July 9, 2025
Policy Feedback@uscis.dhs.gov

Re: Comment to Policy Manual Changes: Derogatory Information Unknown to the Benefit Requestor (Announced at https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250612-DerogatoryInformation.pdf).

Dear USCIS,

The Immigrant Legal Resource Center (ILRC) submits the following in response to the June 12, 2025, updated guidance in the USCIS Policy Manual (PM) concerning derogatory information unknown to the benefit requestor.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC publishes advisories and manuals for legal practitioners in many areas of family and humanitarian immigration law. The ILRC has expertise in several areas of immigration law where the use of derogatory information by USCIS is an issue. Through our extensive network with service providers, immigration practitioners and immigration benefits applicants, we have developed a profound understanding of the barriers faced by low-income immigrants of color seeking immigration benefits. The recommendations that follow are gleaned from the experiences of many low-income immigrants who we and our partners serve.

ILRC Opposes the Agency's Reliance on Derogatory Information that Cannot be Disclosed

We are deeply concerned by the implications of this policy manual update. While gratified to see that the agency will continue to err on the side of disclosure to benefit requestors, other aspects of the Trump administration's immigration policy raise concerns that actual agency practice will not comport with this understanding.

The guidance states that "USCIS may not be able to release source documents or disclose detailed descriptions of all information due to information-sharing limitations, such as classified information, information subject to agreements with agencies that own the information, and

information protected by confidentiality and privacy laws." This statement raises alarm bells for several reasons.

The Policy Manual Revision is Overbroad, and it Violates USCIS's Regulations

The USCIS's own regulation at 8 CFR 103.2(b)(16) recognizes that due process applies to all applications for immigration benefits.

> "***Inspection of evidence.*** An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.
>
> (i) ***Derogatory information unknown to petitioner or applicant.*** If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding."

The only exception to this requirement of revealing derogatory information is a limited one where national security concerns are justified under executive order, and even then, the regulations require that USCIS state the nature of the information being relied on. 8 CFR 103.2(b)(16)(iv),

The regulations require that even in the case of classified information that fits the narrow definition there are strict limitations to be followed: "Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the USCIS Director or his or her designee should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The USCIS Director's or his or her designee's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision." 8 CFR 103.2(b)(16)(iv).

The PM revisions violate the regulations by vastly broadening the derogatory information exception beyond what the regulations allow. The PM fails to define classified information, unlike the regulations, and it now includes also, "information subject to agreements with agencies that own the information, and information protected by confidentiality and privacy laws."

The PM fails to contain any of the limitations that are explicitly listed in the regulations. Interpretations of policy cannot exceed the boundaries clearly established by the agency's own regulations; thus, these revisions are invalid.

Due process is also violated by the PM revisions. Basic due process requires that an individual be given notice of adverse information and be given an opportunity to respond.

Information obtained by other agencies: Since January 2025, this administration has entered into a number of agreements with various state, local and federal agencies to deputize their employees for immigration enforcement purposes, to share information about the citizenship status of individuals, and likely many other purposes not disclosed to the general public. The sheer breadth of information that USCIS could now have access to is staggering. There is little to no transparency about the parameters of the personal information being shared. Thus, it is impossible to account for the information that USCIS could potentially rely on to deny immigration benefit without giving an applicant the chance to address any negative information or correct erroneous information from another agency. False hits on data happen all the time and the wider the net being cast; the more likely erroneous or incorrect information may be returned. Even if USCIS decides not to rely on negative information from another agency, a process described in 6 USCIS-PM E(G)(1) will undoubtedly lead to adjudication delays and exacerbate backlogs.

Classified or National Security Information: The blanket justification of "national security" has resulted in a number of questionable moves by this administration, mostly involving the deprivation of due process rights for immigrants across the country. The addition of this language in the USCIS policy manual is no different. Where there is a desire by the administration to deny benefits to an individual or a specific group of individuals, there is a danger that this blanket prohibition on the sharing of "classified" information could be used to deprive and applicant of the right to rebut false information that could lead to a denial.

Information related to third parties: USCIS is currently engaged in the revision of several forms that require applicants to disclose personal information about third parties.[1] Setting aside the impropriety of using immigration benefit applications to gather information about individuals who are not subject to the application, the collection of information combined with the potential reliance on third party, non-disclosable information raises concerns. USCIS is likely to inappropriately rely on derogatory information about third parties garnered through the information collections on the forms. That information in turn may be confidential under separate provisions, which would not be disclosable to the applicant. In another example, given the administration's apparent targeting of parolees, we are concerned that this provision could be used against parolees based on derogatory information obtained about a previous sponsor.

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[1] *See* Generic Clearance for the Collection of Certain Information on Immigration Forms, 90 FR 11054 (March 3, 2025); Generic Clearance for the Collection of Social Media Identifier(s) on Immigration Forms, 90 FR 11324 (March 5, 2025); Generic Clearance for the Collection of Certain Biographic and Employment Identifiers on Immigration Forms, 90 FR 22750 (May 29, 2025).

Conclusion

USCIS should rescind the new guidance on derogatory information immediately. It violates due process and the agency's own regulations. The risks of long delays and erroneous denials are too high. We also believe the addition of this information is harmful not only to applicants, but to the agency itself. These changes have the potential to drain agency and adjudicator resources and add to the rapid erosion of public trust in the agency. We urge USCIS to rescind the new language and revert to the previous language in place before June 12, 2025.

Sincerely,

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