

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

AND

THE UNITED STATES POSTAL SERVICE

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHD” or “Department”), and the United States Postal Service (hereinafter referred to as “USPS” or “Postal Service”), (collectively referred to as “the agencies” or “the parties”) recognize the value of collaborative communication between the parties to support Service Contract Act (SCA) enforcement and implementation.

The agencies are establishing the below communication processes to more effectively and efficiently communicate and cooperate on areas of common interest and share information as appropriate.

THEREFORE, IT IS MUTUALLY AGREED THAT:

This memorandum of understanding (MOU) agreement is intended to memorialize the understandings between DOL/WHD and USPS that are set forth below. This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHD and USPS; it is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU agreement does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This MOU agreement outlines procedures that are intended to be used by both DOL/WHD and USPS in working together to address the need to communicate and cooperate on areas of common interest and sharing information toward the goal of protecting the wages and fringe benefits of contractors’ service employees on Postal Service contracts subject to the SCA.

I. Purpose

The purpose of the MOU is to strengthen the parties’ collaborative relationship in order to improve interagency communication regarding SCA enforcement and implementation. This agreement will also encourage enhanced law enforcement and greater coordination between the agencies.

II. Points of Contact (POCs)

- The parties designate the following POCs responsible for coordinating communication activities and meeting annually to review relevant terms and conditions and areas of

concern to one or both parties. The parties will notify each other in the event of the separation or long-term absence of their POCs.

- POC designees or their appropriate designee or successor:

WHD

Michele King, Director
Division of Government Contracts Enforcement
King.Michele.R@dol.gov
(202) 693-0574

William Brooks, Senior Policy Advisor
Division of Government Contracts Enforcement
Brooks.William.L@dol.gov
(202) 693-0566

Natalie Collins, Senior Policy Advisor
Division of Government Contracts Enforcement
Collins.Natalie@dol.gov
(202) 693-1014

Luis Bermudez, Senior Policy Advisor
Division of Government Contracts Enforcement
Bermudez.luis@dol.gov
(202) 693-0660

USPS

USPS FINANCE CONTACTS
Bess Brooke, Finance - Transportation Services
Bess.A.Brooke@usps.gov
314-436-5298

Mary Schuler, Finance - Non-Transportation/Other Services
Mary.J.Schuler@usps.gov
650-377-5301

USPS CONTRACTING CONTACT
Keith Harris, Executive Manager, Transportation Strategy
Keith.L.Harris@usps.gov
901-747-7309

USPS SUPPLY MANAGEMENT CONTACT
Robert D'Orso, Manager, Policy, Compliance & Audit
Robert.DOrso@usps.gov
202-268-4163

General Contact Number: 202-268-2000

III. Communication Protocols & Enforcement

- The parties will establish communication protocols, verbal and written, to assist with matters pertaining to SCA-related issues.

The parties will ensure they have the appropriate staff to handle and address SCA matters, and ensure these individuals have the knowledge and resources for effective collaboration.

- The parties may coordinate their respective enforcement activities and assist each other with enforcement, where appropriate and to the extent allowable under law.
- When DOL requests the withholding of contract funds or the transfer of withheld funds to DOL for distribution to workers, DOL will communicate such requests to the relevant USPS contracting officer. The USPS contracting officer will then coordinate with the relevant USPS Finance POC.

IV. Information

- The parties agree to exchange information on laws and regulations of common concern to the parties, to the extent practicable.
- The parties will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, as appropriate and to the extent allowable by law or policy.
- The parties will exchange information related to policy or regulatory changes to federal laws, to the extent permissible.
- Where permissible, the parties agree to share debarment information involving matters of interest to both agencies as well as current/past SCA violations pertaining to U.S. Postal Service procurement contracts that could potentially lead to debarment.
- The parties will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, if possible.
- The following timelines apply to specific information requests:

Action	Timeline Target for Delivery/Action
1. Response to general questions	3 business days
2. Provide a contract document	5 business days
3. Acknowledgement of withholding requests	3 business days or less

4. Transfer of funds	Written acknowledgement that transfer of funds will be completed by finance department and contracting officer
5. Emergency withholding request	3 business days or less
6. Modifying of contract to include the correct Wage Determination	5 business days, and confirmation of modification within 14 calendar days

In accordance with the timelines above, the USPS will use its best efforts to respond to general questions from DOL/WHM, to provide requested contract documents, to acknowledge withholding requests, to arrange for the transfer of funds that have been withheld pursuant to a DOL/WHM withholding request, to respond to emergency withholding requests, and to modify contracts so that they include the correct wage determination, as identified by DOL/WHM, within the timeframes specified above. Also, in accordance with the timelines above, DOL/WHM agrees to respond to general questions within the timeframe specified above.

V. Effect of MOU Agreement

- This MOU agreement does not authorize or obligate the expenditure or reimbursement of any funds between the agencies. Nothing in this agreement obligates the parties to enter into any contract or other obligation.
- By entering into this MOU agreement, the parties do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other.
- Nothing in this MOU agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
- This MOU agreement is not intended to be legally binding or enforceable and does not confer any rights on any other person or entity.
- Nothing in this MOU agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU agreement also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
- This agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, and any other applicable federal laws.
- This MOU agreement contains all the terms and conditions agreed upon by the parties concerning the subject matter of the agreement. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or interpreted to be included within this agreement.

VI. Exchange of Information

To the extent permitted by law, the parties understand that in order to effectuate the purposes and provisions of this MOU, it will be necessary, from time to time, to exchange information, some of which may be considered confidential. It is the policy of each of the parties to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with its own statutory obligations and enforcement efforts. It is the view of the parties that an exchange of information in which both parties are proceeding with a common legal interest is to their mutual benefit. The parties to this MOU agreement recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure.

As concerns this MOU agreement and the specific objective to improve interagency communication regarding SCA enforcement and implementation, the intention of DOL/WHD and USPS is to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with the DOL/WHD's and USPS's own statutory obligations and enforcement efforts. It is DOL/WHD's and USPS's view that an exchange of information in cases in which both entities are proceeding on basically the same matter is to the parties' mutual benefit. There is a need for DOL/WHD and USPS to provide information to other law enforcement bodies without making a public disclosure.

In consideration of these concerns, and subject to any applicable laws and regulations regarding the handling of such information, the agencies agree as follows:

1. Exchange of information to one another pursuant to this MOU is not intended to be a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
2. When confidential information is exchanged it will not be released to the public, or to any third party, without the express permission of the agency providing that information, except as required by law including, but not limited to, the Freedom of Information Act. If a party receives a FOIA request for information provided by the other party, the FOIA request shall be redirected to the party providing the information. Upon receipt of a public disclosure request, the agencies agree to provide each other with notice of the request and an opportunity to pursue legal action to prevent the release of information.
3. When confidential information is exchanged, it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this agreement as described herein. The information shall not be duplicated or re-disclosed without the express written consent or authority of the agency providing the information (hereinafter the "donor agency"), a court order, or as required by law, including the Freedom of Information Act.
4. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal and state 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; any employee statements in enforcement files that were obtained under

these conditions; internal opinions, policy statements, memoranda, and recommendations of federal or state 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 the attorney-client privilege and the attorney work-product privilege; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.

5. In the event that there is a public proceeding, such as a trial, in which certain records, such as confidential information, may be used or testimony of DOL/WHD's employees sought, DOL/WHD requires that USPS notify DOL/WHD.

6. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU agreement, the party receiving such a 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 donor agency that such a request or subpoena has been received, so that the donor agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.

7. 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.

8. The agencies will notify one another, through the agency POC identified in this MOU, 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 agreement.

9. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU agreement remains the responsibility of the donor 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 use its best efforts to notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date. Confidential data will be destroyed no later than thirty (30) days after its use and may be transmitted via secure FTP. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.

10. For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.

11. However, 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 MOU agreement, the agency experiencing the incident or disaster will send formal written electronic notification to the donor agency's designated contact person immediately within 3 days 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 MOU agreement may have been inadvertently disclosed.

12. At the conclusion of an investigation and prosecution by either party, the receiving agency will return any and all confidential information to the donor agency, except as required by law, including the Records Retention Act.

13. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

X. Dissemination of Factual Information

- All public materials bearing the other party's name, logo, or seal must be approved in writing and in advance by the other party. Approvals or requests for modification, or denial of approval, will be communicated by the parties' designated POC. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under the Agreement shall state that they are the responsibility of the party carrying out the activity and do not necessarily represent the opinions, interpretation, or policy of the other party.

VII. Resolution of Disagreements

- Disputes arising under this Agreement will be resolved informally by discussions between Agency Points of Contact, or other officials designated by each agency.

IX. Period of Agreement

- This MOU agreement becomes effective upon the signing of both parties and will expire five (5) years from the effective date, or end after a shorter period if terminated or cancelled by either party by giving at least thirty (30) days advance written notice to the other party.
- This agreement may be modified only through a written modification signed by both agencies.
- Renewal of the agreement may be accomplished only through a written renewal signed by both parties.

This agreement is effective as of the 15th day of November, 2022.

United States Department of Labor
Wage and Hour Division

United States Postal Service

By: Jessica Looman 11/15/22
Jessica Looman Date
Principal Deputy Administrator

By: _____
Mark A. Guilfoil Date
Vice President, Supply Management