

Memorandum of Understanding Between The U.S. Department of Labor and the Federal Trade Commission

I. Purpose and Scope

The United States Department of Labor (hereinafter referred to as the “DOL”) and the Federal Trade Commission (hereinafter referred to as the “FTC”) (collectively referred to as “the Agencies”) recognize the value of strengthening our collaborative relationship. The Agencies enter into this Memorandum of Understanding (MOU) to strengthen the Agencies’ partnership through greater cooperation and coordination in information sharing, investigations and enforcement activity, training, education, research, and outreach.

This MOU is intended to memorialize this understanding between the Agencies. This MOU is a voluntary agreement that expresses the good-faith intentions of the Agencies. This MOU does not create legally binding obligations on the Agencies, contractual or otherwise, and does not create any right enforceable against the Agencies or any of their officers or employees or any other person. This MOU also does not confer upon any third party any right and specifically does not confer on any third party the ability directly or indirectly to obtain, suppress, or exclude any information shared pursuant to this MOU, or to challenge a request under this MOU. This MOU does not obligate and will not result in an exchange of funds, personnel, property, or services, or any kind of financial commitment. This MOU outlines procedures to be followed by both Agencies in working together to address the need for information sharing, coordinated investigations and enforcement activity, training, education, research, and outreach between the Agencies.

The DOL’s worker protection enforcement agencies enforce and administer numerous worker protection statutes, including those governing occupational safety and health, wage and hour standards, mine safety, and workplace-related benefits.

The FTC enforces the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 41 *et seq.*, and other laws and regulations that prohibit, among other things, unfair methods of competition and unfair or deceptive acts or practices. The FTC aims to prevent anticompetitive, deceptive, and unfair business practices through effective law enforcement, advocacy, research, and education.

By entering into this MOU, the Agencies do not imply an endorsement or promotion by either Agency of the policies, programs, or services of the other. Nothing in this MOU 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. Nothing in this MOU modifies either Agency’s ability, responsibility, or obligation to comply with or enforce the laws and regulations within its respective jurisdiction. This MOU also does not limit or restrict the Agencies from participating in similar activities or arrangements with other entities.

The Agencies share an interest in protecting and promoting competition in labor markets and promoting the welfare of American workers. The Agencies share an interest in protecting

workers who have been harmed or may be at risk of being harmed as a result of unfair methods of competition and unfair or deceptive acts or practices. Such methods, acts, or practices include collusive behavior; the use of business models designed to evade legal accountability, such as the misclassification of employees; illegal claims and disclosures about earnings and costs associated with work; the imposition of one-sided and restrictive contract provisions, such as noncompete and nondisclosure provisions; the extent and impact of labor market concentration; and the impact of algorithmic decision-making on workers. The Agencies therefore enter into this MOU to advance these interests and promote interagency collaboration to the fullest extent desired by the Agencies and permitted by law.

II. Coordination Activities

A. Agency Points of Contact

The DOL designates the Assistant Secretary for Policy, or their designee, as the point of contact for matters related to coordination and cooperation pursuant to this MOU. For all other matters related to the interpretation or application of this MOU, DOL designates its Solicitor, or their designee, as its point of contact.

The FTC designates the Director of its Office of Policy Planning, or their designee, as the point of contact for matters related to coordination and cooperation pursuant to this MOU. For all other matters related to the interpretation or application of this MOU, the FTC designates its General Counsel, or their designee, as its point of contact.

Each Agency shall endeavor to notify the other if it designates new Agency Points of Contact.

These points of contact will meet with sufficient regularity to carry out the purposes of this MOU. The Agency Points of Contact will meet on a regular basis, at least quarterly, to discuss topics of mutual interest to the Agencies that further the purposes of this MOU and, when appropriate, establish procedures for coordination of efforts related to such topics.

These topics may include (but are not limited to):

- (i) Interagency collaboration, including coordinating resources;
- (ii) Approaches to identifying and remedying anticompetitive conduct or mergers, or unfair or deceptive acts or practices;
- (iii) Approaches to identifying and remedying violations of employment protections administered and enforced by DOL which may have effects on competition, have effects on consumer protection, or are related to DOL's worker protection statutes;
- (iv) Access to and exchanges of information;
- (v) Training programs;
- (vi) Public outreach; and
- (vii) Technical assistance.

B. Coordinated Investigations and Enforcement

The Agencies shall establish procedures for consulting and coordinating various stages of their respective investigative and enforcement activities with respect to potential violations of the competition and consumer protection laws enforced by the FTC or labor, employment, and workplace safety laws enforced by the DOL to promote coordinated enforcement initiatives, increase efficiency, and minimize duplication, where appropriate and to the extent allowable under law.

This may include, but is not limited to, staff at each Agency periodically consulting on specific complaints, including reviewing information obtained during an investigation or coordinating requests for information, as permitted by law, regulation, Agency policy, and this MOU. Staff may also exchange information about general patterns of conduct that may be anticompetitive or otherwise harm consumers, workers, or others. As discussed below, each Agency may make referrals of potential violations of the other Agency's laws, where appropriate.

C. Training, Education, Research, and Outreach

Where the Agencies mutually determine it to be appropriate, the DOL and the FTC shall provide training to each Agency's staff in identifying cases and issues that may arise under the other's jurisdiction; engage in outreach and public education; share or co-develop training materials and programs; facilitate mission-relevant research projects by exchanging information, knowledge, or data; and develop joint policy statements and technical assistance documents when appropriate to facilitate a greater understanding and awareness of the laws that the Agencies enforce.

The Agencies' training, outreach, and education efforts shall include coordination on the experiences and enforcement perspectives of each Agency in identifying and investigating the legal implications of complex employment structures and exploitative business models and practices, when appropriate. The Agencies may also meet periodically, and otherwise routinely share information, about their enforcement priorities and other identified employment trends.

The Agencies shall conduct all cross-agency consultations and training in compliance with and as permitted by the laws and regulations that govern the Agencies, individually and collectively, including, as applicable in each case: (a) if conducted (i) on a non-reimbursable basis, pursuant to and in compliance with, as appropriate, 31 U.S.C. § 1301 (Appropriations restriction) and 31 U.S.C. §§ 1341-42 and 1517(a) (Antideficiency Act); or (ii) on a reimbursable basis, pursuant to the Economy Act, 31 U.S.C. § 1535, and all related regulations and legal authority, as applicable, and (b) pursuant to any agency-specific regulations and procedures as required.

All public materials will attribute the authorship of the public materials to the respective Agency or Agencies. Public materials bearing the DOL name, logo, or seal must be approved in advance by the DOL. All public materials bearing the FTC name, logo, or seal must be approved in advance by the FTC. Any such materials that include the opinions, results, findings, and/or interpretations of data arising from the result of activities of the Agency carrying out the activity

do not necessarily represent the opinions, interpretation, or policy of the other Agency.

D. Referrals

When one of the DOL's worker protection enforcement agencies detects potential violations under laws enforced by the FTC while investigating conduct under one of the statutes that it enforces, it will evaluate and, as appropriate, refer the matter to the FTC. Following a referral from one of DOL's worker protection enforcement agencies, the FTC will determine whether to open an investigation into the conduct and, after investigation, whether to bring a lawsuit based on the complaint. Accepting the referral does not indicate that the FTC will open an investigation or pursue litigation regarding the conduct.

When the FTC detects potential violations under laws enforced by the DOL during the course of enforcing its own statutes or otherwise furthering its mission, the FTC will evaluate and, as appropriate, refer the matter to the DOL. Accepting the referral does not indicate that the DOL will open an investigation or pursue litigation regarding the conduct.

III. Information Sharing

A. Common Interest

It is the Agencies' view that sharing information in matters of common legal interest is to the Agencies' mutual benefit. The Agencies may, in their discretion and upon request from the other Agency or upon an Agency's own initiative, share information or data with each other that supports the other Agency's enforcement activities, whether obtained in the course of an investigation or through any other sources, to the extent permitted by law, regulation, administrative or court order, or other restrictions, and in accordance with applicable requirements and procedures. Such information may include complaint referrals and other information in complaint or investigative files relating to alleged violations of the laws enforced by the Agencies, as well as statistical analyses or summaries, in accordance with this MOU and where not otherwise prohibited by law, regulation, administrative or court order, or other restrictions. The Agencies will explore ways to efficiently facilitate such information and data sharing, particularly in matters involving unlawful anticompetitive conduct and unfair or deceptive acts or practices.

B. Nonpublic Information

1. When one of the Agencies provides Nonpublic Information pursuant to this MOU (the "Providing Agency") to the other Agency (the "Receiving Agency"), the Receiving Agency shall presume the information to be confidential Nonpublic Information and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Agency designates otherwise in writing.
2. For purposes of this MOU, Nonpublic Information means all information in any format (including written, oral, or electronic) shared pursuant to this MOU unless the

Providing Agency expressly consents to public release in writing or designates the information as publicly available in writing. Nonpublic Information includes any communication or transmission of information between the Agencies pursuant to this MOU, including from a Providing Agency to a Receiving Agency, whether in written, oral, electronic, or any other form, unless both Agencies designate the communication or transmission publicly available in writing. Nonpublic 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; any employee statements in enforcement files that were obtained under these conditions; internal opinions, 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 or regulation as non-final, intra- or inter-Agency documents; information or records covered by applicable privileges, including the attorney-client privilege and the work product doctrine; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.

3. Information shared by an Agency under this MOU may be marked as Controlled Unclassified Information (“CUI”) in accordance with 32 C.F.R. Part 2002. The Agencies shall handle information marked as CUI in accordance with Executive Order 13556 (Nov. 4, 2010), 32 C.F.R. Part 2002 and the CUI Registry ([CUI Categories | National Archives](#)).

C. Legal and Procedural Requirements for Information Sharing

1. Nothing in this MOU shall be deemed to waive or alter any existing statutory or regulatory requirements governing the disclosure of Nonpublic Information. Each Agency will maintain such Nonpublic Information in a manner that conforms to the standards that apply to federal agencies for the protection of the confidentiality of Nonpublic Information and personally identifiable information and for data security and integrity, and in full compliance with the Privacy Act of 1974, 5 U.S.C. § 552a; the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”); the Federal Records Act, 44 U.S.C. § 3101 *et seq.*; Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2; Section 7A of the Clayton Act, 15 U.S.C. § 18a; FTC Rules 4.9-4.11, 16 C.F.R. §§ 4.9-4.11; DOL FOIA Regulations, 29 C.F.R. Part 70; and any other applicable laws. Any transfer of information under this MOU shall only be made where not otherwise prohibited by law.
2. Requests for information under this MOU shall be made through each Agency Point of Contact, or others designated by them as necessary, and each Agency shall promptly respond to these requests as appropriate and as soon as practicable consistent with the availability of the Providing Agency’s staff, resources, and priorities.
3. The Agencies will review this MOU periodically to evaluate the existing information sharing, examine the continuing needs for information sharing, discuss the utility of

categories of data heretofore shared, and determine whether the provisions of this MOU require amendment or revision.

D. Confidentiality Protections and Non-Waiver of Confidentiality and Privileges

1. Unless applicable law requires otherwise, the Agencies shall take all actions reasonably necessary to preserve, protect, and maintain all claims of confidentiality and all privileges and protections related to all Nonpublic Information provided pursuant to this MOU. The Receiving Agency shall not disclose to any third party that it has received information from the Providing Agency except with written authorization from the Providing Agency, or pursuant to an order of a court of the United States or an official request or demand from either House or a duly authorized committee or subcommittee of the U.S. Congress.
2. Each Agency represents that it:
 - a. Maintains reasonable and appropriate safeguards to ensure the continuous protection of the confidentiality and privacy of the Nonpublic Information provided under this MOU;
 - b. Has an incident response and breach notification plan and procedures as required by Federal law, 44 U.S.C. § 3554(b)(7), and implementing guidance, OMB Memorandum M-17-12; and
 - c. Will, in the event that it experiences a security breach that results in the suspected or confirmed inadvertent disclosure of Nonpublic Information exchanged pursuant to this MOU (“incident”), send formal written electronic notification to the Providing Agency’s Point of Contact as soon as practicable and no later than three (3) business days after detection of the incident, and in conformity with Federal law concerning incident response and breach notification plans and procedures. The written electronic notification will describe the incident in detail, including what Nonpublic Information exchanged pursuant to this MOU may have been inadvertently disclosed. The Agency experiencing the incident will coordinate with the Providing Agency upon discovery of any breach or other suspected or confirmed incident potentially affecting the confidentiality and, if applicable, privacy of such Nonpublic Information, and in consultation with the Providing Agency, will promptly take or assist in taking other necessary and appropriate steps to mitigate or prevent further compromise or harm from the incident.
3. Nothing in this MOU, including the sharing of Nonpublic Information pursuant to this MOU, will constitute public disclosure of Nonpublic Information (within the meaning of the FOIA or otherwise) or a waiver of any applicable exemptions; a waiver of confidentiality, or alteration of any claim of confidentiality; a waiver of any applicable privileges or protections (*e.g.*, attorney-client, deliberative process, investigatory files, or law enforcement privileges, the common interest doctrine, or

the work product doctrine); or a waiver of any other protections applicable to Nonpublic Information provided pursuant to this MOU.

4. Neither Agency shall have authority to waive confidentiality or any applicable privilege or doctrine on behalf of the other Agency, nor shall any waiver of confidentiality or an applicable privilege or doctrine by the conduct of one Agency be construed to apply to the other Agency.

E. Transmitting Nonpublic Information

For information security purposes, information (including paper-based documents and electronic information such as emails) exchanged pursuant to this MOU remains the responsibility of the Providing Agency while in transit. The Agencies agree to establish a communication protocol for notifying each Agency Point of Contact 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 Nonpublic Information will notify the Providing Agency if the information is not received as of the next business day following the agreed upon delivery date. Nonpublic Information will be transmitted via secure File Transfer Protocol and in a manner that complies with the Agencies' policies on transferring Nonpublic Information. Nonpublic Information will not be electronically mailed, unless encrypted using approved encryption standards.

F. Use and Disclosure of Nonpublic Information

1. All Nonpublic Information shared pursuant to this MOU shall remain the records and property of the Providing Agency unless that Agency states otherwise in writing.
2. Nonpublic Information obtained pursuant to this MOU, or any process established to implement the MOU, is intended only for use and access by the Receiving Agency for the limited purpose of carrying out activities pursuant to the MOU, or as required by applicable laws and regulations. Except as set forth in this MOU, such Nonpublic Information may not be used or disclosed by the Receiving Agency for purposes outside of this MOU or any process established to implement the MOU, or used with or disclosed to other authorities, or any third party(ies), unless the Producing Agency expressly approves such use or disclosure in advance in writing. The Receiving Agency shall not disclose to any third party that it has received Nonpublic Information from the Providing Agency except with the prior written authorization of the Providing Agency, or pursuant to an order of a court of the United States or an official request or demand from either House or a duly authorized committee or subcommittee of the U.S. Congress.
3. Use and Disclosure Outside the Agencies and in Public Proceedings
 - a. Nonpublic Information shall not be used or disclosed outside the Agencies, including in public proceedings or to or with any third party(ies), except with the prior written authorization of the Providing Agency, unless such use or disclosure is pursuant to an order of a court of the United States, or an official

request or demand from either House or a duly authorized committee or subcommittee of the U.S. Congress, or the Providing Agency's written authorization stating that there is no basis for withholding it, including but not limited to, under the confidentiality requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. When responding to a federal court order, or to an official request or demand from either House or a duly authorized committee or subcommittee of the U.S. Congress, the Receiving Agency shall notify and confer with the Providing Agency prior to duplicating or disclosing the Nonpublic Information.

- b. The Agencies will notify one another, through the Agency Point of Contact identified in this MOU, upon commencement of litigation, a hearing, or other proceeding or matter that may involve the use and/or disclosure of Nonpublic Information exchanged under this MOU outside the Agencies, including through compulsory process, introduction of written evidence, or testimony.
- c. In the event of a public proceeding, such as a trial, in which the FTC contemplates using DOL Nonpublic Information or the testimony of the DOL's employees, the DOL requires that the FTC notify the DOL's Agency Point of Contact. In the event that there is a public proceeding, such as a trial, in which the DOL contemplates using FTC Nonpublic Information or the testimony of the FTC's employees, the FTC requires that the DOL notify the FTC's Agency Point of Contact.

G. Third-Party Requests

In the event that a third party makes a request (including any demand, request for production, interrogatory, request for admission, subpoena, court order, or FOIA request) for access to or copies of Nonpublic Information received by the Receiving Agency from the Providing Agency, unless otherwise prohibited by law, the Receiving Agency shall:

1. For FOIA requests made by a third party for such Nonpublic Information, promptly refer requests for the Providing Agency's records to the Providing Agency for review and direct response to the requester.
2. For other such third-party requests, including a request or subpoena that would, fairly construed, seek production of Nonpublic Information that it received pursuant to this MOU:
 - a. Promptly notify the Providing Agency's Agency Point of Contact in writing that such a request or subpoena has been received, so that the Providing Agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of its Nonpublic Information;
 - b. Before responding to or complying with any third-party request, give the Providing Agency a reasonable opportunity to lawfully object or otherwise prevent disclosure to the third party, and consent to an application by the

Providing Agency to intervene in any related action for purposes of protecting the Providing Agency's interests; and

- c. Refrain from disclosing Nonpublic Information to the third party except as otherwise provided herein, or otherwise from making such information public without prior written approval of the Providing Agency.

IV. Resource Provisions

Each Agency is responsible for funding efforts to fulfill their respective roles and responsibilities. This MOU does not itself authorize the expenditure or reimbursement of any funds. Nothing in this MOU obligates the Agencies to expend appropriations or enter into any contract or other obligations.

V. Totality and Entire Agreement

Except as expressly provided in this MOU, this MOU contains all the terms and conditions agreed upon by the Agencies concerning the subject matter of the agreement. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or be binding upon the Agencies. This MOU is not intended to confer any right upon any private person or other third party.


VI. Effective Date

This MOU will take effect immediately once signed by both Agencies and will expire five (5) years from the effective date. This MOU may be terminated by either Agency by giving ninety (90) days advance written notice to the other Agency prior to the date of termination. This MOU may be modified in writing by mutual consent of both Agencies. Renewal of the MOU may be accomplished by the written agreement of both Agencies. Provisions related to the confidentiality and handling of information exchanged pursuant to this MOU shall survive the termination of this MOU.


This MOU is executed as of the 30th day of August, 2023.

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

FOR THE UNITED STATES DEPARTMENT OF LABOR

By: 
Name: Julie A. Su
Title: Acting Secretary of Labor
Date: August 30, 2023

FOR THE FEDERAL TRADE COMMISSION

By: 
Name: Lina M. Khan
Title: Chair
Date: August 30, 2023