

MEMORANDUM OF AGREEMENT
Between
THE UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
And
THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES
Regarding
INTER-AGENCY DATA SHARING
MEMORANDUM OF AGREEMENT

The United States Department of Labor (DOL), Wage and Hour Division (WHD), and the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) (hereinafter collectively referred to as “the agencies” or “the Parties”) recognize the value of establishing a collaborative relationship to enhance and maximize the wellbeing of children and enforcement of the federal child labor laws. The parties are forming this partnership to encourage greater coordination between them through information sharing, training, and education to further the goal of preventing and responding to instances of child labor exploitation and child labor trafficking.

This Memorandum of Agreement (MOA) is intended to memorialize the partnership between the Parties and outlines procedures to be followed by both Parties in working together to address the need for information sharing, coordination, training, and education. Nothing in this MOA limits or exceeds the agencies’ authority under their respective statutes.

The parties agree as follows:

I. Purpose

The purpose of this MOA is to maximize the enforcement of the child labor protections of the Fair Labor Standards Act (FLSA) administered by DOL/WHD, to enhance ACF’s ability to protect children from exploitation and to connect individuals to needed benefits and services as authorized by the Homeland Security Act of 2002 (HSA), the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and the Trafficking Victims Protection Act of 2000 (TVPA) as amended. This MOA will encourage greater coordination between the agencies through information sharing, training, and education.

This MOA is a voluntary agreement, does not create any contractual obligations, and is not enforceable by any party, private person, or third party. By entering into this MOA, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other. Nothing in this MOA will be interpreted as limiting, superseding, or otherwise affecting the agencies’ normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOA does not obligate and will not result in an exchange of funds, personnel, property, or services, nor does this MOA require or

authorize any financial commitment on the part of the agencies. This MOA also does not limit or restrict the agencies from participating in similar activities or arrangements with other entities. The parties agree that information exchanged, collected, disclosed, or reported shall be used only for the purposes described within this MOA. Parties are strictly forbidden from using information for any other purpose, including for purposes related to immigration enforcement.

II. Relevant Parties and Legal Authorities

A. Wage and Hour Division (WHD)

WHD is authorized to administer and enforce programs under several statutes, including: the Fair Labor Standards Act (FLSA), 29 U.S.C. § 211; the Davis Bacon and Related Acts, 29 CFR § 5.6; the McNamara O'Hara Service Contract Act, 41 U.S.C. § 6707; the Walsh-Healy Public Contracts Act, 41 U.S.C. § 6506; the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. § 1862; the Immigration and Nationality Act (INA), 20 CFR § 655.800, 29 CFR § 501.6, 29 CFR § 503.7; and the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2616.

The FLSA establishes minimum federal standards for wages and hours of work, including, among other things, child labor protections, requirements for the payment of overtime pay, minimum wages, protections to ensure that employers do not keep employees' tips, and "reasonable break time" for nursing mothers to express milk in a place other than a bathroom. The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. The H-1B, H-2A, and H-2B programs govern the temporary employment of certain foreign workers and provide various protections for U.S. workers and workers with these employment visas. These federal wage and hour laws also protect from retaliation those workers who complain of violations or exercise their rights under the applicable law.

B. Administration for Children and Families (ACF)

1. **Office of Refugee Resettlement (ORR):** ORR, a program office of the Administration for Children and Families (ACF) within the Department of Health and Human Services, manages the Unaccompanied Children (UC) Program and is responsible for the care, custody and placement of unaccompanied children in Federal custody by reason of their immigration status. See 6 U.S.C. § 279; 8 U.S.C. § 1232(b), (c). Unaccompanied children are defined in statute as children who are under the age of 18; do not have lawful immigration status in the United States; and with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian available to provide physical care and physical custody. See 6 U.S.C. § 279(g)(2). Unaccompanied children in federal custody are required to be transferred to the custody of ORR by federal agencies. See 8 U.S.C. § 1232(b)(2). Typically, unaccompanied children in federal custody are transferred to ORR by the Department of Homeland Security. ORR coordinates and

implements care and placement of unaccompanied children, and is responsible for, among other things, ensuring that the interests of the child are considered in decisions and actions relating to their care and custody, implementing policies with respect to their care and placement, and making and implementing placement determinations for all unaccompanied children who are in Federal custody by reason of their immigration status.

ORR is responsible for providing services to unaccompanied children while identifying and assessing the suitability of potential sponsors (typically a parent or an adult relative) in the United States who may provide for the child's physical and emotional well-being upon placement. ORR funds a network of over 200 care provider facilities, which are typically state licensed, that provide housing, food, medical care, mental health services, educational services, recreational activities, assess the suitability of potential sponsors, and ensures their safe and timely release from ORR care through case management services. Federal law requires the safe and timely placement of children in the least restrictive setting that is in the best interest of the child. Once ORR determines that a sponsor can provide for the child's physical and mental well-being, in accordance with statutory requirements and its policies, the child is released to the sponsor's care.

Upon release, ORR may provide post-release services for children. ORR also conducts safety and well-being calls with both the sponsor and child after the child is released from ORR care to help continue and facilitate a child's successful transition into their community and encourage permanency. In the event the sponsor is unable to provide care and custody for the child, and if they are not the child's parent or legal guardian, the ORR Sponsor Care Agreement instructs the sponsor to contact ORR's National Call Center (NCC) for support. ORR's NCC is a resource where both sponsors and children can request assistance, report concerns, and be referred to essential community and local government services to promote success and community permanence.

2. **Office on Trafficking in Persons (OTIP):** OTIP, a program office of the Administration for Children and Families (ACF) within the Department of Health and Human Services, is responsible for developing and implementing programs that assist both foreign and domestic victims of human trafficking. OTIP funds grants to community-based organizations to provide comprehensive case management services for individuals who have experienced or may have experienced a severe form of trafficking in persons in coordination with other federally-funded programs including ORR. Grant-funded programs include the Trafficking Victim Assistance Program (TVAP) and Aspire to assist adult and child victims of trafficking on a per capita basis with national coverage (22 U.S.C. § 7105(b)).

OTIP also issues Interim Assistance and Eligibility Letters to foreign national minors, including unaccompanied children, who are potential victims and victims of human trafficking so that they may be eligible for benefits and services to the same extent as a refugee (22 U.S.C. § 7105(b)). These benefits and services include access to trafficking-

specific case management services, medical services, food assistance, cash assistance, health insurance, and other needs to the same extent as a refugee. While the Trafficking Victims Protection Act of 2000 (TVPA), as amended, requires federal, state, and local officials to notify HHS (through ACF OTIP) not later than 24 hours after discovering that a foreign national minor may be a victim of trafficking (22 U.S.C. § 7105(b)(1)(H)), any person who has concerns that a foreign national minor may have experienced human trafficking can submit a Request for Assistance (RFA) to ACF OTIP.

Information gathered by OTIP pursuant to an RFA enables OTIP to provide technical support to providers serving children, as well as to connect individuals to benefits and services. OTIP will only make information available through the RFA to non-HHS entities for the purpose of addressing child protection needs, including the case management purposes described above, as well as to comply with the requirements under the TVPA of 2000, as amended.

C. Additional Legal Authorities

This MOA is authorized under, and entered into, consistent with the following provisions of the laws, regulations, policies, and system of records notices:

- Privacy Act of 1974, 5 U.S.C. 552a;
- Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211
- ORR Division of Children's Services Records System of Records Notice, System Number 09-80-0321, 81 FR 46682, 46683 (July 18, 2016);
- ORR Unaccompanied Children Program Policy Guide;¹
- ORR Refugee Arrivals Data System (RADS), System No. 09-80-0325, 87 FR 7178 (February 8, 2022);
- HHS Child Eligibility Process (22 U.S.C. § 7105(b)(G)); and
- HHS Adult Certification Process (22 U.S.C. § 7105(b)(E))

III. Exchange of Information

It is the parties' view that sharing of information in instances of common interest is to the parties' mutual benefit in achieving their respective program goals. In addition, all parties have an interest in ensuring that any child who has been subject to unlawful child labor violations can access supportive services as soon as the child is identified. Where appropriate and to the extent permitted by law, WHD and the ACF will share, whether upon request from the other agency or upon an agency's own initiative, ad hoc, and regular reporting regarding case and investigation information, information to assist in identification of and supportive services for victims or potential victims of unlawful child labor, child labor

¹ORR Unaccompanied Children Program Policy Guide, available at: <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide>.

trends, and other relevant information that supports the other agency's activities, whether obtained in the course of an investigation or through any other sources.

WHD will provide information related to the following in accordance with this MOA where appropriate and not otherwise prohibited by law:

- Information about employers subject to child labor-related enforcement actions, including employer name, address, and zip code;
- Geographic areas where labor investigations that involve child labor exploitation are most likely to occur, provided regularly (e.g., monthly) and by zip code and or region;
- Information about potential trafficking in order for OTIP to connect individuals to appropriate benefits and services in a timely manner. In accordance with the Trafficking Victims Protection Act (TVPA) of 2000, when WHD has information about children who may have or have experienced human labor trafficking, WHD will refer the matter to OTIP for assessment within 24 hours of identifying the minor (22 U.S.C. § 7105(b)(1)(H));
- Information relating to possible violations of the laws enforced by WHD; reports filed or data produced by employers (e.g., FLSA records); and statistical analyses or summaries, in accordance with this MOA.

ACF will provide information related to the following in accordance with this MOA where appropriate and not otherwise prohibited by law:

- Names of businesses flagged in reports of child labor exploitation and/or trafficking through OTIP and/or ORR processes;
- Zip codes of noted concern where cases of potential or determined trafficking have been identified by OTIP (based on issuance of Interim Assistance or Eligibility Letters and/or other factors);
- Additional contact information for individuals who are identified by DOL as victims or potential victims of unlawful child labor, including names, addresses, dates of birth, and other relevant information, when such information is identifiable and available, and whether such individuals have received or are eligible for services from ACF;
- Information received through ORR and/or OTIP processes and services about employers and employment agencies related to reports of child labor exploitation, child labor trafficking, and workplace complaints.

The parties will explore ways to consistently, efficiently, and securely facilitate the sharing of such information, particularly as it relates to furthering the purposes of this MOA.

IV. Additional Provisions Regarding Information Exchange

A. Restrictions on Use of Information

1. The parties agree that information exchanged, collected, disclosed or reported under this MOA shall be used only for the purposes described within this MOA. Parties are strictly forbidden from using information for any other purpose, including for purposes related to immigration enforcement.
2. The parties agree to safeguard the information shared under this Agreement to prevent use or disclosure of information for purposes other than those agreed to under this MOA. This MOA will be implemented in full compliance with the Privacy Act of 1974, the Freedom of Information Act (FOIA), the Federal Records Act, and any other applicable federal laws. Exchange of information to one another pursuant to this MOA is not considered a public disclosure under the FOIA, 5 U.S.C. § 552. Further information on how the agencies will handle FOIA requests from third parties is detailed in section IV.C below. Information collected or reported on through the MOA may not be used for immigration enforcement purposes.
3. The parties shall assure that all persons who have access to the information shared under this MOA are fully apprised as to the highly sensitive and confidential nature of the information, the safeguard requirements applicable to the information, and the applicable state and federal, civil and criminal sanctions and penalties associated with any intentional or unintentional disclosure. Any exchange of information under this MOA shall be made in accordance with this MOA.

B. Requests for Information and Responses

Requests for information under this section can be made by the individuals identified below.

For DOL/WHd:

- The Administrator
- The Deputy Administrators
- The WHD Chief of Staff
- The Regional Administrators
- The Associate Administrator for Regional Enforcement & Support (main POC)
- The Associate Administrator for Policy
- The Associate Administrator for Enterprise Data & Analytics
- The Regional Solicitors of Labor
- The Associate Solicitor, Division of Fair Labor Standards

For ACF:

- The Assistant Secretary (main POC)

- The Senior Advisor to the Assistant Secretary
- Chief of Staff, Administration for Children and Families
- The Director, Office of Refugee Resettlement
- The Chief of Staff, Office of Refugee Resettlement
- Principal Deputy Director, Office of Refugee Resettlement
- UC Program Director, Office of Refugee Resettlement
- The Unaccompanied Children Program Senior Supervisory Policy Counsel, Office of Refugee Resettlement
- Refugee Program Director, Office of Refugee Resettlement
- The Director, Office on Trafficking in Persons
- Deputy Director, Office on Trafficking in Persons
- Child Trafficking Prevention and Protection Coordinator, Office on Trafficking in Persons

Requests for information and reporting processes under this section should be directed to the following individuals:

- (a) WHD requests for information should usually be directed to ORR and OTIP, with notification to the Immediate Office of the Assistant Secretary.
- (b) ACF requests for information should usually be directed to the WHD Regional Administrator in the region where ACF believes the information is located. ACF requesting officials may also direct their requests for information to any of the DOL or WHD individuals listed in section IV.B above with the exception of the Administrator. A list of WHD Regions, along with their geographic boundaries and current Region leadership is attached hereto and can be found on the agency's website, <https://www.dol.gov/agencies/whd>.

The parties' responses to requests for information under this section shall be made to the official who requested the information. The responding agency will provide copies of the requested information or make the requested information available to the requesting agency within 10 business days of receipt of the request, or as soon as practicable thereafter consistent with the availability of the responding agency's staff and other resources and the responding agency's own priorities.

In addition to individual requests, Parties will submit, where appropriate and to the extent permitted by law, regular reports that are outlined in part III.

C. FOIA Requests and Discovery Responses

1. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under applicable federal

statutes or laws. Confidential information may include the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied, including unaccompanied children and sponsors (when alien number, name and birth date are provided) upon filing out a records request; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal employees, including (but not limited to) investigators and supervisors; any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by FOIA exemptions or legal privileges; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets. The sharing of information under this MOA shall not constitute a waiver of any otherwise applicable privilege or protection from discovery or other disclosure.

2. Confidential information obtained pursuant to this MOA or any process established to implement the MOA, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOA, or as required by applicable laws and regulations. The parties will take reasonable precautions to ensure that information is protected and used in compliance with applicable privacy laws, regulations, and policies, including but not limited to the requirements and prohibitions of the Privacy Act of 1974 regarding information about individuals that is contained in systems of records. Except as set forth in this MOA, such information may not be used or disclosed by the receiving party for other federal governmental purposes outside of the MOA or any process established to implement the MOA, to other authorities, or to any third parties or parties external to the agreement unless the receiving party confers with the supplying party, and the supplying party expressly approves such use or disclosure in writing, signed by the ACF Legal Counsel or DOL's Office of the Solicitor, except as specified herein.² If an agency receives a federal court order or formal request or demand from a federal oversight entity for records or information that originated with the other agency, the receiving agency will (i) unless prohibited by law, promptly notify the supplying party in writing of such request or demand; (ii) afford the supplying party a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the information or any privileges associated therewith; (iii) consistent with law, notify the requestor seeking the information that requests for such information should be made directly to the supplying party in accordance with applicable law; and (iv) consistent with law, cooperate fully with the providing agency to preserve, protect, and maintain the confidentiality of the information and any privileges associated therewith. Nothing in this MOA shall prevent a receiving agency from complying with a legally enforceable obligation. Third parties or parties external to this agreement are all entities that are not WHD and ACF.

² The term "supplying party" refers to the agency that originally owned the records and supplied them to the other agency pursuant to this MOA.

3. If a party receives a Privacy Act or FOIA request from a non-party to this MOA for records or information that originated with the other party, it will refer the request to the party that collected the information for review and direct response to the requester under the Privacy Act or FOIA. *See* 29 C.F.R. § 70.20(d); 29 C.F.R. Parts 70 and 71; 45 C.F.R. Part 5 and 5b; Department of Justice, Office of Information Policy, *Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them*, available at <https://www.justice.gov/oip/blog/referrals-consultations-and-coordination-procedures-processing-records-when-another-agency>.
4. The parties will notify one another, through the agency main point of contact (POC) identified in this MOA upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this MOA, or requests for information made by Congressional members or committees.
5. Should either party receive a discovery request or subpoena that would, reasonably construed, seek production of privileged information that it received pursuant to this MOA, the party receiving such a discovery request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify the supplying party that such a request or subpoena has been received, so that the supplying party may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
6. Neither Party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one Party be construed to apply to the other Party.

D. Information Security

1. All exchanges of information by electronic means must be secure, and methods shall be agreed to by the sending and receiving agencies, consistent with their authorities and applicable federal laws and statutes. When sharing information electronically, the agencies agree to establish communication protocols and timelines for on- and off-boarding any required guest user accounts.
2. For information security purposes, information contained in physical files (such as paper-based documents and CDs) exchanged pursuant to this MOA remains the responsibility of the supplying agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated POC when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information

will notify the supplying agency if the information is not received as of the next business day following the agreed upon delivery date.

3. For information security purposes, after an agency receives information from the supplying agency, the supplying agency retains responsibility only for safeguarding its guest user accounts, and not for any security incidents, inadvertent disclosure, or the information technology safeguards in place for protecting that information by the agency that received it.
4. The Parties agree to establish appropriate administrative, technical, and physical safeguards that are consistent with applicable law to safeguard the confidentiality of the information and prevent unauthorized access or use. The safeguards shall provide a level and scope of security that is not less than the level and scope of requirements established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III—Security of Federal Automated Information Systems, as well as Federal Information Processing Standard 200 entitled “Minimum Security Requirements for Federal Information and Information Systems”; and National Institute of Standards and Technology (NIST) Special Publication 800-53 (“Recommended Security Controls for Federal Information Systems”).
5. At the conclusion of an investigation, litigation, or relevant engagement by either party, the receiving agency will return all confidential information provided in physical files to the supplying agency, and will permanently destroy any confidential information shared electronically, except as required by law, including the Federal Records Act. For information shared by and with ORR, ORR and DOL will return all confidential information provided in physical files to the supplying agency, and will permanently destroy any confidential information shared electronically, except as required by law, including the Federal Records Act, when the child has reached their eighteenth (18th) birthday. For information shared with OTIP, OTIP will return all confidential information provided in physical files to the supplying agency, and will permanently destroy any confidential information shared electronically, except as required by law, including the Federal Records Act, when the individual has been determined to be ineligible for OTIP services.

E. Breach Reporting

In the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOA, the agency experiencing the incident or disaster will send formal written electronic notification to the supplying agency’s designated contact person immediately if possible and in a timeframe consistent with the agency’s breach reporting policies after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail, including what data exchanged pursuant to this MOA may have been inadvertently disclosed.

V. Resource Provisions

Each party is responsible for funding efforts to fulfill their respective roles and responsibilities. This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations. This MOA does not prohibit or otherwise govern agreements between the agencies on matters not addressed herein.

VI. Training and Education

1. Where the parties mutually determine it to be appropriate, they will provide training to each agency's staff in identifying issues that may arise under the other's authority; engage in joint training and education; share or co-develop training materials, public awareness materials, outreach materials, and programs; or develop joint policy statements and technical assistance documents when appropriate. These activities will facilitate a greater understanding and awareness of the laws the agencies administer or enforce relating to child labor exploitation, child labor trafficking, or child welfare. The agencies' training and education efforts may include information regarding the child labor protections under the Fair Labor Standards Act, child trafficking under the Trafficking Victims Protection Act, coordination on the experiences and perspectives of each agency in identifying child labor exploitation and labor trafficking, ORR's process of releasing children to sponsors' care, and eligibility for and provision of post-release services to unaccompanied children formerly in ORR custody, or who may be eligible for services from OTIP.
2. All public materials bearing the HHS/ACF name, logo, or seal must be approved in advance by HHS/ACF. All public materials bearing the DOL/WHd name, logo, or seal must be approved in advance by DOL/WHd. Any such materials that include the opinions, results, findings, and/or interpretations of data arising from the result of activities of the party carrying out the activity do not necessarily represent the opinions, interpretation, or policy of the other party.

VII. Totality and Entire Agreement

Except as expressly provided in this MOA, this MOA constitutes the entire agreement between WHd and ACF with respect to the matters set forth herein. Nothing in this MOA precludes Parties creating specific SOPs or other operational directives around the coordination of data sharing and other activities.

VIII. Effective Date

This MOA will take effect immediately upon signature by both parties and will remain in effect for three (3) years from the effective date unless terminated by the parties. This MOA may be modified in writing by mutual consent of both agencies. The parties will review this MOA quarterly to determine whether the provisions of this MOA require amendment or revision. This

MOA may be terminated by either party upon 90 days written notice to the other agency.
Provisions related to the confidentiality and handling of information exchanged pursuant to this
MOA shall survive the termination of this MOA.

The following officials agree to the terms and conditions of this MOA:

For ACF:



Assistant Secretary, Administration for Children and
Families, U.S. Department of Health and Human Services

Date March 23, 2023

For WHD:



Principal Deputy Administrator, Wage and Hour Division
U.S. Department of Labor

Date March 23, 2023