

**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**

I. PARTIES:

a. The Parties to this Memorandum of Understanding (MOU) are:

1. The Department of Justice (DOJ), Civil Rights Division, Immigrant and Employee Rights Section (IER).

The Department of Justice'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 (DOL), Employment and Training Administration (ETA), Office of Foreign Labor Certification (OFLC).

The Department of Labor's Employment and Training Administration 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: 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; and the review of employer attestations to employ foreign nationals as crewmembers under a D-1 visa. 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 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.

II. PURPOSE

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

- a. OFLC 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 OFLC 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.

III. 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 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.

IV. ACCESS TO RECORDS AND DATA SYSTEMS

IER recognizes that the OFLC 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, and shall follow the mutually agreeable implementation protocols and procedures to certify and ensure Privacy Act compliance that the Parties separately develop. Upon request by IER, OFLC will provide technical training and education for IER staff to access OFLC's records and data systems, and to properly utilize the search functions to retrieve pertinent data.

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

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 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 DOL personnel if it becomes aware of such issues.

V. 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 will advise all personnel having access to the information shared under this MOU of the confidential nature of the information and that safeguards are required to protect the 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.

VI. OFLC INFORMATION SHARING RESPONSIBILITIES

- a. OFLC will designate a point of contact (POC) to ensure cooperation, communication, and coordination with IER.
- b. If OFLC becomes aware of information suggesting potential noncompliance, by covered individuals or entities, with the laws that IER enforces, OFLC will refer that information to IER and/or encourage the harmed individual(s) to call IER's hotline. If OFLC 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 OFLC encounters potential victims of discrimination under the law IER administers, OFLC shall provide them with information about IER's hotline (800) 255-7688 or (800) 237-2515 (TTY for hearing impaired), 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 OFLC 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, it will encourage the SWA to contact IER's hotline and ask to speak to a referral duty attorney. If OFLC receives a written complaint from an SWA about a matter that may fall within IER's jurisdiction, it will encourage the SWA to refer the written complaint to IER in accordance with subparagraph (b)(i).
- c. Should it wish to request information from IER's investigation file, OFLC will transmit a request to the IER POC designated in accordance with the mutually agreeable implementation protocols and procedures the agencies separately establish in furtherance of this MOU.
- d. Consistent with applicable laws, regulations, and policies, and the availability of OFLC resources, OFLC will commit personnel and resources sufficient to support this MOU.

VII. IER INFORMATION SHARING RESPONSIBILITIES

- a. IER will designate one or more points of contact to ensure cooperation, communication, and coordination with OFLC.
- 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 OFLC POC. If IER continues to investigate a matter that falls under the jurisdiction of OFLC, IER will coordinate its activities regarding that matter with OFLC to the greatest extent possible.
- c. Should it wish to request additional information from OFLC, IER will transmit a request to the appropriate OFLC POC through a letter designated as a law enforcement request that references this MOU. As noted in Section IV, IER will only access the records and data systems to which it is granted access consistent with applicable OFLC guidelines, policies, and procedures.
- d. IER shall notify OFLC if information provided by OFLC under Section IV 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.

VIII. OTHER PROVISIONS

- a. 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.
- b. Nothing in this MOU is intended to conflict with the missions of, or existing laws, regulations or other guidance binding on, OFLC 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.
- c. 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.

IX. 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 X, below, this MOU shall remain in full force and effect for a period lasting no more

than three (3) years. On or before the expiration date, the Parties may mutually agree in writing to an extension of this MOU or develop a new MOU.

X. 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. A Party may withdraw its request to terminate this agreement at any time prior to the expiration of the 60-day period.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

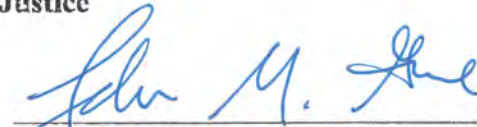
XV. PERSONS TO CONTACT

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

XVI. 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



John M. Gore
Acting Assistant Attorney General
Civil Rights Division

7/31/18
Date

U.S. Department of Labor



Rosemary Lahasky
Deputy Assistant Secretary
Employment and Training Administration

7/24/18
Date

Attachment:

Addenda