

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE WAGE AND HOUR DIVISION
AND
THE EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FOREIGN LABOR CERTIFICATION
REGARDING
EMPLOYMENT-BASED LABOR CERTIFICATION,
LABOR CONDITION APPLICATION DATA, AND FARM LABOR CONTRACTOR
CERTIFICATION DATA**

I. PARTIES

The parties to this Memorandum of Understanding (MOU) are the Wage and Hour Division (WHD) and the Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC).

II. PURPOSE

The purpose of this MOU is to memorialize the parties' agreement under which OFLC will provide authorized WHD staff with access to prevailing wage and temporary employment certification information submitted by, or on behalf of, employers through OFLC's iCERT Visa Portal System (hereinafter referred to as "iCERT System"), Foreign Labor Application Gateway (hereinafter referred to as "FLAG System") and any successor system(s), for the purpose of supporting WHD investigations of employer compliance with foreign labor certification program requirements. The parties also agree that WHD will provide authorized OFLC staff with Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor (FLC) and Farm Labor Contractor Employee (FLCE) registration data from the WHD Certificates Processing System (hereinafter referred to as "CPS System"), and any successor system(s), for the purpose of supporting OFLC audit examinations and certifications of employers engaged in foreign labor certification programs.

It is the intention of the parties that, upon execution of this renewal by both parties, this MOU will supersede and replace the MOU executed on September 29, 2017.

III. DATA SHARING RESPONSIBILITIES OF THE PARTIES

The data sharing responsibilities of the parties to this MOU are as follows:

a. OFLC Responsibilities:

OFLC will provide WHD with access to case data, records, and other information drawn from applications for prevailing wage and temporary employment certification maintained in the iCERT and FLAG system(s). 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 information with WHD under this MOU.

b. WHD Responsibilities:

WHD will provide authorized OFLC staff with Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor (FLC) and Farm Labor Contractor Employee (FLCE) registration data from the WHD CPS System. 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 information with OFLC under this MOU.

IV. **LEGAL AUTHORITIES**

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

a. Title 29, Code of Federal Regulations, Parts 500, 501, and 503.

b. Title 20, Code of Federal Regulations, Part 655.

V. **DESCRIPTION OF RECORDS, DATA SYSTEMS, AND MANAGEMENT**

a. Systems of Records Used:

The DOL System of Records (SORN) used for purposes of this information exchange is the DOL/ETA-7 – Employer Application and Attestation File for Permanent and Temporary Alien Workers; DOL/WHD-9 – Farm Labor Contractor Registration File; and DOL/WHD-10 – Farm Labor Contractor Employee Registration File.

b. Data Systems and Access:

iCERT and FLAG (and any successor systems)

Access to case data, records, and other information drawn from applications for prevailing wage and temporary employment certification shall be made available to only those authorized WHD staff who require access to achieve the purpose(s) of this MOU. In the event direct access to the iCERT, FLAG, or any successor system is required, the ETA Computer Security Handbook's (CSH) policy and procedures require the OFLC to approve a completed Foreign Labor Certification System Access Request Form (FLCS-ARF) for every WHD staff person requiring access.

WHD user accounts will be created after a completed FLCS-ARDF is submitted and approved by the OFLC and the WHD staff read and signs the Rules of Behavior for accessing the iCERT, FLAG, and/or any successor system(s). WHD will promptly notify the OFLC using the points of contact listed in Appendix A when any WHD staff no

longer has a legitimate need to access the applicable system so that the user account can be disabled or terminated. Upon request by the WHD, OFLC will provide technical training and education for staff to access the applicable system and properly utilizing the search functions to retrieve nonimmigrant and immigrant labor certification and labor condition information and data.

CPS (and any successor systems)

The CPS is WHD's software application that enables users to initiate, approve, issue, and renew labor certificates. Data housed in CPS databases will be provided. Only authorized OFLC staff who require access to achieve the purpose(s) of this MOU.

c. Data Management:

WHD and OFLC will not knowingly take any measures that create cybersecurity risks related to systems and information covered by this MOU, and will promptly cease current actions and notify appropriate OFLC, WHD, 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.

WHD and OFLC will not knowingly take any measures that compromise systems or user operation and performance, and will promptly cease current actions and notify appropriate OFLC or DOL personnel if it becomes aware of such issues. WHD will advise all personnel having access to the information exchanged in accordance with this MOU of the confidential nature of the information and that safeguards are required to protect the information.

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

- a. Pursuant to DOL policies, all personally identifiable information exchanged in accordance with this MOU shall be extended Privacy Act protections to the maximum extent practicable.
- b. Personally Identifiable Information (PII) will be protected by administrative, technical, and physical safeguards appropriate to the sensitivities of the information.
- c. WHD and OFLC agrees 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.
- d. WHD and OFLC agrees that all personnel with access to the information exchanged in accordance with this MOU 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.

- e. 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, Management of Federal Information Resources (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.
- f. The parties may not share or otherwise disclose information exchanged in accordance with this MOU to individuals outside WHD and OFLC except in circumstances where the data in question is already otherwise publicly available (e.g., via regular OFLC or WHD website publication or via DOL application programming interface (API)). WHD and OFLC will not otherwise share or disclose such information with individuals outside WHD and OFLC unless such disclosure is compelled by law, or disclosure is authorized under the Privacy Act, the Freedom of Information Act, the Federal Records Act, or other applicable statutes or regulations and, in these circumstances, the WHD and OFLC will, wherever possible, provide advance notice to the other party prior to any such disclosure. Regarding any such potential outside disclosures, WHD and OFLC will exercise due diligence to protect confidential, privileged, or otherwise sensitive materials from unnecessary disclosure.
- g. Each party agrees that it may retain information exchanged in accordance with this MOU until it is no longer needed for official law enforcement, investigative, or other authorized audit purposes. When it is no longer needed for official purposes, all electronic or paper information will be erased or destroyed from WHD and OFLC systems in accordance with applicable National Archives and Records Administration (NARA) approved record retention schedules.

VII. 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 upon thirty (30) days of written notice to the other, this MOU shall remain in full force and effect for a period lasting no more than five (5) years. On or before the expiration date, the parties may mutually agree to an extension of this MOU or develop a new MOU.

VIII. MODIFICATION AND TERMINATION

Modifications to this MOU must be in writing and agreed to by the parties.

This MOU may be terminated by either party upon 30 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(s) for the party's request to terminate, and attempt to resolve the issue(s) giving rise to the request. If the parties are unable to resolve the issue(s), 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 MOU at any time prior to the expiration of the 60-day period.

IX. INTEGRATION CLAUSE

This MOU and any concurrently or subsequently approved 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 data regarding nonimmigrant and immigrant employment-based labor certifications and labor condition applications as well as MSPA FLC and FLC(E) registration data.

X. RIGHT OF ACTION AND COSTS

This MOU does not create any private right of actions on the part of third parties.

The WHD and OFLC agree to bear its respective costs associated with the implementation of the terms and conditions of this MOU.

XI. 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.

XII. PERSONS TO CONTACT


The parties agree to assist each other to carry out this Agreement through the points of contact set out in Appendix A to provide response to program, data or other technical problems or inquiries. The parties agree to notify each other on an annual basis and, where necessary, update the points of contact set out in Appendix A.

XIII. AUTHORIZED SIGNATURES AND APPENDICES


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 MOU.

a. Authorized Signatures

Wage and Hour Division



Cheryl M. Stanton
Administrator



Date

**Employment and Training Administration
Office of Foreign Labor Certification**

Brian D. Pasternak
Administrator

Date

Appendix A
Persons to Contact

A. Wage and Hour Division

Name/Title/Agency	Phone	E-Mail
Brandon Brown, Chief Data Officer WHD	202-693-0671	Brown.brandon@dol.gov
Whitney Ford, Director, Division of Immigration and Farm Labor		Ford.whitney.w@dol.gov
Adrian Samaniego, Acting Director, Division of Certificate Processing WHD		Samaniego.adrian@dol.gov

B. Employment and Training Administration, Office of Foreign Labor Certification

Name/Title/Agency	Phone	E-Mail
Brian Pasternak Administrator ETA-OFLC	202-513-7379	Pasternak.Brian@dol.gov
Isabel Myers Immigration Policy Analyst ETA-OFLC	202-513-7358	Myers.Isabel@dol.gov