



# Welcome to Introduction to Leahy Vetting Policy

Version 2.1





# Introduction

## MODULE 1

## Welcome

Welcome to the **Introduction to Leahy Vetting Policy** course.

This course provides the background, legislative history, and policies for the Leahy law implemented through the U.S. State Department (State) and the Department of Defense (DoD), which govern vetting of foreign security forces before they can receive various types of U.S. government (USG) aid. We strongly recommend completing this course before requesting an account for the International Vetting and Security Tracking-cloud (INVESTc) system, which is the primary workflow management tool and official system of record for Leahy vetting at State and DoD.

While the INVESTc system is largely intuitive, additional support documentation and training are available in the form of context-specific help, printable quick guides, and role-specific training within the application. In-person (D.C. only) and virtual instructor-led training (at post) are also available.

## Audience

This course is designed for direct-hire USG employees and contractors who are involved in implementing Leahy-applicable assistance for foreign security force personnel and units (i.e., military, police, etc.).

## Course Objective

At the completion of this course, you will be able to:

- Identify the Leahy laws and policies that are the basis of the vetting process.

## Course Information

### Course Structure

This course comprises two modules with review questions at the end of the course. To reinforce your mastery of the material, please answer the review questions.

### Intranet Links

This course provides useful links to the Department of State intranet. You must use a Department of State OpenNet computer to view all intranet sites.

### Review Questions

The review questions are intended to test and reinforce your learning. Question types used in the review may include true/false, multiple choice, and multiple answer questions.



**Law & Policy**  
MODULE 2

## Objectives

This course is designed to give you an understanding of the Leahy law, which prohibits the Department of State (State) and the Department of Defense (DoD) from providing funds for assistance or training to foreign security force units or individuals where there is credible information that these forces have committed a gross violation of human rights (GVHR).

By the end of this module, you will be able to:

- Explain the scope and purpose of the State and DoD Leahy law.
- Define “gross violations of human rights.”
- Determine what constitutes “credible information” of a GVHR.
- Define a “unit” in the context of security forces.
- Summarize remediation procedures under the Leahy law.

## Leahy Law

The term “Leahy law” refers to two statutory provisions prohibiting the U.S. Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights (GVHRs). One statutory provision applies to the U.S. Department of State (State) and the other applies to the U.S. Department of Defense (DoD).

### State Leahy Law

**See** Foreign Assistance Act of 1961, Sect. 620M

**No assistance shall be furnished ... to any unit** of the security forces of a foreign country if the Secretary of State has **credible information** that such unit has committed a **gross violation of human rights**.

### DoD Leahy Law

**See** Title 10 U.S. Code, Sect. 362

The Secretary of Defense shall, in consultation with the Secretary of State, ensure that **prior to a decision to provide any training, equipment, or other assistance** to a unit of a foreign security force full consideration is given to any **credible information** available to the Department of State relating to **human rights violations** by such unit.



The Department of State is responsible for informing the Department of Defense of information about GVHRs. For this reason, the Department of State does all Leahy vetting for both Departments.

## Background Information about the Leahy Law

The State Leahy law was first enacted as a provision in the 1997 Foreign Operations Appropriations Act (P.L. 104-208). Sponsored by Senator Patrick Leahy of Vermont, the amendment prohibited the Foreign Operations, Export Financing, and Related Programs Appropriations Act (FOAA) from assisting foreign security force units implicated in gross violations of human rights (GVHRs), unless the Secretary of State determined that the host government was taking effective measures to bring those responsible to justice.

Initially the amendment focused on the State Department's International Narcotics Control program. It was expanded in 1998 to include all security assistance programs that used funds appropriated through the FOAA.

A separate Leahy amendment was added to the annual Defense Appropriations Act, which requires that no funding under the Act be used to train security force units where there is credible information that they have committed GVHRs. The DoD Leahy law is now in Section 362 of U.S.C. Title 10 and applies to all forms of assistance, not just training.



## State Leahy Amendment

In 2008, Congress made the State Leahy provision permanent by adding it to the Foreign Assistance Act of 1961, as amended. The new section is titled "Limitation on Assistance to Security Forces" (Sec. 620M).

*The following are sections of the State Leahy Amendment.*

- (a) IN GENERAL:** No assistance shall be furnished under this Act or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed gross violations of human rights.



State Leahy prohibits assistance under the Foreign Assistance Act of 1961 (FAA) or the Arms Export Control Act (AECA), and applies to all forms of assistance, including training, equipment and other activities.

- (b) EXCEPTION:** The prohibition in subsection (a) shall not apply if the Secretary determines and reports to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.
- (c) DUTY TO INFORM:** In the event that funds are withheld from any unit pursuant to this section, the Secretary of State shall promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.

The 2011 update included seven provisions under Section 620M(d). Three entail new requirements:

- (1) ensure that for each country the Department of State has a current list of all security force units receiving United States training, equipment, or other types of assistance;
- (5) ensure that when vetting an individual for eligibility to receive United States training the individual's unit is also vetted;
- (7) make publicly available, to the maximum extent practicable, the

identity of those units for which no assistance shall be furnished pursuant to subsection (a).

## DoD Leahy Law

A provision of the Leahy law allows the Secretary of Defense to waive the Leahy law prohibition on provision of assistance to ineligible units; as of November 2019, the Secretary of Defense has never used this waiver.

*The following are sections of the DoD Leahy Amendment.*

- (a) PROHIBITION:** Of the amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.
- (b) COORDINATION:** The Secretary of Defense shall, in consultation with the Secretary of State, ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.
- (c) WAIVER:** The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a)(1) if the Secretary determines that the waiver is required by extraordinary circumstances.
- (d) REPORT:** Not later than 15 days after the application of any exception under subsection (b) or the exercise of any waiver under subsection (c), the Secretary of Defense shall submit to the appropriate committees of Congress a report:
  - (1) in the case of an exception under subsection (b), providing notice of the use of the exception and stating the grounds for the exception; and
  - (2) in the case of a waiver under subsection (c), describing:
    - (A) the information relating to the gross violation of human rights; (B) the extraordinary circumstances that necessitate the waiver; (C) the purpose and duration of the training, equipment, or other assistance; and (D) the United States forces and the foreign security force unit involved.

**(e) EXCEPTION:** The prohibition in subsection (a)(1) shall not apply if the Secretary of Defense, after consultation with the Secretary of State, determines that the government of such country has taken all necessary corrective steps, or if the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

Both the State and DoD Leahy laws provide for remediation of units previously identified as tainted (refers to a security force unit for which credible derogatory information regarding gross violations of human rights has been found). See the Joint DoD and State Remediation policy memo.

## Important Leahy Vetting Terms

The Leahy vetting system is based on a policy of vetting security force units and their commanders for unit training. Also, candidates for individual training and the names of their home units are vetted together because if an individual is trained and returns to his unit, he may provide the benefit of that training to his unit.

There are three important Leahy vetting terms that this course will cover:

- Gross violations of human rights (GVHRs)
- Credible information
- Unit

## Gross Violations of Human Rights (GVHRs)

The State and DoD Leahy laws do not explicitly define what constitutes a “gross violation of human rights.”

Consequently, the State Department looked to definitions in other sections of the Foreign Assistance Act of 1961 (FAA), including sections 116 and 502B(d)(1), for guidance on the meaning of the term that is instructive in the understanding and application of the Leahy laws.

**In the FAA, Sections 116 and 502B(d)(1) both state that the term “gross violations of internationally recognized human rights” includes “...torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person... .”**

## Gross Violations of Human Rights (GVHRs): Most Common Types

The majority of Leahy law vetting focuses on the following GVHRs that will taint a security force unit if committed under color of law (“under color of law” describes when a security force unit member acts, or appears to be acting, in their capacity as a security force, e.g., wearing a uniforms, identifying themselves as a member of the security force):

*Review the definition of each major GVHR below:*

**TORTURE:** An act committed while the subject is under the direct custody of the offender that intentionally inflicts severe mental or physical pain or suffering for such purposes as obtaining information or a confession, as punishment, or to intimidate or coerce, or for any reason based upon discrimination of any kind.

**EXTRAJUDICIAL KILLING:** A deliberate killing of an individual, carried out under color of law, and not authorized by a previous judgment pronounced by a regularly constituted court after a trial affording all requisite fair trial and appeal guarantees.

**FORCED DISAPPEARANCE:** When government officials, or groups acting on behalf of the government, or with the government’s direct or indirect support, consent, or acquiescence (a) arrest, detain, or abduct a

person, or otherwise deprive a person of liberty, and (b) subsequently refuse to disclose that person's fate, whereabouts, or deprivation of liberty, (c) thereby placing the person outside the protection of the law.

**RAPE (UNDER COLOR OF THE LAW):** An act of rape committed by a member of a unit who is acting, or appears to be acting, in their capacity as a security force, e.g., wearing a uniform, identifying themselves as a member of the security force.



The list is not exhaustive, and other types of incidents can be examined on the basis of specific facts to assess whether they are GVHRs.

## Credible Information

What constitutes credible information supporting a derogatory account about a gross human rights violation?

### Legislative history shows that evidence:

- Need not be admissible in a court of law.
- Should be deserving of confidence as a basis for decision-making.

### Non-governmental organization (NGO) information or press reports can be sufficient if:

- Sources have a reputation for accurate and impartial reporting.
- Reported information has indicia of reliability.

### Ideally, information is corroborated by multiple sources:

- More than one source is preferred, although it's not necessary.
- It depends on the quality of the source and the information.

## Seven Criteria for Evaluating Credible Information

1. **Past accuracy and reliability** of the reporting source as well as original source, if known
2. **How the source obtained the information** (e.g., personal knowledge obtained by a witness, witness interviews collected by an NGO, descriptions collected from government records, etc.)
3. **Known political agenda** of a source (both reporting source and/or original source, if known) which might lead to bias in reporting
4. **Corroborative information** to confirm part or all of the allegation
5. **Information that contradicts** part or all of the allegation
6. History of unit and **known patterns of abuse**/professional behavior
7. **Level of detail** of the GVHR allegation, including detail in identification of the GVHR, perpetrator (or link to an operational unit), and victim

## Unit

For Leahy vetting purposes, a unit may be construed as the smallest operational group in the field that has been implicated in the reported human rights violation.

In the table below, the “units” are highlighted in the lowest row. For each of the security force groups in the table, these units are the lowest organization elements capable of exercising command and discipline over its members, and thus the typical target for Leahy vetting.

UNIT LEVEL HIERARCHY: INCREASING SPECIFICITY			
ARMY	AIR FORCE	NAVY	POLICE
Division	Wing	Squadron	City or State
Brigade or Group	Group	Task Unit or Flotilla	Precinct
Battalion	Squadron	Ship, boat, battalion	Sub-unit, SVU, squad

In the vetting process, clearly identifying the unit should include the entire chain of command and a geographic location:

**ARMY Unit Example:** *1st Battalion; Valley X; 3rd Brigade; 9th Division; Army of the Republic of Y;*

**POLICE Unit Example:** *Criminal Investigation Unit; Police Station A, Precinct 13, City F Police Force.*



Clean and tainted units may be part of the same larger group.

## Remediation

### What do you think?

Are there exceptions to the Leahy law? Once a unit is tainted, is it tainted forever?

- a. Yes
- b. No

The answer is “No.” Known as “remediation,” Leahy law allows the resumption of U.S. assistance to previously restricted security forces units if:

- The host government is taking all necessary corrective steps to bring to justice those responsible for GVHRs.
- Under DoD provision, equipment or assistance is needed for disaster relief, humanitarian aid, or national security emergency.



## Exceptions

*The following are details of the State and DoD “exceptions” on remediation:*

### State Leahy Law

**Sub-section (b) of Section 620M (“Limitation on Assistance to Security Forces”) of the Foreign Assistance Act of 1961, as amended.**

**Exception:** The prohibition in subsection (a) shall not apply if the Secretary determines and reports to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Committees on Appropriations that **the government** of such country **is taking effective steps to bring responsible members of the security forces to justice.**

### DoD Leahy Law

**Sub-section (b) of Section 362 of Title 10 of the U.S. Code.**

**Exception:** The prohibition in subsection (a)(1) shall not apply if the Secretary of Defense, after consultation with the Secretary of State, determines that **the government** of such country **has taken all necessary corrective steps**, or if the equipment or other assistance is **necessary to assist in disaster relief operations or other humanitarian or national security emergencies.**

## Summary

This course provided a brief introduction to the Leahy law regarding the vetting of foreign security forces for human rights violations before providing them USG training, equipment, or other assistance. You should now have a better understanding of:

- The **scope of the Leahy law** used by the Department of State and Department of Defense.
- The **types of gross violations of human rights (GVHRs)** applicable to the Leahy laws.
- The **definition of “unit”** of security forces used in the Leahy vetting process.
- The **types of credible information** that can back GVHRs.
- The **provisions for remediation** of tainted units under the Leahy laws.

For further resources about the Leahy law and vetting policy, check out Diplopedia’s entry for “[Leahy Laws and Human Rights Vetting](#).”

Let’s go to the Course Wrap-Up to review what you’ve learned. You will also be provided with resources for the INVESTc Leahy vetting system.

## Course Wrap-Up: Module 3

### Knowledge Review

#### Question 1

Please answer the following questions to test your understanding of the course content.

*Please select the correct answer.*

**Only the State Leahy provision applies to withholding assistance on training for foreign security forces that have committed human rights violations.**

- a. True
- b. False

**The correct answer is “False.”** Both State and DoD Leahy laws apply to training, material, and financial assistance.

#### Question 2

*Please select all that apply.*

**Which of the following actions fall under the Leahy law's understanding of a gross violation of human rights (GVHR)?**

- a. Torture
- b. Rape under color of law
- c. Drug trafficking
- d. Forced disappearance
- e. Extrajudicial killing

**The correct answers are a, b, d, and e.** Torture, rape under color of law, forced disappearance, and extrajudicial killing are some of the most common types of gross violations of human rights. Though drug trafficking may fall under another U.S. policy that prohibits assistance, it is technically not considered a GVHR and, therefore, does not trigger the Leahy law.

### Question 3

*Please select the correct answer.*

**One person claims she witnessed government soldiers torturing civilians from a minority ethnic group during a civil war. This could be considered “credible information” under Leahy vetting policy.**

- a. True
- b. False

**The correct answer is “True.”** Although multiple people's reports are preferred, they are not absolutely necessary.

### Question 4

*Please select the best answer.*

**For Leahy vetting purposes, the identification of a security force “unit” with a reported human rights violation should include:**

- a. Only the unit commander's first and last names.
- b. Both the names of the commander and unit members.
- c. The entire chain of command and geographic location.
- d. A clear distinction between clean and tainted units.

**The correct answer is c.** For Leahy vetting purposes, the identification of a security force “unit” with a reported human rights violation should include the entire chain of command and geographic location.

## Question 5

*Please select all that apply.*

**Under the Leahy law, USG assistance to a previously tainted security force unit can resume if:**

- a. The responsible government is pursuing justice against those accused of GVHRs.
- b. The host country needs disaster relief.
- c. The host country is undergoing a national emergency.
- d. The host country is undergoing a humanitarian emergency.

**The correct answers are a, b, c, and d.** An exception to the Leahy law can be made under any of the above circumstances, with Secretary-level approval.