

THE COUNCIL ON THE UNDERGROUND ECONOMY (CUE)

ANNUAL REPORT

☎ (877) 96-LABOR

✉ cuetips@mass.gov

2023



JUNE 28, 2024

Dear Chair Jehlen and Vice-Chair Diggs,

On behalf of the Council on the Underground Economy (CUE), I am pleased to present the CUE's 2023 Annual Report. The Healey-Driscoll Administration remains committed to the mission of the CUE, working collaboratively across state and federal government to fight against workplace fraud, employee misclassification, nonpayment of taxes, and more.

As described in Section 25 of Chapter 23 of the Massachusetts General Laws, the Executive Office of Labor and Workforce Development (EOLWD) convenes several state and federal agencies who extend leadership and expertise on the CUE to serve employers, taxpayers, and workers across Massachusetts with the goal of stopping unfair business practices and promoting compliance with applicable laws. EOLWD is grateful for this continued partnership to ensure compliance with the Commonwealth's employment, licensing, and tax laws.

In 2023, the CUE's investigators met regularly to discuss common themes and promote related enforcement. In planning strategically to improve coordination and outcomes, EOLWD is spearheading plans to launch a new online system for receiving and tracking CUE tips. These enhancements will be critical. In 2023 alone, the CUE received over 170 calls and online tips with allegations ranging from wage and hour violations to more complex employee misclassification issues.

Working with CUE agency partners, the CUE took action, including referring complaints to appropriate agencies for follow-up, sending allegations for further investigation, or assessing fines or penalties against non-compliant employers. As a result of this collaboration, the CUE reported \$1.04 million in 2023.

Thank you to all Executive Branch partners, as well as the Fair Labor Division with the Office of the Attorney General, the Insurance Fraud Bureau, the Alcoholic Beverages Control Commission with the Office of the State Treasurer and Receiver General, and federal partners at the U.S. Department of Labor for their ongoing contributions.

Working collaboratively helps restores fairness to the Massachusetts economy and helps legitimate employers, workers, taxpayers, and consumers thrive in the Commonwealth.

Sincerely,

LAUREN JONES

SECRETARY OF LABOR AND WORKFORCE DEVELOPMENT

PARTNER AGENCY ABBREVIATIONS

ABCC: Alcoholic Beverages Control Commission
AGO-FLD: Office of the Attorney General - Fair Labor Division
DCAMM: Division of Capital Asset Management and Maintenance
DFML: Department of Family and Medical Leave
DIA: Department of Industrial Accidents
DLS: Department of Labor Standards
DOB: Division of Banks
DOL: Massachusetts Division of Occupational Licensure
DOR: Massachusetts Department of Revenue
DPH: Department of Public Health
DUA: Department of Unemployment Assistance
EBSA: USDOL Employee Benefits Security Administration
EOLWD: Executive Office of Labor and Workforce Development
IFB: Insurance Fraud Bureau
JTF: Joint Enforcement Task Force on the Underground Economy
MCAD: Massachusetts Commission Against Discrimination
MOBD: Massachusetts Office of Business Development
NLRB: National Labor Relations Board
OPSI: DOL Office of Public Safety and Inspections
ORI: Massachusetts Office for Refugees and Immigrants
OSD: Operational Services Division
USDOL: United States Department of Labor


THE COUNCIL ON THE UNDERGROUND ECONOMY



The Council on the Underground Economy (“CUE”) works to stop unfair business practices and promote compliance with Massachusetts law. CUE serves employers, taxpayers, industries, and workers across the Commonwealth by engaging in coordinated investigations and related enforcement actions. This is a collaborative effort between the state and federal governments and their partners. By pursuing tips and engaging in outreach, the CUE works to hold businesses accountable, bringing them into compliance with Massachusetts law and related tax requirements.

The CUE is focused on ensuring that all Massachusetts workers are treated fairly and creating a level playing field for all businesses based or operating in the Commonwealth.

The “underground economy” refers to individuals and businesses who conceal or misrepresent their employee populations to avoid one or more of their responsibilities related to wages, payroll taxes, insurance, licensing, safety, or other legal or regulatory requirements.



When the underground economy is allowed to flourish, workers are denied basic rights and protections, legitimate businesses cannot compete and shut down, consumers receive unregulated goods and unlicensed services, and the state is cheated out of revenue that could otherwise provide programs and services that benefit Massachusetts residents.

[Section 25 of Chapter 23 of the Massachusetts General Laws](#) formally established the Council on the Underground Economy. Led by the Executive Office of Labor and Workforce Development (EOLWD) in partnership with the federal government and agencies across the Commonwealth, including the Office of the Attorney General (AGO), Executive Office of Public Safety and Security (EOPSS), the Department of Revenue (DOR), the Division of Occupational Licensure (DOL), and in collaboration with the legislature, business, organized labor, nonprofits, and others, the CUE primarily focuses on several key items:

1. streamlines collaborative and targeted investigation and enforcement actions;
2. educates business owners and employees about applicable requirements and potential harms caused by the underground economy;
3. helps to restore competitive equality for law-abiding businesses;
4. assesses and evaluates investigative and enforcement methods and develops and recommends strategies to improve these methods;
5. collaborates to assist vulnerable populations that have been exploited by the underground economy and misclassification, including, but not limited, to immigrant workers; and
6. preserves taxpayer dollars and ensures proper payment of taxes; and
7. protects worker health, safety, wages, rights, and benefits.

The CUE is the successor entity to the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, established by Executive Order in March of 2008. It was first codified in 2015.

Important Definitional Terms

- The “underground economy” refers to businesses and/or individuals that utilize schemes to conceal or misrepresent their employee population(s) to avoid legal or reporting obligations. Specifically, the underground economy means any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory, or taxing agencies, including tax evasion or fraud, employee misclassification, wage theft, or unreported wages.
- Cash wages are wages illegally paid in cash (or “under the table”) to avoid payroll related expenses (e.g., business expenses associated with taxes or insurance).
- Child labor violations, in the context of the CUE, constitute work performed illegally by minors who are either too young to work generally, lack statutory permission to work, or who are too young to perform work in the times of day, cumulative hours or, at the specific job they are doing.
- Employee misclassification violations occur when a worker is paid as something other than an employee (such as an independent contractor), when by law that worker is really an employee. When employees are incorrectly classified, costs for insurance (including unemployment and workers compensation), payroll taxes, licenses, employee benefits, and safety equipment and conditions are reduced, in turn negatively impacting workers, other businesses, and Commonwealth taxpayers more broadly.
- Licensure is the practice of ensuring that qualified individuals are credentialed in a particular area or trade. Credentialing requirements are frequently established by law, regulation, or licensing entity. Fair and consistent enforcement of licensing laws and regulations ensures that licensed, qualified individuals and businesses are providing services to consumers.

- Prevailing wage is the minimum hourly rate that must be paid on a public works project. These rates vary by craft, trade, or location and are maintained by the Department of Labor Standards (DOLS) and apply to union and non-union employers and employees on any public works project. The Fair Labor Division within the Office of the Attorney General enforces these laws.
- Tax evasion is a crime, frequently stemming from an individual or business's failure to pay taxes or file a tax return.
- Wage and/or hour violations occur when employers are not in compliance with Massachusetts's wage and hour laws. Wage and hour laws establish how, when, and how much workers must be paid, including provisions regarding minimum wage, overtime, timely payment, sick time, meal breaks, temporary worker protections, domestic worker protections, recordkeeping, and more.
- Workers' compensation violations occur when businesses fail to secure and maintain workers' compensation insurance coverage for their employees.
- Worker health and safety violations may exist where workers are exposed to hazardous circumstances, conditions, practices, or operations.

[illegible]

2023 Results

The CUE's investigators meet monthly and review complaints, referrals, and tips from the CUE tip line. The investigators coordinate to help bring businesses into compliance and level the playing field across the state.

In 2023, the CUE received 170 tips. Based on these tips and the investigative efforts of CUE member agencies, \$1,044,201.41 were ordered or assessed. These recovered dollars were then re-distributed, either back to the enforcing agency, or in some cases, as restitution directly to the affected workers.

Figure 1: 2023 Results

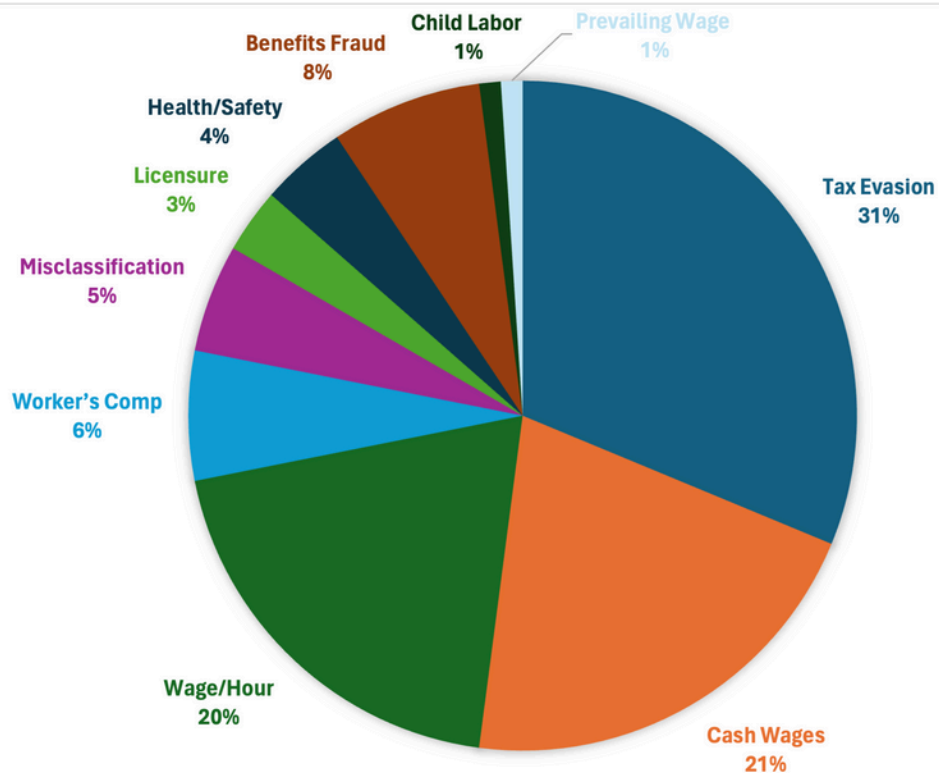
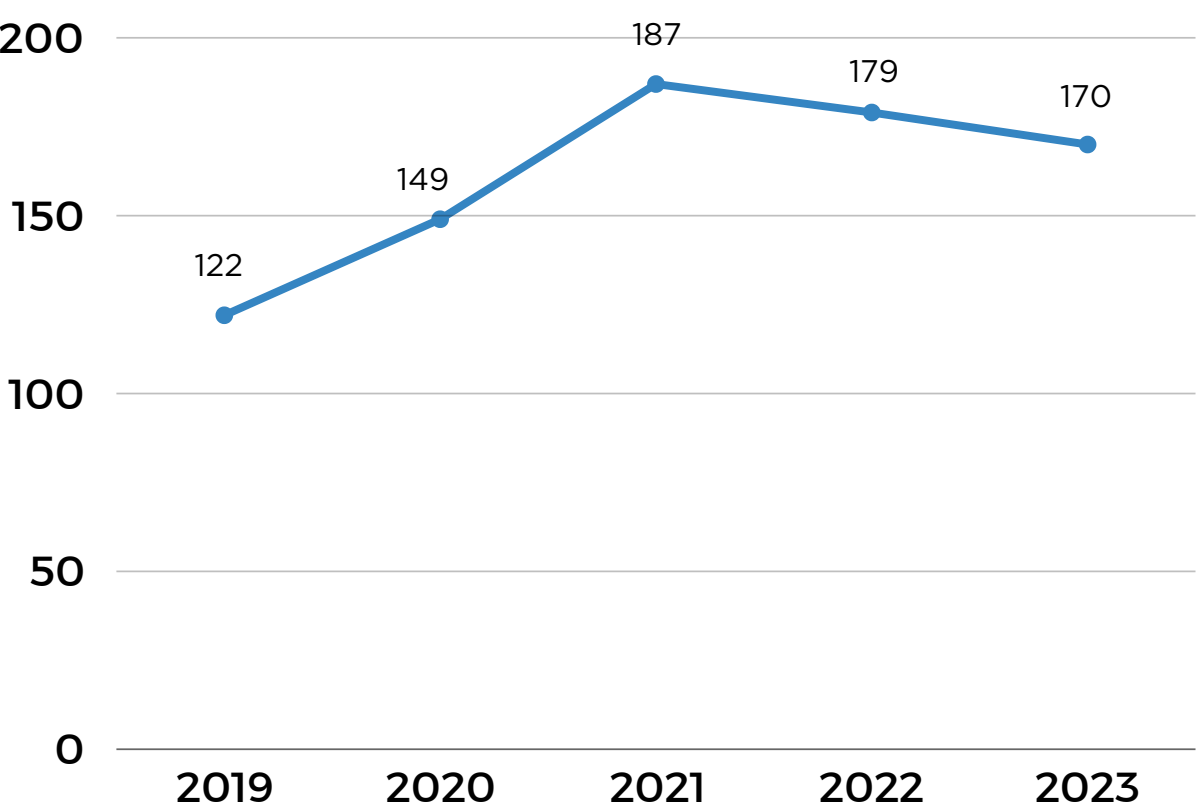


Figure 2: Number of tips received by the CUE between 2019 - 2023



2023 Funds Ordered and Assessed by Reporting Agencies

Attorney General's Fair Labor Division	\$23,400.00
Department of Unemployment Assistance	\$639,918.41
Division of Occupational Licensure	\$1,000.00
Department of Revenue	\$12,383.00
Department of Labor Standards	7,500.00
USDOL Wage & Hour	\$360,000.00
Total:	\$1,044,201.41

The Insurance Fraud Bureau closed five CUE cases in 2023 without recommendations for related charges; no new IFB CUE cases were opened, referred for prosecution, nor was restitution ordered.

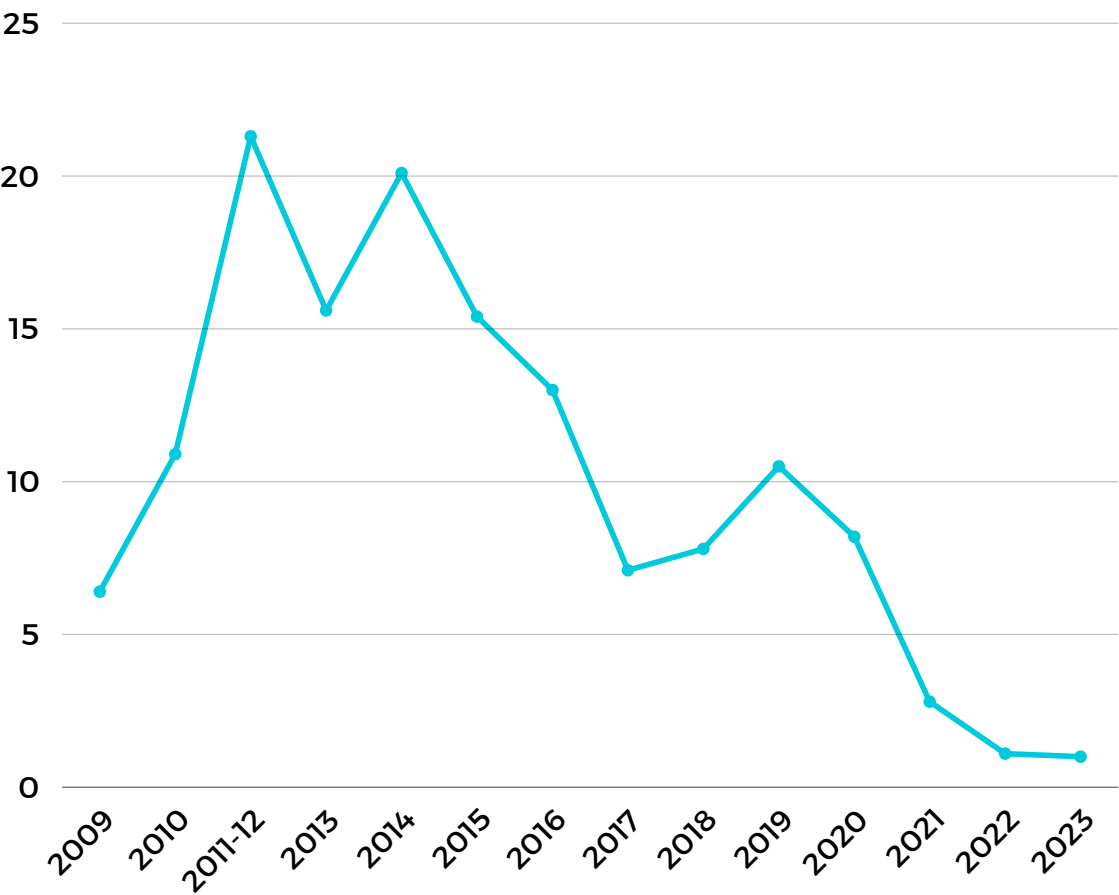
When workers are paid in cash, they miss out on protections and benefits available to other workers.



Revenue 2009-Present

Since 2009, CUE operations have ordered/assessed more than \$104 million from non-compliant businesses. These collections are the result of tips, complaints, or referrals given to the CUE’s investigators.

Figure 3: Revenue Generated by the CUE between 2009 - Present (Measured in Millions)



2023 total ordered/assessed: \$1,044,201.41

TOTAL ordered/assessed: \$143,540,479.18 (March of 2008 – December 2023)

What's Next for the CUE?

The Healey-Driscoll Administration plans to revitalize CUE operations. Specifically, the Executive Office of Labor and Workforce Development plans to overhaul the CUE's online presence to build both a new web portal and telephonic tip line. This will enable us to better facilitate cross-agency collaboration at the state and federal level.

The web portal will allow for seamless integration of the investigative workflow across CUE partner agencies. Individual complaints, tips, or referrals can be streamlined using these improved resources. Workers, stakeholders, advocates, and others from the business community and elsewhere can more easily (and anonymously) report tips to the CUE investigators for subsequent investigation.

The CUE remains committed to promoting worker safety, fairness, and opportunity across the Massachusetts economy. The CUE will continue to meet regularly to strategize ways to continue to improve.

Appendix

Common Interest Agreement among CUE Partners

**AMENDMENT TO THE NOVEMBER 17, 2014 COMMON INTEREST AGREEMENT BETWEEN
PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR AND THE COMMONWEALTH OF
MASSACHUSETTS EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT, JOINT
ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE
MISCLASSIFICATION/COUNCIL ON THE UNDERGROUND ECONOMY AND THE FEBRUARY 5, 2018
RENEWAL AND AMENDMENT OF THE COMMON INTEREST AGREEMENT**

This Amendment to the November 17, 2014 Common Interest Agreement Between Participating Agencies of the U.S. Department of Labor and the Commonwealth of Massachusetts Executive Office of Labor and Workforce Development, Joint Enforcement Task Force on the Underground Economy and Employee Misclassification/Council On the Underground Economy (collectively, "The Parties") and the February 5, 2018 Renewal and Amendment of the Common Interest Agreement (hereinafter, collectively, the "Common Interest Agreement") is entered into by and between the U.S. Department of Labor, the Commonwealth of Massachusetts Executive Office of Labor and Workforce Development and the Commonwealth of Massachusetts Department of Revenue. This Amendment renews the Common Interest Agreement for a further term of four years from the effective date of this Amendment. As the Common Interest Agreement expired on February 5, 2021, the Parties agree that the Effective Date of this Amendment shall be February 5, 2021.

Appendix A of the Common Interest Agreement is amended:

1. by replacing the first bullet with the following: Pursuant to M.G.L. c. 62C, § 21(b)(26), DOR is authorized to disclose tax return information "relating to the classification by a business entity of individuals providing services to such business entity as employees or independent contractors, including but not limited to information relating to the business entity's withholding or failure to withhold personal income tax pursuant to [M.G.L.] chapter 62B with respect to payments to particular individuals and the amount of any such payments or withholding" to members of the Council on the Underground Economy (CUE). In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 21B:
2. by deleting the following sub-bullet under DOR disclosure of tax information (third sub-bullet):
 - 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.

and replacing it with the following three sub-bullets:

- Unless specifically requested and subject to additional security requirements, DOR will only release the last four numbers of an individual's Social Security number. All information under this Agreement will be exchanged in a secure manner, as specified by the parties.
- Before a CUE Member Employee or an Employee of Participating Agencies of the U.S. Department of Labor can access DOR's information, such Employee will be required to sign the attached "Massachusetts Department of Revenue Compliance Agreement." Thereafter, on an annual basis, each such employee is required to read and sign the Compliance Agreement.
- Exchange of the DOR information pursuant to this Agreement is not a public disclosure under the Massachusetts Public Records Law (M.G.L. c. 4, §7(26) and M.G.L. c. 66, § 10). Only general, aggregate information may be discussed or disclosed during any "public CUE Council meeting," unless that information is otherwise publicly available. Names of companies under audit, total wages owed by a named company, etc., may not be discussed in a public CUE Council meeting. For the purposes of this Common Interest Agreement, a public CUE Council meeting is a meeting

at which any person other than a CUE Member, a party to the Common Interest Agreement or their representative/s is present, provided that a person who is not a CUE Member Employee shall sign the Compliance Agreement or an agreement that is equally protective of DOR's information, as may be agreed upon with DOR.

All other terms and conditions remain the same.

This Amendment is effective as of February 5, 2021.

United States Department of Labor

By: Jessica Looman
Wage & Hour Division

Name: Jessica Looman

Title: Acting Administrator

By: Doug L. Parker
Occupational Safety & Health Administration

Name: Douglas L. Parker

Title: Assistant Secretary

By: **TIMOTHY HAUSER** Digitally signed by TIMOTHY HAUSER
Date: 2022.02.25 13:15:43 -05'00'
Employee Benefits Security Administration

Name: Timothy D. Hauser

Title: Deputy Assistant Secretary for Program Operations

By: **JENNY YANG** Digitally signed by JENNY YANG
Date: 2022.03.01 20:45:36 -05'00'
Office of Federal Contract Compliance

Name: Jenny Yang

Title: Director

By: Seema Nanda
Office of the Solicitor

Name: Seema Nanda

Title: Solicitor of Labor

Massachusetts Executive Office of Labor and Workforce Development

By: Rosalin Acosta

Name: Rosalin Acosta

Title: Secretary

By: Geoffrey E. Snyder
Massachusetts Department of Revenue

Name: Geoffrey E. Snyder

Title: Commissioner

**MASSACHUSETTS DEPARTMENT OF REVENUE
U.S. DOL PARTICIPANT EMPLOYEE COMPLIANCE AGREEMENT**

A. CONFIDENTIALITY POLICY

The U.S. Department of Labor ("U.S. DOL") and its Participating Agencies in the Commonwealth of Massachusetts Council on the Underground Economy ("U.S. DOL Participant" or "U.S. DOL Participants") has entered into a Common Interest Agreement with the Massachusetts Department of Revenue ("DOR") which allows U.S. DOL Participants to receive certain confidential information from DOR.

I, _____, a U.S. DOL Participant Employee, hereby acknowledge that in connection with my performance of activities for U.S. Department of Labor's [IDENTIFY applicable U.S. DOL program] I may have access to DOR Information.

For the purpose of this Agreement, DOR Information shall consist of any personally identifiable information provided by DOR to the U.S. DOL Participant in the course of work under the Common Interest Agreement and may include, but is not necessarily limited to, state tax return information, as well as "personal data" as defined in M.G.L. c. 66A and "personal information" as defined in M.G.L. c. 93H. In addition, DOR Information shall also include any of the following information, if provided by DOR to the U.S. DOL Participant in the course of work under the Common Interest Agreement: computer systems information; audit, compliance and collection criteria and techniques.

Subject to disclosures of information that may be required by law, court order, or congressional inquiry and subject to the provisions of the Common Interest Agreement with respect to privileged information, including but not limited to notice requirements, I will at all times maintain the confidentiality of the DOR Information. I will not "browse" (defined as an unauthorized willful inspection) the DOR Information for any purpose. I will not access, or attempt to access, request, use, or modify DOR Information concerning myself for any purpose. I will not access, or attempt to access, request, use, or modify any DOR Information relating to any individual or entity with whom I have a personal or financial relationship, for any reason. I will not, either directly or indirectly, disclose or otherwise make the DOR Information available to any unauthorized person (defined as a person who does not have a legitimate business reason to view, access or use the DOR Information) at any time, either during or after my employment..

I understand that, pursuant to M.G.L. c. 93H, § 3, DOR is required to provide written notification to the Attorney General, the Director of Consumer Affairs and Business Regulation, the Executive Office of Technology Services and Security, the Public Records Division and the affected individual when a person knows or has reason to know of any unauthorized access or use (defined as having no legitimate business reason to access or use) of an individual's personal information.

I also understand that the following Massachusetts Statutes Relating to Confidentiality of DOR Information is being provided to me because as part of my job duties at the U.S. Department of Labor in performing activities of [IDENTIFY applicable U.S. Dept. of Labor program] I may have access to the DOR Information.

B. SUMMARY OF MASSACHUSETTS STATUTES RELATING TO CONFIDENTIALITY OF DOR INFORMATION

To the extent not inconsistent with federal law, I agree to comply with all laws relating to confidentiality of the Information, including but not limited to, the following:

- 1) Fair Information Practices Act ("FIPA"), M.G.L. c. 66A: Prohibits the unauthorized disclosure of "personal data," as defined in M.G.L. c. 66A. General Laws chapter 214, section 3B provides for injunctive and other nonmonetary relief for a violation of the statute. General Laws chapter 214, section 3B also provides for injunctive and other nonmonetary relief for violation of this statute.
- 2) M.G.L. c. 62C, § 21: Prohibits unauthorized disclosure of tax information or returns as defined in 830 CMR 62C.21.1. The word "return" is defined very broadly in 830 CMR 62C.21.1 and includes information developed by DOR. A violation of this statute is punishable by a fine of not more than \$1,000 and/or by imprisonment for not more than six months, and by disqualification from holding office in the Commonwealth for a period not exceeding three years.
- 3) M.G.L. c. 62C, § 21B: Prohibits unauthorized willful inspection of tax information or returns as defined in 830 CMR 62C.21.1. The word "return" is defined very broadly in 830 CMR 62C.21.1 and includes information developed by DOR. A violation of this statute is punishable by a fine of not more than \$1,000 per return, document, or taxpayer and/or by imprisonment for not more than one year, and by disqualification from holding office in the Commonwealth for a period not exceeding three years. This section provides that browsing of tax information by an employee of the Commonwealth shall be grounds for dismissal of the employee. This section also provides that browsing by a contractor of the Commonwealth or an employee of a contractor of the Commonwealth is grounds for prohibiting that person from performing services under the contractor's contract with the Commonwealth, as well as cause for terminating the contract and for prohibiting the contractor from entering into a future contract with the Commonwealth.
- 4) M.G.L. c. 62E, § 8: Prohibits unauthorized disclosure of information obtained from the wage reporting and financial institution match system. A violation of this statute is punishable by a fine of \$100 per offense.

C. NON-DISCLOSURE AGREEMENT – SECURITY INFORMATION

Under the Common Interest Agreement, I may also be receiving or accessing information or data from DOR that is confidential, proprietary or sensitive, including, but not limited to, information relating to software, processes, data files, computer programs and materials, source code and object code, regardless of the medium, and information contained therein (hereinafter, collectively, "Security Information."). This Security Information is being provided to me solely in connection with my performance of services under the Common Interest Agreement and I will use this Security Information only in connection with the performance of such services.

If I receive or have access to the Security Information, I will physically safeguard such information at all times. I understand that if I improperly disseminate the Security Information for purposes other than in connection with the performance of my services under the Common Interest Agreement, I may be subject to sanctions.

D. BEST PRACTICES FOR SAFEGUARDING DOR INFORMATION

U.S. DOL Participant Employees should only collect DOR Information that is necessary; access information only for business purposes; use DOR Information only for the purpose for which it is collected; keep the information confidential; and disclose DOR Information only as permitted by this Compliance Agreement and the Common Interest Agreement.

The following are examples of best practices for safeguarding DOR Information:

- Collect or access DOR Information only for legitimate, work-related purposes.
- Use or disclose DOR Information only if authorized for a business need.
- Do not leave DOR Information unattended.
- Do not leave or discuss DOR Information in public areas.
- Share DOR Information only as permitted by this Compliance Agreement and the Common Interest Agreement in accordance with statutory authority.
- Discuss matters concerning DOR Information only with authorized personnel.
- Retain DOR Information only as long as necessary or as required by law.
- Dispose of DOR Information securely (e.g., locked shred bin).
- Follow a “clean desk practice.” Clear your desk of any DOR Information and lock your computer screen when leaving your workspace.
- Ensure fax numbers, email addresses or mailing names and addresses are correct.
- Confirm that the DOR Information being discussed pertains to the person to whom you are speaking.
- Beware of social engineering¹ schemes.

E. REPORTING OF DISCLOSURE RELATED ISSUES

I will immediately notify my supervisor and/or manager if any DOR or Security Information in my possession is improperly used or accessed, or if I discover any possible disclosure, unauthorized access or browsing of the DOR or Security Information, or unauthorized use of the DOR or Security Information.

F. QUESTIONS

If I have any questions regarding any of the above, I will contact my supervisor, manager and/or DOR's Administrative Affairs Division at 617-626-2130 or RMABInformation@dor.state.ma.us.

G. U.S. DOL PARTICIPANT EMPLOYEE SIGNATURE

Name (print): _____

Signature: _____

Date _____

¹ Social engineering is the act of stealing personal identification by deceiving people to make unwarranted disclosures.