

**MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN  
THE DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION  
IMMIGRANT AND EMPLOYEE RIGHTS SECTION  
AND  
THE DEPARTMENT OF LABOR  
EMPLOYMENT AND TRAINING ADMINISTRATION  
OFFICE OF FOREIGN LABOR CERTIFICATION  
REGARDING  
INFORMATION SHARING AND CASE REFERRAL**

**I. BACKGROUND:**

On July 31, 2018, the Department of Justice (DOJ), Civil Rights Division, Immigrant and Employee Rights Section (IER) and the Department of Labor (DOL), Employment and Training Administration (ETA), Office of Foreign Labor Certification (OFLC) (hereinafter, the Parties) entered into a Memorandum of Understanding (MOU) entitled, “Memorandum of Understanding between the Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section and the Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification Regarding Information Sharing and Case Referral” (2018 MOU). The 2018 MOU established the overarching arrangement by which IER and OFLC provided access to and exchanged information that ensured both parties obtained the most current and accurate information related to employment-based labor certification and labor condition applications and cases of suspected noncompliance in the possession of the Parties. The 2018 MOU enabled the respective Parties to exchange information that greatly enhanced the adjudication of applications, investigations of discriminatory practices, and otherwise ensured the proper administration of the laws and regulations that the Parties enforce. Due to implementation of the Northern Mariana Islands U.S. Workforce Investment Act of 2018, Pub. L. No. 115-218, revised labor certification application forms, and the roll out of the Foreign Labor Application Gateway (FLAG) system by OFLC in 2019, DOL seeks to update and expand the labor certification information that will be shared with IER. Therefore, it is the intention of the Parties that upon execution by both Parties, this MOU will supersede and replace the 2018 MOU.

**II. PARTIES:**

a. The parties to this MOU are:

1. The Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section.

DOJ's Civil Rights Division prosecutes violations of civil rights statutes and enforces federal statutes and executive orders that prohibit, among other things, unlawful discrimination in voting, education, employment, housing, police services, public accommodations and facilities, and federally funded and conducted programs.

IER is the section within the Civil Rights Division that is responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, which prohibits: (1) covered persons or entities that employ four or more employees from discriminating against certain work-authorized individuals on the basis of citizenship status in hiring, firing, or recruitment for a fee; (2) covered persons or entities that employ four to fourteen employees from discriminating against work-authorized individuals on the basis of national origin in hiring, firing, or recruitment for a fee; (3) covered persons or entities from engaging in unfair documentary practices in the employment eligibility verification (Form I-9 and E-Verify) process on the basis of citizenship status or national origin; and (4) covered persons or entities from retaliating against individuals who engage in protected activity relating to the rights and privileges secured under 8 U.S.C. § 1324b. Through its enforcement of this statute, IER protects U.S. workers from discrimination based on citizenship status or national origin.

Injured parties or their authorized representatives may file charges with IER alleging a violation of 8 U.S.C. § 1324b within 180 days of the alleged discrimination. In addition, IER also may initiate independent investigations (without the filing of a charge) if there is reason to believe that a violation of 8 U.S.C. § 1324b has occurred. Although independent investigations typically involve alleged discriminatory policies that potentially affect many employees or applicants, IER may also conduct independent investigations when even one person is allegedly discriminated against.

2. The Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification.

ETA administers a variety of grant and regulatory programs that fund and support job training, labor market information, unemployment insurance, and other employment services provided by state and local workforce agencies.

OFLC, located within ETA, protects the wages and working conditions of U.S. workers and U.S.-based foreign workers by administering the following immigrant and nonimmigrant visa programs authorized by the INA and the Northern Mariana Islands U.S. Workforce Investment Act of 2018: the Permanent Labor Certification Program; the H-1B, H-1B1, and E-3 Labor Condition Applications Program; the Temporary Labor Certification Programs for H-2A agricultural workers and H-2B nonagricultural workers, respectively; the D-1 Program for foreign nationals employed as crewmembers for longshore activities in U.S. ports; and the Temporary Labor Certification Program for CW-1 workers in the Commonwealth of the Northern Mariana Islands. Statutory and regulatory provisions require

employers seeking to employ foreign nationals on a permanent or temporary basis to first apply to the Secretary of Labor for a labor certification or approval of a “labor certification or condition application,” depending on the type of visa the employer is requesting for the worker. OFLC regulations provide guidance on, among other things, the processing of applications, periods of validity, employer responsibilities, and sanctions for noncompliance of program requirements.

- b. Nomenclature: Any references to “DOL” in this MOU mean ETA and OFLC only, and no other agency or sub-agency component of the Department of Labor.

### **III. PURPOSE:**

The purpose of this MOU is to memorialize the Parties’ agreement under which:

- a. DOL will refer to IER cases of potential discrimination in violation of the law that IER enforces and provide designated IER employees access to databases to facilitate IER’s investigations of potential violations of the law that IER enforces, in accordance with separately mutually agreeable day-to-day implementation procedures and protocols; and
- b. IER will inform DOL of cases of suspected noncompliance with the laws and regulations OFLC administers and provide designated OFLC employees information in accordance with separately mutually agreeable day-to-day implementation procedures and protocols.

### **IV. LEGAL AUTHORITIES:**

The information sharing and enhanced cooperation among the parties to this MOU are authorized under, and comply with, the provisions of the following:

- a. Title 5, United States Code, Section 552a, the Privacy Act of 1974.
- b. Title 8, United States Code, Sections 1101(a)(15)(D), (E), and (H); 1182(a)(5), (n), (t); 1184, 1188 [INA §§ 101(a)(15)(D), (E), and (H); 212(a)(5), (n), (t); 214; 218].
- c. Title 8, United States Code, Section 1324b [INA § 274B].
- d. Title 48, United States Code, Section 1806.
- e. Title 20, Code of Federal Regulations, Parts 655 and 656.

**Other Relevant Guidelines:** Office of Management and Budget Circular A-130, *Managing Information as a Strategic Resource*.

## **V. ACCESS TO RECORDS AND DATA SYSTEMS:**

IER recognizes that the DOL records and data systems to which IER will be granted access pursuant to the information-sharing provisions of this MOU are covered by the Privacy Act. Accordingly, authorized IER staff will only access these records and data systems to conduct a specific search for information related to an identified law enforcement matter. Furthermore, IER recognizes that it bears any and all responsibility, including liability, for any claims associated with violations of the Privacy Act to the extent any violations occur as a direct result of IER's access to DOL records and data systems.

Subject to DOL's amendment of its System of Records Notice (SORN) DOL/ETA-7 as discussed in Section VII below, prior to accessing DOL records and data systems, the Deputy Special Counsel or designee will send an e-mail to [REDACTED] seeking and describing the nature of IER's access based on a law enforcement purpose. The e-mail will reference the "DJ" number assigned to the matter, and identify the search terms to be used or the search subject.

Upon request by the IER, DOL will provide technical training and education for IER staff to access DOL's records and data systems, and to properly utilize any search functions to retrieve pertinent data.

IER also agrees to maintain records it obtains through access to DOL's data systems in accordance with IER's Privacy Act obligations.

IER will not knowingly take any measures that create cybersecurity risks related to systems and information covered by this MOU, and will promptly cease such actions and notify appropriate OFLC or other DOL personnel if it becomes aware of such security risks or breaches. Each party agrees that any application or system on which that data and information resides, as well as the handling of all data and information, will be managed and operated in compliance with all relevant federal security and confidentiality laws, regulations, and policies.

IER will not knowingly take any measures that compromise system or user operation and performance, and will promptly cease such actions and notify appropriate OFLC or other DOL personnel if it becomes aware of such issues.

## **VI. PRIVACY SAFEGUARDS, RESTRICTIONS ON DISCLOSURE, AND RECORD RETENTION**

### **a. Privacy Safeguards and Restriction on Disclosure**

1. All Personally Identifiable Information (PII) exchanged in accordance with this MOU shall be covered by Privacy Act and all other applicable legal protections.

2. PII will be protected by administrative, technical, and physical safeguards appropriate to the sensitivities of the information.
3. IER and DOL agree to maintain reasonable physical, electronic, and procedural safeguards designed to appropriately protect the information shared under this MOU against loss, theft, or misuse, as well as unauthorized access, disclosure, copying, use, modification, or deletion.
4. IER and DOL acknowledge that the use and disclosure of information provided by the parties under this MOU may also be subject to limitations under law, regulation, and policy. Subject to paragraph 3 of this section, before DOL retains or discloses to any third party, including any DOL component or other federal agency, information solely received from IER, IER will have the opportunity to identify any specific limitations pertaining to DOL's use or dissemination of that information. Similarly, and also subject to paragraph 3 of this Section, before IER retains or discloses to any third party outside of IER or the Office of the Assistant Attorney General for Civil Rights, including any DOJ component or other federal agency, any information received solely from DOL, that it did not also receive from another collateral source, DOL will have the opportunity to identify any specific limitations pertaining to IER's use or dissemination of that information.
5. IER and DOL agree that DOL's prior written consent will be obtained for any forwarding or disclosure of the information obtained pursuant to this MOU, beyond DOL or DOJ. Similarly, IER and DOL agree that IER's prior written consent will be obtained for any forwarding or disclosure by DOL of information obtained pursuant to this MOU, beyond DOL or DOJ.
6. IER and DOL, including all personnel with access to the information, will be appropriately trained regarding the proper handling of PII and proper care of the information systems to ensure the overall safeguarding and security of the information. IER and DOL will cross-train to ensure that each agency's employees, including contractors with access to any of the information, have completed privacy training on the handling of PII, which includes information on applicable laws, regulations, and policies related to information privacy and security, as well as on immigration-specific confidentiality protections as required.
7. The Parties agree to comply with the Federal Information Security Management Act (FISMA), 44 U.S.C. § 3541 et seq., as amended by the Federal Information Security Modernization Act of 2014, Pub. L. 113-283; Federal Information Processing Standards (FIPS); Mandatory Security Processing Standards 199 & 200; related Office of Management and Budget (OMB) circulars and memoranda, including revised Circular A-130,

*Managing Information as a Strategic Resource* (July 28, 2016) and Memorandum M-06-16, *Protection of Sensitive Agency Information* (June 23, 2006); National Institute of Standards and Technology (NIST) directives; and the Federal Acquisition Regulations (FAR). These laws, regulations, and directives provide requirements for safeguarding Federal information systems and PII used in Federal agency business processes, as well as related reporting requirements.

8. FISMA requirements apply to all Federal contractors, organizations, or sources that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. Each agency receiving information under this Agreement is responsible for oversight and compliance of its contractors and agents with FISMA requirements.
9. IER and DOL reserve the right to conduct reviews or inspections of the other agency to monitor its compliance with the FISMA, cybersecurity, and/or Privacy Act requirements during the lifetime of this MOU.

**b. Procedures for Data Loss Reporting and Breach Notification**

1. If IER or DOL experiences a loss of PII provided under this MOU, the relevant party will follow the OMB loss reporting guidelines, set forth in OMB M-17-12, *Preparing for and Responding to a Breach of Personally Identifiable Information* (January 3, 2017), and notify the United States Computer Emergency Readiness Team (US-CERT) within one hour of reaching the agency's top-level Computer Security Incident Response Team (CSIRT), Security Operations Center (SOC), or IT department. In addition, IER and DOL will notify the appropriate Systems Security contact, provided in Appendix G of this MOU.
2. IER and DOL will follow the PII breach notification policies and related procedures, as required by OMB M-17-12.

**VII. OFLC INFORMATION SHARING RESPONSIBILITIES**

- a. DOL will designate a point of contact (POC) to ensure cooperation, communication, and coordination with IER.
- b. DOL agrees to pursue an amendment to its SORN DOL/ETA-7, *Foreign Labor Certification System and Employer Application Case Files*, and, upon enactment of the amendment, enhance information sharing activities with IER under this MOU in the following manner:
  1. DOL will electronically transmit agreed-upon data categories from the Program Electronic Review Management (PERM) System, iCERT Visa Portal System, and FLAG System, or any successor systems, related to

permanent and temporary employment certifications and labor condition applications for nonimmigrant and immigrant worker positions.

2. Information obtained from the PERM, iCERT, and FLAG systems, or any successor systems, and provided to IER shall be limited to the data categories set forth in the Appendices A through F to this MOU. Should any of these systems be updated, replaced, or decommissioned, the surviving systems and databases established for the same operational purposes will be used to provide and share the agreed upon data categories. The parties will develop and/or amend any Interconnection Security Agreements to reflect the use of new or modified access to DOL records and data systems.
- c. Provided that the functional capability exists to authorize and manage user level account access, DOL agrees to provide designated IER employees with electronic access to the PERM, iCERT, and FLAG systems (or any successor systems). Access to DOL systems shall be limited to only those authorized IER staff requiring access to achieve the purpose(s) of this MOU following execution of all required account access forms by DOL. Prior to enactment of an amendment to SORN DOL/ETA-7, DOL agrees to provide up to six IER employees with system access and, in the absence of a log-on process to certify that IER use and any search of DOL systems complies with the Privacy Act, the Parties agree that IER shall use the process described in section V of this MOU to ensure compliance with Privacy Act requirements.
- d. DOL agrees to provide to IER, on a monthly basis, a list of entities currently undergoing DOL audit examination in connection with the immigrant and nonimmigrant employment-based visa programs for which DOL conducts audits, along with the visa program(s) under which each entity is being audited.
- e. If DOL becomes aware of information suggesting potential noncompliance, by covered individuals or entities, with the laws that IER enforces, DOL will refer that information to IER and/or encourage the harmed individual(s) to call IER's hotline. If DOL continues to be involved in a matter that has been referred to IER, it will coordinate its activities regarding that matter with IER to the greatest extent possible.
  1. If DOL encounters potential victims of discrimination under the law IER administers, DOL shall provide them with information about IER's hotline, (800) 255-7688 or (800) 237-2515 (TTY for hearing impaired), and a copy of IER's charge form or information on how to access IER's charge form, available at <https://www.justice.gov/crt/filing-charge>.
  2. If DOL learns of a matter from a State Workforce Agency (SWA) that may fall within IER's jurisdiction and that has not yet been reduced to writing, DOL will encourage the SWA to contact IER's hotline and ask to speak to a referral duty attorney. If DOL receives a written complaint from a SWA

about a matter that may fall within IER's jurisdiction, DOL will encourage the SWA to refer the written complaint to IER in accordance with subparagraph (e)(1).

- f. Should DOL wish to request information from IER's investigation file, DOL will transmit a request to the IER POC designated in accordance with the mutually agreeable implementation protocols and procedures the Parties separately establish in furtherance of this MOU.
- g. Consistent with applicable laws, regulations, and policies, and the availability of DOL resources, DOL will commit personnel and resources sufficient to support this MOU.

## **VIII. IER INFORMATION SHARING RESPONSIBILITIES**

- a. IER will designate one or more POCs to ensure cooperation, communication, and coordination with DOL. IER will promptly notify DOL using the POCs listed in Appendix G when any IER staff no longer has a legitimate need to access DOL records and data systems so that the user account can be disabled or terminated.
- b. If IER becomes aware of information suggesting potential employer or agent noncompliance with the labor certification process, IER will promptly share that information with the appropriate designated DOL POC. If IER continues to investigate a matter that falls under the jurisdiction of DOL, IER will coordinate its activities regarding that matter with DOL to the greatest extent possible.
- c. Should IER wish to request additional information from DOL, IER will transmit a request to the appropriate DOL POC through a letter designated as a law enforcement request that references this MOU. IER will only access the records and data systems to which it is granted access consistent with applicable DOL guidelines, policies, and procedures.
- d. IER shall notify DOL if information provided by DOL results in IER's initiation of an investigation into whether a person or entity discriminated against U.S. workers.
- e. Consistent with applicable laws, regulations, and policies, and the availability of IER resources, IER will commit personnel and resources sufficient to support this MOU.

## **IX. OTHER PROVISIONS**

- a. IER frequently receives information from multiple sources during the course of its investigations, including directly from employees and employers, but



recognizes that any information obtained solely through access to DOL records and data systems remains the property of DOL. DOL similarly recognizes that all PII received from IER remains the property of IER. Each Party recognizes that it bears responsibility for any disclosure or release of information received from the other Party.

- b. IER and DOL will retire any records containing information exchanged pursuant to this MOU in accordance with the Federal Records Retention Schedule, 44 U.S.C. § 3303a. When the information is no longer required by DOL, DOL will delete/destroy all electronic data from its systems, as well as all paper records that it has in its possession in accordance with applicable National Archives and Records Administration (NARA) approved retention schedules. IER will delete/destroy all electronic data from its systems, including all paper records, that it has in its possession in accordance with applicable NARA approved retention schedules and consistent with other legal obligations.
- c. If the referring Party has retained jurisdiction over any aspect of a matter at the time of referral to the other Party, both Parties will coordinate their activities to the greatest extent practical and share information so as to minimize duplication of effort and any risk that a Party's activities may adversely affect the other.
- d. Nothing in this MOU is intended to conflict with the missions of, or existing laws, regulations or other guidance binding on, DOL and/or IER. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect. If a Party identifies any such inconsistency, it shall bring it to the attention of the other Party in order to modify the MOU as may be necessary.
- e. This MOU is not intended to create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

## **X. EFFECTIVE DATE AND DURATION OF AGREEMENT**

The terms of this MOU will take effect on the date of the last signature of the Parties. Unless terminated by either Party in accordance with the terms described in Section XI, below, this MOU shall remain in full force and effect for a period lasting no more than five (5) years with the option for further extension by the mutual agreement of both Parties. In the event the MOU expires while both Parties are making good faith efforts to extend or revise the MOU, the terms and conditions of this MOU will remain in effect unless either Party provides written notice to the other of its intent not to follow the MOU.

## **XI. MODIFICATION AND TERMINATION**

This MOU may be modified by the mutual, written consent of the parties.

This MOU may be terminated by either Party upon 60 days' advance written notice. In the event one Party requests termination of this MOU, the Parties will confer within the 60-day period to discuss the reason for the Party's request to terminate, and to attempt to resolve the issue(s) giving rise to the request. If the Parties are unable to resolve the issues, the termination will be effective at the expiration of the 60-day period or at a later date agreed to by the Parties. The Party may withdraw its request to terminate this agreement at any time prior to the expiration of the 60-day period.

## **XII. REVIEW**

The Parties agree to review this MOU within one (1) year of the effective date to determine whether any modifications are necessary to more effectively accomplish the goals of the MOU. Failure to conduct a review, however, will not result in the termination of this MOU.

## **XIII. INTEGRATION CLAUSE**

This MOU and any jointly-approved concurrent or subsequent Addenda and Appendices constitute the entire agreement between the Parties with respect to its subject matter. There have been no representations, warranties, or promises made outside this MOU. This MOU shall take precedence over any other documents that may be in conflict with it with respect to providing or exchanging data on matters of labor certification or immigrant or employee rights.

## **XIV. RIGHT OF ACTION AND COSTS**

This MOU does not create any private rights of action on the part of third parties.

Each Party agrees to bear its respective costs associated with the implementation of the terms and conditions of this MOU.

## **XV. FUNDING**

Notwithstanding any other provision herein, this MOU does not obligate either Party to expend funds or enter into any other agreement to commit or expend funds, nor does it serve as a basis for the transfer of funds. Nothing in this MOU shall be interpreted as limiting, superseding, or otherwise affecting either Party's normal

operations or decisions in carrying out its statutory or regulatory duties. The Parties expressly acknowledge that this in no way implies that Congress will appropriate funds for such expenditures.


**XVI. PERSONS TO CONTACT**

The Parties agree to assist each other to carry out this MOU through the points of contact set out in Appendix G and, through such contacts, provide response to program, data or other technical problems or inquiries. The Parties agree they will notify each other on any changed contact information.

**XVII. AUTHORIZED SIGNATURES**

The signatories below warrant and represent that they have the competent authority on behalf of their respective agencies to enter into the obligations set forth in this agreement.

**U.S. Department of Justice**

  
Eric Dreiband  
Assistant Attorney General  
Civil Rights Division

January 8, 2021  
Date

**U.S. Department of Labor**

BRIAN D.  
PASTERNAK  
Digitally signed by BRIAN D. PASTERNAK  
Date: 2021.01.08 11:46:54 -0500  
Brian D. Pasternak  
Administrator  
Office of Foreign Labor Certification  
Employment and Training Administration

\_\_\_\_\_  
Date

Attachments:

Appendix A –

Appendix B –

