

**MEMORANDUM OF AGREEMENT (MOA)
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY (DHS)
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)
AND
THE DEPARTMENT OF LABOR (DOL)
REGARDING
EMPLOYMENT-BASED PETITION, LABOR CERTIFICATION, AND LABOR
CONDITION APPLICATION DATA**

I. BACKGROUND

On January 12, 2017, the U.S. Citizenship and Immigration Services (USCIS) and the Department of Labor (DOL) (hereinafter “the parties”) entered into a Memorandum of Agreement (MOA) entitled, “Memorandum of Agreement between the Department of Homeland Security, United States Citizenship and Immigration Services and the Department of Labor regarding Employment-Based Petition, Labor Certification, and Labor Condition Application Data” (“2017 MOA”). The 2017 MOA established the overarching arrangement by which USCIS and DOL will provide access to and exchange data that ensures both parties can obtain the most current and accurate information related to employment-based petitions, labor certifications, and labor condition applications in the possession of the parties. The 2017 MOA enables the respective parties to exchange information that greatly enhances the adjudication of applications and petitions and otherwise supports the proper administration of U.S. immigration laws and regulations. On September 6, 2019, the parties agreed to an Addendum to the 2017 MOA, allowing for sharing of additional data sets and categories. It is the intention of the parties that upon execution by both parties, this MOA will supersede and replace the MOA dated January 12, 2017, and corresponding 2019 Addendum.

II. PARTIES

A. The parties to this MOA are:

1. The Department of Homeland Security (DHS), acting through USCIS;
2. DOL’s Employment and Training Administration (ETA), acting through the Office of Foreign Labor Certification (OFLC);
3. DOL’s Wage and Hour Division (WHD); and
4. DOL’s Office of Inspector General (OIG).

B. Nomenclature: Any references to “DOL” in this MOA means primarily OFLC, WHD, and OIG. The parties acknowledge that there may be occasions when other DHS or DOL agencies or divisions possess a valid mission need for information exchanged

pursuant to this MOA. DOL is authorized to share such information with other DOL agencies and components possessing a documented valid mission need for such information. Similarly, pursuant to DHS's "One DHS" policy¹, USCIS may share information obtained through this MOA with other DHS components possessing a documented valid mission need for such information. Any information exchanged between or among the parties pursuant to this Agreement will be handled in a manner consistent with the terms set forth in this MOA.

III. PURPOSE

- A.** This MOA establishes the overarching arrangement by which the parties will provide access to and share information about employment-based petition records and data contained within labor certification and labor condition application databases. Appendices A – H of this Agreement describe the specific categories of data to be shared. This MOA also sets forth the basic mechanisms for the exchange of data as well as the responsibilities of the parties regarding the use, retention, maintenance, dissemination, destruction, and safeguarding of this data.
- B.** This MOA also provides for the referral of suspected violations of the terms of labor condition applications (LCAs) by USCIS to WHD, consistent with section 212(n)(2)(G)(v) of the Immigration and Nationality Act (INA).
- C.** Information sharing between the parties is intended to support the administration of U.S. immigration law, consistent with the parties' regulations and policies, and to combat fraud and abuse in the immigration system. In addition, the MOA supports U.S. labor and immigration law enforcement, fair employment and policy objectives, and other relevant national interests.

IV. DATA SHARING RESPONSIBILITIES OF THE PARTIES

The parties agree to the following:

A. USCIS:

USCIS will provide DOL read-only access to USCIS data systems related to employment-based petitions for nonimmigrant and immigrant workers. USCIS will also provide DOL a manual search capability to view data and other pertinent information contained within the Validation Instrument for Business Enterprises (VIBE) System. The data USCIS will make available to DOL through read-only access shall be limited to the data categories² set forth in the Appendices to this MOA. Should any of these systems be updated, replaced, or decommissioned, the surviving and/or successor systems and databases established for the same operational purposes will be utilized to provide and share the agreed upon data categories. The parties will amend

¹ Department of Homeland Security. Information Sharing and Safeguarding. DHS Directives System, Directive Number: 262-05. Issue Date: 9/4/2014.

² A data category is a classification of data elements grouped based on similar characteristics.

the affected Interconnection Security Agreements to reflect the use of new or modified data systems.

USCIS will also share information with WHD relating to suspected employer violations of the terms of employers' LCAs that USCIS obtains or generates during the course of its adjudication of H-1B petitions or during the course of administrative and targeted site visits conducted by the Fraud Detection and National Security Directorate (FDNS). To ensure cooperation, communication, and coordination with WHD, USCIS will designate a point of contact and, consistent with applicable laws, regulations, and policies, and the availability of USCIS resources, commit personnel and resources sufficient to support this MOA.

USCIS will not share with DOL via this MOA any information that may be subject to immigration specific confidentiality provisions, such as IIRIRA § 404(h), IRCA Section 121(c); 8 C.F.R. § 208.6 (Disclosure of Asylum Information to Third Parties, which is applied to refugee information by policy); the Violence Against Women Act and 8 U.S.C. § 1367 (pertaining to certain victims of domestic abuse and to certain victims of qualifying criminal activities and severe forms of human trafficking); 8 U.S.C. § 1255a(c)(5) (pertaining to Legalization); 8 U.S.C. §§ 1160(b)(5) and (6) (pertaining to Special Agricultural Workers, or SAWs); LIFE Act, Pub. L. 106-553 (pertaining to the Life Act); 8 U.S.C. § 1254(c)(6) and 8 C.F.R. § 244.16 (pertaining to Temporary Protected Status, or TPS); other immigration specific limitations; and the terms and conditions as set forth in USCIS' System of Records Notices.

DOL data shared with USCIS may be accessed by USCIS FDNS and DHS Office of the Inspector General (OIG) for authorized investigative purposes. This MOA does not alter or restrict the ability for DOL and USCIS FDNS to continue to share investigative information through existing arrangements. Nothing in this MOA shall be construed to limit either parties' right to share information obtained via this MOA beyond the terms of this Agreement if the agency data owner has consented in writing to the additional sharing, and it is otherwise permissible by law.

B. OFLC:

OFLC will electronically transmit agreed-upon data categories from the Program Electronic Review Management (PERM) System, iCERT Visa Portal (iCERT) System, and Foreign Labor Application Gateway (FLAG) System, or any successor systems, related to permanent and temporary labor certifications and labor condition applications for nonimmigrant and immigrant worker positions. OFLC will also provide USCIS read-only access to the PERM, iCERT, and FLAG systems, or any successor systems, to obtain case data, records, and other information derived from applications for labor certifications. Information obtained from the PERM, iCERT, and FLAG systems, or any successor systems, and provided to USCIS shall be limited to the data categories set forth in the Appendices to this MOA. 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 amend the affected Interconnectivity Agreements to reflect the use of new or modified data systems.

C. DOL OIG:

No data will be provided by DOL OIG pursuant to this MOA. DOL OIG may access data provided by USCIS to DOL, consistent with the provisions in Department of Labor Manual Series (DLMS) 8-100, 200, and 300, if it has a valid investigative/law enforcement need and will notify USCIS in writing when USCIS data needs to be accessed or used for these purposes by contacting USCIS.PrivacyInquiries@uscis.dhs.gov.

D. WHD:

No data will be provided by WHD pursuant to this MOA. To ensure cooperation, communication, and coordination with USCIS, WHD will designate a point of contact and, consistent with applicable laws, regulations, and policies, and the availability of WHD resources, commit personnel and resources sufficient to support this MOA. In addition to information provided by USCIS relating to suspected employer violations of the terms of employers' LCAs, WHD may access data that USCIS makes available to DOL through read-only access if it has a valid investigative/law enforcement need and will notify USCIS in writing when USCIS data needs to be accessed or are used for these purposes by contacting USCIS.PrivacyInquiries@uscis.dhs.gov.

V. TRAINING

To facilitate referrals under this MOA, reciprocal training is required to familiarize USCIS and WHD staff with each other's functions and to help USCIS staff recognize what may constitute violations of the laws enforced by WHD. To that end, WHD will provide training and related materials to USCIS, and USCIS will provide training and related materials to WHD. Training will occur on an ongoing basis as necessary.

VI. AUTHORITIES

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

- A. Title 5, United States Code, Sections 552a.
- B. Title 8, United States Code, Sections 1101, 1103, 1153, 1154, 1155, 1182, 1184, 1188, 1324, 1324a.
- C. Title 48, United States Code, Sections 1806.
- D. Title 8, Code of Federal Regulations, Sections 204.5 and 214.2(h).
- E. Title 20, Code of Federal Regulations, Parts 655 and 656.

- F. Title 29, Code of Federal Regulations, Parts 501 and 503.
- G. National Institutes of Standards and Technology (NIST) SP 800-47, Security Guide for Interconnecting Information Technology Systems.
- H. NIST Information Technology Laboratory (ITL) Bulletin, *Secure Interconnections for Information Technology Systems*, February 2003.
- I. NIST SP 800-53, Rev. 4, *Security and Privacy Controls for Federal Information Systems and Organization*, January 22, 2015.
- J. NIST SP 800-53A, Rev. 4, *Assessing Security and Privacy Controls in Federal Information Systems and Organizations: Building Effective Assessment Plans*, December 18, 2014.
- K. NIST SP 800-122, *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)*, April 2010.
- L. Office of Management and Budget Circular A-130, Appendix III, Security of Federal Automated Information Resources.
- M. Office of Management and Budget Memorandum 17-12, Preparing for and Responding to a Breach of Personally Identifiable Information.
- N. Privacy policy guidance and requirements issued (as updated) by the DHS Chief Privacy Officer and published on the Privacy Office website, including but not limited to:
- DHS Sensitive Systems Policy Directive 4300A, Version 13.1, July 27, 2017.
 - DHS 4300A Sensitive Systems Handbook, Version 12.0, November 15, 2015.
 - DHS 4300A Sensitive Systems Handbook, Attachment N, Preparation of Interconnection Security Agreements, Version 11.0, August 5, 2014.
 - DHS 4300A Sensitive Systems Handbook, Attachment D, Type Accreditation, Version 12.0, July 30, 2018.
 - DHS 4300A Sensitive Systems Handbook, Attachment F, Incident Response, Version 12.0, July 30, 2018.
 - DHS 4300A Sensitive Systems Handbook, Attachment O, Vulnerability Management Program, Version 9.1, July 24, 2012.
 - DHS 4300A Sensitive Systems Handbook, Attachment S, Compliance Framework for Privacy Sensitive Systems, Version 9.1, July 24, 2012.

- Handbook for Safeguarding Sensitive PII Privacy, Policy Directive 047-01-007 Revision 3 Published by the DHS Privacy Office, December 4, 2017.
- DHS Privacy Policy Guidance Memorandum Number 2017-1, DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information, dated April 25, 2017.
- Privacy Policy Guidance Memorandum 2011-01, *Privacy Act Amendment Requests* (February 11, 2011).
- Privacy Policy Guidance Memorandum 2008-01, *The Fair Information Practice Principles: Framework for Privacy Policy at the Department of Homeland Security* (December 29, 2008).
- Privacy Incident Handling Guidance (PIHG) (December 4, 2017).
- Memorandum from DHS Secretary Michael Chertoff, “DHS Policy for Internal Information Exchange and Sharing,” dated February 1, 2007.

VII. RECORDS MANAGEMENT

A. USCIS Systems of Records Used and Data Categories

All information regarding DHS systems of records and data categories that will be shared in the Agreement are listed in the appendices.

B. DOL Systems of Records Used and Data Categories

The DOL System of Records used for purposes of this information exchange is the DOL/ETA-7 – Foreign Labor Certification System and Employer Application Case Files.

The parties agree that the data categories contained in the following appendices will be shared or made available under this Agreement:

1. Appendix A – Data categories from H-2A Temporary Employment Certification Applications, associated with Information Collection Request Office of Management and Budget (ICROMB) control number 1205-0466, to include additional administrative case records and information available from the iCERT and FLAG systems, or their replacement or successor systems. Additionally, data categories include information contained on DOL’s Agricultural Clearance Order and corresponding addendums.
2. Appendix B – Data categories from H-1B Labor Condition Applications, associated with OMB control number 1205-0310, to include additional administrative case records and information available from the iCERT and FLAG systems, or their replacement or successor systems.

3. Appendix C – Data categories from H-2B Temporary Employment Certification Applications, associated with ICROMB control number 1205-0509, to include additional administrative case records and information available from the iCERT and FLAG systems, or their replacement or successor systems.
4. Appendix D – Data categories from CW-1 Temporary Employment Certification Applications and Applications for Prevailing Wage Determination, associated with ICROMB control number 1205-0534, to include additional administrative case records and information available from the FLAG system, or its replacement or successor system.
5. Appendix E – Data elements categories from Applications for Prevailing Wage Determination, associated with OMB control number 1205-0508, including certain data related to the administrative processing of such application forms maintained by DOL in the iCERT and FLAG systems or any successor systems.
6. Appendix F – Data categories from Permanent Labor Certification Applications, associated with ICROMB control number 1205-0451, to include additional administrative case records and information available from the iCERT and FLAG systems, or their replacement or successor systems.

C. Data Management

Consistent with the terms of this Agreement, USCIS and DOL will agree upon data to be collected, retained, used, and disseminated to the appropriate USCIS and DOL components and will prepare technical documents appropriate to fulfill the respective responsibilities under this Agreement, including, but not limited to, specific data exchange protocols and interface requirements to be memorialized in Interface Control Documents (ICDs), such as Interconnection Security Agreements and Interface Control Agreements. Technical documents may include, but are not limited to, documents concerning the following:

1. Information about interfaces
2. Information about systems holding data to be exchanged including system security authorization package information
3. Information about access to systems, access roles, and limitations on data that may be viewed during such access
4. Specific data fields to be exchanged
5. Sizing and scoping of data categories
6. Cross-agency data standards
7. Information about parsing data to be exchanged
8. Updating and managing feedback on data

9. Data exchange protocols
10. Retention and safeguarding of information to be exchanged

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

A. Privacy Safeguards and Restriction on Disclosure

1. All Personally Identifiable Information (PII) will be protected by administrative, technical, and physical safeguards appropriate to the sensitivities of the information. USCIS and DOL agree to maintain reasonable physical, electronic, and procedural safeguards designed to appropriately protect the information shared under this Agreement against loss, theft, or misuse, as well as unauthorized access, disclosure, copying, use, modification, or deletion.
2. USCIS and DOL will transfer, store, and control the information shared under this Agreement in compliance with the privacy and security requirements of both parties. Access to the records exchanged and any records created by the exchange will be stored in an area physically safe from access by unauthorized persons during duty hours, non-duty hours, and when not in use.
3. USCIS and DOL will advise all personnel having access to the information shared under this Agreement of the confidential nature of the information and that safeguards are required to protect the information.
4. Information exchanged pursuant to this MOA shall only be provided to authorized employees and/or contractors of the parties to this Agreement, as set forth herein. However, for the purposes of combating fraud and abuse in the immigration system, USCIS may disclose information from permanent employment labor certifications, temporary labor certifications, and labor condition applications issued by DOL pursuant to this MOA to a petitioning entity(ies) and/or its legal representative(s) that applied for the underlying labor certifications via DOL's system(s) and/or currently represents the petitioning entity(ies) that filed the underlying petition with USCIS.
5. Although the Department of State (DOS) is not a party to this MOA, DOL authorizes DOS employees and their support service contractors with current read-only VIBE access to obtain DOL data through USCIS' VIBE system, or any successor systems.
6. USCIS and DOL agree that prior written consent will be obtained for any disclosure of the information obtained pursuant to this MOA outside of the respective Departments, except as otherwise permitted in this MOA. USCIS and DOL agree that information exchanged pursuant to this MOA may be shared with employees of the respective Departments that possess a valid mission need for the information.

7. USCIS and DOL, including all personnel with access to the information referenced in this MOA, 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. USCIS and DOL will cross-train personnel 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. Privacy training compliance will be reported when new users request access to systems and when access is renewed annually. USCIS and DOL, in coordination with their legal and privacy oversight offices, will establish joint training requirements and certification processes to ensure sensitive information is properly handled and safeguarded.

B. Limitations on Use and Disclosure of Information

1. Both parties acknowledge that the use and disclosure of the data and other information provided by the parties under this Agreement may also be subject to limitations under law, regulation, and policy. Before DOL permanently retains or discloses to any third party any information obtained from or provided by USCIS, USCIS will have the opportunity to identify and memorialize any specific limitations pertaining to DOL's use or dissemination of that information. Both parties will not further disclose records provided by either party to outside third parties without written request and the express written consent of USCIS or DOL, respectively.
2. Access requests pursuant to the Privacy Act, the Freedom of Information Act, or the Judicial Redress Act shall be referred to the party who initially captured the requested information for processing. The parties agree to consult on the disclosure of any information containing joint information.
3. The parties agree that any information submitted by an employer to DHS for purposes of securing the employment of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the INA and disclosed by DHS to DOL pursuant to this MOA will not be considered a receipt of information for purposes of sections 212(n)(2)(A) and 212(n)(2)(G)(ii) of the INA, as required by INA section 212(n)(2)(G)(v). Such information may be used by DOL solely to initiate and prosecute investigations under section 212(n)(2)(G)(i) of the INA.

C. Retention and Destruction of Identifiable Records

USCIS and DOL will retire any records containing information exchanged pursuant to this Agreement in accordance with the parties' respective Federal Records Retention Schedule (44 U.S.C. § 3303a). When the information is no longer required by DOL or USCIS for agency adjudication or other business needs, or required to be retained for litigation or other legal purposes, the respective parties

will destroy all electronic data from their systems by overwriting the logical storage location and all user addressable locations, block erasing, and/or cryptographically erasing the data as well as all paper records in their possession in accordance with applicable National Archives and Records Administration (NARA) approved retention schedules. The applicable NARA approved retention schedule can be found with the system-specific information in Appendix H of this Agreement. USCIS and DOL will certify in writing, as appropriate, the destruction of all electronic and paper records associated with the Agreement. Notification will be sent to the USCIS Records Officer at USCISRecordsOfficer@uscis.dhs.gov.

IX. PROCEDURES FOR SECURITY

USCIS and DOL will comply with the following procedures for ensuring the administrative, technical, and physical security of the information exchanged and the results of such programs:

A. Applicable Federal Information Security Laws and Regulations

1. USCIS and DOL will 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); 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.
2. 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.
3. Both USCIS and DOL reserve the right to conduct onsite inspections of the other agency to monitor its compliance with the FISMA requirements during the lifetime of this Agreement.

B. Loss/Breach Reporting

If USCIS or DOL experiences or suspects that there has been a loss, mishandling, or an unauthorized disclosure of PII resulting in a security incident³ provided under this Agreement, USCIS and DOL will follow the procedures outlined in the ISA associated with this Agreement.

X. COMPLIANCE

A. Privacy Audit

At least on an annual basis, the parties will conduct privacy audits to ensure compliance with the privacy requirements set forth in this Agreement in accordance with their own audit procedures and policies, and both parties agree to inform each other of the results of such audits. All audit data will be sent to the USCIS Privacy Office at USCIS.PrivacyInquiries@uscis.dhs.gov and the Office of Foreign Labor Certification office at oflc.interagency@dol.gov.

The parties may also accept the results of internal agency audits (such as Inspector General audits) conducted in lieu of an audit under this section to the extent that such audits address compliance with requirements of this Agreement. Audits should include, but are not limited to, the following:

- The number of DOL users granted access to each system
- The number of DOL users whose access was revoked and why (failure to fulfill training requirements, misuse of system, etc.)
- The number of USCIS records accessed by DOL users
- The number of USCIS records retained by DOL users
- The number of instances of loss, theft, or misuse; unauthorized access; or improper disclosure, copying, use, modification, or deletion of USCIS data
- The number of onward disclosure requests

B. Penalties

Both parties understand that if one party to this Agreement or one of the party's employee/agents willfully discloses any such PII to a third party not authorized to receive it, either party can revoke the other party's access to records set forth by this Agreement. Penalties associated with the unauthorized disclosure may include the following:

³ A security *incident* is defined as an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by subsection 552a(i)(1) of title 5, United States Code, or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).

Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection 552a-(e)(4) of title 5, United States Code, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

In the event that USCIS is informed by DOL that Section 1367 information has been disclosed in an unauthorized manner, the USCIS Office of Privacy will notify the DHS Chief Privacy Officer and the DHS Officer for Civil Rights and Civil Liberties as soon as is practicable, but no later than twenty-four (24) hours after discovery of the unauthorized disclosure. DHS and the DOL will follow the requirements of their respective policies in addressing such an unauthorized disclosure. USCIS personnel will follow instructions in the DHS Privacy Incident Handling Guidance.

XI. DURATION OF AGREEMENT

The terms of this Agreement will take effect on the date of the last signature of the parties. The Agreement will be reviewed annually by both parties. Unless terminated by either party upon sixty (60) days of written notice to the other, this Agreement shall remain in full force and effect for five (5) years with the option for further extension by the mutual agreement of both parties. In the event the Agreement expires while both parties are making good faith efforts to extend or revise the Agreement, the terms and conditions of this Agreement will remain in effect unless either party provides written notice to the other of its intent not to follow the Agreement.

XII. MODIFICATION AND TERMINATION

Modifications to this Agreement must be in writing and agreed to by both parties. The data categories or specific terms of the incorporated Appendices can be individually and specifically negotiated and modified by the points of contact identified in Appendix I without also requiring modifications to the terms of this governing MOA.

This Agreement may be terminated by either party upon sixty (60) days advance written notice. In the event one party requests termination of this Agreement, 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.

XIII. INTEGRATION CLAUSE

This Agreement 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 Agreement. This Agreement shall take precedence over any other documents that may be in conflict with it with respect to providing access to and sharing information about employment-based petition records and data contained within labor certification and labor condition application databases.

XIV. INTERPRETATION AND SEVERABILITY

Nothing in this MOA is intended to conflict with current law or regulation. If a term of this MOA is inconsistent with such authority, then that term shall be invalid to the extent of the inconsistency, but the remaining terms and conditions of this MOA shall remain in full force and effect.

XV. NO PRIVATE RIGHT OF ACTION AND COSTS

This Agreement does not create any private right of actions on the part of third parties. Unless otherwise agreed to in writing, each party shall bear its own costs in relation to this MOA. Nothing in this MOA is intended to restrict the authority of either party to act as provided by law, statute, or regulation, or to restrict any party from administering or enforcing any laws within its authority or jurisdiction.

XVI. FUNDING

Notwithstanding any other provision herein, this Agreement 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 Agreement 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.

XVII. PERSONS TO CONTACT

The parties agree to assist each other to carry out this Agreement through the points of contact set out in Appendix I 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 I.

XVIII. 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. Citizenship and Immigration Services

MATTHEW S GRAVISS Digitally signed by
MATTHEW S GRAVISS
Date: 2020.07.30 11:45:46
-04'00'

Matthew Graviss
Chief Data Officer

07/30/2020

Date

U.S. Department of Labor



John Pallasch
Assistant Secretary
Employment and Training Administration

07/30/2020

Date



Cheryl M. Stanton
Administrator
Wage and Hour Division

07/30/2020

Date

Larry D. Turner

Larry D. Turner
Acting Inspector General
U.S. Department of Labor

07/30/2020

Date

Attachments:

Appendix A – H-2A Temporary Employment Certification Application Data Categories, OMB Control Number 1205-0466

Appendix B – H-1B Labor Condition Application Data Categories, OMB Control Number 1205-0310

Appendix C – H-2B Temporary Employment Certification Application Data Categories, OMB Control Number 1205-0509

Appendix D – CW-1 Temporary Employment Certification and Prevailing Wage Application Data Categories, OMB Control Number 1205-0534

Appendix E – Prevailing Wage Application Data Categories, OMB Control Number 1205-0508

Appendix F – Permanent Labor Certification Application Data Categories, OMB Control Number 1205-0451

Appendix G – Data Categories about Petitioning Companies and Organizations

Appendix H – Data Categories about Individual Petitioners and Beneficiaries

Appendix I – Persons to Contact

Appendix A

H-2A Temporary Employment Certification Application Data Categories⁴

OMB Control Number 1205-0466

H-2A Temporary Labor Certification Application

1. Type of Employer Application
2. Nature of Temporary Need
3. Employer Information
4. Employer Point of Contact Information
5. Attorney or Agent Information
6. Job Opportunity Information
7. H-2A Labor Contractor Information
8. Declaration of Employer and Attorney/Agent
9. Labor Certification Application Preparer Information
10. Appendix A: Attorney or Agent Declaration
11. Appendix B: Employer Declaration
12. Labor Certification Decision Information
13. Case status, processing events, and related case management information

H-2A Agricultural Clearance Order

1. Agricultural Clearance Order Identifier Numbers
2. Agricultural Clearance Order SOC Code
3. SWA Order Holding Office Contact Information
4. Agricultural Clearance Order Employer Contact Information
5. Type of Agricultural Clearance Order
6. Agricultural Clearance Order Job Offer Information
7. Agricultural Clearance Order Minimum Job Qualifications and Requirements
8. Agricultural Clearance Order Place of Employment Information

⁴The data categories referenced in this MOA are Privacy Act Systems – DOL/ETA-7, *Foreign Labor Certification System and Employer Application Case Files*, and published in DOL’s System of Records Notice at 81 FR 25765 (Apr. 29, 2016). ETA’s OFLC Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. <https://www.dol.gov/sol/privacy/dol-eta-7.htm>

9. Agricultural Clearance Order Housing Information
10. Agricultural Clearance Order Provision of Meals Information
11. Agricultural Clearance Order Transportation and Daily Subsistence Information
12. Agricultural Clearance Order Referral and Hiring Instructions
13. Agricultural Clearance Order Additional Material Terms and Conditions of the Job Offer
14. Agricultural Clearance Order Declaration
15. Case status, processing events, and related case management information

Appendix B
H-1B Labor Condition Application Data Categories⁵
OMB Control Number 1205-0310

1. Employment-Based Nonimmigrant Visa Information
2. Temporary Need Information
3. Employer Information
4. Employer Point of Contact Information
5. Attorney or Agent Information
6. Employment Location
7. Wage Information
8. Employer Labor Condition Application Statements
9. Additional Labor Condition Application Statements_H-1B ONLY Information
10. Information regarding H-1B Dependent or Willful Violator ONLY
11. Employer Public Disclosure Information
12. Notice of Obligations
13. Labor Condition Application Preparer Information
14. Labor Certification Decision Information
15. Case status, processing events, and related case management information

⁵ The data categories referenced in this MOA are Privacy Act Systems – DOL/ETA-7, *Foreign Labor Certification System and Employer Application Case Files*, and published in DOL’s System of Records Notice at 81 FR 25765 (Apr. 29, 2016). ETA’s OFLC Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. <https://www.dol.gov/sol/privacy/dol-eta-7.htm>

Appendix C

H-2B Temporary Employment Certification Application Data Categories⁶

OMB Control Number 1205-0509

1. Type of Employer Application
2. Nature of Temporary Need
3. Employer Information
4. Employer Point of Contact Information
5. Attorney or Agent Information
6. Job Opportunity Information
7. Job Offer Information
8. Wage Information
9. Labor Certification Application Preparer Information
10. Appendix A: Additional Places of Employment
11. Appendix B: Attorney or Agent Declaration Information
12. Appendix C: Foreign Labor Recruiter Information
13. Appendix D: Employer-Client Information
14. Labor Certification Decision Information
15. Case status, processing events, and related case management information

⁶The data categories referenced in this MOA are Privacy Act Systems – DOL/ETA-7, *Foreign Labor Certification System and Employer Application Case Files*, and published in DOL’s System of Records Notice at 81 FR 25765 (Apr. 29, 2016). ETA’s OFLC Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. <https://www.dol.gov/sol/privacy/dol-eta-7.htm>

Appendix D

CW-1 Temporary Employment Certification and Prevailing Wage Application Data Categories⁷

OMB Control Number 1205-0534

1. Nature of CW-1 Application
2. Employer Information
3. Employer Point of Contact Information
4. Attorney or Agent Information
5. Job Opportunity Information
6. Job Requirements
7. Place of Employment
8. Wage Information
9. Labor Certification Application Preparer Information
10. Labor Certification Decision Information
11. Appendix A: Job Contractor: Employer-Client Information
12. Appendix B: Additional Place of Employment Information
13. Appendix C: Employer and Attorney Declaration Information
14. Case status, processing events, and related case management information

⁷ The data categories referenced in this MOA are Privacy Act Systems – DOL/ETA-7, *Foreign Labor Certification System and Employer Application Case Files*, and published in DOL’s System of Records Notice at 81 FR 25765 (Apr. 29, 2016). ETA’s OFLC Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. <https://www.dol.gov/sol/privacy/dol-eta-7.htm>

Appendix E
Prevailing Wage Application Determination Data Categories⁸
OMB Control Number 1205-0508

1. Employment-Based Visa Information
2. Employer Point of Contact Information
3. Employer Information
4. Job Opportunity Information
5. Job Requirements
6. Place of Employment Information
7. Prevailing Wage Determination Information
8. Case status, processing events, and related case management information

⁸The data elements categories in this MOA are Privacy Act Systems – DOL/ETA-7, *Foreign Labor Certification System and Employer Application Case Files*, and published in DOL’s System of Records Notice at 81 FR 25765 (Apr. 29, 2016). ETA’s OFLC Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. <https://www.dol.gov/sol/privacy/dol-eta-7.htm>

Appendix F
Permanent Labor Certification Application Data Categories⁹
OMB Control Number 1205-0451

1. Type of Permanent Labor Certification
2. Employer Information
3. Employer Point of Contact Information
4. Attorney or Agent Information
5. Wage Information
6. Job Opportunity Information and Requirements
7. Area of Intended Employment Information
8. Recruitment Information
9. Foreign Worker Information
10. Permanent Labor Certification Preparer Information
11. Labor Condition Statements and Declarations of Foreign Worker, Employer, and Attorney or Agent
12. Labor Certification Decision Information
13. Case status, processing events, and related case management information

⁹The data categories referenced in this MOA are Privacy Act Systems – DOL/ETA-7, *Foreign Labor Certification System and Employer Application Case Files*, and published in DOL’s System of Records Notice at 81 FR 25765 (Apr. 29, 2016). ETA’s OFLC Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. <https://www.dol.gov/sol/privacy/dol-eta-7.htm>

Appendix G

Data Categories about Petitioning Companies and Organizations^{10 11}

1. USCIS Petition Information
2. VIBE Scoring Result
3. USCIS Previous Filings
4. IIP Information (based on the terms and conditions on the VIBE Independent Information Provider (IIP) contract)
5. VIBE Predefined Company Score & Comments
6. VIBE Predefined Attorney/Accredited Representative Score & Comments
7. DOL Labor Certifications Summary & Details
8. ETA Associated USCIS Filings

¹⁰ The Web-based *Validation Instrument for Business Enterprises* (VIBE) is a tool designed to enhance USCIS' adjudications of certain employment-based immigration petitions and applications. VIBE uses commercially available data from an independent information provider (IIP) to validate basic information about companies or organizations petitioning to employ certain foreign nationals and to validate the basic information about the companies or organizations. For more information, see DHS/USCIS/PIA-044(a) Validation Instrument for Business Enterprises (VIBE), available at www.dhs.gov/privacy

¹¹ The DHS Systems of Records Notices (SORN) used for purposes of this information exchange are: DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556; DHS/USCIS-006 Fraud Detection and National Security Records, August 8, 2012, 77 FR 47411; and DHS/USCIS-007 Benefits Information System, October 10, 2019 84 FR 54622.

Appendix H

Data Categories about Individual Petitioners and Beneficiaries^{12 13}

1. Petitioner/Employer Identity Information
2. Immigration Status
3. Decision Information
4. Identity and Status Information

¹² USCIS will provide DOL read-only access to the Person Centric Query Service (PCQS), or its successor system, to view data drawn from CLAIMS 3, ELIS, or their successor systems subject to the limitations explained in the MOA. CLAIMS 3 (C3) is a USCIS internal case management system which stores data from filings received at USCIS Service Centers. ELIS is the digital case processing platform for USCIS that supports digital ingestion and processing of workloads filed through both the e-file intake channel (myUSCIS online portal) as well as the paper intake channel (USCIS Lockbox). ELIS integrates enterprise services and data from other source systems into a single platform that provides a seamless user experience and offers USCIS federal and contractor staff the features and tools needed to perform highly complex processing and adjudicative tasks. Data from applications or petitions received at Service Centers is entered into C3 or the ELIS platform. ELIS is the Official Immigration Record for cases processed in a digital environment.

¹³ The DHS Systems of Records Notices (SORN) used for purposes of this information exchange are: DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556; DHS/USCIS-007 Benefits Information System, October 10, 2019 84 FR 54622; and DHS/USCIS-018 Immigration Biometric and Background Check (IBBC) System of Records, July 31, 2018, 83 FR 36950. The National Archives and Records Administration (NARA) approved retention schedule (DAA-0566-2016-0013) can be found at https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/department-of-homeland-security/rg-0566/daa-0566-2016-0013_sf115.pdf

Appendix I

Persons to Contact

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U.S. Department of Labor		
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