



Policy Paper

Partner Vetting Independent Assessment: Insufficient Justification for a Global Rollout

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Acronyms and Short-Form Terms

Assessment	Independent assessment surveys conducted for this report
CFR	Code of Federal Regulations
DCHA	Bureau of Democracy, Conflict and Humanitarian Assistance
EU	European Union
FAQ	Frequently Asked Questions, USAID/State Partner Vetting System Pilot Program
Final Rule	Final Rule on Partner Vetting in USAID Assistance
NGO	Nongovernmental Organization
OFDA	Office of U.S. Foreign Disaster Assistance
PII	Personally Identifiable Information
PVS	Partner Vetting System
RAM	Risk Analysis and Management
RBA	Risk-Based Assessment
State	U.S. Department of State
U.K.	United Kingdom
USAID	U.S. Agency for International Development

Executive Summary

This report presents the findings from an assessment of the Department of State (State) and USAID partner vetting system (PVS) pilot (the Assessment). The concerns of U.S. nongovernmental organizations (NGOs) regarding PVS are not a debate about vetting, but rather about the role of U.S. NGOs in such a system. U.S. NGOs working overseas do not want their funding or resources to be used by, or in any way diverted to, designated terrorist groups. To this end, InterAction member organizations¹ will continue to audit their programs and rigorously vet implementing partners. U.S. NGOs want to ensure that any vetting system does not risk the lives of staff, does not harm aid recipients, allows for effective program implementation, and does not result in U.S. NGOs being perceived as an extension of U.S. intelligence, undermining their independence and neutrality. Vetting approaches that avoid these unintended negative consequences can be designed and managed by USAID and State.

The findings of this report support three overarching conclusions. First, implementation of the partner vetting pilot has not been consistent enough to form the basis for a global program. Second, the option of direct vetting² was insufficiently implemented and warrants further study. Third, the significant number of critiques – many of which are addressed by the recommendations in this report – could, if addressed, significantly alleviate some of the negative consequences of vetting.

For these reasons InterAction recommends that Congress direct USAID and the Department of State to extend the PVS pilot for an additional three years, to include implementation of direct vetting and the recommendations made in this report in both pilot and enhanced vetting countries.

Partner vetting is an additional due diligence procedure added to a set of procedures used by USAID and State in an effort to ensure that U.S. foreign assistance does not inadvertently benefit terrorists or their supporters. The preamble to the Final Rule on Partner Vetting in USAID Assistance states: “The purpose of the Partner Vetting System is to help mitigate the risk that USAID funds and other resources could inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners.”

This report finds that PVS is not consistent with its stated purpose because it goes beyond mitigation, into intelligence collection for the U.S. government. It also finds that the objective of minimizing the negative impact of partner vetting on providing humanitarian and development assistance has been unevenly realized. To account for this, USAID and State need to address some key areas, among which are: the disparity of burden distribution; the shift of liability – legal, security and operational – to implementing partners; and the uncertainty that pervades partner vetting due to a consistent lack of transparency and information-sharing that directly increases the burden and liability for implementing partners.

This report begins with consideration of the link between perception and security. Section I

discusses the potential negative impact on NGO staff security should vetting be perceived as an intelligence gathering activity. In countries characterized by insecure environments in particular, some implementing partners believe vetting puts their people in greater danger. Assessment respondents and interviewees for this report said decisions about whether to participate in vetted awards was a country-by-country, case-by-case decision that included a number of factors, with security high among them. The fundamental objection to vetting is that it oversteps its stated purpose and places implementing partners in the position of collecting the personally identifiable information (PII) of key individuals. Section I suggests why there is nothing that precludes the use of this information for U.S. intelligence purposes.

Section II addresses the administrative burden of vetting. It compares the official government estimates of the vetting burden with Assessment responses and finds that the official estimates are too low.³ In every case, the median cost shared by Assessment respondents exceeded the official estimate, often by a significant amount. Individually, some awards were in line with the estimates, but the majority exceeded them. This report can only surmise that the official estimates were based on the lowest common denominator and that, in fact, the administrative burden for vetting the majority of awards is greater. In practice, some implementing partners bear more of the burden than others. One-third of respondents reported that vetting made it more difficult to effectively and efficiently deliver programs.

As a part of the vetting process, some prime recipients chose direct vetting, an option that removes the prime recipient from the middleman role of collecting PII from sub-recipients. Instead, sub-recipients submit their PII directly to USAID or State. Section III focuses on the implementation of direct vetting because it is a more recent option that was negotiated into the Final Rule and only required for awards in pilot countries midway through the pilot period. This report found that direct vetting was not consistently presented as an option; some prime recipients had to request its use. More concerning though was the finding that some prime recipients were required to verify the PII of sub-recipients' key individuals when using direct vetting. This requirement is in line with USAID's FAQ on partner vetting but it contradicts language in the explanatory statement for the Consolidated Appropriations Act for Fiscal Year 2016 (184 Cong. Rec. 10419, 2015). This requirement to verify effectively shifts legal liability for the accuracy of PII to prime recipients. It also adds to the uncertainty of the process.

Moving to the point in the vetting process when key individuals are either cleared or determined to be positive matches, Section IV summarizes the main issues encountered by interviewees and Assessment respondents. These were: invasive requests for additional key individual information; a lack of transparency; and a small number of inconsistent vetting outcomes. In addition, when a positive match is confirmed, there is no legal obligation that information be shared about why an individual or organization was determined to be a positive match; and in practice this information is infrequently shared. This lack of transparency only increases the uncertainty under which implementing partners operate.

Section V considers data security and integrity. Implementing partners are concerned about both the security risks to PII that is submitted – from hacking, to unsecure transmission, to the potential sharing of it for purposes other than the stated intent – and the integrity of the data it is vetted against. As a result, NGOs said that vetting has increased their security and operational liability. There is also uncertainty due to the lack of transparency about how PII is used, stored and shared.

Section VI focuses on data protection and privacy law. In some countries the partner vetting process directly conflicts with these laws. Some examples include European Union countries, the United Kingdom, Kenya, the Philippines and Ukraine. This issue is not a simple one to resolve. The fact that USAID and State have not addressed it despite repeated efforts by implementing partners to raise the issue and propose solutions indicates a deliberate decision to allow the potential legal liability to fall on the shoulders of implementing partners.

Section VII proposes a set of minimum exemptions and considers the fact that currently most exemptions depend on an informal, per award approach that relies on historical trends and personal perspectives within USAID and State bureaus. Reliance on these rather than on clear guidelines adds to the uncertainty of partner vetting. Efforts to date by implementing partners to negotiate a set of basic exemptions and to create more formal exemption processes have only been marginally effective. This is despite the fact that a precedent for exemptions exists in USAID's own branding and marking provisions.

Section VIII, the conclusion, includes a set of alternative approaches to partner vetting. Looking ahead, InterAction and its members will continue to urge U.S. government counterparts to engage in a formal, consultative process with implementing partners to create a simpler, smarter and more equitable approach that meets the stated purpose of partner vetting while more effectively accounting for and minimizing its negative impacts.

Consolidated List of Recommendations

This list consolidates recommendations made throughout the report. While the report is divided into sections that reflect different aspects of the vetting process, the recommendations fall into four substantive areas related to: (1) the purpose of vetting; (2) liability; (3) administrative burden; and (4) transparency and information sharing. The number(s) after each recommendation indicate the section(s) of the report in which the recommendation appears.

Purpose of Vetting

1. Create guidelines that ensure individuals' information is used only for the stated intent of vetting. (I, V)
2. Create and institutionalize a definition of what constitutes proper use of individuals' information that is agreed on by U.S. NGOs and the U.S. government. (I)
3. Limit the number of countries subject to vetting. (II)
4. Create a formal system to exempt vetting for special circumstances, including humanitarian contexts. (VII)

Transparency and Information-Sharing

1. Clarify and make public all steps in the vetting process, including how individuals' information is used, shared and stored. (II, V)

Liability: Legal, Operational and Security

1. Ensure the Risk-Based Assessment tool gives equal weight to the risk factors for implementing partners when determining whether and how to apply vetting. (I)
2. Create a way for those submitting information to flag that an individual is sensitive and therefore related communications should not occur via unsecure means. (V)
3. Exempt awards for the sensitive work of democracy, rights and governance. (VII)
4. Exempt or indemnify prime and sub-recipients in countries where vetting may violate data protection and privacy laws. (VI)
5. Make direct vetting by sub-recipients an option for all awards. (I, III)
6. Limit the role of the prime recipient in direct vetting to notifying sub-recipients. (III)
7. Do not require prime recipients to verify the information submitted by sub-recipients. (III)
8. Disclose the reason for each positive match so implementing partners can make informed decisions. (IV, V)
9. Ensure that the party evaluating a positive match appeal is senior to the original reviewer for all vetted awards. (IV)

Administrative Burden

1. Revise administrative burden estimates to account for median estimates that include complex vetting and verification circumstances. (II)



2. Reduce the time and cost burden of vetting compliance with actions that include providing:
 - a. Detailed guidance for sub-recipients using direct vetting in the primary local language(s) (III);
 - b. A specific time period for which vetting clearance is valid, for example, one-year (II, V);
 - c. Measures that address the lack of reciprocity between and within the USAID and State systems (II); and
 - d. Lists of preapproved vendors (II).
3. Create a transparent denial and appeal process for positive matches. (IV)
4. Exempt small sub-awards. (VII)
5. Exempt beneficiaries. (VII)

Overview of Partner Vetting

The Partner Vetting System (PVS) was created by the U.S. Agency for International Development (USAID) to help prevent humanitarian and development funds from being used to inadvertently benefit terrorists, their supporters or those affiliated with them. The Department of State (State) created a parallel initiative called Risk Analysis and Management (RAM) that was modeled on PVS. Since July 2015, USAID and State have undertaken a congressionally mandated one-year pilot program for both PVS and RAM in five countries: Guatemala, Kenya, Lebanon, the Philippines and Ukraine.⁴ This is in addition to other countries and territories where vetting similar to PVS and RAM has been in effect for a number of years. These are often referred to as enhanced vetting countries⁵ and currently include the West Bank and Gaza (2003)⁶, Afghanistan (2011), Iran (2006)⁷, and more recently Syria (late 2015) and Pakistan (December 2016).

Purpose of this Report

Congress has required that USAID and State present an evaluation of the pilot program. This evaluation, along with required consultations with key stakeholders, will contribute to decisions about whether and how to move forward with vetting. There is no indication that USAID and State's evaluation of the pilot will take into account the broader impacts of vetting on implementing partners. To ensure that implementing partner perspectives are included in this process, InterAction has undertaken a parallel assessment. The main findings are presented in this report, which will serve as a basis for future discussions with congressional representatives and other U.S. government counterparts.

Summary of the Partner Vetting System Process

PVS and RAM require potential prime recipients that apply for awards from USAID and State to submit detailed biographical information on "key individuals." Key individuals are defined in the preamble to the Final Rule as anyone who has the ability to divert award funds. This includes the principal and deputy principal officers, the program manager or chief of party and any other person with significant responsibilities for the administration of the activities or resources. PVS and RAM also require prime recipients that issue sub-grants to gather similarly detailed biographical information on the key individuals of sub-recipients, in some cases including vendors and individual beneficiaries. Before USAID or State disburses the award funds, this biographical information is vetted against classified U.S. government intelligence databases. If any match is found between an applicant's organization or key individuals and one or more names in the U.S. government databases, the award will be denied. Matches can be appealed within seven days by providing additional personal information on the key individuals. Biographical information provided may be used to update the classified government databases, although exactly how this information is, or could be, used remains unclear.

Methodology

The information in this report was collected through an independent assessment survey (Assessment), interviews, desk research, and documents provided by InterAction and U.S. NGO interviewees. Assessment respondents were organizations that had considered applying for, applied for, or received USAID or State awards as prime recipients during the pilot period of July 27, 2015 – September 2016 in countries subject to vetting. The countries included the five pilot countries – Guatemala, Lebanon, Kenya, the Philippines and Ukraine – as well as other countries and territories with enhanced vetting requirements. Two of those, Iran and the West Bank and Gaza, have processes that are distinct enough from partner vetting that they were originally excluded. However, information received through Assessment surveys and interviews was relevant and ultimately taken into consideration. The Assessment was originally set to conclude at the end of July 2016, but was later extended to the end of September in line with USAID's own extension of the pilot period.

Assessment responses were solicited through InterAction member NGOs, counterpart NGO platforms in select countries, and humanitarian NGO consortia. They were solicited on the basis of anonymity for both organizations and the individual respondents. Respondent organizations could choose to submit multiple Assessment surveys in order to reflect different perspectives within the organization, for example from headquarters and country offices. The survey could also be accessed and filled out by multiple staff through a shared username and password. After deliberation, the Assessment survey was limited to prime recipients because, despite efforts to draft a survey that would solicit both prime and sub-recipient perspectives, the document that resulted was too unwieldy for practical use. The option of circulating two surveys was determined to be too confusing in terms of outreach to the respective constituencies. The decision to limit the survey to prime recipients was not easy. While many prime recipients are often sub-recipients as well, by excluding sub-recipients the perspectives of local partners was not included. The report as a whole would have benefitted from these perspectives – in particular on issues such as staff security, perceptions of vetting, impact on partnerships, and direct vetting.

In total, 27 Assessment responses were submitted: 13 from country offices and 14 from headquarters. Only one response came from a non-U.S. NGO. The Assessments covered 22 different awards. Three respondents had two or more awards subject to vetting; others had one award each. By government agency, the awards were distributed as follows: USAID, 14; State/Bureau of Population, Refugees and Migration, 5; and State (other bureaus), 3. All five of the pilot countries, as well as Afghanistan and Iran were included in the survey responses.

One issue in the analysis phase was determining how to handle the Assessment response that included Iran. It was ultimately included because it did not make an appreciable change in the survey's numbers, but did add to the breadth of overall information. Additionally, some interviews included discussion about Iran and the West Bank and Gaza that was considered in the report. The second issue was three surveys that were submitted on the same award by three different staff in the same country office. Ultimately all three were kept because some of the answers differed

sufficiently in degree and it was not possible to make a fair decision either in merging them or excluding two.

In addition to the 27 Assessment responses, six interviews were conducted: five with U.S. NGO representatives and one with a former senior U.S. government official. The former government official had significant knowledge of vetting and was supportive of it. The U.S. NGOs interviewed included one country office and four headquarters. Like the Assessment surveys, interviews were similarly anonymous.

Independent desk research and background documents provided by InterAction and some U.S. NGO interviewees rounded out the information gathered for this report. These documents included written exchanges, submissions to policy processes, meeting notes, vetting requirements, a USAID audit report, academic papers and media articles. These provided an important framework in which to situate the Assessment responses and interviews. Each section of the paper relies, in part, on the content of these documents. Not available for this report was information on how many USAID and State awards were subject to vetting during the pilot period, in which countries, and how many were exempt from vetting.

Section I - Security and Perception

The preamble to the Final Rule on Partner Vetting in USAID Assistance (Final Rule) states: “PVS is not a U.S. intelligence collection program... and is not authorized by law to collect intelligence information.” When there is a positive match between information “contained in U.S. [g]overnment databases” and the personally identifiable information (PII) provided by award applicants or their sub-recipients, this information can be used to “update the existing public or non-public database records for those organizations or individuals ...” The provision of PII “is not extraordinary, and its collection does not imply an improper use” (Final Rule, preamble).⁸

InterAction members have long expressed a deep concern about the potential negative impact on staff security should vetting be perceived as an intelligence gathering activity for the U.S. government. This objection has emphasized the importance of NGO neutrality, impartiality and independence to the security of staff and their ability to access recipients of aid in highly insecure environments. This is particularly important in insecure environments where misperceptions about implementing partners as entities associated with U.S. government intelligence already exist or could quickly develop. The fundamental objection to vetting, as currently conducted, is that it oversteps its stated purpose and in doing so places implementing partners in the position of collecting PII on individuals and organizations that may be used to update or expand U.S. intelligence databases. As such, local populations may perceive implementing partners as government agents. This perception puts NGO staff at undue risk. While the preamble to the Final Rule states that the collection of PII “does not imply an improper use,” neither is there agreement on, or a guarantee, of its proper use.

Concern about the security of NGO staff is serious and founded in a record of danger for NGO workers. Between 2010 and 2015, there were 1,931 aid workers who were kidnapped, injured or killed. Of those, 43% worked for international NGOs. Of the total victims, 13% were international staff and a full 87% were national staff. Notably, 23% of these incidents occurred in private homes or offices. If project sites are included, that number increases to 35% (Aid Worker Security Database). Security incidents known to have occurred as a direct result of a perception that NGOs are in some way linked to U.S. intelligence activities have been documented.⁹ It should be noted that the actual numbers may be higher, but the ability to establish direct causation is nearly impossible in the absence of a statement from an attacker. Additionally, NGOs generally have few resources to investigate and uncover the true reason behind attacks against staff. Concern that more incidents could occur as a direct or indirect result of vetting, either in the form of violence or increased government scrutiny is very reasonable. USAID’s own branding and marking provisions include exemptions when the security of implementing partners may be at risk. As one interviewee put it:

... at some point we’re concerned there will be a story in the local newspaper in one of these countries that says this is what USAID requires of a contractor... and people will perceive that as us giving names over to the U.S. government. That day, we expect, will happen at some point, we just don’t know when. It hasn’t happened yet. — *U.S. NGO interviewee*

Assessment results show that concerns that vetting will weaken staff security were held by 42% of respondents. Forty-six percent believe vetting will have no impact and the remaining 12% believe that vetting will, in fact, strengthen staff security. On the other hand, when asked if there were concerns NGOs could be perceived as agents or intelligence gatherers of the U.S. government, 60% of respondents said yes, while 24% said it depends on the country and only 16% said no. As another interviewee explained:

... it's going to be slightly different in different contexts... I would say in a West Bank/Gaza, it doesn't inherently change the security equation; it just changes your ability to implement... In Pakistan that's very clear. And Afghanistan it would be interesting because we're talking about an environment that's extremely hardened... — U.S. NGO interviewee

When asked how sub-recipients reacted to the vetting requirement, 44% said the reaction was neutral and 32% said it was negative. None said it was positive.

On the ability to be secure, some Assessment respondents and interviewees said they determined whether to participate in vetted awards on a country-by-country, case-by-case basis, taking into account a number of factors, with security high among them. Afghanistan was cited as the country with the highest security concerns related to vetting. Pakistan was also frequently referenced in interviews as a high security concern should vetting be required. At the time it was anticipated that vetting would begin there in October 2016. While delayed, vetting did begin in December 2016.

To determining if, and to what extent, vetting should be required for programs and activities, USAID and State developed a tool called the Risk-Based Assessment (RBA).¹⁰ The preamble to the Final Rule states that the pilot period should be used to test the RBA to “determine whether there is a correlation and the nature of the correlation between vetting results and the level of risk established in the RBA.” As part of on-going advocacy efforts, InterAction members have pointed out that the RBA should not only take into account the risks present in the environment, but also the risks to implementing partners that may result from vetting in that environment as well.

OBSERVATION 1: “Vetting is very real in both Afghanistan and Pakistan. Where we accept [it], we provide information only on [our organization's] people. The basic reason for this is that we don't have clarity on how that information is being used. We assess each opportunity on a case-by-case basis and look at a few key criteria: security management, reputation management [within communities], operations, logistics, and the burden of vetting itself in terms of the way data is required or just logistics outside of security. The question at the root of it all is: what is the information being used for and where does that place us as the go-between? Following the recent attacks on an international NGO compound in Kabul, the Taliban came out with a follow-up statement saying the NGO was not their target. But those lines can get muddled pretty quickly. Thus far we've been able to maintain our security because people know exactly what we're doing, where the lines are drawn. When you start re-drawing those lines then you may not even stand up and say: 'No, we don't do that.'”

—U.S. NGO interviewee

After vetting was introduced in Afghanistan in 2011, Mercy Corps and CARE, most notably, declined a combined total of \$43 million, choosing instead to withdraw from or turn down USAID-funded work because of concerns with the potential security ramifications of vetting (Nixon 2015). A total of nine large InterAction members elected to forgo any USAID funds that required third party vetting. It is not known how many others chose not to apply, or chose to alter their program plans due to security concerns. In the Assessment, 82% of respondents said that their organization's security posture in the pilot countries is based on a community acceptance model¹¹, which is contingent on local relationships of trust and impartiality. As to whether staff generally felt safe, 56% said yes, 36% said it depends in the country, and 8% said no.

NGOs generally do not have the resources or the mandate to investigate security incidents and ascertain their true motive. Host governments are responsible for such investigations. Unable to produce or procure this kind of analysis and, when raising security concerns asked to prove a positive correlation that they do not have the resources or mandate to carry out, NGOs often assume the increased risk. To better ensure NGO staff security, more should be done by the authorized entities to investigate serious security incidents.

Recommendation: Create guidelines that ensure individuals' information is used only for the stated intent of vetting (this is also a recommendation in Section V).

Recommendation: Create and institutionalize a definition of what constitutes proper use of individuals' information that is agreed on by U.S. NGOs and the U.S. government.

Recommendation: Ensure the Risk-Based Assessment tool gives equal weight to the risk factors for implementing partners when determining whether and how to apply vetting.

Recommendation: Make direct vetting by sub-recipients an option for all awards (this is also a recommendation in Section III).

Section II - Burden Estimate

In preparing the Final Rule on partner vetting, USAID estimated the administrative burden to be three key individuals per form on average, with 75 minutes required to “gather the necessary information, complete the form, submit the form to USAID, and respond to requests by USAID for additional information ...” (Final Rule, preamble). The cost was estimated at \$40.93 per application. USAID further estimated that, if vetting were applied to all awards, the total annual cost for all prime recipients would be \$414,212 for an annual average of 10,120 award submissions.¹² Regarding other direct costs, the preamble to the Final Rule states: “[n]o start-up, capital, operation, maintenance, or recordkeeping costs to applicants are anticipated as a result of this collection.” On indirect costs, it notes: “USAID has not quantified other costs associated with this rule, such as indirect costs ... [but] we have invited implementing partners on an ongoing basis to provide feedback on issues related to partner vetting ...”

Assessment results indicate that the official burden estimates are too low. They place the median number of key individuals per award at six, compared to the Final Rule’s average of three. The average from Assessment responses was 39 key individuals per award, including prime and sub-recipients; this better reflects the administrative burden of awards with a large number of key individuals. A majority of respondents (62% percent) said the amount of time required was 10 hours or less,¹³ but 23% said it took 11 to 20 hours and 15% said it took 20 hours or more. This means that 38% said it took 11 hours or longer, significantly exceeding the official estimate of 75 minutes. The median cost for this staff time was \$700, ranging from \$200 to \$4,000 per award. While the survey results do not indicate why this range was so large, they do show that it was not due to the number of key individuals vetted, with one exception. Overall, the cost of staff time *per key individual* ranged from \$8 to \$1,000, with a median cost of \$88.

OBSERVATION 2: “Vetting was required in the last year of our multiyear award. We submitted PII for contractors, grant recipients, and key staff, including U.S. [b]oard members of the prime implementer. The U.S. based [b]oard members were not comfortable providing their information. People with common names were asked to provide additional information such as their spouse’s information or the names, dates of birth, children’s names, or the applicant’s school history. Our staff was uncomfortable asking some of these questions, so when possible we substituted less invasive questions. During this time, we had to train internal staff to use the portal, but in order to access it a contract modification had to be processed. So before we had access to the portal, hard copies were submitted to the Mission. In order to get the original signatures on the hard copies, staff had to, in some cases, drive many hours to remote locations. The overall time added to the award issuance process was estimated to be months. Projects were put on hold, often for one to two months, for a program intended to construct and equip sustainable businesses. In fact, by the time we were told the pilot system had ended, we still had not received responses for 53% of the individuals submitted. We were told that those pending approvals are now approvable but there has been some uncertainty since PVS instructions were often unclear. We are moving forward with the unapproved applicants.”

— U.S. NGO, Assessment respondent

All administrative costs gathered in Assessment responses, except the \$8 per key individual, exceeded the official estimate of \$40.93 per award or \$14 per individual. If these actual incurred expenses are used to calculate the potential costs of vetting applied globally, the *lowest cost* per award of \$200 indicates an annual cost of just over \$2 million. However, the Assessment's *median cost* per award of \$700 indicates a global annual cost of just over \$7 million.

Some of the staff time and cost captured in the Assessment responses may include what the preamble to the Final Rule described as “start-up, capital, operation, maintenance, or recordkeeping costs,” none of which were “anticipated as a result of this collection.” Start-up costs might reasonably include time spent by a prime recipient’s staff learning to use the on-line PVS and RAM portals and, in the case of standard vetting, determining how best to verify new categories of personal information. Operation costs might include temporary staff brought on to free up the appropriate employees to key in, review and verify data. And capital, maintenance and recordkeeping costs could be part of necessary future investments in the protocols and hardware to maintain the security of the personally identifiable information (PII) submitted, particularly for organizations that choose standard vetting.¹⁴

Other direct costs were identified as well. For example, an Assessment respondent that chose direct vetting had to invest staff time to assist sub-recipients in the process (see Observation 3). In another instance of unanticipated direct costs, a prime recipient had to “process a contract modification in order to get access to the online system.”

OBSERVATION 3: “[T]here was no guidance provided by USAID on how to use the web portal in any language. Further, the web portal was only in English, making it more difficult for our local sub-recipients to understand how to use the portal and input information into it (which required us to help them translate and walk through their submission to the system). Also, it was not made clear that there was only a 24-hour window to set up an organization’s password to the system once notified by USAID. As such, staff were either traveling or didn’t realize this time restraint ... and had to contact USAID to restart and reset the password process ...”

— U.S. NGO, Assessment respondent

OBSERVATION 4: “In pilot country X we operate 90 small community-based organizations. The difficulties started with the collection of information; laboring to explain to our partners why we were collecting their personal information. The community-based organizations are scattered, and in remote areas, so time and effort was put into informing them and collecting this information. We also had to delay issuing modification and work because an additional increment in funds required us to get vetting approval first. Staff had to be pulled from other work to concentrate on vetting and inputting information into the USAID portal. The portal server is slow, in that even after keying in the information one has to wait one to two minutes for it to be saved before proceeding with the next entry. Training was only provided in Washington, DC, never in the pilot country. At a minimum we expected USAID to offer portal training at the Mission, but that was not the case. One of the biggest frustrations with vetting is the uncertainty, once all the information is submitted, as to when to expect a response back from USAID. Because of this, we are unable to plan and predict when agreements will be issued out to our sub-recipients.”

— U.S. NGO, Assessment respondent

As to indirect costs, vetting-related delays had an impact. A majority 63% of Assessment respondents said that vetting added, on average, more than a month to the award issuance process. An additional 25% said it added approximately five business days, and the remaining 12% said it added one or two days. Of all Assessment respondents, 38% said the additional time required for vetting resulted in delays in program implementation. One had a delay of only several days, one was still waiting when their Assessment survey was submitted, and the remaining had experienced delays of one to four months. In some cases, delays affected the prime's relationship with sub-recipients. One respondent wrote: "Project continuation was slowed down ... Confidence [of] sub-grantees lost as a result of requirements mid-stream ..." (U.S. NGO).

More generally, 33% of Assessment respondents said that vetting made it more difficult to effectively and efficiently deliver programs. Using the official estimate of an average of 10,120 awards per year, if vetting were applied to all awards, 6,072 awards would have proceeded with no negative impact to the effectiveness or efficiency of their delivery, while 3,340 – meaning about one out of every three awards – would have been negatively affected.

Interviewees with experience in enhanced vetting countries identified additional indirect costs that further increased the administrative burden. Their experience has been that each vetting process begins de novo, in that the PVS and RAM systems do not communicate within themselves, do not communicate with each other, and do not share even the most basic information with implementing partners. This means that prime recipients regularly duplicate their own work or that of others, such as submitting key individuals that have recently been vetted and cleared for a different award. It also means that they cannot access information as basic as which key individuals have been submitted by their organization for vetting or what the status is in the vetting process. One interviewee summarized the experience this way:

OBSERVATION 5: Two experiences of vetting related delays shared by pilot country Assessment respondents:

"Both projects have been delayed as a result of vetting delays. Project 1 was delayed four months due to vetting delays. Project 2 is currently being delayed and we anticipate at least a one – two month delay."

– U.S. NGO

"We originally submitted our first small grant request only to have it tabled by the AO [Agreement Officer], asking us to have the PVS forms completed for each proposed sub-grantee."

– U.S. NGO

... it's not only there is no reciprocity between PVS and RAM, there's no inter-connectivity between programs [i.e. within the same Agency]. So if we were using a consultant on... Syria and Afghanistan, they would have to be put through separately, and again, they could have separate results because of that, even within the same Agency. If we have two open [country X] programs from the same donor, the vetting has to happen separately for each. Now, there's the expectation ... if it's been vetted by somebody else that counts as your vetting as long as it was within a year. But you have

to, as the partner organization, find out who has been vetted. For Afghanistan, this was also an issue because you have to vet certain transactions above \$25,000, so our team asked [about vendors]: “Can’t you just give us a list of who has been vetted?” ... And at least back then it wasn’t something that would take a week, it would take them four to six weeks for somebody that everybody seemed to be using. So it was not conceived to move the process along faster. And USAID then specifically said, “No, we won’t tell you if they’ve been vetted before ...” — *U.S. NGO, interviewee*

Recommendation: Limit the number of countries subject to vetting.

Recommendation: Revise the administrative burden estimates to account for median estimates that include complex vetting and verification circumstances.

Recommendation: Reduce the time and cost burden of vetting compliance with actions that include providing:

- a specific time period for which vetting clearance is valid, for example, one-year (this is also a recommendation in Section V);
- measures that address the lack of reciprocity between and within the USAID and State systems; and
- lists of pre-approved vendors.

Recommendation: Clarify and make public all steps in the vetting process, including how individuals’ information is used, shared and stored (this is also a recommendation in Section V).

Section III - Direct Vetting

A key step in the vetting process is the collection of key individuals' personally identifiable information (PII). There are two ways this is done: standard vetting and direct vetting. With standard vetting, the potential prime recipient is required to collect and submit the PII of that organization's key individuals and those of all required sub-recipients. With direct vetting, the potential prime recipient and sub-recipients separately submit their key individuals' PII, removing the prime recipient as the middleman in the exchange. Direct vetting was first allowed under the pilot program. At the outset, it was allowed for only a "select group of awards" (Final Rule, preamble). The explanatory statement for the Consolidated Appropriations Act for Fiscal Year 2016 (184 Cong. Rec. 10419, 2015), signed into law in December 2015 (midway through the pilot period), made direct vetting an option for all awards in the pilot countries. At a May 2016 briefing with InterAction members, USAID representatives confirmed direct vetting was an option for all pilot countries. Direct vetting is not yet an option for awards in enhanced vetting countries.

This section focuses on direct vetting because it is a more recent option for implementing partners. InterAction has long-held that prime recipients should have a choice between standard and direct vetting for all awards. Some organizations prefer direct vetting because they feel it "empowers [their] sub-recipients to make the decision for themselves on whether to comply with vetting, and submitting their information gives them a clear understanding of what it means to comply with vetting requirements." Others prefer standard vetting because they "feel very strongly" there should be "no direct relationship between the U.S. government and [their] partners." The importance of both options was expressed in interviews for this report.

Assessment responses and interviews highlighted two areas of concern with the implementation of direct vetting under the pilot program: first, a failure to present direct vetting as an option when that option was available; and second, the requirement that prime recipients verify the PII submitted by sub-recipients.

The first concern is that direct vetting was not always offered as an option, even when it was one. It was difficult to pinpoint whether this problem was limited or widespread because direct vetting was not a required option for all awards in the pilot countries until midway through the pilot period. One Assessment respondent self-reported that: "... we had to request use of the direct vetting option" (U.S. NGO). In other words, in at least some cases prime recipients had to know direct vetting was an option, and request it, before it was made available. Forty percent of Assessment respondents with awards vetted during the pilot period in pilot countries said direct vetting was an option. Sixty percent said it was not. While it is difficult to know why direct vetting, once available, was not always offered as an option, it is noteworthy that the 40% who said it was offered chose that approach.

The second concern deals with the requirement that prime recipients verify the PII of sub-recipients' key individuals. USAID's Frequently Asked Questions document on partner vetting (the FAQ), published in September 2015, states that prime recipients that choose direct vetting are: "responsible

for verifying that the information provided by its sub-prime organizations to USAID for the purposes of vetting is accurate and complete to the best of its knowledge.” However, the explanatory statement for the 2016 Appropriations Act referenced above states that the direct vetting option “does not require prime awardees to collect, verify, or submit sub-awardee data.” The language in USAID’s FAQ and the 2016 Appropriations Act explanatory statement remained at odds as of the publication of this report. Assessment results and interviews indicate that USAID is requiring verification. One respondent reported: “USAID required that we sign a verification that the information provided by our sub-recipients was accurate, however, we were never given access by USAID to the information they submitted; we only received a list of key individuals from USAID” (U.S. NGO). In addition to the continued requirement to verify, this quote highlights another problem: it may be unclear what information the prime recipient is required to verify. In the instance quoted, it was not clear whether the prime recipient was required to verify only the names and titles sent to them, or all of the information in the sub-recipients’ PII, which they did not have access to in the first place.

Recommendation: Make direct vetting by sub-recipients an option for all awards (this is also a recommendation in Section I).

Recommendation: Limit the role of the prime recipient in direct vetting to notifying sub-recipients.

Recommendation: Do not require prime recipients to verify the information submitted by sub-recipients.

Recommendation: Reduce the time and cost burden of vetting compliance with actions that include providing detailed guidance for sub-recipients using direct vetting in the primary local language(s). (Other recommendations for reducing the time/cost burden are included in Section II.)

Section IV - Positive Matches

If an individual or organization is determined to be a positive match during the vetting process, the applicant has seven days to file an appeal by submitting additional personally identifiable information (PII). The government agency does not have to provide a reason for the denial. The preamble to the Final Rule states: “Organizations will be given a reason ... with a reasonable amount of detail...” The amount of detail “... will depend on the sensitivity of the information ...” Under the pilot program, appeals do not go to staff who made the original denial but instead go to “senior policy makers within the Agency” (Final Rule, preamble). This process is similar for enhanced vetting countries, however it is unclear how those appeals are reviewed.

Research for this report found limited information about positive matches.¹⁵ At the time Assessment surveys were submitted, half of the respondents had completed vetting and been approved.¹⁶ These responses, plus interviews, highlighted three issues specific to this part of the vetting process: first, invasive requests for additional PII; second, inconsistent vetting outcomes; and third, a pervasive lack of transparency.

The concern about invasive requests for additional PII was raised a few times in Assessment responses and interviews. Assessment respondents and interviewees attributed these requests to either the need to more accurately distinguish individuals with common names or to rule out potential false positives. One Assessment respondent, a prime recipient using standard vetting, was asked for additional PII that included information on the children and spouses of a number of sub-recipient key individuals. The prime recipient reported that staff were uncomfortable asking for this level of detail and when possible substituted less invasive questions (see Observation 2).

In terms of inconsistent vetting outcomes, a small number of instances in enhanced vetting countries were discussed by interviewees. In one case, a partner organization submitted a sub-recipient that was approved. One month later, the same sub-recipient was submitted by a different organization and was declined. There was no explanation and the partner organization that had been told the sub-recipient was approved was not notified that the sub-recipient was now declined. In another instance, a prime recipient organization received notice of a positive match for an independent consultant and several months later, out of the blue, received an update that the individual was eligible. Again, no explanation was given.

With regard to transparency, comments focused on the lack of shared information. One Assessment respondent wrote about the difficulty of getting information about why vendors were rejected. An interviewee, speaking of an experience outside of the pilot period, was able to get a bit more information but only informally: “Yes, there was a hit for Afghanistan [a vendor]. We asked for information from the U.S. government. They didn’t put anything official but they told informally that it was due to corruption” (U.S. NGO). This lack of transparency about why some sub-recipients are considered positive matches may be a problem within USAID and State as well. The former U.S. government official interviewed for this report said: “Having been on the other side ... in many cases

USAID and State don't hear any more than the NGOs do."

This lack of clarity can put implementing organizations in a difficult position if they have pre-existing working relationships with partners that are later identified as positive matches. The implementing organization must decide whether to cut all ties, assist in an appeal process, or take another course of action. When vetting outcomes are inconsistent (as in the examples above) and no information about the reason for the positive match is given, it can be particularly difficult for implementers to know what course of action to take.

OBSERVATION 6: "[I]n some cases that's more of a legal mandate about personally identifiable information and in other cases it's life and death for activists who are participating in programs. There's sort of this, 'You need to trust our system, but by the way, we can't explain to you why these quirky things are happening, why it's taking five months for people to be vetted and what not.' So that's the opaque."

— U.S. NGO interviewee

Recommendation: Disclose the reason for each positive match so implementing partners can make informed decisions (this also a recommendation in Section V).

Recommendation: Create a transparent denial and appeal process for positive matches.

Recommendation: Ensure that the party evaluating a positive match appeal is senior to the original reviewer for all vetted awards.

Section V - Data Security and Integrity

USAID's FAQ on the pilot Partner Vetting System, published on-line in September 2015, states that individuals' personally identifiable information (PII), collected by USAID, is maintained in secure databases. It states that there are role-based limitations on staff access to this information. It also states that PII will be retained for audit and follow-up, although the time period for retention is not yet determined. Meeting notes from a May 2016 briefing between InterAction members and USAID representatives note that USAID systems are stand-alone and not connected to the intelligence database. A 2007 USAID audit that preceded the rulemaking process for partner vetting stated that PII will be vetted against the Department of Justice's Terrorist Screening Center (TSC). If this is still the case and if the USAID system is stand-alone, then presumably PII is submitted to the TSC in a separate process (USAID 2007).

NGOs are worried about the security of the PII of their partners, vendors and beneficiaries should database security systems be breached. They worry when PII is shared via unsecure means. They are also deeply worried that PII will be shared with other governments and U.S. government agencies, or in other words, used for reasons other than the stated purpose.

And they worry that the data PII is vetted against lack integrity. Data security is a particular worry for NGOs and their partners that work in areas such as human rights, democracy and governance, peacebuilding, conflict management, and similar areas.

Data security and data integrity were not addressed directly in the Assessment survey but they were raised by interviewees and came up in background documents reviewed for this report. To the concern that systems containing PII will be hacked, there have been a number of notable breaches of U.S. government and private sector systems, including the 2015 breach of the Office of Personnel Management. NGOs are concerned that U.S. government databases containing PII will at some point be hacked and used by other governments or actors to do harm to NGOs and their partners. Some are also concerned about their own ability to establish the protocols and assume the cost of keeping PII secure.

When PII is shared via unsecure means, NGOs also worry. This concern predates, and includes, the pilot period. An interviewee with experience in enhanced vetting countries, prior to and during the pilot period, said:

We specifically, for [enhanced vetting country], didn't want to send things over Internet for fear of different things. We would hand in something and they would respond with an email saying so-and-so has been approved. That's kind of counter-productive to the security posture that you're trying to create around this. And so, from the moment we're

OBSERVATION 7: "[The b]iggest problem we heard from the subs [sub-recipients] and our Board Members was them listing personal information like passport, address, phone number etc. ... They had more questions about how was this information being handled by us and USAID afterwards."

— U.S. NGO, Assessment respondent

handing over that information, as much as we try to make sure that that information is safe on all kinds of levels ... I have no confidence in them that they can ensure that it's safe; that I know what is an effective process of vetting these people. — *U.S. NGO interviewee*

Another interviewee, a sub-recipient in a pilot country, when asked generally if there were concerns with vetting requirements responded: “Yes, obviously when you have personal information ... The prime [recipient] asked for it on an Excel document so it's not encrypted. So yes, the manner in which we're providing it to the prime isn't secure, so yes, there is a risk” (U.S. NGO).

NGOs also worry about PII being used for purposes other than the stated intent – whether shared with other U.S. government agencies or with other governments. Language for the Final Rule is not clear on this point. During the rulemaking process, but prior to the Final Rule being issued, a research paper by the Counterterrorism and Humanitarian Engagement Project examined data protection and privacy law related to vetting and noted: “... USAID and the State Department may share data on individuals with other U.S. government entities and other governments for reasons that have not been clearly defined” (Cohen, Hasty & Winton, 2014). If this remains true, prime and sub-recipients submitting PII do not know whether, and how, their information is used. They do not know if information on cleared individuals is retained for non-vetting purposes, and they do not know how information on individuals or organizations identified as positive matches is used or retained. NGOs want to know that they and their partners will be safe. Knowing how PII is used and how it is shared is of paramount importance to them.

Finally, NGOs worry that the data PII is vetted against lack integrity, resulting in a higher number of false positives. From an NGO perspective, false positives may take several forms, such as: a request for additional vetting information beyond what was already submitted; an individual or vendor that passes in one instance but not in another; a lengthy delay in receiving results; or when the prime recipient is notified that an individual or organization did not pass, but subsequently receives an update that they were cleared. Among those interviewed for this report, a former U.S. government official supportive of vetting noted, “... the false positives will drive you crazy.”

One would expect that, over time, the integrity of the data would improve, the problem of false positives would decrease, and the vetting process would be more efficient. However, this does not appear to be the case. An interviewee, speaking about an award pending in the West Bank and Gaza during the pilot period, where vetting began at least as far back as 2003, recounted waiting almost five months for notification that the one sub-recipient submitted for the award had passed vetting.

Recommendation: Clarify and make public all steps in the vetting process, including how individuals' information is used, shared and stored (this is also a recommendation in Section II).

Recommendation: Disclose the reason for each positive match so implementing partners can make informed decisions (this also a recommendation in Section IV).



Recommendation: Create a way for those submitting information to flag that an individual is sensitive and therefore related communications should not occur via unsecure means.

Recommendation: Create guidelines that ensure individuals' information is used only for the stated intent of vetting (this is also a recommendation in Section I).

Recommendation: Reduce the time and cost burden of vetting compliance with actions that include providing a specific time period for which vetting clearance is valid, for example, one-year. (This is also a recommendation in Section II, which includes other time/cost burden reducing recommendations).

Section VI - Data Protection and Privacy Law

On the issue of the potential for conflict between the requirements of partner vetting and the data protection and privacy laws of other countries, the preamble to the Final Rule states: “USAID will continue to evaluate issues relating to privacy and data protection during implementation of the pilot and consider accommodations as necessary.” The explanatory statement for the 2016 Appropriations Act requires that the pilot period evaluation include an “analysis of privacy and data protection concerns.”

In some countries the partner vetting process directly conflicts with local data protection and privacy law. According to a research paper that examined the potential for conflict with European Union (EU) and United Kingdom (U.K.) laws, partner vetting is “in direct conflict with European and UK data protection and privacy laws” (Cohen, Hasty & Winton, 2014). Partner vetting is also in potential conflict with the laws of other countries, including three pilot countries: Kenya, the Philippines and Ukraine. The Philippines and Ukraine have passed laws similar to the EU. In Kenya, privacy rights are part of the 2010 Constitution.

OBSERVATION 8: “We have not actually engaged in partner vetting because all of our programs are implemented through our headquarters division in [EU member country]. We didn’t even get to the local law assessment because our headquarters put the kibosh on it. All of our international staff that is in the field, which is a lot of very senior level staff, but also the staff we second to our partner organizations, are all contracted through [EU headquarters]. All of the human resource functions for international staff is done out of that office. Essentially, we suspended participation in application for new USAID programs in the pilot countries.”

— U.S. NGO interviewee

The issue is not a simple one to resolve. In the EU and the U.K., for example, the conflict between vetting requirements and relevant data protection and privacy law concerns both data processing and its cross-border transfer. Even if direct vetting were used, the sub-recipient collecting and transferring the data to the U.S. government portal would be liable under EU law. In terms of prosecuting violations, both governments and individuals would be able to pursue legal action (Cohen, Hasty & Winton, 2014).¹⁷

When asked if the possibility of prosecution under EU or other national data protection and privacy laws had stopped their organization from applying for awards subject to vetting, only 5% of Assessment respondents said yes. However, when asked if such concerns might prevent future award applications, that percent increased to 32%. An additional 36% said they did not know. Interviews and Assessment surveys suggest that the impact of this legal situation has so far been limited to a small number of organizations. In one case, the legal and human resources staff at an organization’s EU headquarters determined that vetting was too risky under EU law, in addition to violating the

OBSERVATION 9: “As is the case for any NGO with offices and staff in the EU, this conflict is certainly a matter of significant concern and one that gives pause in deciding whether to pursue future U.S. federal awards that would be subject to PVS or RAM vetting requirements.”

— U.S. NGO, Assessment respondent

organization's internal human resource guidelines. As a result, the organization suspended applications for new USAID awards (see Observation 8). Two awards were not applied for during the pilot period as a result of this decision.

In June 2013, InterAction members formally noted this issue as part of the rulemaking process for the Final Rule. InterAction submitted a detailed memorandum prepared by counsel expert in the area of privacy and data protection law. The memorandum concluded that vetting, as proposed, could not be reconciled with

relevant European laws, and potentially the laws of other countries as well. The same counsel also reviewed the Final Rule and determined that the conclusions of the memorandum remained essentially the same.¹⁸ This was not the first, nor the last time U.S. NGOs raised this issue. In a September 2015 written exchange with the Assistant Administrator for USAID's Management Bureau, InterAction stated its understanding of the situation: "To date, USAID has not addressed the concerns that PVS may violate either European Union member states' or a pilot country's privacy and data protection laws. Currently, USAID does not plan to exempt vetting under these circumstances." The Assistant Administrator's reply confirmed this: "Your recollection of stated policy regarding ... European Union privacy and data protection laws is correct."¹⁹

OBSERVATION 10: "If compliance with partner vetting requirements put our organization in legal risk, it would be an important factor in determining whether we pursue the funding award."

— U.S. NGO, Assessment respondent

Most recently, InterAction attempted to address the problem through proposed language for the 2017 Appropriations Act (see Appendix II). The relevant part of the language submitted states: "... ensure the pilot PVS program, and any other similar vetting programs, adhere to the data protection and privacy laws of host governments, or ... indemnify prime awardees for any potential legal action taken against them ..." In the justification, InterAction wrote that USAID and State "have not addressed serious concerns about data protection and privacy concerns that put NGOs in tenuous legal position ... placing the entirety of that risk upon implementing organizations ..."

Recommendation: Exempt or indemnify prime and sub-recipients in countries where vetting may violate data protection and privacy laws.

Section VII - Exemptions

There are two types of exemptions from vetting: blanket and case-by-case. Blanket exemptions cover everything in a particular category. Case-by-case exemptions occur on a per award or per context basis. In countries under the pilot program, blanket exemptions apply only to certain categories of individual beneficiaries. Those exemptions include indirect beneficiaries, ultimate beneficiaries, some training participants, and refugees and internally displaced persons, among others (FAQ). For case-by-case exemptions, the preamble to the Final Rule states: “USAID retains the discretion to address emergency or unique situations on a case-by-case-basis when a vetting requirement would impede USAID’s ability to respond to an emergency situation.” Organizations working under exempted awards can be vetted either post-award or “once the immediate need has been addressed” (FAQ).

The only formal means to request an exemption is on a per award basis. As explained in a December 2015 letter to InterAction’s CEO from the Assistant Administrator for USAID’s Management Bureau, Mission staff can “include a brief description of mitigating circumstances” and as part of the information collection process for an award, “[i]mplementing [p]artners can also provide input on mitigating circumstances that may impact whether vetting is conducted ...”²⁰ The FAQ contains similar language. No other formal process exists.

Most exemptions from vetting rely on an informal, per award, approach. A former U.S. government official interviewed for this report, who supports vetting as currently designed, said:

Any system you come up with is going to have, in effect, checks and balances ... Even within USAID, you have the Inspector General and the General Counsel and some other offices that are very firm on doing very complete vetting but you also have DCHA and OFDA²¹ that are looking out for the interests of NGOs and other providers on the ground ... — *Former U.S. government official*

This describes an informal system that is dependent on historical trends and the personal perspectives of current bureau chiefs and senior staff rather than on clear guidelines. This dependence adds to the uncertainty of partner vetting. In a system where checks and balances are based on the rule of law, exemptions may act as a check on a potential excess of vetting. Currently nothing prevents a shift in the trends that the quote above describes. Efforts to date by InterAction and its members to negotiate a set of basic exemptions and to create more formal exemption processes have only been marginally effective.

In fact, USAID’s own branding and marking provisions set a precedent that is relevant in a discussion about exemptions for vetting. For democracy and governance work, a branding and marking exemption can be requested when the neutrality and independence of implementing partners would be compromised. More broadly, exemptions are also considered when branding and marking requirements would diminish the credibility of the work, undercut the host country

government's ownership, offend local cultural or societal norms, or conflict with international law. It is also possible to request an exemption after an award has been issued, if compelling political, safety or security concerns arise (22 CFR 226.91).

InterAction members have a two-part position. First, they hold that vetting as currently conceived is the wrong approach. They recommend instead an alternative that is simpler, smarter, more equitable, and consistently applied before being brought to scale. Second, if vetting continues as is, at a minimum, humanitarian emergency, democracy, rights and governance, beneficiaries, and small sub-awards should be exempted, and a formal system should be created to consider exemptions in special circumstances.

Of these five there has been progress on one: an exemption for humanitarian emergencies, limited to sudden onset situations. As described in the first paragraph of this section, organizations in these circumstances can be vetted post-award or once the immediate need has passed. No Assessment respondents or interviewees reported vetting being applied mid- or post-award in a humanitarian situation. However, there were two reports of vetting applied midway through development awards; both reported that vetting caused months-long delays that affected program implementation. Observations 2 and 4 summarize these experiences.

For democracy, rights and governance programs, the explanatory statement for the 2016 Appropriations Act requires USAID and State to consider an exemption for “democracy assistance” in their report to Congress on the pilot program, but does not require consideration of a similar exemption for rights or governance programs. Language submitted by InterAction for the 2017 Appropriations Act re-inserts rights and governance in a request for “a procedure for waiving vetting requirements.”

OBSERVATION 11: “What this [vetting] is predicated on is that everything is just a transactional project deliverable-based initiative. That’s not what political development is ... certainly not in most democracy and governance.”

— U.S. NGO interviewee

There is no exemption for direct beneficiaries. In a September 2015 exchange of letters between the Assistant Administrator of USAID’s Management Bureau and InterAction’s CEO, the Assistant Administrator justified the lack of an exemption for direct beneficiaries: “It is important for the pilot program to gather data allowing USAID to evaluate vetting as applied to beneficiaries.” The initial letter from InterAction’s CEO does, however, note one positive step, the understanding that: “... USAID’s solicitations will clearly establish whether it requires the vetting of beneficiaries as opposed to stating that vetting beneficiaries ‘may be required’.” Shifting to a “may be required” standard as opposed to the automatic vetting of beneficiaries is a small step forward. It would improve transparency, which would in turn allow award applicants to make more informed decisions before applying for an award. However, it would still fall short of providing an exemption. The experience in an enhanced vetting country told in Observation 12 illuminates how the current approach undermines planning and operations.

OBSERVATION 12: “The training of trainers program was days out from the launch event. Our sub-recipient had passed vetting after almost five months during which we were repeatedly told they probably wouldn’t pass, and that we should identify a back-up partner. But eventually, without any explanation for the delay, we were cleared to move ahead. The program materials were developed, the in-country coordinator hired, the venue reserved, and the local participants invited and confirmed. The award requirements were clear, formal and informal conversations had occurred at all levels with U.S. government (USG) counterparts, and the program details were in the negotiated work plan. Within days of the event we received news that all 100 volunteer trainers would have to be vetted, and that this could be done in two days. Our doubts about the ability to expeditiously vet aside, we would never have moved forward if we had known that vetting would apply to second-tier partners or program participants. While our local partner (a sub-recipient of federal funds) understood the conditions and agreed to submit PII for key individuals of the organization, such a requirement for individuals with whom that partner engages would be highly problematic. Prolonged program delays aside, the perception that we are collecting such information on behalf of the USG, and these individuals would therefore be directly associated with the USG, compromises the safety and security of staff and beneficiaries. Further, individuals would not be informed of, or able to appeal in any substantive way, the reason for a derogatory vetting result. In the end, we determined that it was not feasible to continue with the program, and made the very difficult decision to end the award.”

— U.S. NGO interviewee

There is also no established exemption for sub-awards. The preamble to the Final Rule notes that the sub-award threshold for vetting is determined by the Risk-Based Assessment tool.²² While sub-awards less than \$25,000 are often not vetted, interviewees reported difficulty getting confirmation on what the minimum threshold will be or whether there will be one at all. Vetting for small sub-awards may increase the administrative burden simply because more vetting is required. It may also increase the operational burden due to vetting-related delays that hold up program activities. In addition, an interviewee said they sometimes have had to choose a more expensive vendor, such as a U.S. vendor, “because it would have taken two or three months to get it [a vendor] vetted and we needed to move right away ...” (U.S. NGO).

Finally, there are no robust processes for requesting an exemption due to special circumstances. The lack of such a process can cause delays in life-or-death situations. This has already happened. For example, it resulted in delays in the delivery of critical assistance during the 2011–2012 regional famine that heavily impacted southern Somalia. U.S. government required vetting delayed U.S. NGO responses for months during the critical period immediately preceding the famine. While this position was ultimately reversed, months were lost before an exemption for security purposes was agreed on.

Recommendation: Create a formal system to exempt vetting for special circumstances, including humanitarian contexts.

Recommendation: Exempt awards for the sensitive work of democracy, rights and governance.

Recommendation: Exempt small sub-awards.

Recommendation: Exempt beneficiaries.

Section VIII - Conclusion

Partner vetting is an additional due diligence procedure added to a set of procedures used by USAID and State in an effort to ensure that U.S. foreign assistance does not inadvertently benefit terrorists or their supporters. The findings of this report, which is based on extensive research and survey work, support three overarching conclusions:

- First, implementation of the partner vetting pilot has not been consistent enough to form the basis for a global program;
- Second, the option of direct vetting was insufficiently implemented and warrants further study; and
- Third, the significant number of critiques – many of which are addressed by the recommendations in this report – could, if addressed, significantly alleviate some of the negative consequences of vetting.

For these reasons InterAction recommends that Congress direct USAID and the Department of State to extend the PVS pilot for an additional three years, to include implementation of direct vetting and the recommendations made in this report in both pilot and enhanced vetting countries.

The preamble to the Final Rule states that: “USAID’s experience has been that organizations advancing humanitarian and foreign assistance operations adapt to such requirements.” This is especially unfortunate because just over one year prior to the Final Rule’s publication, a study commissioned by USAID/Conflict Management and Mitigation, highlighted some of the impacts of vetting and the responsibility aid agencies have to consider the inadvertent consequences of their practices: “The operational practices of aid agencies carry significant, often inadvertent consequences for local partners and must be subject to systematic scrutiny lest they reinforce existing conflict dynamics” (Allen, Kjaer, Skeith & Plotkin, 2014). In the West Bank and Gaza, where the referenced part of the study took place: “90% of interviewees described vetting as problematic, raising a number of logistical and social/political concerns” (Allen, Kjaer, Skeith & Plotkin, 2014).

InterAction and its members have anticipated and been aware of impacts such as these since partner vetting was introduced and have consistently advocated for change. The position of InterAction and its members is two-part. First, they hold that vetting as currently conceived is the wrong approach. They recommend instead an alternative that is simpler, smarter, more equitable, and consistently applied before being brought to scale. Second, barring willingness on the part of the U.S. government to reconsider partner vetting, the recommendations made throughout this report should be implemented. In both cases, the end goal is an approach that accounts for the U.S. government’s desire for increased due diligence.

One starting point for developing an alternative approach would be recommendations submitted by InterAction for the 2017 Appropriations Act (see Appendix II). These include:



- Accessible databases so prime recipients can directly vet staff;
- A “cleared names” list;
- A pre-approval process that organizations can undertake directly with USAID and State; and
- A mutually agreed due diligence standard that does not require providing information on community members to the U.S. government.

Further, the recommendations found in each section of this report should be an integral part of any future discussions.

Looking ahead, InterAction and its members will continue to urge U.S. government counterparts to engage in a formal, consultative process with implementing partners to create a simpler, smarter and more equitable approach that meets the stated purpose of partner vetting while more effectively accounting for and minimizing the negative impacts.

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Appendix II: InterAction Submission for Fiscal Year 2017 Appropriations

Reference: State and Foreign Operations, Title VII General Provisions, Special Provisions

Requested Bill Language:

The Department of State and USAID shall submit the report required in Sec 7034(e) of PL 114-113 on the PVS pilot by November 15, 2016, and a review of the efficacy of the pilot PVS, including an analysis of potential security or programmatic challenges USAID Partners face under this system, and an analysis of any alternatives that accomplish the same objectives but may have less adverse impact to implementing partners. For all awards carried out under the PVS pilot program, or any other similar vetting system, the Department of State and USAID shall include a direct vetting option that does not require prime awardees to collect, verify, or submit sub-awardee data as well as humanitarian and democracy and governance exemptions.

Requested Report Language:

In each country subject to the PVS pilot program, or any other similar vetting system, the Department of State and USAID will directly provide a full disclosure in the local language(s) to all individuals and organizations subject to vetting, and the host government, that includes how to provide information to the Department of State and USAID for vetting, how information will be stored and used by the U.S. Government, how information regarding a positive match will be handled, and how to appeal such a match. The Department of State and USAID are further directed to provide a procedure for waiving vetting requirements for humanitarian assistance or investments in democracy, rights, and governance. The Department of State and USAID are further directed to ensure the pilot PVS program, and any other similar vetting programs, adhere to the data protection and privacy laws of host governments, or otherwise Department of State and USAID must indemnify prime awardees for any potential legal action taken against them for compliance with the pilot PVS or any other similar vetting system.

The Committees on Appropriations further directs USAID and the Department of State to refrain from implementing similar vetting systems in countries outside the designated PVS pilot program until the Committees have had ample time to review the report provided by the Department of State and USAID, unless required to respond to existing security threats. The Department of State and USAID are directed to consult with the Committees on Appropriations and relevant stakeholders at least 60 days prior to any such expansion, or any other changes to existing vetting programs. The Department of State and USAID are further directed to provide a procedure for gathering public input in the risk analysis performed prior making a decision to apply vetting requirements to awards in any additional countries.

Justification for Request:

For FY16, Congress required the Department of State and USAID to submit a report upon the completion of the PVS pilot. This requirement stemmed from Congress' recognition that an

improperly implemented vetting system could result in very significant and irreversible harm to humanitarian aid and democracy and peace building organizations operating in insecure environments where suspicions of intelligence gathering result in staff and programs being targeted by armed groups and ousted from the country.

In its implementation of the PVS pilot, the Department of State and USAID must directly address the challenges NGOs are facing with PVS implementation. USAID has not publicly released any analysis to date on alternatives to PVS or direct vetting, such as making the names in the referenced databases publicly available so NGOs can vet partner staff themselves; instituting a “cleared names” list so organizations can go through a pre-approval process directly with USAID and State; and/or establishing a due diligence standard for NGOs which would be designed to prevent diversion of U.S. funded assistance that does not require providing information of community members to the U.S. Government.

Additionally, there are ongoing problems with implementation that the pilot has not addressed. For example, USAID has requested implementing partners using the direct vetting option included in the FY16 report language to verify sub-awardee data – in direct contravention of the report language and clear Congressional intent. There is also minimal coordination between State and USAID’s respective vetting programs which has required individuals to submit information to separate vetting programs on jointly funded projects. There are also instances where USAID has not had materials in local languages explaining vetting, including how to comply with PVS, or what the U.S. will do with the submitted information. Furthermore, the Department of State and USAID have not addressed serious concerns about data protection and privacy concerns that put NGOs in tenuous legal position regarding various countries’ data protection and privacy laws, placing the entirety of that risk upon implementing organizations, including non-profit humanitarian, democracy, rights and peacebuilding organizations. This should include State and USAID adjusting the risk modeling which determines the risk and need for vetting in particular programs and countries to include input from implementing partners, who are uniquely positioned to give an on-the-ground perspective of the risks in a given situation and the risks of implementing partner vetting for staff and beneficiaries.

Finally, the Department of State and USAID must understand the importance of Congressional intent and oversight in the rollout of any form of partner vetting. USAID has not addressed Congress’ directive to consider an exemption for democracy assistance programming, nor has the humanitarian exemption been clearly delineated or consistently applied. Congress needs to receive and review the report mandated in the FY16 Appropriations measure and to hear from stakeholders and provide guidance to State and USAID on whether and how to proceed further with partner vetting. This includes State and USAID providing a standard amount of lead time to review additional vetting programs proposed under the security exemption or changes to existing vetting programs.

Endnotes

- 1 InterAction is a U.S.-based coalition of over 180 international development and humanitarian assistance non-governmental organizations (NGOs). We represent large and small, religious and secular NGOs.
- 2 Direct vetting is an option in the vetting process that allows sub-recipients to submit personal information on their key individuals directly to USAID or the Department of State without using prime recipients as an intermediary.
- 3 Official estimates referenced are in the preamble to the Final Rule on Partner Vetting in USAID Assistance.
- 4 For the purposes of this report, PVS or the PVS pilot refers to the implementation of both PVS and RAM. PVS and RAM are considered together because the models are similar and because USAID and State will be submitting a joint report to Congress on the pilot's implementation.
- 5 Enhanced vetting country is the term generally used to refer to the countries or territories where vetting procedures similar to partner vetting are required.
- 6 Vetting in the West Bank and Gaza was required for Economic Support Fund assistance in the Consolidated Appropriations Acts of 2003, 2004 and 2005. Mission Order 21, which guides vetting and other antiterrorism procedures there, was issued in early 2006. It is possible that some form of vetting may have begun as early as 2001 or 2002. The 2007 Amended and Restated Mission Order 21 notes that vetting procedures are: "... the culmination of an evolutionary process that began in July 2001..." (2007-WBG-26) Related guidance was also developed in March 2002 for the implementation of Executive Order 13244 in the West Bank and Gaza (USAID 2007).
- 7 The earliest requirement found for this report was a public notice from the Department of State for "Iran Democracy Programs Grant Vetting" (71 Federal Register 236. December 8, 2006).
- 8 Full quote: "In those instances where there is a positive match, USAID will update the existing public or non-public database records for those organizations or individuals with any pertinent data provided by the organization or individual. USAID only updates the record once we have determined a match and there is more accurate information on the individual that was voluntarily provided on the Partner Information Form. Failure to provide these updates would be counterproductive to the U.S. Government's comprehensive counterterrorism efforts and inconsistent with a whole of government approach. Given the standard assumption that an exchange of personal information is required as a part of government employment and government funding opportunities, the provision of personally identifying information for that purpose is not extraordinary, and its collection does not imply an improper use" (Final Rule, preamble).

- 9 For a short list of relevant press coverage, see, for example, footnote 21 in Cohen, Hasty & Winton 2014; resources cited in OMB Watch (Sazawal 2009) Issue Brief “USAID Must Consider Alternative Vetting Approaches”; and Wille, C. and Fast, L. (2013) “Operating in Insecurity: Shifting Patterns of Violence Against Humanitarian Aid Providers and their Staff (1996-2010),” *Insecurity Insight Report* 13-1. Insecurity Insight: Vevey, Switzerland.
- 10 Factors used in the RBA are listed in the FAQ.
- 11 An NGO’s ability to implement programs, and often the security of its staff, is contingent on local relationships of trust, perception of impartiality and acceptance by the community.
- 12 This is based on the official estimate’s calculation of \$40.93 per submission. This includes “the time required for the administrative support employee to collect the information, complete the form, submit the form to USAID, and follow up with USAID on information related to the form.” The annual cost, if required for all awards, is estimated at \$414,212, if \$40.93 per application is multiplied by the annual estimate of 10,120 submissions (Final Rule, preamble).
- 13 The fact that the survey did not include an option of 75 minutes or less, in line with the official estimate, was an oversight. The author followed up with all respondents that chose 10 hours or less to see if the time required was more or less than 75 minutes. At the time this report was published, three-quarters of respondents had replied. Of those, half said their response would have been 75 minutes or less and half said they still would have answered 10 hours or less.
- 14 Standard vetting is the process by which the potential prime award recipient collects and submits the personal information of its key individuals and those of sub-recipients to USAID and State.
- 15 The preamble to the Final Rule notes that in Afghanistan vetting: “... prevented approximately \$100 million from being awarded to entities that did not meet USAID’s vetting requirements” and that “1.5–2.5 percent of potential awardees were deemed ineligible.” In a July 11, 2015 *New York Times* article by Ron Nixon, the amount cited by USAID was \$600 million, “mostly in Afghanistan.” It is not possible to compare these numbers because in neither case was the period of time given.
- 16 One Assessment respondent reported a positive match for a sub-recipient during the pilot period in an enhanced vetting country. The author followed-up for additional information but no response was received before the report’s publication.
- 17 There are two instances when these laws may not apply: when the information is requested directly from each individual and when the employee is fully funded by USAID or State (Cohen, Hasty & Winton 2014).
- 18 There is some precedent for such an exchange of data: the 2003 Mutual Legal Assistance Agreement. That agreement applies only to data exchange between the EU and the U.S.

Moreover, the relevance of the MLAA precedent may also be limited due to the reasons for and intended use of the information. For more detail see: Cohen, Hasty & Winton 2014.

- 19 Referenced quotes in full: September 2015 letter from InterAction CEO to the Assistant Administrator of USAID's Management Bureau: "To date, USAID has not addressed the concerns that PVS may violate either European Union member states' or a pilot country's privacy and data protection laws. Currently, USAID does not plan to exempt vetting under these circumstances." Response to InterAction CEO from the Assistant Administrator: "Your recollection of stated policy regarding democracy, rights, governance programs and civil society organizations as well as European Union privacy and data protection laws is correct."
- 20 Referenced quotes in full: "The RBA Tool also provides Mission staff with the opportunity to include a brief description of mitigating circumstances that may impact whether vetting is conducted. Implementing Partners can also provide input on mitigating circumstances that may impact whether vetting is conducted as part of the information collection process" (December 2015 letter from the Assistant Administrator for USAID's Management Bureau to InterAction CEO).
- 21 DCHA is the acronym for USAID's Bureau for Democracy, Conflict and Humanitarian Assistance; OFDA refers to the Office of U.S. Foreign Disaster Assistance.
- 22 See Section I for a brief description of the Risk-Based Assessment tool.