

# **DISCLOSURE OF SECTION 1367 INFORMATION TO NATIONAL SECURITY OFFICIALS FOR NATIONAL SECURITY PURPOSES**

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## **I. Purpose**

This Instruction implements the Department of Homeland Security (DHS) Directive 215-01, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes Title 8, United States Code (U.S.C.), Section 1367(b)(8), with respect to the disclosure of any information related to applicants for or beneficiaries of T Visa, U Visa or Violence Against Women Act (VAWA) protections (“Section 1367 information”) for National Intelligence (including Foreign Intelligence and Counterintelligence) purposes to elements of the Intelligence Community or for counterterrorism purposes to elements of the Intelligence Community, other Federal departments and agencies, and foreign government entities.

## **II. Scope**

This Instruction applies throughout DHS. It does not affect the disclosure of Section 1367 information in accordance with Title 8, United States Code (U.S.C.), Section 1367(b)(1)-(7).

## **III. References**

- A. Title 6, U.S.C., Section 112, “Secretary; functions”
- B. Immigration and Nationality Act (INA), Title 8, U.S.C., Sections 1101(a)(15)(T), (a)(15)(U), (a)(51)
- C. INA, Title 8, U.S.C., Section 1103, “Powers and duties of the Secretary, the Under Secretary, and the Attorney General”
- D. INA, Title 8, U.S.C., Section 1367, “Penalties for Disclosure”
- E. Title 50, U.S.C., Chapter 15, “National Security Act of 1947,” as amended
- F. Executive Order (E.O.) 12,333, “U.S. Intelligence Activities,” as amended

- G. E.O. 13,388, “Further Strengthening the Sharing of Terrorism Information to Protect Americans”
- H. DHS Privacy Incident Handling Guidance (Jan. 26, 2012)
- I. DHS Directive 002-02, “Implementation of Section 1367 Information Provisions”
- J. DHS Instruction 002-02-001, “Implementation of Section 1367 Information Provisions”

## IV. Definitions

- A. **Counterintelligence**: Information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.
- B. **Foreign Intelligence**: Information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.
- C. **Information**: Any knowledge such as facts or opinions, data, numbers, or graphics, whether in digital, textual, oral or other forms, and whether maintained in any medium, including but not limited to computerized data bases, paper, microform, magnetic tape, and other digital storage solutions.
- D. **Intelligence**: A collection of acquired, analyzed, and synthesized information, that is of tactical, operational, or strategic value. It includes foreign intelligence and counterintelligence as defined by Executive Order 12333, December 4, 1981, as amended, or by a successor order.
- E. **Intelligence Community**: The United States Intelligence Community as defined at Title 50, United States Code, Section 401a, “Definitions,” and Executive Order No. 12,333, “United States Intelligence Activities, Section 3.5, as amended.
- F. **National Intelligence**: All Intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that (1) pertains to more than one United States government agency; and (2) that involves (i) threats to the United States, its people, property, or interests; (ii) the development, proliferation, or use

of weapons of mass destruction; or (iii) any other matter bearing on United States national or homeland security.

- G. **Section 1367 Information:** Any information relating to aliens who are seeking or have been approved for immigrant status as battered spouses, children and parents under provisions of the Violence Against Women Act (VAWA), as victims of a severe form of human trafficking who generally are cooperating with law enforcement authorities, or as aliens who have suffered substantial physical or mental abuse and are cooperating with law enforcement authorities. This definition includes records or other information that do not specifically identify the individual as an applicant or beneficiary of the T Visa, U Visa, or VAWA protections. Section 1367 covers information relating to beneficiaries of applications for a number of immigration benefits, not just the Form I-360 VAWA self-petition. For the purpose of this guidance if an alien is the beneficiary of a pending or approved application for one or more of the victim-based benefits described below, the requirements of 8 U.S.C. 1367 is followed:
1. VAWA self-petitioner, which incorporates the following applications or petitions:
    - a. I-360 Self-petition - self-petitioners under INA sec. 204
    - b. I-751 Hardship waiver - battered spouse or child hardship waiver
    - c. VAWA CAA - abused Cuban Adjustment Act applicants
    - d. VAWA HRIFA - abused Haitian Refugee Immigration Fairness Act applicants
    - e. VAWA NACARA - abused Nicaraguan Adjustment and Central American Relief Act applicants
    - f. VAWA Suspension of Deportation
  2. VAWA Cancellation of Removal applicants under INA section 240A(b)(2)
  3. I-914 T Nonimmigrant Status - victim of a severe form of trafficking in persons under INA section 101(a)(15)(T)
  4. I-918 U Nonimmigrant Status - victim of certain serious criminal activity under INA section 101(a)(15)(U)
- H. **Terrorism:** Any activity that—(A) involves an act that—(i) is dangerous to

human life or potentially destructive of critical infrastructure or key resources; and (ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and (B) appears to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

- I. **Terrorism Information**: All information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to (1) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism; (2) threats posed by such groups or individuals to the United States, United States Persons, or United States interests, or to those of other nations; (3) communications of or by such groups or individuals; or (4) groups or individuals reasonably believed to be assisting or associated with such groups or individuals. The term includes Weapons of Mass Destruction Information.
- J. **Weapons of Mass Destruction Information**: Information that could reasonably be expected to assist in the development, proliferation, or use of a weapon of mass destruction (including a chemical, biological, radiological, or nuclear weapon) that could be used by a terrorist or a terrorist organization against the United States, including information about the location of any stockpile of nuclear materials that could be exploited for use in such a weapon that could be used by a terrorist or a terrorist organization against the United States.

## V. Responsibilities

- A. The **Officer for Civil Rights and Civil Liberties** directs and oversees the implementation of the integration of civil rights and civil liberties across the Department, serving as the foundational DHS organization through which all Department-wide civil rights and civil liberties activities are overseen, defined, and measured, including the maintenance and disclosure of Section 1367 information. The Officer for Civil Rights and Civil Liberties manages the execution of this Instruction.
- B. The **Under Secretary for Intelligence and Analysis** serves as the Chief Intelligence Officer for the Department, exercising leadership and authority over intelligence policy and programs throughout the Department and, acting in conjunction with, and without preempting the authorities of the DHS Chief Information Officer and the DHS Chief Security Officer,

exercising leadership over information sharing and safeguarding policy and programs throughout the Department in partnership with the Heads of Other Components, including with respect to the disclosure of Section 1367 information.

- C. The **Director of U.S. Citizenship and Immigration Services** oversees lawful immigration to the United States by establishing national immigration services policies and priorities, including with respect to the maintenance and disclosure of Section 1367 information.
- D. The **Chief Privacy Officer** is the senior official within the Department with primary responsibility for privacy compliance and policy, including with respect to disclosure of Section 1367 information.
- E. The Component **Heads** implement and execute all applicable policies and procedures set forth in this instruction and any implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute, executive order, presidential or other directive, or national or departmental policy.

## VI. Content and Procedures

### A. **Content:**

- 1. Consistent with applicable law, regulation, presidential and other directives, and national and departmental policies, Component Heads (or their designees, provided that any such designee is adequately trained on applicable protections and policies), in coordination with the Director of U.S. Citizenship and Immigration Services or his designees, are permitted to disclose Section 1367 Information under the following circumstances:
  - a. To elements of the United States Intelligence Community outside the Department in furtherance of those elements' authorized National Intelligence (including foreign intelligence and counterintelligence) or counterterrorism functions, provided that disclosure is made in furtherance of the recipient's authorized National Intelligence or counterterrorism function and the information provided is used only for the authorized purpose for which it was provided.
  - b. To other Federal departments or agencies possessing a counterterrorism function, provided that disclosure is made in furtherance of the recipient's authorized counterterrorism

function and the information provided is used only for the authorized purpose for which it was provided.

- c. To foreign governments or any entities thereof possessing a counterterrorism function, provided that disclosure is made in furtherance of the recipient's authorized counterterrorism function and the information provided is used only for the authorized purpose for which it was provided.
  - d. Disclosure by a Component Head or his or her designee to any of the entities described in Section VI.A.1.a-VI.A.1.c of this Instruction is permissible only in accordance with Component-specific procedures for disclosing Section 1367 information jointly developed by the Component, the Office of Intelligence and Analysis, the U.S. Citizenship and Immigration Services, and the Office for Civil Rights and Civil Liberties.
2. Except as provided under the terms and conditions of any applicable preexisting information-sharing arrangements between the Department and requestors of Section 1367 information, the Under Secretary for Intelligence and Analysis serves as the Department's point of contact for new requested information sharing arrangements of the type described in Section VI.A.1.a-VI.A.1.c of this Instruction.
  3. This Instruction is not intended to contradict or abrogate other protections afforded to applicants for or beneficiaries of T Visa, U Visa, or VAWA protections under law, regulation, presidential or other directive, international agreement, or national or departmental policy, including but not limited to Title 5, U.S.C., Section 552a, "Privacy Act of 1974," Office of Management and Budget (OMB) Memorandum M-06-19, "Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments," July 12, 2006, and DHS Instruction No. 047-01, "Privacy Policy and Compliance," July 7, 2011.

**B. Procedures:**

1. **Information Requests:** Component Heads are authorized to disclose Section 1367 information only in accordance with the procedures and requirements set forth below and in accordance with Component-specific processes and procedures for disclosing Section 1367 information jointly developed by the Component, the Office of Intelligence and Analysis, the U.S. Citizenship and

Immigration Services, and the Office for Civil Rights and Civil Liberties.

- a. As a general matter, requests for Section 1367 information are made in writing (whether in paper or electronic format) and received by the Department prior to disclosure of the information.
  - i. If exigent circumstances prevent a requestor from submitting a written request for Section 1367 information in advance of receipt of that information, the requirement of Section VI.B.1.a of this instruction may be waived in the discretion of the Component Head, but subject to the requirement that the requestor confirm its request in writing as soon as possible, and in any event no later than thirty days after receipt of the information.
  - ii. The exception set forth in Section VI.B.1.a.i of this Instruction does not apply to requests for a large volume of data containing Section 1367 information (i.e., "bulk data"), which, under any circumstances, are required to be made in writing (whether in paper or electronic format) and received by the Department prior to disclosure of the information, and recurring transfers of such information are not provided until the parties sign an information sharing access agreement.
- b. The written request includes the following information:
  - i. Confirmation that the requestor seeks the information in connection with its authorized counterterrorism (or, with respect to elements of the Intelligence Community outside the Department, National Intelligence) function(s);
  - ii. Where possible, supporting information giving rise to the request (e.g., a case number in a terrorism investigation);
  - iii. A description of the requestor's safeguards in place to prevent any unlawful or unauthorized disclosure of the information to third parties; and
  - iv. Confirmation that the written request has been

authorized by the head of the recipient entity or an official delegated or designated with the authority to make such a request on behalf of the head of the recipient entity.

- c. The procedures set forth in Section VI.B.1.a-VI.B.1.b of this Instruction do not apply under the following circumstances:
  - i. In accordance with the terms and conditions of any applicable preexisting information sharing arrangement between the Department and the recipient of Section 1367 information; or
  - ii. To the extent such information has been appropriately disclosed to the public or a State, tribal, territorial, or local government entity in furtherance of a criminal or civil investigation or prosecution and where the Component Head has coordinated such a disclosure with the Director of U.S. Citizenship and Immigration Services and other Component Heads, as appropriate; or
  - iii. Where the Component Head seeks to proactively disclose such information for eligible purposes to eligible recipients and in compliance with the procedures and requirements set forth below and in accordance with Component-specific processes and procedures for disclosing Section 1367 information jointly developed by the Component, the Office of Intelligence and Analysis, the U.S. Citizenship and Immigration Services, and the Office for Civil Rights and Civil Liberties.

## 2. **Identification of Section 1367 Information**

- a. Prior to disclosing any information in response to a request for information from a national security official for national security purposes, or proactively seeking to make such a disclosure to eligible entities for those purposes, Component Heads or their designees are responsible for determining whether any information intended to be disclosed is Section 1367 information.
  - i. Consequently, disclosures of information in response to requests for information from national security officials for national security purposes, or proactive



disclosures of information to eligible entities for those purposes, are permissible only to the extent permitted by and consistent with processes and procedures for identifying and disclosing Section 1367 information jointly developed by the Component, the Office of Intelligence and Analysis, the U.S. Citizenship and Immigration Service, and the Office for Civil Rights and Civil Liberties.

- ii. Section VI.B.2.a.i of this Instruction does not apply to any Component until the processes and procedures described in that section are executed or 180 days after the execution of this instruction, whichever occurs first.
  
  - b. When a national security official outside DHS requests information in bulk from DHS or requests account access to a DHS system of records for national security purposes, such bulk information or account access is provided only to the extent permitted by and consistent with the processes and procedures described in Section VI.B.2.a.i of this Instruction, and only to the extent permitted by and consistent with an applicable information sharing access agreement memorializing the procedures for identifying Section 1367 information and the limitations placed on the use and third-party disclosure of such information.
3. **Retention:** Disclosing officials possess the discretion to disclose Section 1367 information when the intended recipient of such information acknowledges and agrees to abide by the following retention restrictions:
- a. For information determined to constitute terrorism information (or, with respect to elements of the Intelligence Community outside the Department, as information determined to be relevant to the element's authorized National Intelligence function(s)) at the time of disclosure, retention is in accordance with the intended recipient's applicable retention restrictions.
  
  - b. For information that has not been determined to constitute terrorism information (or, with respect to elements of the Intelligence Community outside the Department, as information determined to be relevant to the element's authorized National Intelligence function(s)) at the time of disclosure, (1) retention is in accordance with the terms and

conditions of any applicable information sharing access agreement, except that, notwithstanding the terms and conditions of any such agreement, the information is retained for one year or less from the date of receipt of the information; or (2) in the absence of an applicable information sharing access agreement, retention may be authorized for a period no later than thirty days from the date of receipt of the information.

- c. For Section 1367 information not identified as terrorism information (or, with respect to elements of the Intelligence Community outside the Department, as information determined to be relevant to the element's authorized National Intelligence function(s)) at the time of disclosure, the intended recipient documents in writing as soon as is practicable, but in no event later than the date of the expiration of the temporary retention period described above, any determination made by the intended recipient that the information constitutes terrorism information (or, with respect to elements of the Intelligence Community outside the Department, is relevant to the element's authorized National Intelligence function(s)), and inform the relevant Component Head of that determination.

- 4. **Third-Party Dissemination:** Component Heads disclose Section 1367 information only when the intended recipient of such information acknowledges and agrees that such information is only further disclosed to a third-party recipient in accordance with the provisions of Title 8, U.S.C., Section 1367, "Penalties for disclosure," and where the conditions described below are satisfied, and only where the standard warning against further disclosure set forth in Appendix A to this instruction is provided in writing, in conjunction with the information being disclosed.

- a. Section 1367 information may be disclosed by the recipient of such information to a third party with the written permission (whether in paper or electronic format) of the Secretary, or the Component Head who originally disclosed the information acting in coordination with the Director of U.S. Citizenship and Immigration Services and other Component Heads, as appropriate, provided that Component Heads only permit recipients of Section 1367 information to share such information under circumstances where the Component Heads could directly share that information with the intended third-party recipient.

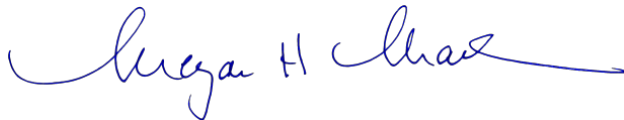
- b. Each Component Head that discloses Section 1367 information pursuant to this instruction alerts the recipient that current departmental policy does not permit the further disclosure of Section 1367 information to a person, group, or entity except as permitted by 8 U.S.C. §1367, this Instruction and any other applicable departmental guidance, including, but not limited to, other Federal, or foreign partners without the written consent of the applicant (if the applicant is an adult) or the explicit authorization of the Secretary or the Component Head who originally disclosed the information, acting in coordination with the Director of the U.S. Citizenship and Immigration Services and any other Component Head, as appropriate.
- 5. **Unauthorized Disclosures:** Component Heads disclose Section 1367 information only when the intended recipient of such information acknowledges and agrees that the requirements set forth below are satisfied.
  - a. Recipients of Section 1367 information ensure that any such information in their possession is accessed only by authorized personnel with a need to know the information and is safeguarded and marked, as appropriate, consistent with the Department's policy on controlled unclassified information and any other applicable requirements concerning the handling of such information. These safeguards include procedures to document proper accounting for access to and disclosure of the information.
  - b. Recipients of Section 1367 information who make unauthorized disclosures are not considered for future information sharing until they have conducted an internal audit to determine how the unauthorized disclosure occurred and submit to the Director of U.S. Citizenship and Immigration Services any remedial measures that have been taken to prevent additional unauthorized disclosures in the future. The Director of U.S. Citizenship and Immigration Services then decides if information sharing should resume based upon the results of the requestor's internal audit and the remedial measures undertaken by the recipient.
- 6. **Notification of Unauthorized Disclosures:** In the event that any Component (1) discloses Section 1367 information in a manner inconsistent with the provisions above or (2) is informed by the recipient of Section 1367 information that the recipient has disclosed that information in an unauthorized manner, the Component Head for that Component (1) notifies the Chief Privacy

Officer and the Officer for Civil Rights and Civil Liberties as soon as is practicable, but in no event later than twenty-four hours after discovery of the unauthorized disclosure, and (2) satisfies the requirements of the DHS Privacy Incident Handling Guidance.

## VII. Questions

Address any questions or concerns regarding this Instruction to the Office for Civil Rights and Civil Liberties.

Appendix A: Standard Warning Against Further Disclosure to Outside Entities  
Appendix B: Standard Requirement for Notification of Determination of Terrorism Information or other Intelligence Information



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Officer for Civil Rights and Civil Liberties

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Date

## **Appendix A: Standard Warning Against Further Disclosure to Outside Entities Language**

Any other federal departments or agencies or foreign governments to whom information is disclosed receives a warning against further disclosure of the information beyond those entities. The warning text to be included is as follows:

As the new custodian of Section 1367 information, you agree to be bound by the confidentiality protections established by 8 U.S.C § 1367. You may not disclose this information to other parties without the permission of the U.S. Citizenship and Immigration Services and in accordance with 8 U.S.C § 1367 as implemented in DHS Instruction No. 215-01-001, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes.

## **Appendix B: Standard Requirement for Notification of Determination of Terrorism Information or other National Intelligence**

Any other federal departments or agencies or foreign governments to whom DHS discloses Section 1367 information that DHS has not yet determined to constitute terrorism information (or, with respect to elements of the Intelligence Community outside the Department, as information determined to be relevant to the element's authorized National Intelligence function(s)) receives a condition that the recipient informs DHS if the recipient intends to permanently retain the information. The condition text to be included as follows:

- DHS has not yet determined whether this information constitutes terrorism information or information relevant to an Intelligence Community element's authorized National Intelligence function. The recipient of this information is required to document in writing as soon as is practicable, but in no event later than the date of the expiration of the temporary retention period described in DHS's transmission, any determination made by the requestor that the information constitutes terrorism information (or, with respect to elements of the Intelligence Community outside the Department, is relevant to the element's authorized National Intelligence function(s)), and inform the relevant Component Head of that determination, so that DHS may take action, as appropriate.