

Joint Enforcement Task Force

on the Underground Economy and Employee Misclassification



Task Force Members: Alcoholic Beverages Control Commission • Department of Industrial Accidents • Department of Labor Standards • Department of Public Safety • Department of Revenue • Department of Unemployment Assistance • Division of Banks • Division of Capital Asset Management and Maintenance • Division of Professional Licensure • Fair Labor Division, Massachusetts Attorney General's Office • Insurance Fraud Bureau • Massachusetts Commission Against Discrimination • Massachusetts Office of Refugees and Immigrants • Office of Small Business and Entrepreneurship • Supplier Diversity Office



COMMONWEALTH OF MASSACHUSETTS

Deval L. Patrick, Governor

Joanne F. Goldstein, Secretary,

Executive Office of Labor and Workforce Development

Report Submitted by:

Heather Rowe, Interim Director, Joint Task Force

1-877-96-LABOR

www.mass.gov/lwd/jtf

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification
Annual Report 2012



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY
AND EMPLOYEE MISCLASSIFICATION

DEVAL L. PATRICK
GOVERNOR

JOANNE F. GOLDSTEIN
SECRETARY

HEATHER ROWE
INTERIM DIRECTOR
JOINT ENFORCEMENT
TASK FORCE

August, 2013

Dear Governor Patrick:

On behalf of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, we are pleased to present the Task Force's 2012 Annual Report.

In March of 2008, you signed Executive Order #499, establishing the Commonwealth's Joint Enforcement Task Force on the Underground Economy and Employee Misclassification to address the issue of employer fraud and worker misclassification. We are grateful for your leadership and vision in promoting collaboration across state agencies and constitutional offices to ensure stronger compliance with the Commonwealth's labor, licensing, and tax laws.

Now in our fifth year, the keys to the success of the Task Force remain agency cooperation, the sharing of information, and the efficient use of resources to target violations and educate the public. By maintaining these guiding principles, Task Force member agencies function as a collective and strategic force in combating the underground economy.

We would like to take this opportunity to thank the designated representatives to the Task Force from our executive branch member agencies, as well as the Office of the Attorney General's Fair Labor Division, the Office of the Treasurer's Alcoholic Beverages Control Commission, and the Insurance Fraud Bureau for their ongoing contributions. Through this partnership, we are helping to restore fairness to our economy by leveling the playing field for law-abiding employers and protecting workers and the interests of taxpayers in the Commonwealth.

This Annual Report details the work of the Task Force during its fourth year, including a breakdown of the funds recovered through the Task Force and summaries of each member agency's participation in addressing Task Force referrals and violations. The report also describes current initiatives to increase the volume and impact of our joint enforcement.

The Task Force is committed to building on our efforts to date to deliver greater enforcement and education, and we look forward to continued success.

Sincerely,

Joanne F. Goldstein, Secretary
Executive Office of Labor and Workforce Development

Heather Rowe,
Interim Director, Joint Enforcement Task Force
Director, Department of Labor Standards

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Definitions of Abbreviations

ABCC:	Alcoholic Beverages Control Commission
AGO-FLD:	Office of the Attorney General - Fair Labor Division
COMM CORP:	Commonwealth Corporation
DAS:	Division of Apprentice Standards
DCAMM:	Division of Capital Asset Management and Maintenance
DIA:	Department of Industrial Accidents
DLS:	Department of Labor Standards
DOB:	Division of Banks
DOR:	Department of Revenue
DPL:	Division of Professional Licensure
DPS:	Department of Public Safety
DUA:	Department of Unemployment Assistance
EOLWD:	Executive Office of Labor and Workforce Development
FSC:	Fair Share Contribution
IFB:	Insurance Fraud Bureau
JTF:	Joint Enforcement Task Force on the Underground Economy and Employee Misclassification
MCAD:	Massachusetts Commission Against Discrimination
MORI:	Massachusetts Office for Refugees and Immigrants
OSBE:	Office of Small Business and Entrepreneurship
SDO:	Supplier Diversity Office
US DOL:	United States Department of Labor

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Executive Summary

In March of 2008, Governor Deval Patrick signed Executive Order #499 which formed the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF or Task Force), in order to coordinate the Commonwealth's efforts to eliminate employer fraud and employee misclassification. The Executive Order calls for the Task Force member agencies to address the underground economy cooperatively based on the following objectives:

- educate business owners and employees about applicable requirements;
- conduct joint, targeted investigations and enforcement actions;
- protect the health, safety, wage, and benefit rights of workers;
- restore competitive equality for law-abiding businesses; and
- preserve taxpayer dollars and insure proper payment of taxes.

The Issue in Massachusetts

The "underground economy" is a term that refers to those individuals and businesses that utilize schemes to conceal or misrepresent their employee population to avoid one or more of their employer responsibilities related to wages, payroll taxes, insurance, licensing, safety, or other regulatory requirements. The underground economy also encompasses other activities such as tax evasion, payroll fraud, under-the-table work, and wage theft. These activities may include but are not limited to: paying wages in cash, skimming some or all of the cash takings, not paying overtime, paying sub-minimum wages, charging individuals for transportation or supplies essential to the work, underreporting employees, misclassifying employees as independent contractors, forcing employees to set up shell subcontractor entities, running a part of normal business activities "off-the-books," not registering a business to avoid tax obligations or to avoid obtaining the necessary licenses and insurance policies. Some unscrupulous employers methodically operate this way as part of their business model; other employers may be unaware of legal complexities with regard to employment laws or feel the economic pressure or incentive to cut corners in their business operations. Whether violating the law knowingly or unknowingly, the lure of more profits, lower costs and less responsibility for workers drives these decisions more frequently. By reducing the amount of money expended for wages, insurance, payroll taxes, licenses, employee benefits, materials and transportation, safety equipment, and safety conditions, these employers can gain a competitive advantage over businesses that comply with business and tax laws and regulations. This results in unfair competition in the marketplace and forces law-abiding businesses to pay greater direct costs to stay in business and indirectly subsidize socialized benefits like health care, unemployment, workers' compensation, and for those companies and individuals who do not play by the rules.

Individuals who perform work for businesses that do not comply with labor, licensing, and tax laws are negatively affected, often significantly. They are often paid sub-minimum wage, receive no overtime, are denied access to workers' compensation benefits, Unemployment Insurance (UI) coverage, health care coverage and social security eligibility. Their working conditions may not meet safety requirements, often putting them in danger. Their value is diminished and their ability to economically sustain themselves and their families is put in peril. As a result, other employers and taxpayers are required to indirectly subsidize these liabilities, in the form of workers' compensation or UI coverage through employer funded trust funds, health care through MassHealth, and other state and federal subsidies.

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In addition to the direct negative economic impact to individual workers, these activities also compromise the legitimate business community and the Massachusetts economy. Legitimate businesses are put at an economic disadvantage when competing with other companies who are able to charge less for their work, construction, goods or services because they are not law abiding. Further, legitimate businesses subsidize those entities that do not follow the wage and hour laws, purchase workers' compensation insurance, or contribute to the UI system, as their dollars are used to provide benefits when there are no employers of record to charge. Taxpayers are also unduly burdened as many workers who are misclassified, paid below minimum wage, or are without employer-provided benefits often utilize existing social safety nets. Finally, the sheer number of workers who now fall into the underground economy puts stress on the social safety net and the underlying societal norms that we share.

Massachusetts communities are not immune to the underground economy. Consumers drive the demand for labor, goods, and services, and may unwittingly be contributing to the underground economy through their buying choices. Without realization, consumers may be purchasing goods or contracting for services with entities that are part of the underground economy. In order to increase awareness and to limit the availability of goods and services produced without regard to the wage and hour laws and/or as part of the underground economy, the US DOL has begun to restrict business' ability to sell these goods through interstate commerce, through what is known as the "Hot Goods" provision under the Fair Labor Standards Act. Massachusetts has been supportive of the US DOL's efforts and was a major partner in the US DOL's successful efforts to address this issue in the Commonwealth. Collectively, the costs of the underground economy are high. Operating outside the law allows businesses to have an unfair advantage by illegitimately lowering costs, therefore undercutting their competitors. This takes business away from law-abiding companies and their employees who are trying to make an honest living. This race-to-the-bottom hurts the economy, legitimate businesses, and results in the erosion of the social fabric, economic stability, wage levels and working conditions in the Commonwealth.

JTF Results

The 2012 Annual Report is based on eighteen months of data, broken out between the periods of July 2011 through December 2011, and January 2012 through December 2012.¹ During this combined period, member agencies recovered \$21,393,652 in wage restitution, state taxes, unemployment contributions from employers, fines, and penalties as a result of referrals and cooperative oversight. Of this total, \$5,949,873 was recovered from 07/1/11 – 12/31/11, and \$15,443,779 was recovered from 01/01/12 – 12/31/12 (see page 5). Unless otherwise noted, all references to funds recovered represent monies that have been recovered through the cooperative efforts of the JTF and represent monies above and beyond what member agencies collect through their ordinary enforcement efforts.

In its fourth year, the JTF also received 237 complaints through the JTF referral phone line (1-877-96-LABOR), the online referral service (www.mass.gov/lwd/jtf), and complaints made directly to member agencies. The work of the JTF agencies resulted in over 24,000 compliance checks and investigations in the 18 month period, including 17,000 compliance checks in the 2012 calendar year alone.

¹ Prior JTF reports represented activities as follows:

2009 Annual Report: March 2008-March 2009

2010 Annual Report: April 2009-March 2010

2011 Annual Report: April 2010-March 2011 and April 2011-June 2011

2012 Annual Report: July 2011-December 2011 and January 2012-December 2012

Beginning with the 2013 Annual Report, activities will be reported on a calendar year cycle

2012 Accomplishments

During 2012, the JTF had several noteworthy accomplishments:

- The JTF uncovered \$1.17 million in unreported wages by subcontractors on the Marriott Copley Place (Host Hotels) renovation project;
- The Department of Unemployment Assistance (DUA) found over 2,300 misclassified workers and \$11 million in unreported wages in 3 audits over 5 months;
- The DUA recoveries more than doubled from 2011 to 2012;
- The Alcohol Beverages Control Commission (ABCC) licensing compliance checks reaped millions of recovered funds from applicants seeking liquor licenses;
- The JTF launched a research study on the underground economy and employee misclassification;
- Cross-agency training for partner investigative agencies was provided;
- An automated fraud detection technology system was implemented by the DUA to better compile possible audit targets;
- JTF initiated a more robust compliance check system among agencies.

2013 Goals and Initiatives

During 2013, the JTF looks forward to continued success by focusing on the following goals:

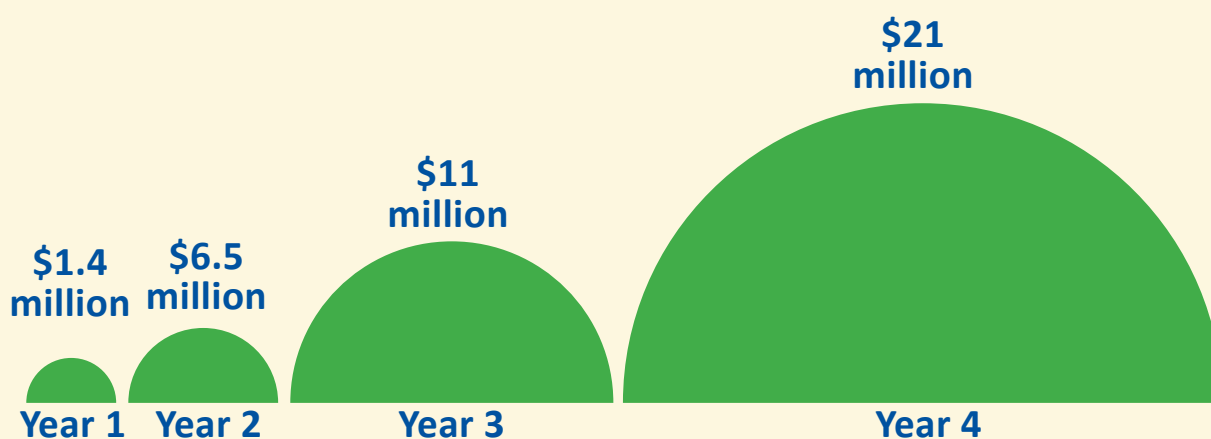
- Implement objectives to achieve the strategic goals set by EOLWD to increase transparency in government as part of Governor Deval Patrick's MassResults Plan;
- Complete the JTF research study on employee misclassification and the underground economy in Massachusetts;
- Create education and outreach material for businesses and workers;
- Continue to provide and expand cross-agency training opportunities;
- Expand JTF partnerships outside the Executive Branch Agencies;
- Further advance technological capabilities for capturing and tracking referrals;
- Build upon existing channels of multi-state and federal cooperation and maximize future potential cooperation.

Recovered Funds Revenue Generated Through the JTF

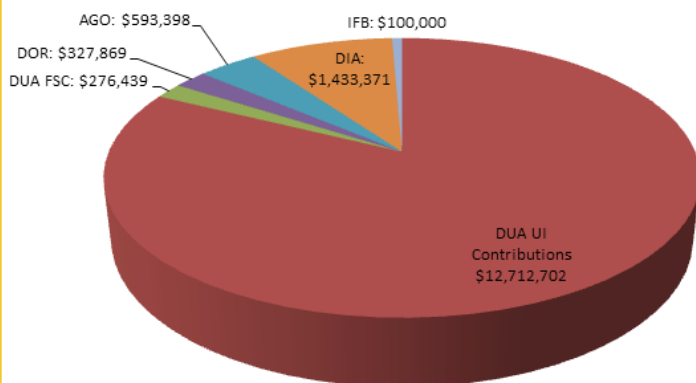
Period 4 total recoveries \$21,393,652

For further details of each partner agencies' participation, please see the "Partner Agency Enforcement Activity" section on pages 10-12.

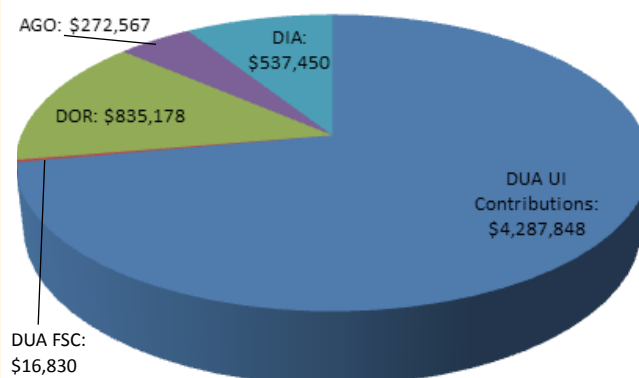
Restitution, state taxes, unemployment contributions, fines, and penalties collected through Joint Task Force Efforts



Year 4: 01/01/12 - 12/31/12
Total: \$15,443,779



Year 4: 07/01/2011 - 12/31/11
Total: \$5,949,873



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	Year 4		Year 3	Year 2	Year 1
	January 2012 – December 2012	July 2011 - December 2011	April 2010 – March 2011 and April 2011 – June 2011	April 2009 to March 2010	March 2008 – March 2009
DUA UI Contributions:	\$12,712,702	\$4,287,848	\$2,365,237	\$2,071,211	\$737,439
DUA FSC:	\$276,439	\$16,830		\$188,788	\$239,742
DOR:	\$327,869	\$835,178	\$3,665,097	\$1,568,166	\$233,468
AGO:	\$593,398	\$272,567	\$3,033,148	\$788,690	\$200,425
DIA*:	\$1,433,371	\$537,450	\$2,167,311	\$1,872,694	\$24,750
IFB:	\$100,000				
Sub Total:	\$15,443,779	\$5,949,873			
Total:	\$21,393,652		\$10,930,933	\$6,489,549	\$1,439,024

* DIA has a complementary enforcement operation, and certain DIA recovered funds reported in Years 2, 3, and 4 came as a result of that operation. The DIA Office of Investigations, which works with the JTF investigative team, is responsible for ensuring that all employers operating in the Commonwealth carry workers' compensation insurance at all times, pursuant to M.G.L. c. 152, §25A and §25C. Any employer that is found to be in violation of the statute is served with a Stop Work Order (SWO). The SWO requires the business to close immediately upon service of the SWO and carries a fine of \$100 per day until the employer presents proof of a valid policy and pays the fine. The DIA has assigned investigators to cover every city and town in the Commonwealth. These investigators continually examine businesses and organizations of every size and description in order to guarantee that all employers in Massachusetts comply with the law.

Noteworthy Accomplishments

JTF Uncovers \$1.17M in Unreported Wages by Subcontractors on the Marriott Copley Place (Host Hotels) Renovation Project

During a multi-month JTF investigation, partner agency investigators uncovered: sub-minimum wage payments to workers; employers without workers' compensation insurance policies; unreported W-2 wages; misclassification of workers; and unpaid unemployment contributions by contractors and subcontractors working on the renovation project at the Marriott Hotel at Copley Place in Boston. (The hotel is owned by Host Hotels and Resorts, Inc. and operated by Marriott.)

In the fall of 2011, the JTF received a tip about out-of-state laborers working for sub-minimum wages on the \$18 million hotel renovation project. The Attorney General's Office (AGO), through its investigation of the case, found that Host Hotels had contracted with Baystate Services, a general contractor, to renovate guest rooms at Boston's Marriott Copley Place hotel. Baystate subcontracted with Installations Plus, a California corporation, which in turn subcontracted work to Victory Outreach, a Philadelphia-based self-identified church and rehabilitation program. Victory Outreach sent dozens of men to move hotel furniture during the renovation project. Victory Outreach claimed that the work was not employment but rehabilitation provided under an agreement it had with the court system. These furniture movers were housed by Victory Outreach, worked long hours and received only a modest daily stipend.

The multi-agency investigation concluded that the workers were legally employees, not volunteers or receiving rehabilitation services, and were paid less than the state's minimum wage of \$8 an hour and no overtime payments. Victory Outreach claimed that it did not receive any compensation for arranging employment for these individuals and that it had insufficient assets to pay the workers the difference between what they actually received and the wages they should have received. Installations Plus maintained that it was not the direct employer of the furniture movers and was not legally responsible for their wages. Host Hotels and Marriott alleged that they were not the employers either and had no statutory obligation to the workers. Ultimately, Baystate Services agreed to voluntarily pay the difference between what the workers had been paid and \$8 an hour, totaling \$31,000 to 37 workers entitled to wage restitution. Thus, the issue of which entity was legally the employer and responsible for the wages was never resolved.

As part of this JTF investigation, multiple site visits were conducted by partner agencies including DUA and DIA. DUA audits uncovered \$1,171,536 in unreported wages, 63 misclassified employees, and \$85,907 in unpaid DUA obligations among subcontractors working on the project. Of the \$1,171,536 in unreported wages, \$587,249 was attributable to misclassified "1099" wages and \$584,287 was attributable to unreported W-2 wages. In some cases, employers were found in violation of more than one law. DIA issued three Stop Work Orders to employers for failing to have workers' compensation insurance policies.

DUA Identifies Over 2,300 Misclassified Workers and \$11 Million in Unreported Wages in Three Audits

DUA's revenue audit department reported to the JTF three audits that uncovered \$11,500,000 in unreported wages, 2,300 misclassified employees, and \$2,554,000 in unpaid DUA obligations among the three unrelated businesses, significant examples of the underground economy in Massachusetts.

Among DUA's findings in these audits:

- An adult entertainment establishment failed to report any wages for 619 workers and paid those workers in lump sum cash payments. The same company misclassified an additional 12 workers as "independent contractors," issuing these employees 1099 tax forms though they should have received W-2s.
- An auto auction company misclassified its entire workforce of over 1,400 employees, calling the employees "independent contractors" and issuing 1099 tax forms. None of these workers met the statutory requirements to be classified as independent contractors.
- A home health care agency misclassified 299 workers and failed to report \$4.2 million in taxable wages.

As a result of the audits, all three of the businesses engaged in swift action to achieve compliance. All three businesses properly classified employees and made payments for the unpaid Unemployment Insurance Trust Fund obligations they had incurred. These audits and subsequent compliance demonstrate that the collective authority of the JTF results in increased investigations, greater compliance, and a deterrent to misclassification by other companies.

Partner Agency Collaborations with DUA Result in Calendar Year 2012 Recoveries that More than Double 2011 Amounts

DUA's revenue audit department, working in conjunction with the Alcohol Beverages Control Commission (ABCC), Division of Capital Asset Management and Maintenance (DCAMM), Department of Career Services (DCS), Department of Industrial Accidents (DIA), Department of Labor Standards (DLS), Commonwealth Corporation (COMM. CORP), Executive Office of Labor and Workforce Development (EOLWD) and Fair Share Contribution (FSC) through a JTF effort, recovered \$17,293,819 from employers in unpaid unemployment contributions in an 18-month period, with \$12,989,141 in 2012 calendar year alone. These agencies agreed to conduct cross-agency compliance checks and to require compliance before state licenses or certifications are issued. Investigators and staff among these agencies conducted more than 20,000 compliance checks. As a result of these checks, a number of businesses were found to be in violation of state law and were required to pay owed unemployment contributions in order to be considered for a state license or certification. The following is a description of DUA's 2012 recoveries for previously unpaid UI Trust Fund contributions through this JTF collaboration:

- ABCC compliance checks in 2012 recovered \$8,441,780;
- DCAMM compliance checks in 2012 recovered \$1,249,051;
- DCS compliance checks in 2012 recovered \$559,425;
- DIA compliance checks in 2012 recovered \$96,396;
- DLS/DAT compliance checks in 2012 recovered \$463,934;
- COMM. CORP compliance checks in 2012 recovered \$477,076
- EOLWD compliance checks in 2012 recovered \$ 1,455,040;
- FSC compliance checks in 2012 recovered \$276,439.

ABCC Licensing Compliance Checks Reap Millions of Recovered Funds from Applicants Seeking Liquor Licenses

In the fourth year of the JTF, the collaboration between ABCC and DUA, which only began in 2012, proved to be highly successful. As noted above, DUA recovered \$8,441,780 during calendar year 2012 through efforts by the ABCC to hold initial and renewal applications for liquor licenses, until applicants paid outstanding unemployment contributions due

the Commonwealth. Through this interagency collaboration, ABCC has made outstanding efforts at leveling the playing field for businesses that have liquor licenses, ensuring these businesses pay their legal obligations.

JTF Research Study on the Underground Economy and Employee Misclassification Underway

In order to help insure the continued vibrancy of the Commonwealth's economy, its workers and its businesses, the JTF has embarked on a research study to determine the level and nature of employer fraud and employee misclassification in Massachusetts. DOR, as a member of the JTF, has contracted with Revenue Solutions, Inc. (RSI) to review and analyze relevant aggregate data and conduct an analysis to figure out to the extent possible the frequency and severity of employee misclassification and underground economy activity in the Commonwealth by industry. EOLWD has retained David Weil, Ph.D., and James Rebitzer, Ph.D., two renowned authors and members of the academic community, to review the data and the analysis, and produce a report that will provide EOLWD with the degree and volume of employee misclassification in Massachusetts, and if possible, recommendations on how to best address any systemic problems that are uncovered. The study will also include an analysis of the fiscal impact caused by employee misclassification on state tax revenues and the Unemployment Insurance Trust Fund. The findings and conclusions of the JTF research study will help shape the JTF's mandate and provide direction to other Commonwealth agencies in collaboratively addressing this problem. The study is expected to be released in 2014.

Cross-Agency Training

JTF member agencies remain committed to cross-agency education and training to ensure that investigative agencies are familiar with each other's processes and enforcement authority. In 2012, DOR opened its employee training and development programs to the JTF investigative team when available training slots exist. This partnership allows JTF members to take courses that may have not otherwise have been available to them.

Cross-training and awareness initiatives assist JTF agencies in operating efficiently by providing opportunities for agencies to identify potential cooperative methods. Cross-agency training helps to increase investigators' awareness of the requirements placed on employers by their counterpart agencies and encourage inter-agency referrals.

Fraud Detection Technology

DUA, working in conjunction with the JTF, has implemented the use of a Fraud Detection Technology called AWARE. AWARE is a database that can run cross matches between several different agencies' data. DUA, DIA, DLS, and the federal Internal Revenue Service are some of the agencies whose data DUA uses to compile possible audit targets. DUA is in the process of loading additional external data into AWARE, but has already been actively using it to pursue fraud cases. This technologically-advanced investigative system has proven successful in identifying possible employer fraud across all industries. This tool is improving audit targeting strategies for the DUA which allows resources to be used more effectively.

JTF Assisting Employer Compliance

DLS worked with DUA to create a new compliance check e-mail box for employers seeking licenses who were advised of DUA's non-compliance. Due to a high call volume of employers referred from DLS to DUA, an additional means of connecting with the DUA was established for employers in the form of a dedicated compliance email address for DLS license applicants.

Results of Referrals and Cooperative Oversight

Reporting Suspected Cases of Fraud and Misclassification to the Task Force

The JTF offers options for the public to report suspected workplace fraud and employee misclassification. First, information is available online about the underground economy and how to take action, including a form to complete, if workplace fraud and employee misclassification is suspected (www.mass.gov/lwd/jtf). Secondly, the JTF anonymous referral telephone line provides another avenue for individuals to provide information on the underground economy to JTF partner agencies (1-877-96-LABOR).

JTF Compliance Cross-Checking

JTF partner agencies' collaboration goes beyond the coordination of JTF referrals and investigations. The JTF has also facilitated the implementation of numerous cooperative oversight processes, resulting in over 24,000 compliance checks by agencies over the past 18 months, to assist in enforcement against employers violating Massachusetts tax, labor, employment and licensing laws. A compliance check occurs when a single Task Force member agency reviews an employer's conduct for purposes of an ongoing investigation, license application, license renewal application, or procurement certification, or inquires as to whether other Task Force member agencies have noncompliance matters relative to that particular employer. Cooperative oversight in the form of JTF compliance checks has proven to be an important tool for the Commonwealth's licensing, procurement, tax, and labor law enforcement agencies.

	DUA Compliance Check Breakout by Agency			
	June 2011 – December 2011		January 2012 – December 2012	
Agency sending Compliance Check:	Amount Assessed	Number of Compliance Checks Completed	Amount Assessed	Number of Compliance Checks Completed
ABCC	\$2,872,859	4,435	\$8,441,780	14,039
DLS-DAS			\$1,349	21
COMM. CORP			\$447,076	245
DCAMM	\$943,326	1,039	\$1,249,051	1,376
DCS			\$559,425	747
DIA			\$96,396	23
DLS	\$471,663	995	\$462,585	975
EOLWD			\$1,455,040	279
DUA-Section 30			\$0	63
DUA-FSC	\$16,830		\$276,439	
Sub-totals:	\$4,304,678	6,469	\$12,989,141	17,768
	Total number of Compliance Checks Completed for Period 4:	24,237	Total Amount Assessed for Period 4:	\$17,293,819

JTF Referral Investigations

JTF partner agencies with enforcement authority over underground economy matters have tracked their activities related to JTF referrals and resulting investigations. In its fourth year, the Task Force reviewed 237 referrals and opened agency investigations when appropriate. These investigations, conducted in addition to the agencies' regular investigatory and enforcement work, ranged from single-agency audits to multi-agency actions, with results such as stop work orders issued, owed monies recovered, prosecution of persons for egregious infractions, or no violations found. It should be noted that since white collar crime investigations can require months of investigation and/or litigation, the results of many investigations may not be available until long after referrals are made. Complaints that were not investigated either lacked sufficient information for follow-up or lacked relevance to the mission of the JTF.

Partner Agency Enforcement Activity

The Alcoholic Beverages Control Commission (ABCC), investigates applications for liquor licenses. It prosecutes violations of pertinent statutes and regulations and adjudicates disputes among members of the industry. In 2012, ABCC participated in the recovery of over \$8 million for the state's UI Trust Fund, and assisted JTF agencies in reviewing investigations relative to employers maintaining or applying for a liquor license in the Commonwealth.

The Attorney General's Office - Fair Labor Division (AGO-FLD) reviewed all relevant JTF complaints for potential violations of minimum wage and child labor laws; nonpayment of wages, prevailing wage violations; misclassification of employees; overtime pay violations; payroll record keeping; workers' compensation and unemployment insurance fraud. The Attorney General's Office (AGO) recovered \$865,965 in restitution, penalties, and fines related to violations of the state's wage and hour and independent contractor laws in the 18 month period: \$272,567 from 07/01/11 – 12/31/11, and \$593,398 in calendar year 2012.

Based on JTF referrals, the AGO-FLD took on numerous investigations yielding both civil and criminal enforcement actions, including 16 civil citations issued with restitution and penalty orders totaling more than \$385,000. Additionally, and in conjunction with other JTF partnering agency assistance, the AGO-FLD successfully secured superior court guilty pleas stemming from a 45 count criminal indictment involving unemployment fraud, workers' compensation fraud, employee misclassification and prevailing wage violations, with fines and restitution totaling \$329,000. The AGO-FLD further continued its pursuit of violations of the Massachusetts employee misclassification/ independent contractor statute which resulted in citations to 14 businesses with total assessed penalties of more than \$200,000.

The AGO-FLD investigated and prosecuted many additional cases outside of JTF referrals. Their efforts continue to combat the underground economy, employee misclassification, and wage and hour violations. In 2012, the AGO-FLD had prevailing wage civil citations, restitution, and penalties ordered in the amount of \$3,578,541 in addition to the JTF referrals. Also, the office had non-payment of wages, overtime, minimum wage, holiday and vacation pay, and child labor civil citations, restitution and penalties ordered in the amount of \$2,680,443. These numbers are not included in the JTF recovered funds identified in this report, but are critical to the enforcement activities taken to combat the underground economy.

The Department of Industrial Accidents (DIA) reviewed all relevant complaints received by the JTF and checked each for workers' compensation coverage. Based on the review and investigation of all JTF referrals in calendar year 2012, DIA issued fifteen (15) stop work orders for lack of workers' compensation coverage. As a result, 81 workers received workers' compensation coverage, and DIA recovered \$10,500 in fines. In its complementary enforcement process by the same investigators in calendar year 2012, DIA conducted 82,330

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compliance checks, 5,979 investigations, and issued 2,707 stop work orders for lack of workers' compensation insurance resulting in \$1,422,871 in fines and 7,016 workers brought under workers' compensation insurance coverage. In the period from 7/1/11 to 12/31/11, DIA conducted 28,161 compliance checks, 2,278 investigations, and issued 1,280 stop work orders for lack of workers' compensation insurance resulting in \$537,450 in fines and 4,612 workers brought under workers' compensation insurance coverage. Had any of those uncovered workers sustained an accident on the job, they would have turned to the state's workers' compensation insurance trust fund to cover their weekly benefits and medical expenses; this represents an unfair dynamic for businesses that are dutifully paying their insurance premiums to operate in compliance with the state's workers' compensation laws.

The Department of Labor Standards (DLS) assisted DUA in recovering just under \$1 million in unpaid unemployment insurance obligations through a joint operation during the 18 month period 7/1/11-12/31/12. DLS also investigated complaints referred by the JTF alleging misconduct on the part of employment or temporary staffing agencies, asbestos and lead paint related licensing, and apprentice training programs. DLS investigated 17 employment and placement agencies as a result of JTF referrals. Of the 17, eight were not in compliance with the state's Employment Agencies Law. Written warnings were sent to the noncompliant entities. The department also investigated five renovation/painting contractors as a result of JTF referrals in the 18 month period. Three of those firms were not in compliance with the state's Deleading and Lead-Safe Renovation regulation. DLS commenced enforcement actions against those entities that were non-compliant. DLS provided guidance to other JTF agencies in cases involving employers in each of these subject areas.

The Department of Public Safety (DPS) reviewed all relevant referrals involving unlicensed individuals or businesses performing services that require professional licensure by the Commonwealth of Massachusetts. DPS has provided background and specific information for investigations on the various license classifications which it oversees.

The Department of Revenue (DOR) reviewed and closed 42 cases that were referred from the JTF that resulted in the assessment of \$835,178 of additional tax, interest, and penalties during the period of 7/1/11 to 12/31/11. During calendar year 2012, DOR closed 83 cases from JTF referrals that resulted in \$327,869 of additional assessments of tax, interest, and penalties. There are also 12 JTF cases totaling \$291,458 that should be assessed within the first quarter of 2013, and 25 more cases referred in 2012, still in progress at the end of the calendar year. Since the inception of the JTF, DOR has closed 524 cases from JTF referrals, totaling \$6,437,926 in recoveries.

The Department of Unemployment Assistance (DUA) reviewed all relevant JTF referrals for Unemployment Insurance (UI) Trust Fund and Fair Share contribution (FSC) violations such as failure to file, underreporting, failure to register, and/or failure to pay in full. DUA recovered \$17,293,819 in unpaid employer contributions to the UI Trust Fund and FSC through referrals and compliance cross-checks with ABCC, DLS, DCAMM, DIA, and EOLWD. \$4,304,678 of the recoveries were from 07/1/11 – 12/31/12 and \$12,989,141 of the recoveries were from calendar year 2012.

The Division of Banks (DOB) assisted JTF members by reviewing and acting upon referrals involving unlicensed entities that fall within the Division's jurisdiction. Additionally, DOB provided assistance to JTF members with background information for ongoing investigations that involved Division licensed individuals and entities.

The Division of Capital Asset Management and Maintenance (DCAMM), from January 1, 2012 to December 31, 2012, collected \$1,249,051 and brought 116 contractors into compliance with outstanding DUA liabilities. This was accomplished by sending notices to applicants that they must resolve their DUA obligation before they can be eligible for DCAMM certification to bid on Chapter 149 public building construction contracts.

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DCAMM halts the certification process for any contractor who has not brought themselves into compliance with DUA obligations and denies certification to them. DCAMM denied certification to three contractors that failed to come into compliance with DUA. Three other contractors were decertified and 22 were denied DCAMM certification for a variety of reasons ranging from poor performance to non-compliance of issues.

DCAMM's Certification Unit continues to cross-check DIA's debarment list, the Supplier Diversity Office's (SDO) Decertification and Withdrawal Listing, the Occupational Safety and Health Administration (OSHA) website, the Worker's Compensation Rating Insurance Bureau (WCRI) website, the Attorney General's list of debarred contractors, the Secretary of the Commonwealth, Corporation Division website, the Department of Public Safety License verification website, and the Division of Professional Licensure as part of DCAMM's standard certification application process. Additionally, each contractor's application is checked against DCAMM's internal JTF case tracking database, and on a weekly basis, a list of all contractor applicants received is sent to all JTF partner agencies to inquire whether any other agency is working on any matters related to the applicant.

The Division of Professional Licensure (DPL) investigated all JTF referrals involving unlicensed individuals or businesses performing services that required professional licensure by the Commonwealth. Also, DPL created a Health Care Fraud Tip Line, providing consumers a confidential outlet to alert the DPL Health Care Fraud Unit to excessive or false billing practices by health-related DPL-licensed professionals.

Insurance Fraud Bureau (IFB) assisted JTF members by reviewing and acting upon referrals involving insurance fraud. In 2012, the IFB had one JTF referral of insurance fraud that resulted in the contractor being ordered to pay \$100,000 in restitution to their workers' compensation carrier.

The Massachusetts Commission Against Discrimination (MCAD) is the state's chief civil rights agency. The Commission works to eliminate discrimination on a variety of bases and areas, including the employment setting, and strives to advance the civil rights of the people of the Commonwealth through law enforcement, outreach, training and adjudication. MCAD provides guidance to JTF agencies regarding applicable laws and receives referrals where appropriate.

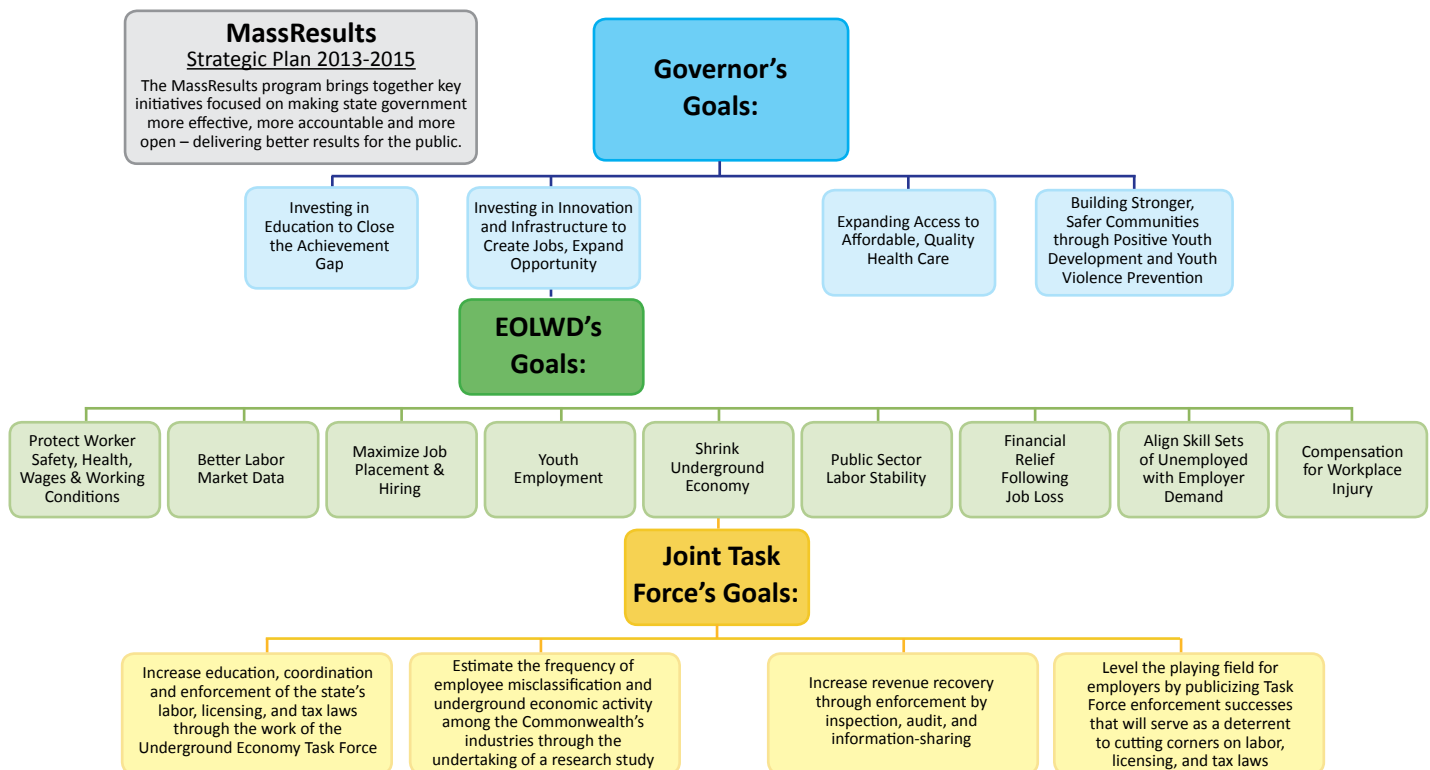
2013 Goals and Initiatives

In 2013, the JTF remains focused on increasing the volume and impact of cross-agency enforcement by building on the existing processes used by member agencies. These cooperative investigative efforts raise awareness among the general public, workers, the business community, and government about the work of JTF agencies to combat the underground economy and enforce the responsibilities of employers in the Commonwealth. The ultimate goal of the JTF continues to be insuring that the economy in the Commonwealth is supportive of and conducive to the flourishing of businesses that play by the rules and fulfill their legal obligations to their employees and the Commonwealth.

Strategic Goals

In accordance with Executive Order 540, “Improving the performance of state government by implementing a comprehensive strategic planning and performance management framework in the Executive departments,” the JTF outlined the following strategic goals for 2013 – 2015 to the Governor:

- Increase education, coordination, and enforcement of the state’s labor, employment, licensing, and tax laws through the work of the Underground Economy Task Force;
- Increase revenue recovery through enforcement by inspection, audit, and information-sharing;
- Level the playing field for employers by publicizing JTF enforcement successes that will serve as a deterrent to cutting corners on labor, employment, licensing, and tax laws; and
- Evaluate the frequency and intensity of employee misclassification and underground economic activity among the Commonwealth’s industries through the undertaking of a research study.



Research Study on Employee Misclassification and the Underground Economy in Massachusetts

The research study to determine and analyze the current state of the underground economy in Massachusetts is underway. The results of the study will inform future policy considerations based upon what the study reveals about issues, statistics, lost revenues, and other impacts on businesses and individual workers. The need for concrete data to better clarify and illustrate the problem is critical for making informed policy decisions. The study is expected to be completed in 2014.

Education and Outreach

The Task Force is implementing a multi-faceted education and outreach plan that will:

- 1) Create educational material for workers and employers to raise awareness about ongoing issues of the underground economy, and provide contact information for reporting fraudulent work practices. Worker cards will include brief descriptions on ways to detect underground economy activity and how to report it. Business outreach will include a brochure educating business owners of the importance of compliance with the law and the adverse effects of participating in the underground economy or misclassifying employees.
- 2) Utilize its statewide Steering Committee to assist in educating workers, unions and businesses; identify potential problem areas, and develop policy recommendations for specific legislative proposals.
- 3) Continue to enhance its website and other communication portals to improve access to information about the underground economy and the work of the JTF.

Cross-Agency Training

The Task Force member agencies remain committed to a cross-agency education and training plan to ensure that JTF investigative agencies are familiar with the various processes and enforcement authority. Cross training ensures efficiency, coordination and encourages interagency referrals. During 2013, the JTF will make training opportunities available for partner agency investigators.

Expanding Additional Partnerships

The Task Force has seen tremendous success as a result of compliance checks among JTF partner agencies, and will look for more opportunities to increase collaboration and coordination. As a result of cross-agency communication, increasing compliance among multiple state agencies' requirements, monetary recoveries have increased exponentially. Engaging additional partners into the JTF may lead to additional revenue for the Commonwealth to recover, unveiling more businesses in non-compliance. Additionally, more partners may strengthen enforcement, as it is not uncommon for an unscrupulous business to have multiple compliance issues with multiple government agencies. The more avenues of enforcement available, the more likely the JTF may be able to curb illegal behaviors.

Multi-State and Federal Cooperation

Many JTF agencies and partners have strong, working relationships with federal authorities. The JTF will strengthen these existing partnerships and maximize any potential assistance to further address issues within the Massachusetts' underground economy. Also, the JTF has developed relationships with counterparts in other states to share new ideas and best practices involving methods of cross-agency enforcement and open potential avenues for multi-state enforcement initiatives.

In November 2012, JTF representatives traveled to Montpelier, Vermont for a meeting with the State of Vermont's Misclassification Task Force which was established by an executive order in September of 2012. The two states have agreed to work together by sharing information that may be relevant on businesses moving across state lines.

Technological Advancements

As the JTF grows, it is necessary to implement changes to keep up with technological advancements. In 2013, the JTF will create and implement a database which will assist in capturing more relevant data from JTF tips and referrals. The database will also provide search and edit features and generate reports. With these improvements, the JTF will streamline the referral process creating more efficiency and ability to track trends within the underground economy. The JTF will continue to utilize all technological advancements to buttress its enforcement efforts. It will explore all new technology available to determine whether there are programs that will enhance its reach.

Appendix A: Executive Order 499

By His Excellency
DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 499

Establishing a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

WHEREAS, the health of the Commonwealth's economy, its workers, and its businesses is harmed by the existence of an illegal underground economy in which individuals and businesses conceal their activities from government licensing, regulatory, and taxing authorities;

WHEREAS, individuals and businesses that operate in the underground economy do so in violation of labor, employment, tax, insurance and occupational safety laws, by failing to pay required wages, carry workers' compensation insurance, comply with health, safety and licensing requirements, or pay income taxes and payroll taxes that fund unemployment insurance, disability insurance, and Medicare and Social Security benefits;

WHEREAS, certain businesses also improperly classify their employees as "independent contractors" (referred to as "employee misclassification") and hire undocumented workers to avoid compliance with labor, employment, tax, insurance and regulatory requirements;

WHEREAS, the underground economy and, in particular, the practice of employee misclassification: (1) exploits vulnerable workers and deprives them of legal benefits and protections; (2) gives unlawful businesses an unfair competitive advantage over lawful businesses by illegally driving down violators' taxes, wages, and other overhead costs; (3) defrauds the government of substantial tax revenues; and (4) harms consumers who suffer at the hands of unlicensed businesses that fail to maintain minimum levels of skills and knowledge;

WHEREAS, a recent study based on audits of Massachusetts unemployment records for construction employers between 2002 and 2005 found that up to 14% of the employees covered by the audits were estimated to have been misclassified by employers;

WHEREAS, efforts to combat the underground economy and employee misclassification historically have been divided among various agencies, diminishing the timeliness, efficiency and effectiveness of such efforts; and

WHEREAS, the creation of joint task forces has proven to be an effective mechanism for enhancing interagency cooperation, information sharing, and the prosecution of violators;

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. I, do hereby order as follows:

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

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Section 1. There is hereby established the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (the “Task Force”).

Section 2. The Task Force shall consist of the following members or their designees: the Director of Labor, the Commissioner of Revenue, the Commissioner of the Department of Industrial Accidents, the Chief of the Attorney General’s Fair Labor Division, the Commissioner of the Division of Occupational Safety, the Commissioner of the Department of Public Safety, the Director of the Division of Professional Licensure, the Director of Apprenticeship Training and the Director of the Division of Unemployment Assistance. The Director of Labor shall chair the Task Force.

Section 3. The Task Force shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster compliance with the law by educating business owners and employees about applicable requirements; (b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.

In fulfilling its mission, the Task Force shall:

- a. Facilitate timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
- b. Identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members’ investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- c. Assess existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develop and recommend strategies to improve those methods;
- d. Encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;
- e. Solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;
- f. Work cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
- g. Work cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
- h. Identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

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- i. Consult with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness, including consideration of whether to establish an advisory panel under the secretary of labor and workforce development.

Section 4. The Task Force shall transmit an annual report to the Governor summarizing the Task Force's activities during the preceding year. The report shall, without limitation: (a) describe the Task Force's efforts and accomplishments during the year; (b) identify any administrative or legal barriers impeding the more effective operation of the Task Force, including any barriers to information sharing or joint action; (c) propose, after consultation with representatives of business and organized labor, members of the legislature and other agencies, appropriate administrative, legislative, or regulatory changes to strengthen the Task Force's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and (d) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. The Task Force also shall take appropriate steps to publicize its activities.

Section 5. To the extent permitted by law, every agency within the Executive Branch shall make all reasonable efforts to cooperate with the Task Force and to furnish such information and assistance as the Task Force reasonably deems necessary to accomplish its purposes.

Section 6. Nothing in this Executive Order shall be construed to require action inconsistent with any applicable state or federal law.

Section 7. This Executive Order shall continue in effect until amended, superseded, or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 12th day of March in the year of our Lord two thousand and eight and of the Independence of the United States, two hundred and thirty-two.

DEVAL L. PATRICK
GOVERNOR
Commonwealth of Massachusetts

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

Appendix B: Member Agencies

Executive Office of Labor and Workforce Development

Department of Industrial Accidents (DIA)

The Department of Industrial Accidents administers the law related to the Massachusetts workers' compensation system. This law balances the provision of prompt and fair compensation to workers with occupational injuries and illness arising out of and in the course of employment, with the needs of employers to manage workers' compensation insurance costs. The Department also administers the Workers' Compensation Trust Fund, which provides benefits to injured workers when their employer fails to properly insure or provide these benefits. DIA's investigative unit works to ensure that businesses and industries are in compliance with the workers' compensation statute. One enforcement tool employed by the DIA is the issuance of immediate Stop Work Orders to violators, who are subject to fines and prosecution for failing to provide their employees with workers' compensation benefits.

For more information, visit: <http://www.mass.gov/dia>

Department of Labor Standards (DLS)

The Department of Labor Standards (DLS) is responsible for the promotion and protection of workers' safety and health, wages and working conditions, and to support employers and workers in the utilization of apprenticeship as a workforce development tool. DLS protects workers by means of education and training, workplace safety and health consultation and assessment, occupational injury and illness data collection and analysis, and consistent and responsible administration of its statutes and regulations. DLS operates the following programs: Division of Apprentice Training, Prevailing Wage Program, Minimum Wage Program, Employment Agency Program, On-site Consultation Program, Asbestos Program, Lead Program, Occupational Lead Poisoning Registry, MA Workplace Safety and Health Program, Occupational Safety and Health Statistics Program, and Industrial Hygiene Laboratory.

For more information, visit: <http://www.mass.gov/dols>

Department of Unemployment Assistance (DUA)

The Department of Unemployment Assistance administers the unemployment insurance program in Massachusetts, providing temporary financial assistance to workers who lose their jobs through no fault of their own. Funding for unemployment insurance benefits comes from contributions paid by the state's employers; no deductions are made from workers' salaries. Employers pay quarterly contributions to the Massachusetts DUA. Protecting the integrity of the unemployment insurance program is a responsibility taken seriously by the DUA. Working with Joint Task Force partners, progress is being made in preventing, detecting, investigating and prosecuting those who defraud or attempt to defraud the unemployment insurance system. This includes employers that evade paying their fair share of unemployment insurance costs by intentionally misclassifying their employees as independent contractors.

For more information, visit: <http://www.mass.gov/dua>

Office of the Attorney General

Fair Labor Division

The Office of Attorney General's Fair Labor Division enforces various laws that protect workers, including the prevailing wage, minimum wage, payment of wages, overtime, payroll record keeping, employee misclassification, tip pooling, child labor, Sunday and holiday premium pay laws. The Fair Labor Division also investigates allegations of violation of the State's public bidding laws in order to protect the integrity of the process of awarding public works construction contracts. In addition to prosecuting employers who fail to follow the Commonwealth's wage and hour laws, the Fair Labor Division works to protect employees from being exploited by an employer by educating both employers and employees about the law and employees' rights.

The Attorney General aims to set a level playing field for employers and employees throughout the State. The Attorney General's specific jurisdiction to enforce the Commonwealth's wage and hour laws, both criminally and civilly, as well as its general jurisdiction to enforce criminal laws, including insurance and tax laws, larceny and embezzlement, allows it to take a holistic approach to prosecuting cases involving the underground economy. Its broad jurisdiction enables it to work in partnership with fellow member agencies on the JTF in order to effectively investigate and prosecute cases, as warranted.

For more information, visit: <http://www.mass.gov/ago>

Executive Office of Administration and Finance

Division of Capital Asset Management (DCAMM)

The Division of Capital Asset Management (DCAMM) is charged with providing professional and comprehensive services to state agencies in the field of public building design, construction, maintenance, and real estate. DCAMM's scope of services includes planning, design, construction, capital repairs and improvements, asset management, contractor certification and compliance, leasing, acquisition and disposition of real estate, and maintenance.

DCAMM serves the JTF by identifying DCAMM-certified contractors who have become non-compliant with other state agencies' regulations or requirements in an effort to bring the contractors back into compliance with state law or to decertify or debar such contractors when appropriate. DCAMM utilizes information obtained from various partner agencies as part of the certification process in order to make a final determination on whether the contractor meets the qualifications to be certified to perform public work.

For more information, visit: <http://www.mass.gov/dcam>

Department of Revenue (DOR)

The mission of the Massachusetts Department of Revenue is to achieve maximum compliance with the tax, child support and municipal finance laws of the Commonwealth. The Department is dedicated to enforcing these laws in a fair, impartial and consistent manner by providing professional and courteous service to all its customers. The Department is also committed to the objectives of the Underground Economy Task Force to enforce employee classification laws through increased public awareness and enforcement. Misclassification of employees by employers has resulted in millions of dollars in lost tax revenue. Both with the Task Force and independently, DOR will be assigning more resources to employee misclassification and other withholding audits.

For more information, visit: <http://www.mass.gov/dor>

Supplier Diversity Office (SDO)

SDO creates opportunities for minority and women owned business by growing the number of state and federally certified businesses and offering business insurance and advocacy programs.

For more information, visit: <http://www.mass.gov/sdo>

Executive Office of Public Safety and Security

Department of Public Safety (DPS)

The Department of Public Safety is a licensing and regulatory agency whose mission is to reduce the risk to life and property by promoting safety in the design, construction, installation, inspection, operation, repair and alteration of boilers, pressure vessels, elevators, and buildings. The DPS licenses individuals in many areas, including elevator mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinklerfitters, pipefitters, and refrigeration technicians and hoisting operators. In order to ensure compliance with the laws of the Commonwealth, the Department is committed to sharing its resources in a cooperative effort with other state agencies to ensure that workers in these industries are not exploited by business owners through misclassification or other means of skirting labor, tax and occupational safety laws.

For more information, visit: <http://www.mass.gov/eopss>

Executive Office of Health and Human Services

Massachusetts Office for Refugees and Immigrants (MORI)

The statutory purpose of the Massachusetts Office for Refugees and Immigrants (MORI) is to promote the full participation of refugees and immigrants as self-sufficient individuals and families in the economic, social and civic life of the Commonwealth. The primary responsibility of the office is to administer the federally funded refugee resettlement program in Massachusetts, which provides assistance to refugees, such as case management, employment services (including English language training), transitional cash and medical assistance, health screening, and foster care for unaccompanied minors. MORI also administers a state funded citizenship assistance program to assist legal permanent residents in Massachusetts to become naturalized U.S. citizens. MORI serves the

Task Force in an advisory capacity, attending Task Force meetings upon invitation; and providing information on understanding cultural issues, identifying immigrant community groups to facilitate Task Force outreach, as well as identifying translation resources, upon request.

For more information, visit: <http://www.mass.gov/ori>

Executive Office of Housing and Economic Development

Division of Banks (DOB)

The Division of Banks (DOB) is responsible for ensuring a sound, competitive, and accessible banking and financial services environment in the Commonwealth. DOB is committed to providing effective financial and consumer protection supervision over regulated entities through intra- and inter-agency coordination. Under statute, the DOB is tasked with chartering, licensing, and examining State Chartered Banks, Credit Unions, Trust Companies, Mortgage Brokers, Mortgage Lenders, Mortgage Loan Originators, Check Cashers, Check Sellers, Debt Collectors, Foreign Transmittal Agencies, Insurance Premium Finance Agencies, Motor Vehicle Sales Finance Companies, Retail Installment Finance Companies, and Small Loan Companies.

For more information, visit <http://www.mass.gov/dob>

Division of Professional Licensure (DPL)

The Division of Professional Licensure, under the Office of Consumer Affairs and Business Regulation, oversees 31 boards of registration that license and regulate more than 360,000 licensees in some 50 trades and professions. DPL also oversees the State Racing Commission. DPL's mission is to protect the public health, safety, and welfare by licensing qualified individuals who provide services to consumers, and by fair enforcement of the statutes and regulations of the boards. Boards can revoke or suspend a license after investigation of serious complaints. DPL seeks to aggressively pursue unlicensed practices, working with participating Joint Task Force agencies and courts throughout the Commonwealth.

For more information, visit: <http://www.mass.gov/dpl>

Office of Small Business and Entrepreneurship (OSBE)

The Office of Small Business and Entrepreneurship's mission is to create policies and programs to support small businesses and entrepreneurs across the Commonwealth. OSBE is the most valuable resource for Small Business Community, and utilizes the following business development tools: Small Business Assistance Advisory Council, Office of Grants and Technical Assistance, and Small Business Development Centers. OSBE is dedicated to understanding small business needs, providing appropriate programs, and advocating policy to enable growth and job creation.

For more information, visit: <http://www.mass.gov/dbd/mobd>

Office of the Treasurer

Alcoholic Beverages Control Commission (ABCC)

The Alcoholic Beverages Control Commission regulates the alcoholic beverages industry in Massachusetts, directly licensing the statewide activities of liquor manufacturers, transporters, wholesalers, and brokers. The ABCC also regulates interstate and international alcoholic beverage businesses by issuing certificates of compliance. The ABCC investigates applications for licenses, prosecutes violations of pertinent statutes and regulations and adjudicates disputes among members of the industry.

For more information, visit: <http://www.mass.gov/abcc>

Independent

Massachusetts Commission Against Discrimination (MCAD)

The Massachusetts Commission Against Discrimination (MCAD) is responsible for enforcement of Massachusetts' anti-discrimination laws, including the Fair Employment, Fair Education and Fair Housing Practices Acts, as well as the Maternity Leave and Public Accommodations laws, on behalf of the public. The Legislature has afforded the Commission with significant and comprehensive power and authority to investigate, conciliate, prosecute and adjudicate claims of discrimination, incident to our primary mandate of protecting, preserving, and enhancing the civil rights of our citizens.

For more information, visit: <http://www.mass.gov/mcad>

Other Partners

Insurance Fraud Bureau (IFB)

The Insurance Fraud Bureau of Massachusetts (IFB) was authorized by Massachusetts statute in 1990 to criminally investigate suspected fraudulent insurance transactions. The IFB became operational in 1991. The jurisdiction of the IFB was expanded effective January 1, 1992 to specifically include the criminal investigation of workers' compensation fraud, workers' compensation claim fraud, and workers' compensation premium evasion cases presented by misclassification of employees—schemes to affect experience modification or unreported or underreported payroll. Under existing law, anyone who is licensed under Massachusetts General Law (M.G.L.) Chapter 175, exempt from the licensing requirements of M.G.L. c. 175, or otherwise engaged in the business of insurance, and who becomes aware of suspected insurance fraud, is required to report it to the IFB. In addition to incarceration, the restitution orders on workers' compensation premium evasion cases total over \$63 million.

Referrals can be made through the IFB web site at www.ifb.org or via the IFB hotline, 1-800-32-FRAUD.

For more information, visit: <http://www.ifb.org>

Appendix C: Common Interest Agreement

COMMON INTEREST AGREEMENT BETWEEN PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR AND PARTICIPATING AGENCIES OF THE COMMONWEALTH OF MASSACHUSETTS

This Agreement is made and entered into by and between participating agencies of the United States Department of Labor, specifically, the Wage and Hour Division, the Employee Benefits Security Administration, the Office of Federal Contract Compliance Programs, and the Occupational Safety and Health Administration (all represented by the Office of the Solicitor and hereinafter collectively referred to as the “Department”), and participating agencies of the Commonwealth of Massachusetts, specifically, the Executive Office of Labor and Workforce Development, the Office of the Attorney General, the Department of Revenue, the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, the Massachusetts Commission Against Discrimination, the Alcoholic Beverages Control Commission, the Division of Banks, the Department of Public Safety, the Division of Capital Asset Management, and the Division of Professional Licensure (hereinafter collectively referred to as “The Commonwealth”). The Department and the Commonwealth are collectively referred to as “the parties.”

With the specific and mutual goals of providing clear, accurate, and easy-to-access compliance information to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by, as appropriate, conducting coordinated enforcement actions and sharing information consistent with applicable law, the parties agree to enter into this Agreement.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The parties recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the Commonwealth of Massachusetts. The parties enter into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest. This includes, but is not limited to the following: sharing of training materials; providing employers and employees with compliance assistance information; and conducting coordinated law enforcement investigations and sharing information, where appropriate and to the extent allowed by law, to protect the wages, retirement income security, equal employment opportunity, unemployment benefits, workers' compensation entitlements, safety, and health of America's workforce, and to ensure a level playing field for law-abiding businesses, and proper compliance with applicable tax and licensing laws.

Agency Responsibilities

The Department is responsible for administering and enforcing a wide range of federal labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and

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Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, the prevailing wage requirements of the Davis-Bacon and Related Acts, the Service Contract Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, numerous whistleblower provisions of federal statutes, Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Nothing in this agreement limits the Department's enforcement of these and other laws.

The Commonwealth is responsible for:

Executive Office of Labor and Workforce Development (EOLWD)/Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)

- EOLWD is responsible for directing and overseeing the work of the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, and the Department of Career Services. The Secretary of Labor and Workforce Development serves as the chair of JTF according to Massachusetts Executive Order 499 (E.O. 499).
- According to E.O. 499, JTF coordinates joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster compliance with the law by educating business owners and employees about applicable requirements; (b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.
- According to E.O. 499, in fulfilling its mission, JTF:
 - Facilitates timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
 - Identifies those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
 - Assesses existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develops and recommends strategies to improve those methods;
 - Encourages businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;
 - Solicits the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establishes procedures for referring cases to prosecuting authorities as appropriate;
 - Works cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee

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misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;

- Works cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
- Identifies potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
- Consults with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness, including consideration of whether to establish an advisory panel under the secretary of labor and workforce development.

Attorney General's Office, Fair Labor Division (AGO-FLD)

- The AGO-FLD enforces the Commonwealth's wage and hour laws, both criminally and civilly, including the prevailing wage, minimum wage, payment of wages, overtime, payroll record keeping, employee misclassification, tip pooling, child labor, Sunday and holiday premium pay laws.
- The AGO-FLD also investigates allegations of violation of the State's public bidding laws in order to protect the integrity of the process of awarding public works construction contracts.
- In addition to prosecuting employers who fail to follow the Commonwealth's wage and hour laws, AGO-FLD works to protect employees from being exploited by an employer by educating both employers and employees about the law and employees' rights.

Department of Unemployment Assistance (DUA)

- The DUA administers the unemployment insurance program in Massachusetts, providing temporary financial assistance to workers who lose their jobs through no fault of their own. Funding for unemployment insurance benefits comes from contributions paid by the state's employers; no deductions are made from workers' salaries. Employers pay quarterly contributions to the Massachusetts DUA.

Department of Industrial Accidents (DIA)

- Pursuant to M.G.L. Chapter 152, the mission of the DIA is to administer the Commonwealth's Workers' Compensation system and provide prompt and fair compensation to victims of occupational injuries and illness, and to see that medical

treatment to injured workers is provided in a timely manner while balancing the needs of employers to contain workers' compensation insurance costs. Additionally, DIA provides dispute resolution of workers' compensation cases through due process and adjudication and administers the Special, Private and Public Trust Funds.

Department of Revenue (DOR)

- The mission of DOR is to achieve maximum compliance with the tax, child support and municipal finance laws of the Commonwealth. DOR is dedicated to enforcing these laws in a fair, impartial and consistent manner by providing professional and courteous service to all its customers. DOR is also committed to the objectives of JTF to enforce employee classification laws through increased public awareness and enforcement.

Division of Banks (DOB)

- The mission of DOB is to ensure a sound, competitive, and accessible banking and financial services environment. DOB is committed to providing effective financial and consumer protection supervision over regulated entities through intra- and inter-agency coordination. Under statute, the DOB is tasked with chartering, licensing, and examining State Chartered Banks, Credit Unions, Trust Companies, Mortgage Brokers, Mortgage Lenders, Mortgage Loan Originators, Check Cashers, Check Sellers, Debt Collectors, Foreign Transmittal Agencies, Insurance Premium Finance Agencies, Motor Vehicle Sales Finance Companies, Retail Installment Finance Companies, and Small Loan Companies.

Department of Labor Standards (DLS)

- DLS is responsible for the promotion and protection of workers' safety and health, wages and working conditions, and to support employers and workers in the utilization of apprenticeship as a workforce development tool. DLS protects workers by means of education and training, workplace safety and health consultation and assessment, occupational injury and illness data collection and analysis, and consistent and responsible administration of its statutes and regulations. DLS operates the following programs:
 - Division of Apprentice Training
 - Prevailing Wage Program
 - Minimum Wage Program
 - Employment Agency Program
 - On-site Consultation Program
 - Asbestos Program
 - Lead Program
 - Occupational Lead Poisoning Registry
 - MA Workplace Safety & Health Program
 - Occupational Safety & Health Statistics Program
 - Industrial Hygiene Laboratory
 - Mine Safety and Health Program

Division of Capital Asset Management (DCAM)

- DCAM is charged with providing professional and comprehensive services to state agencies in the field of public-building design, construction, maintenance and real estate. DCAM's scope of services includes planning, design, construction, capital repairs and improvements, asset management, contractor certification and compliance, leasing, acquisition and disposition, and maintenance.

Alcoholic Beverages Control Commission (ABCC)

- ABCC regulates the alcoholic beverages industry in Massachusetts, directly licensing the statewide activities of liquor manufacturers, transporters, wholesalers and brokers. ABCC also regulates interstate and international alcoholic beverage businesses by issuing certificates of compliance. The ABCC investigates applications for licenses, prosecutes violations of pertinent statutes and regulations and adjudicates disputes among members of the industry.

Massachusetts Commission Against Discrimination (MCAD)

- MCAD is responsible for enforcing Massachusetts' anti-discrimination laws, including the Fair Employment, Fair Education and Fair Housing Practices Acts, as well as the Maternity Leave and Public Accommodations laws, on behalf of the public.
- The Legislature has afforded MCAD with significant and comprehensive power and authority to investigate, conciliate, prosecute and adjudicate claims of discrimination, incident to our primary mandate of protecting, preserving, and enhancing the civil rights of our citizens.

Division of Professional Licensure (DPL)

- DPL, under the Office of Consumer Affairs and Business Regulation (OCABR), oversees the state's 29 Boards of Registration, and regulates more than 40 trades and professions.
- Its mission is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair enforcements of statutes and regulations of the boards of registration. Each board can revoke or suspend a license after investigation of serious complaints.

Department of Public Safety (DPS)

- The Department of Public Safety is a licensing and regulatory agency whose mission is to reduce the risk to life and property by promoting safety in the design, construction, installation, inspection, operation, repair and alteration of boilers, pressure vessels, elevators, and buildings. The DPS licenses individuals in many areas, including elevator

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mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinklerfitters, pipefitters, refrigeration technicians, and hoisting operators.

Contacts

- Each participating agency will designate a contact person responsible for coordinating activities covered under this Agreement.
- Each participating agency will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of this Agreement.

Enforcement

Where appropriate and to the extent allowable under law,

- Any or all of the participating agencies may conduct coordinated investigations of common interest periodically in the Commonwealth of Massachusetts, as mutually agreed upon.
- The participating agencies will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The participating agencies will make referrals of potential violations of each other's laws.

Effect of Agreement

- This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates any participating agency to expend appropriations, enter into any other contract, or incur other obligations.
- By entering into this Agreement, the parties do not imply an endorsement or promotion of the policies, programs, or services of the other.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any participating agency to implement its respective statutory functions.
- This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties. This agreement is not intended to confer any right upon any private person or other third party.
- Nothing in this Agreement will be interpreted as limiting or superseding the participating agencies' normal operations. This agreement also does not limit or restrict the participating agencies from participating in similar activities or arrangements with other entities.
- This agreement will be executed in full compliance with the Privacy Act of 1974, and any other applicable federal laws and laws of the Commonwealth.

Exchange of Information

- The Department and the Commonwealth endeavor to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with each party's own statutory obligations and enforcement efforts. It is the parties' view that sharing of information – including certain documents, factual materials, mental impressions, memoranda, interview reports, research and other information, some of which may be privileged – in cases of common interest is to the parties' mutual benefit.
- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- Information that is otherwise discoverable and not privileged shall not become privileged simply because it was shared between any participating agency of the Department and any participating agency of the Commonwealth.
- Privileged information means information that may be exempt from disclosure to the public or other unauthorized persons under state and/or federal laws, or otherwise may properly be withheld from disclosure. Such information may include but is not limited to: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in any of the participating agencies' enforcement files that were obtained under these conditions; information concerning investigative techniques or procedures that if disclosed could lessen investigative effectiveness; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and/or the attorney work-product privilege; personal information on living persons; tax and child support information; individually identifiable health information; and confidential business information and trade secrets. Any physical material or other document containing such information should be clearly marked "privileged" before it is provided pursuant to this Agreement.
- Confidential Unemployment Compensation (UC) information, as defined in 20 CFR 603.2(b), means any unemployment compensation information, as defined in 20 CFR 603.2(j), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.
- Acknowledging that privileges and protections (including without limitation the investigative files privilege, informant's privilege, attorney-client privilege, work product doctrine, deliberative process privilege, and confidentiality agreements or orders) may apply to certain shared information, the parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to that shared information.
- When privileged information is shared it shall be used and accessed only by authorized individuals and only for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The information shall not be duplicated or further disclosed without the written authorization of the party that provided it, unless the information becomes public without violation of this Agreement or unless the information is required to be disclosed by Court order or other legal authority. The parties shall instruct all such authorized individuals about the confidentiality requirements under both applicable state and federal law and the Common Interest Agreement itself, and about the potential sanctions for unauthorized use, browsing, or disclosure of privileged information.

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- In the event that there is a public proceeding, such as a trial, in which privileged information may be used or testimony of either party's employees sought, prompt notice shall be given to the other party to enable it to take such action, if any, that it deems appropriate under the circumstances.
- Subject to applicable requirements of law, the participating agencies shall adhere to the limitations placed on them in any requested dissemination of CJIS/NCIC data to non-criminal justice agencies.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this 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, and shall promptly notify the party providing such information that such a request or subpoena has been received, so that the party providing such information may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
- 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.
- The requirements of this Agreement, as applied to all privileged information, shall survive all of the following: (a) withdrawal by any participating agency party from this Agreement; (b) termination of this Agreement, (c) final disposition of claims or actions whether by judgment, settlement or other means of disposition.
- In addition to the requirements above, confidential unemployment compensation information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4, and any other applicable laws. In addition to the requirements above, the types of confidential information referenced in Appendix A may be exchanged only subject to the corresponding confidentiality requirements included in Appendix A.

Subject to the foregoing constraints:

- The participating agencies agree to exchange information on laws and regulations of common concern to the other participating agencies, as requested and to the extent practicable and allowable by law and policy.
- The participating agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent feasible and allowable by law and policy.
- The participating agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, as requested and to the extent practicable and allowable by law and policy.

Resolution of Disagreements

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

Period of Agreement

- This Agreement becomes effective upon the signing by all participating agencies, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all participating agencies. Any participating agency may withdraw from participation in this Agreement by giving thirty (30) days advance written notice prior to the date of intended withdrawal. Renewal of the Agreement may be accomplished by written agreement of all participating agencies.

This agreement is executed as of the 19th day of September, 2011.

Appendix A (of Common Interest Agreement)

- In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 21B:
 - Confidential tax information must be safeguarded in accordance with the best practices contained in the National Institute of Standards and Technology (NIST) Special Publication 800-53 Revision 2, "Security Controls for Federal Information Systems", Annex 2, "Moderate-Impact Baseline" (NIST 800-53 (Moderate Level)) (this document can be found at: <http://csrc.nist.gov/publications/PubsSPs.html>) regarding the physical and technical security of the DOR Information.
 - Confidential tax information in all files or systems must be maintained only for as long as it is relevant or useful for the purposes of this Agreement or until termination of this Agreement. The best practices contained in the NIST 800-88 Standard regarding the destruction of electronic or paper media and magnetic tapes; applicable state and federal statutes and regulations, including G.L. c. 93I; and the Massachusetts Statewide Records Retention Schedule must be followed.
 - Any person having access to the tax information must be informed of DOR's confidentiality requirements and the sanctions for unauthorized disclosure and sign DOR's confidentiality acknowledgement.
 - Access to confidential information may not be released to any third party without DOR's written approval.
 - DOR reserves the right to periodically review the use of the confidential tax information, including on-site audits and inspections, to reasonably determine and verify that the confidentiality of the DOR Information is maintained in accordance with the terms of this Agreement, and that the information is used only for authorized purposes.
 - DOR may discontinue or suspend the provision of the tax information immediately if it determines that any term of this Agreement has been violated.

- In accordance with M.G.L. c.151:
 - Privileged unemployment tax information shall be stored in a place physically secure from access by unauthorized persons.
 - Privileged unemployment tax information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
 - Privileged unemployment tax information shall be returned to the agency providing the information when no longer needed for the purposes of this Agreement or upon termination of this Agreement.
 - Prior to accessing privileged unemployment tax information, parties shall agree to: (1) instruct all personnel having access to the privileged unemployment tax information about confidentiality requirements and the sanctions for unauthorized disclosure, (2) sign an acknowledgement that all personnel having access to the privileged unemployment tax information have been so instructed, and (3) allow with reasonable notice on-site inspections by the party providing the privileged unemployment tax information.
- In accordance with M.G.L. c.93H, agencies shall safeguard personal information of residents of the Commonwealth.

For further information please contact:

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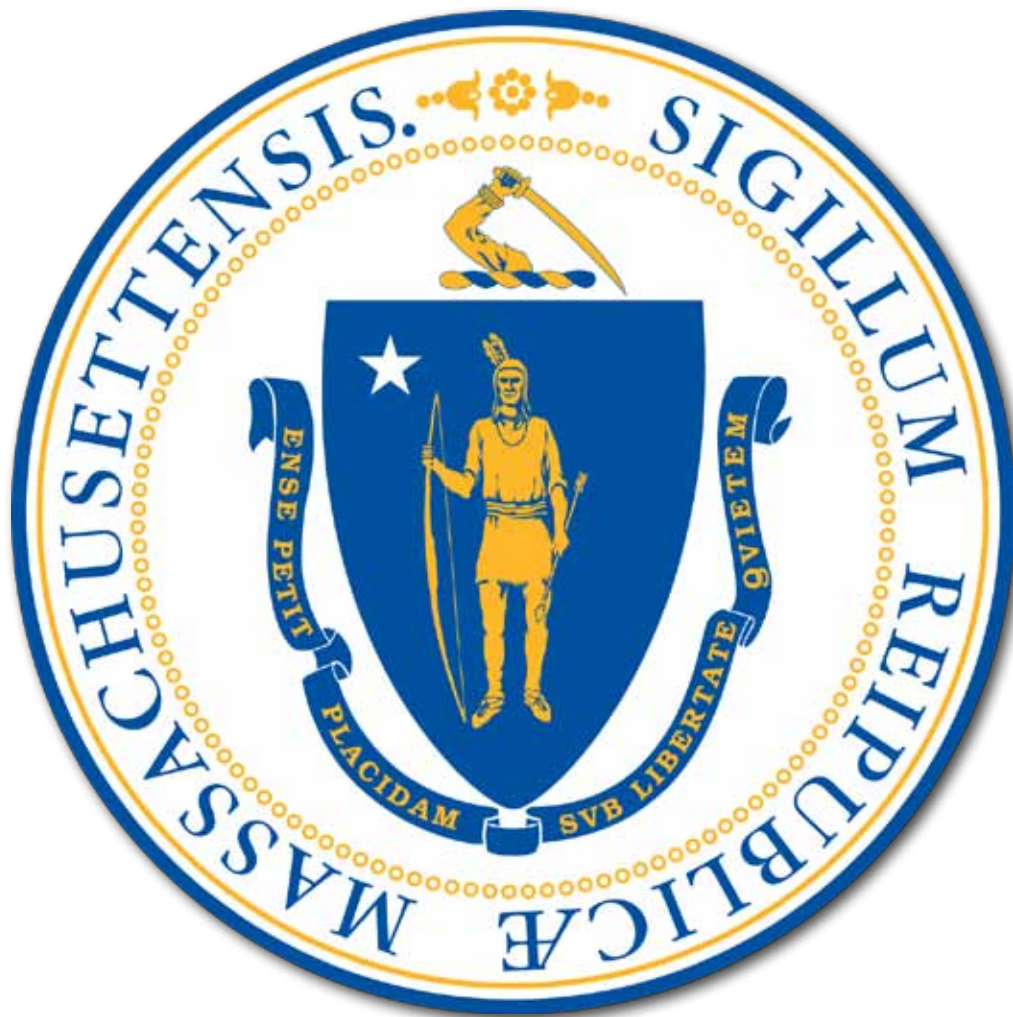
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Task Force Members:

Alcoholic Beverages Control Commission • Department of Industrial Accidents •
Department of Labor Standards • Department of Public Safety •
Department of Revenue • Department of Unemployment Assistance •
Division of Banks • Division of Capital Asset Management and Maintenance •
Division of Professional Licensure • Fair Labor Division, Massachusetts Attorney
General's Office • Insurance Fraud Bureau • Massachusetts Commission
Against Discrimination • Massachusetts Office of Refugees and Immigrants •
Office of Small Business and Entrepreneurship • Supplier Diversity Office

COMMONWEALTH OF MASSACHUSETTS

Deval L. Patrick, Governor

Joanne F. Goldstein, Secretary,
Executive Office of Labor and Workforce Development

Report Submitted by:
Heather Rowe, Interim Director, Joint Task Force

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