

IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS

I. Purpose

This directive establishes a single Department of Homeland Security (DHS) policy regarding the implementation of Title 8, United States Code (U.S.C.), Section 1367, Violence Against Women Act (VAWA) confidentiality provisions and provides guidance as instructed by 8 U.S.C. 1367(d), as amended by the Violence Against Women Reauthorization Act of 2013, Public Law 113-4, section 810.

II. Scope

This directive applies throughout DHS, particularly those employees who work with applicants for victim-based immigration relief or who have access to protected information, such as United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

III. Authorities

- A. Public Law 101-649, "Immigration and Nationality Act" (INA) Section 101(a)(51), as codified in 8 U.S.C. Section 1101(a)(51)
- B. Public Law 103-322, "Violence Against Women Act (VAWA) of 1994"
- C. Public Law 106-386, "Victims of Trafficking and Violence Protection Act of 2000." (VTVPA)
- D. Public Law 109-162, "Violence Against Women and Department of Justice Reauthorization Act of 2005," Section 817, "VAWA Confidentiality Nondisclosure."(VAWA 2005)
- E. Public Law 113-4, "Violence Against Women Reauthorization Act of 2013," Section 810, "Disclosure of Information for National Security Purposes." (VAWA 2013)
- F. Section 239(e) of the Immigration and Nationality Act (INA) (8 U.S.C. 1229(e)), "Certification of compliance with restrictions on disclosure"

- G. Section 240A(b)(2) of the Immigration and Nationality Act (INA) (8 U.S.C. 1229(b)), “Special Rule for Battered Spouse or Child”
- H. Title 8, U.S.C., Section 1367, “Penalties for disclosure of information” (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA))
- I. Title 42, U.S.C., Section 13925(a), “Definitions and grant provisions” (as re-designated and amended by Section 3 of VAWA 2013), Public Law 113-4
- J. Delegation 19004, Delegation of Authority to Implement Section 1367 Information
- K. Instruction 002-02-001, Implementation of Section 1367 Information Provisions
- L. DHS Privacy Incident Handling Guidance (Jan. 26, 2012)

IV. Responsibilities

All responsible parties listed below are to help ensure compliance with applicable policies and procedures set forth in this Directive.

- A. The **Chief Privacy Officer** is the senior official within the Department with primary responsibility for privacy compliance and policy.
- B. The **Officer for Civil Rights and Civil Liberties (CRCL)** directs and oversees the implementation of the integration of civil rights and civil liberties across the Department and has the delegated authority to issue this Directive and Instruction.
- C. The **General Counsel** is responsible for ensuring legal compliance and has final authority and responsibility for legal policy determinations within the Department and its Components.
- D. The **Component Heads** with any Section 1367 information that might be shared will implement and execute all applicable policies and procedures set forth in this directive, and will develop any necessary 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 Instruction, or national or departmental policy.
- E. The **Council on Combating Violence Against Women** works to ensure that policies and practices for combating violence against women and

children are consistent Department-wide. By identifying opportunities to build consensus on challenging issues across Components, sharing best practices, and coordinating efforts Department-wide, the Council supports the Department's missions of effectively administering the laws preventing violence against women and children. The Council collects information on a quarterly basis and conduct after-action reviews on cases where exceptions have been applied to disclose information and where enforcement actions have been taken at sensitive locations. The Council is also responsible for assisting in developing all implementing policies that are created by Components.

- F. The ***Federal Law Enforcement Training Center (FLETC)*** ensures the computer-based training module, *VAWA: Confidentiality and Immigration Relief*, is available to all Components for promulgation through their Learning Management Systems and provides assistance to keep the training updated and current, as necessary.

V. Policy and Training Requirements

Policy: The policy is comprised of three confidentiality requirements:

- A. All DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone other than a sworn officer or employee of DHS, Department of State (DOS), or Department of Justice (DOJ) of any information relating to a beneficiary of a pending or approved application for victim-based immigration benefits, including a battered spouse or child hardship waiver, VAWA self-petition, VAWA cancellation of removal or suspension of deportation case, or T or U nonimmigrant status, including the fact that they have applied for such benefits. There are certain exceptions to the general nondisclosure requirement, such as information to be used solely for a legitimate national security purpose in a manner that protects the confidentiality of such information. (Please note that different procedures apply for the disclosure of information to national security officials and can be found at Instruction 215-01-001, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes).
- B. Adverse determinations of admissibility or deportability against an alien are not made using information furnished solely by prohibited sources associated with the battery or extreme cruelty, sexual assault, human trafficking or substantial physical or mental abuse, regardless of whether the alien has applied for VAWA benefits, or a T or U visa. For a more information on what qualifies as a VAWA benefit, refer to Instruction 002-02-001, Implementation of Section 1367 Provisions. If a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited

source, DHS employees should treat the information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to pursuing the adverse information. Further, DHS employees receiving information solely from a prohibited source do not take action on that information unless there is an independent source of corroboration.

- C. DHS employees complete a certification of compliance in cases where enforcement actions leading to a removal proceeding are taken at sensitive locations, as required by INA 239(e) (8 U.S.C. 1229(e)). The certification includes the Notice to Appear, which affirms compliance with the Section 1367 Information and prohibited source provisions.

Component requirements: Components with access to Section 1367 Information that might be shared with those outside of the DHS develop any necessary 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 instruction, or national or departmental policy. Components coordinate with the Council in the development of implementing policy. Moreover, any Component with access to Section 1367 information creates ways to identify those individuals protected by Section 1367 confidentiality, such as through a Central Index System (CIS) database check, and develops safeguards to protect this information in the relevant systems.

Training requirement: All DHS employees who, through the course of their work may come into contact with victim applicants or have access to information covered by 8 U.S.C. 1367 complete the *VAWA: Confidentiality and Immigration Relief* training, which is currently on Component's Learning Management Systems (LMS). The VAWA Training was developed by FLETC in collaboration with subject-matter experts from several DHS Components, including USCIS, ICE and CBP. No later than 180 days after the enactment of this policy, and on an annual basis thereafter, the Component Heads, or his or her delegates, of CIS OMB, CRCL, USCIS, ICE and CBP report to the Review Committee the rate of compliance for this training.

VI. Questions

Address any questions or concerns regarding this Directive to CRCL.



Chris Cummiskey
Acting Under Secretary for Management



Date