

**ADDENDUM**  
**TO THE MAY 4, 2023 MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE U.S. DEPARTMENT OF LABOR,**  
**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**  
**AND**  
**THE U.S. DEPARTMENT OF LABOR,**  
**WAGE AND HOUR DIVISION**  
**REGARDING**  
**INFORMATION SHARING FOR U & T VISA CERTIFICATIONS**

**I. Purpose and Background**

This addendum to the May 4, 2023, Memorandum of Understanding between the Occupational Safety and Health Administration (OSHA) and the Wage and Hour Division (WHD) (“May 4, 2023 MOU”) is intended to address coordination between the two Agencies relating to their respective U and T visa certification programs, including sharing information between the Agencies, making referrals, and protections for confidential information.

**II. Authority**

**A. U & T Visas Generally**

U and T visas are available to the victims of certain qualifying criminal activities (“QCs”) and to the victims of a severe form of trafficking in persons (“trafficking”), respectively. *See* 8 U.S.C. §§ 1101(a)(15)(T)-(U), 1184(o)-(p). To establish eligibility, U visa applicants must demonstrate that they have been helpful, are being helpful, or are likely to be helpful to authorities in detecting, investigating, or prosecuting criminal activity, § 1101(a)(15)(U), and T visa applicants must show that they have complied with reasonable requests for assistance from law enforcement, § 1101(a)(15)(T). A certification from a law enforcement official or agency attests to these qualifications. Regulations promulgated by the Department of Homeland Security (DHS) specifically identify the Department of Labor (DOL) as an agency that may provide U and T visa certifications. 8 C.F.R. § 214.14(a)(2); 8 C.F.R. § 214.201.

**B. Department of Labor Certifications**

Within DOL, the Secretary of Labor has delegated to WHD and OSHA the authority to issue U and T visa certifications. Secretary’s Order 01-2014 (Dec. 19, 2014); Memorandum from Sec’y of Labor, Martin J. Walsh, to Assistant Sec’y of Labor for OSHA, Douglas L. Parker (Jan. 24, 2023) (Secretary’s Order forthcoming). Each Agency’s authority to issue certifications rests upon its existing authority to investigate compliance with and administer the laws within its purview,

which are described in Section II of the May 4, 2023 MOU. Thus, each Agency has the authority to issue a U or T visa certification where it has detected a QCA or trafficking while engaged in investigative and enforcement activities conducted pursuant to the statutes that Agency administers, *see* 8 C.F.R. § 214.14(a)(2); 8 C.F.R. § 214.201, and will consider exercising this authority where the QCA or trafficking arises in the context of a work environment or an employment relationship and there is a credible allegation of a violation of a law that the Agency enforces related to the work environment or employment relationship. *See* WHD, U & T Visa Certifications, [dol.gov/agencies/whd/immigration/u-t-visa](https://dol.gov/agencies/whd/immigration/u-t-visa); OSHA, U & T Visa Certifications, [https://www.whistleblowers.gov/ut\\_visacriteria](https://www.whistleblowers.gov/ut_visacriteria).

### **III. Referrals and Coordination**

#### **A. General**

OSHA sometimes receives U and T visa certification requests for which WHD has the authority to certify instead of or in addition to OSHA, for instance, where the request contains alleged violations of a law that WHD enforces. Similarly, WHD sometimes receives certification requests for which OSHA has the authority to certify instead of or in addition to WHD. In such instances, referring the certification request to the other Agency and/or coordinating to determine which Agency should process, evaluate, and respond to the request will enable both Agencies to more efficiently enforce the laws within their purview, as well as to more efficiently respond to such certification requests. Therefore, the two Agencies agree to share information on U and T visa certification requests, as well as information relevant to such requests, as set forth below.

#### **B. Confidentiality**

While federal law prohibits the disclosure of any information related to a U or T visa beneficiary or petitioner, 8 U.S.C. § 1367(a)(2), internal disclosure is permitted for legitimate purposes, *id.* (excepting intra-agency disclosure for legitimate purposes); *id.* at (b)(2) (excepting disclosure to law enforcement officials “for a legitimate law enforcement purpose in a manner that protects the confidentiality of such information”); *see* 8 C.F.R. § 214.14(e)(2) (clarifying that statutory confidentiality provisions apply to government agencies not listed in the statute); *id.* at § 214.216(c) (same). Information shared between WHD and OSHA as set forth herein is done for legitimate purposes, specifically the legitimate law enforcement purposes of processing, evaluating, and responding to U and T visa certification requests and reporting alleged violations of law to the Agency charged with enforcing such laws. The Agencies’ internal procedures for sharing information are intended to protect the confidentiality of the information.

#### **C. Sharing Information Relevant to Pending U and T Visa Certification Requests**

The Agencies may, pursuant to their internal procedures, share information relevant to pending U and T visa certification requests for the following purposes:

- Where WHD or OSHA receives a U or T visa certification request that would be more appropriately handled by the other Agency, it may refer the request to the other Agency.

- In some instances, both WHD and OSHA will have the authority to issue a U or T visa certification. In such instances, the Agencies may coordinate to determine which Agency will process, evaluate, and respond to a specific certification request based on (a) the specific violations of law alleged; (b) whether either Agency has a related investigation or is considering opening an investigation; (c) the Agencies' respective resource constraints, particularly where these may prevent prompt action on a certification request; and (d) other institutional interests.
- At times one of the Agencies will have information relevant to a certification request being evaluated by the other Agency (*e.g.*, information from a prior investigation that substantiates or corroborates information provided by the requester). In such instances, the Agencies may share such relevant information with the other Agency.
- The Agencies may share information in response to any other legitimate law enforcement purpose not identified above provided that it is done in a manner that protects the confidentiality of such information.

To maximize the protection afforded to any information related to a U or T visa beneficiary or petitioner that is shared in written form, WHD and OSHA shall limit the Agency personnel who have access to this information to those who need it for the purpose of processing, evaluating, or responding to certification requests.

As set forth in the May 4, 2023 MOU between the Agencies at Section VIII(E), each Agency agrees to notify the other immediately upon receipt of any legal demand for access to this shared information – including FOIA requests, requests from other law enforcement agencies (including DOL's Office of the Inspector General), or requests made during litigation (*e.g.*, discovery requests, court orders, *Touhy* requests) – and to consult with the other to formulate a response consistent with the requirements of 8 U.S.C. § 1367 and other applicable laws. It is understood that the sharing of information between the Agencies is not considered a public disclosure under FOIA. *See* May 4, 2023 MOU, Section VIII(F). Nor would such information sharing operate as a waiver of confidentiality, privilege, or attorney work product.

Should either Agency determine that it is permissible and appropriate to disclose shared information, or is compelled to disclose such information, the Agency shall alert the receiving party that the information is subject to the confidentiality requirements of 8 U.S.C. § 1367.

#### **D. Security Requirements**

For all confidential datafiles, either Agency will securely transfer data in a manner consistent with DOL data transfer processes.

#### **IV. Revisions**

The Agencies shall periodically assess and revise these sharing procedures at any time as needed.

This Addendum to the May 4, 2023 MOU is effective as of [DATE].

United States Department of Labor  
Occupational Safety and Health Administration



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Assistant Secretary

United States Department of Labor  
Wage and Hour Division



Jessica Looman  
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