

**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. PARTIES:

- a. The parties to this Memorandum of Agreement (MOA) are:
1. The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS);
 2. The Department of Labor's (DOL) Office of Foreign Labor Certification, situated in DOL's Employment and Training Administration;
 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 mean OFLC, WHD and OIG only, and no other agency or sub-agency component of DOL.

II. PURPOSE:

The purpose of this Memorandum of Agreement is to memorialize the parties' agreement under which:

- a. DHS/USCIS will provide to OFLC, WHD, and OIG information from DHS's Computer Linked Application Immigration Management System (CLAIMS3), the Validation Instrument for Business Enterprises (VIBE) System, and other DHS systems that contain information related to employment-based petitions through Person Centric Query System (PCQS); and
- b. OFLC will provide information submitted by employers through the Program Electronic Review Management (PERM) system and the iCERT Visa Portal System (iCERT) to DHS/USCIS.

III. DATA SHARING RESPONSIBILITIES OF THE PARTIES: The data sharing responsibilities of the parties to this Agreement are as follows:

a. USCIS Responsibilities:

In accordance with the terms of this Agreement, USCIS will provide DOL read-only access to the Person Centric Query System (PCQS) to view, on a read-only basis, data drawn from CLAIMS3 and other DHS systems that contain responsive information related to petitions for nonimmigrant and immigrant workers and special immigrants. USCIS will also provide data and other pertinent information contained within the VIBE system to DOL.

b. OFLC Responsibilities:

In accordance with the terms of this Agreement, OFLC will electronically transmit agreed-upon data elements, as set out in Appendices A-D, from PERM and iCERT related to permanent and temporary employment certifications and labor condition applications for immigrant and nonimmigrant workers. OFLC will also provide USCIS access to the OFLC Permanent Case Management System and iCERT System to view, on a read-only basis, case data and documentation drawn from applications for nonimmigrant and immigrant labor certifications.

c. WHD Responsibilities:

WHD will have no data-sharing responsibilities under this MOA.

d. OIG Responsibilities:

OIG will have no data-sharing responsibilities under this MOA.

IV. LEGAL 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 8, United States Code, Sections 1101, 1103, 1153, 1154, 1155, 1182, 1184, 1188, 1324, 1324a.
- b. Title 5, United States Code, Sections 552 and 552a.
- c. Title 8, Code of Federal Regulations, Sections 204.5 and 214.2(h).
- d. Title 20, Code of Federal Regulations, Parts 655 and 656.

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

Other Relevant Guidelines

a. National Institutes of Standards and Technology (NIST) SP 800-47, Security Guide for Interconnecting Information Technology Systems.

b. Office of Management and Budget Circular A-130, Appendix III, Security of Federal Automated Information Resources.

c. DHS Privacy Policy Guidance Memorandum Number 2007-1, DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons as amended, dated January 7, 2009, (Provision of Privacy Act protections, as a matter of DHS policy, to non U.S. Citizens/Lawful Permanent Residents to the maximum extent practicable).

V. DESCRIPTION OF RECORDS, DATA ELEMENTS, AND DATA MANAGEMENT

a. Systems of Records Used

The DHS Systems of Records (SORN) used for purposes of this information exchange are:

1. DHS/USCIS-007 – United States Citizenship and Immigration Services Benefits Information System, September 29, 2008, 73 FR 56596.
2. DHS/USCIS-014 – Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests System of Records, April 5, 2013, 78 FR 20680.
3. DHS/USCIS-015 – Electronic Immigration System-2 Account and Case Management System of Records, April 5, 2013, 78 FR 20673.
4. DHS/USCIS-016 – Electronic Immigration System-3 Automated Background Functions System of Records, November 15, 2011, 76 FR 70735.
5. DHS/NPPD-001 – Arrival and Departure Information System, May 28, 2013, 78 FR 31955.

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

b. Data Elements

Appendices A, B, C, and D specify the data elements that will be shared or will be made available to be exchanged under this MOA.

1. Appendix A – Data elements from ETA Forms 9142A and B.
2. Appendix B – Data elements from ETA Form 9089 (including audit requests and responses and available additional notes from iCert).
3. Appendix C – Data elements from ETA Form 9035.
4. Appendix D – Data elements available through DHS VIBE and/or PCQS Systems.

c. Data Management

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 responsibilities under this Agreement, to include but not limited to, specific data exchange protocols and interface requirements to be memorialized in Interface Control Documents (ICDs). 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
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 elements
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

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

a. Privacy Safeguards and Restriction on Disclosure

1. Pursuant to DHS and DOL policy, all personally identifiable information exchanged in accordance with this MOA shall be extended Privacy Act protections to the maximum extent practical.

2. Personally Identifiable Information (PII) will be protected by administrative, technical, and physical safeguards appropriate to the sensitivities of the information.
3. 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.
4. USCIS and DOL will transfer, store, and control the information involved in the process 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.
5. USCIS and DOL will advise all personnel having access to the information involved in the process under this Agreement of the confidential nature of the information and that safeguards are required to protect the information.
6. Information exchanged pursuant to this MOA shall only be provided to authorized employees and or contractors of the Parties to this agreement. Since this MOA allows USCIS and DOL to access Sensitive But Unclassified (SBU) information and access USCIS computer systems, USCIS and DOL agree that authorized employees and/or contractors of each respective agency must execute a **DHS Form 11000-6 Sensitive But Unclassified Information Nondisclosure Agreement (NDA) (Appendix E)** as a condition to access such information, in accordance with DHS Management Directive 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) and **DHS Form 11000-5, Department of Homeland Security Personnel Security Data Verification Request (Appendix F)** prior to accessing SBU information exchanged pursuant to this MOA and USCIS computer systems.
 - i. **Suitability determinations.** Suitability determinations for DOL authorized employees and contractors who will access USCIS computer systems are the responsibility of DOL. Suitability determinations for USCIS authorized employees and contractors who will access USCIS computer systems are the responsibility of DHS.
 - ii. **Background Check Investigations.** Employees who will need to access sensitive information exchanged pursuant to this MOA and access USCIS computer systems will have a completed and favorably adjudicated full field background investigation (BI), or commensurate with the sensitivity in nature of each designated position. For DOL authorized employees and/or contractors who will access SBU information exchanged pursuant to this MOA and USCIS computer systems, DOL will certify to the USCIS Office of Security & Integrity the investigation type and adjudicative decision for individuals accessing

USCIS information and systems and will submit both DHS Form 11000-5 and DHS Form 11000-6 for each individual to the Office of Security & Integrity, Personnel Security Division (OSI PSD) at the time DOL provides the certification of background investigations for DOL authorized employees and/or contractors prior to accessing SBU information and USCIS computer systems.

7. USCIS and DOL agree that prior written consent will be obtained for any forward on disclosure of the information obtained pursuant to this MOA, outside of the respective Departments.
8. USCIS 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. USCIS 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.
9. The Parties agree that any information disclosed by DHS to DOL pursuant to this MOA will not be considered a receipt of information for purposes of section 212(n)(2)(G)(ii) of the Immigration and Nationality Act (INA) as required by section 212(n)(2)(G)(v) of the INA.

b. Limitations on Use and Disclosure of Information

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 beneficiary information from USCIS, USCIS will have the opportunity to identify any specific limitations pertaining to DOL's use or dissemination of that information.

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 Federal Records Retention Schedule (44 U.S.C. § 3303a). When the information is no longer required by DOL, DOL will destroy all electronic data from their systems as well as all paper records that they have in their possession in accordance with applicable National Archives and Records Administration (NARA) approved retention schedules. Similarly, when the information is no longer required by USCIS, USCIS will delete/destroy all electronic data from their systems as well as all paper records that they have in their possession in accordance with applicable NARA approved retention schedules.

VII. 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) 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 personally identifiable information (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

1. Loss

If USCIS or DOL experiences a loss of PII provided under this Agreement, USCIS and DOL will follow the OMB loss reporting guidelines (OMB M-06-19 "Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security into IT Investments" and OMB M-15-01 "Fiscal Year 2014-2015 Guidance on Improving Federal Information Security and Privacy Management Practices") 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, USCIS and DOL will notify the appropriate Systems Security contact, provided in Appendix G of this Agreement.

2. Breach Notification

USCIS and DOL will follow the PII breach notification policies and related procedures, as required by OMB M-07-16 (May 22, 2007).

VIII. DURATION OF AGREEMENT

The terms of this Agreement 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 Agreement 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 to an extension of this Agreement or develop a new Agreement.

IX. MODIFICATION AND TERMINATION

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

This Agreement may be terminated by either party upon 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. The party may withdraw its request to terminate this Agreement at any time prior to the expiration of the 60-day period.

X. 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 data regarding nonimmigrant and immigrant employment-based petitions, labor certifications, and labor condition applications.

XI. RIGHT OF ACTION AND COSTS

This agreement does not create any private right of actions 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 Agreement.

XII. 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.

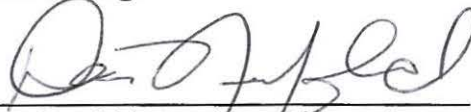
XIII. PERSONS TO CONTACT

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

XIV. 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



Don Neufeld, Associate Director
Service Center Operations Directorate

01/12/17

Date

U.S. Department of Labor



Portia Wu
Assistant Secretary
Employment and Training Administration

8/10/16

Date



Dr. David Weil
Administrator
Wage and Hour Division

8/12/16

Date



Scott S. Dahl
Inspector General
U.S. Department of Labor

8/12/16

Date

Attachments:

- Appendix A – Data elements from DOL Forms ETA-9142A and B
- Appendix B – Data elements from DOL Form ETA-9089
- Appendix C – Data elements from DOL Form ETA-9035
- Appendix D – Data elements from DHS Validation Instrument for Business Enterprises (VIBE) System and Person Centric Query System (PCQS)
- Appendix E – DHS Form 11000-6 Sensitive But Unclassified Information Nondisclosure Agreement (NDA)
- Appendix F – DHS Form 11000-5 DHS Personnel Security Data Verification Request
- Appendix G – Persons to Contact