



COMMONWEALTH OF MASSACHUSETTS

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**Timothy P. Murray,
Lieutenant Governor**

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

Task Force Members

Department of
Unemployment Assistance

Department of
Industrial Accidents

Fair Labor Division,
Massachusetts Attorney
General's Office

Department of Revenue

Department of Labor Standards

Division of Capital
Asset Management

Alcoholic Beverages
Control Commission

Division of Professional Licensure

Department of Public Safety

Massachusetts Commission
Against Discrimination

Division of Banks

Massachusetts Office of Refugees
and Immigrants

Office of Small Business
and Entrepreneurship

Supplier Diversity Office

Insurance Fraud Bureau (Partner)

Report Submitted by:

Drew Cahill, Director
Joint Task Force

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

2011 Annual Report

1-877-96-LABOR
www.mass.gov/lwd/jtf

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

Annual Report 2011



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
TIMOTHY P. MURRAY
LT. GOVERNOR

JOANNE F. GOLDSTEIN
SECRETARY
DREW CAHILL
DIRECTOR
JOINT ENFORCEMENT
TASK FORCE

April, 2012

Dear Governor Patrick:

On behalf of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, we are pleased to present you with the Task Force's 3rd 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 providing an opportunity for state agencies and constitutional offices to work in collaboration to ensure stronger compliance with the Commonwealth's labor, licensing and tax laws.

Now in our fourth 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 to educate the public. Following these guiding principles, Task Force member agencies are now functioning as a collective force, working smarter in the fight to combat 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. The cooperative effort put forth by these agencies and their representatives helps 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.

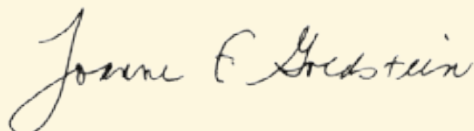
We are pleased to present you with this Annual Report, which details the works of the Task Force during its third year. Included is a chart highlighting information about the funds recovered through the Task Force, along with summaries of each member agency's participation in responding to Task Force referrals and addressing violations. Other sections of the report describe initiatives being pursued to assist the Task Force in increasing the volume and impact of our enforcement, including the establishment of a technologically advanced fraud detection system to be administered by the Department of Unemployment Assistance, and the undertaking of a research study on the underground economy. Lastly, the report also includes a summary and the complete text of a recently signed Common Interest Agreement between the Task Force and the United States Department of Labor announcing our intention to cooperate on employer enforcement and education in the months and years ahead.

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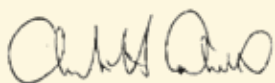
Our agencies are committed to building on our efforts to date, including through the development of new cross-agency enforcement and education methods, and we look forward to continued success.

Sincerely,



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

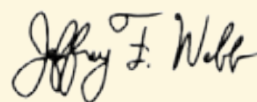
Principal Members:



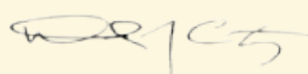
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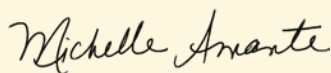
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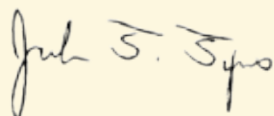
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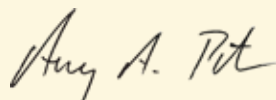
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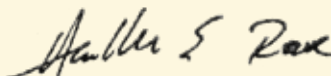
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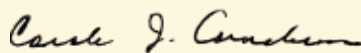
André Porter,
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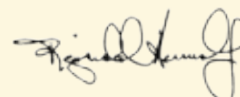
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Executive Summary

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 an effort to coordinate the Commonwealth's attempt to eliminate workplace 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, and benefit rights of workers; and
- restore competitive equality for law-abiding businesses.

The Problem in Massachusetts

The majority of Massachusetts employers pay their applicable taxes, classify their workers legally, and contribute in a responsible manner as a part of our economy and as members of the community. Nevertheless, an underground economy exists in which unscrupulous employers compete unfairly by paying workers "off the books", paying sub-minimum wages, and illegally misclassifying their workers so as to avoid paying withholding taxes, and unemployment or workers' compensation insurance. These practices put a great strain on those businesses playing by the rules, workers attempting to earn an honest day's pay for an honest day's work, and community resources. While education and outreach to business is needed and is a constant focus of the Task Force, it is important to acknowledge that a large portion of our enforcement deals with individuals and businesses that willfully and intentionally avoid labor, license and tax laws. Moreover, such activity goes largely unreported, making it difficult to fully measure the cost of the underground economy in actual dollars and cents. While the JTF continues to make great gains in addressing this problem, agency participants understand that there remains much work to be done.

Commonwealth of Massachusetts and United States Department of Labor Common Interest Agreement

In 2011, the Task Force negotiated and signed a Memorandum of Understanding (MOU) with the United States Department of Labor (US DOL), putting Massachusetts in position as one of the first seven states in the country to begin a collaborative relationship with the federal government regarding enforcement against employers operating in the underground economy. The agreements were announced at a signing event on September 19, 2011 in Washington D.C. by US Secretary of Labor Hilda Solis, Internal Revenue Service Commissioner Doug Shulman, and representatives of the seven states, including Massachusetts Secretary of Labor and Workforce Development, Joanne Goldstein.

JTF Results

During the JTF's third-year of operation, as a result of referrals and cooperative oversight, member agencies recovered \$10,930,933 (see chart, page 4), an increase of \$4,441,364 from last year's recoveries totaling \$6,489,549, and an increase of \$9,491,909 from the Task Force's first year recoveries totalling \$1,439,024. 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 the member agencies collect through their ordinary enforcement efforts.

In its third year, the JTF received 353 complaints through the JTF referral phone line and on-line referral service along with thousands of complaints made directly to member agencies. The work of the JTF in investigating

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these complaints, conducting over 8,000 compliance cross-checks, and taking cross-agency action produced the following results:

- DOR reviewed and closed 191 JTF cases for audit for suspected payroll, income, corporate, sales, or meals tax evasion and misclassification of employees, resulting in \$3,665,097 in overdue taxes collected.
- The Attorney General's Office (AGO) recovered \$3,033,148 in restitution, penalties, and fines related to violations of the state's wage and hour, and independent contractor law.
- The Department of Unemployment Assistance (DUA) recovered \$2,365,237 in new unemployment insurance taxes mostly through compliance cross-checks on employers in coordination with other agencies, including the Department of Labor Standards (DLS), Division of Capital Asset Management (DCAM), the Alcoholic Beverages Control Commission (ABCC), and the Department of Industrial Accidents (DIA).
- The DIA brought 7,598 workers under workers' compensation insurance coverage that had previously been without coverage, issued 3,085 Stop Work Orders for lack of required workers' compensation insurance coverage, and recovered \$2,167,311 in fines from employers for workers' compensation violations.
- The Division of Capital Asset Management (DCAM) assisted the Commonwealth in collecting \$1,168,987 and bringing 111 contractors into compliance on outstanding DUA liabilities. This was accomplished by providing notice to DCAM applicants that their DUA obligations must be fulfilled before they can be eligible for certification. DCAM continues to halt the certification process for any contractors who have not brought themselves into compliance with DUA obligations and denies these applicants from certification. DCAM denied certification to 3 contractors that failed to come into compliance with the DUA during the Task Force's third year.

24,000+ Workers brought under Workers' Compensation Insurance Coverage

The JTF is pleased to announce that 24,232 workers were brought under Workers' Compensation Insurance coverage during the Task Force's first 3 years between April 1, 2008 and March 31, 2011 as a result of 9,877 Stop Work Orders issued by Task Force field investigators at the Department of Industrial Accidents (DIA) against employers operating illegally without Workers' Compensation Insurance coverage.

New Enforcement of Lead Safety Standards on Renovation, Repair, and Painting Jobs

Enforcing a new Environmental Protection Agency (EPA) regulation, Task Force investigators with the Department of Labor Standards (DLS) conducted hundreds of site inspections on renovation, repair, and painting (RRP) projects across the state since October 2011. As a result, DLS has issued fines to 13 contractors for violations including the following:

3rd Year Highlights

- **DIA brought 7,598 workers under workers' compensation insurance coverage that had previously been without coverage.**
- **AGO recovered \$3,033,148 in restitution, penalties, and fines related to violations of the state's wage and hour, and independent contractor law.**
- **DOR conducted JTF audits resulting in \$3,665,097 in overdue taxes collected primarily as a result of misclassification of workers as independent contractors, under-the-table cash payment schemes, and non-filing or under-filing of state taxes.**
- **DUA and DIA conducted over 8,000 compliance checks with ABCC, DLS, and DCAM on businesses applying for various license and certification approvals with the Commonwealth, resulting in collection of \$2,365,237 in previously unpaid unemployment insurance taxes on the part of employers.**
- **MCAD and DOB joined the JTF as new member agencies in 2011 with the goal of assisting the JTF in enforcement and education in the areas of employment discrimination and the Commonwealth's banking and financial system, respectively.**

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- Failure to have their employees trained in the use of lead-safe work practices that minimize occupants' exposure to lead hazards.
- Failure to maintain the proper license to perform renovation, repair and painting work;
- Failure to use proper equipment to ensure the containment of lead dust.

Civil penalties issued to contractors for violations of the new RRP Rule have totaled over \$35,000.00. These citations are listed on a new DLS Enforcement Actions page on the department's website at <http://www.mass.gov/dols/enforcement-actions>.

DUA Calendar Year 2011 Recoveries Break \$6 Million Mark

JTF investigators at DUA, working in conjunction with the Alcoholic Beverages Control Commission (ABCC), the Division of Capital Asset Management (DCAM), and DLS, recovered \$6,653,085 from employers in unpaid unemployment taxes in 2011. As part of their role with the JTF, investigators and staff with DUA, ABCC, DCAM, and DLS conducted thousands of cross-agency compliance checks during the 2011 calendar year. As a result of this review, 604 businesses were found to be in violation of state law and were required to pay unemployment taxes owed in order to be considered for a state license or certification. The following is a description of DUA's recoveries working with each of the other agencies:

- Through JTF investigations between DUA and ABCC in 2011, the state recovered \$3,615,627 in previously unpaid unemployment taxes.
- Through JTF investigations between DUA and DLS in 2011, the state recovered \$1,568,209 in previously unpaid unemployment taxes.
- Through JTF investigations between DUA and DCAM in 2011, the state recovered \$1,469,249 in previously unpaid unemployment taxes.

Employer Education Program: "Compliance Made Simple"

"Compliance Made Simple" is an educational resource designed by the following Task Force member-agencies: the DIA, the DUA, the AGO, and the Office of Small Business and Entrepreneurship (OSBE). This power point and panel presentation provides employers with useful information that can help them develop wage, benefit, safety and health practices and policies for their businesses.

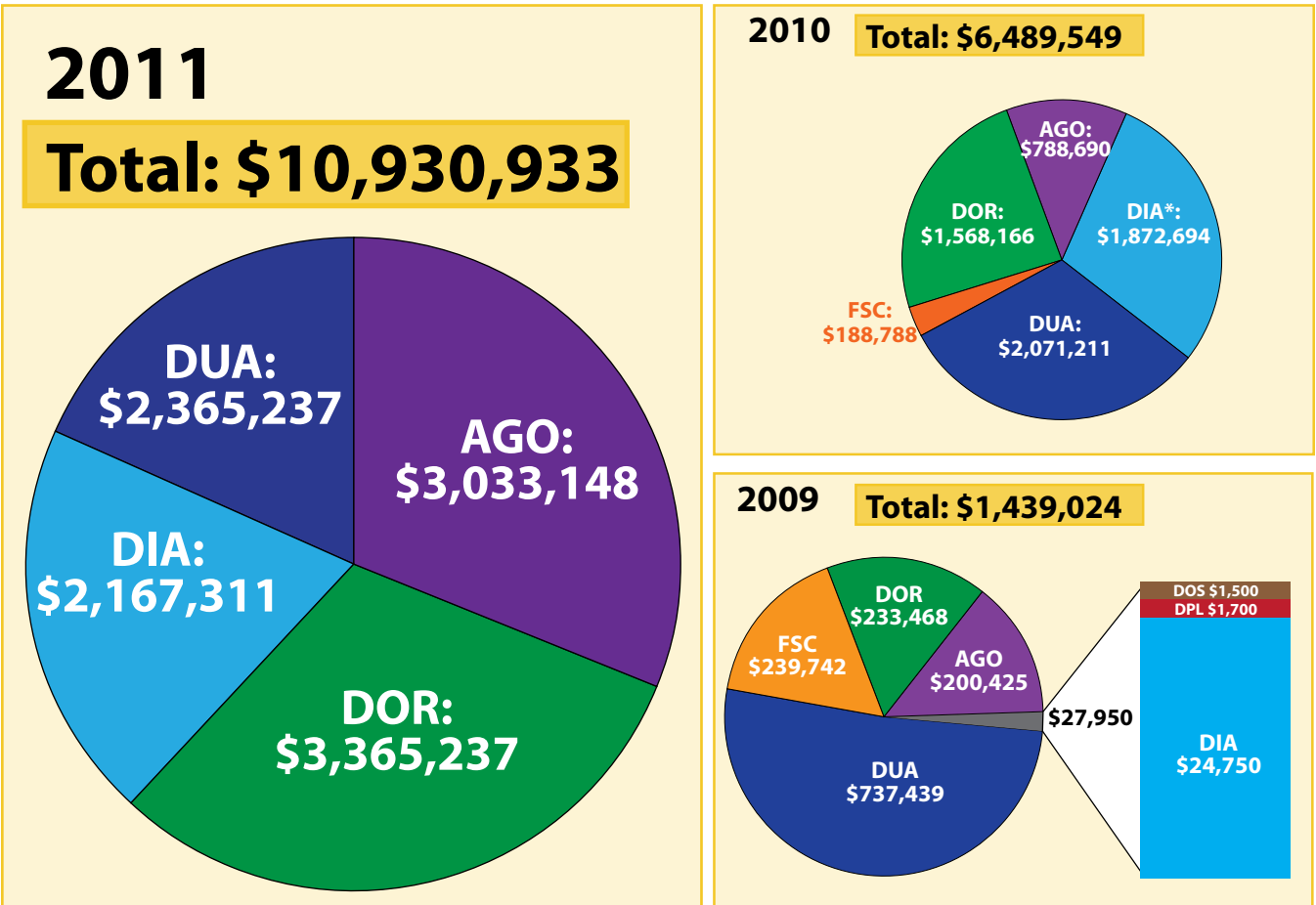
During 2011, "Compliance Made Simple" was presented in Sutton, Brockton, Salem and hosted by the Blackstone Valley Chamber of Commerce, Metro South Chamber of Commerce and The Enterprise Center at Salem State University, respectively.

Initiatives

As the Task Force operates in its fourth year, a number of initiatives are currently being undertaken to build on the work of the JTF's first three years, including: (1) the implementation of fraud detection technology by the Department of Unemployment Assistance (DUA) for purposes of identifying employer fraud and worker misclassification; (2) the commissioning of a research study to show the current depth and scope of employee misclassification and the underground economy in Massachusetts; (3) and the execution of an education and outreach plan to further inform workers, businesses, and the general public about the state's employer compliance standards and resources for addressing violations. These initiatives will be explained in greater detail in Section 4 of the report on Page 8.

Recovered Funds

Revenue Generated Through the JTF



	Year 3	Year 2	Year 1
DUA UI taxes:	\$2,365,237	\$2,071,211	\$737,439
DUA FSC:		\$188,788	\$239,742
DOR:	\$3,665,097	\$1,568,166	\$233,468
AGO:	\$3,033,148	\$788,690	\$200,425
DIA*:	\$2,167,311	\$1,872,694	\$24,750
Total:	\$10,930,933	\$6,489,549	\$1,439,024**

* DIA has a complimentary enforcement operation, and certain DIA recovered funds reported in Years 2 and 3 came as a result of that operation.

** The Year 1 recoveries totaled here also include \$1,500 recovered by the Department of Labor Standards, and \$1,700 recovered by the Division of Professional Licensure.

Results of Referrals and Cooperative Oversight

Reporting Suspected Cases of Fraud and Misclassification to the Task Force

The web site of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, www.mass.gov/lwd/jtf, provides information about the underground economy, and how to take action when it comes to getting help with suspected cases of workplace fraud and employee misclassification. The web page provides the public with a form that can be completed and submitted to the JTF for suspected cases of fraud and misclassification. The JTF anonymous referral telephone line, 1-877-96-LABOR, provides another avenue for individuals to provide information on the underground economy to JTF member agencies.

JTF Referral Investigations

JTF member agencies that have enforcement authority over underground economy matters have tracked their activities with regard to JTF referrals and resulting investigations. In its third year, the Task Force reviewed 353 referrals and opened agency investigations when appropriate. These investigations, conducted on top of the agencies' independent investigatory and enforcement work, ranged from single-agency audits to multi-agency actions, with results ranging from stop work orders issued, to owed monies received, to prosecution of persons for egregious infractions, to 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. Those complaints that were not investigated either lacked sufficient information for follow-up or lacked relevance to the mission of the JTF. All information provided to the JTF is considered confidential and is not subject to public disclosure.

JTF Compliance Cross-Checking

JTF member 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 8000 compliance checks amongst agencies in the JTF's third year, to assist in enforcement against employers violating Massachusetts tax, labor and licensing laws. A compliance check occurs when a single Task Force member agency reviewing an employer's conduct for purposes of an ongoing investigation, license application, license renewal application, or procurement certification, inquires as to whether other Task Force member agencies are pursuing ongoing enforcement 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 and procurement agencies, and tax and labor enforcement agencies.

Member Agency Enforcement Activity

The Department of Unemployment Assistance (DUA) reviewed all relevant JTF referrals looking for Unemployment Insurance (UI) tax and Fair Share Contribution (FSC) violations such as failure to file, underreporting, failure to register, and/or failure to pay in full. DUA recovered \$2,365,237 in new unemployment insurance (UI) taxes and Fair Share contributions through referrals and compliance cross-checks with ABCC, DLS, DCAM and DIA.

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, DIA issued seven (7) stop work orders for lack of workers' compensation coverage. As a result, 146 workers received workers' compensation coverage, and DIA recovered \$38,600 in fines. In a complimentary enforcement process, DIA conducted 48,874 compliance checks, 6,149 investigations, and issued 3,078 stop work orders for lack of workers' compensation insurance resulting in \$1,746,823 in fines and 7,452 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. Additionally, 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 Attorney General's Office (AGO) reviewed all relevant complaints for potential violations of minimum wage and child labor laws; nonpayment of wages, prevailing wage violations; misclassification of employees¹; overtime pay violations; payroll record keeping; workers' compensation and unemployment insurance fraud and launched investigations in many cases, resulting in 54 civil citations, \$2,781,298 in restitution to workers, the state revenue, unemployment insurance, and workers' compensation insurance systems, and \$251,850 in fines.

The Department of Revenue (DOR) reviewed and closed 191 JTF cases for audit for suspected payroll, income, corporate, sales, or meals tax evasion and misclassification of employees, resulting in \$3,665,097 in overdue taxes collected. Most of the JTF cases involved businesses that have under reported or not filed corporate, sales, meals, withholding or personal income tax, improperly treated workers as independent contractors, or paid workers in cash.

1 M.G.L. c. 149, s. 148B, provides a three-part independent contractor test which requires that all three elements (commonly referred to as prongs one, two and three or the A, B, C test) must exist in order for an individual to be classified other than as an employee. The three prongs are: Freedom from Control, Service Outside the Employers Usual Course of Business, and, Independent Trade, Occupation, Profession or Business. The burden of proof is on the employer, and the inability of an employer to prove any one of the prongs is sufficient to conclude that the individual in question is an employee. See *Scalli v. Citizens Financial Group*, 2006 WL 1581625, 14 (D. Mass. 2006); *Rainbow Development, LLC v. Corn., Dept. of Industrial Accidents*, 2005 WL 3543770, X2 (Mass. Sup. Ct. 2005). The Commissioner of Revenue is charged with administering the Massachusetts wage withholding laws under M.G.L. c. 62B, which provides a different definition of employee than M.G.L. c. 149, s. 148B, for purposes of Massachusetts income tax withholding. See Department of Revenue TIR 05-1 1: Effect of New Employee Classification under M.G.L. c. 149, s. 148B on Withholding of Tax on Wages under M.G.L. c. 62B. In addition, a definition similar but not identical to M.G.L. c. 149, s. 148B, exists for unemployment insurance purposes. M.G.L. c. 151 A, s. 2. The Massachusetts Workers' Compensation Law also provides a different definition of employee. M.G.L. c. 152, s. 1(4).

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The Department of Labor Standards (DLS) assisted DUA in recovering over \$1 million in unpaid unemployment insurance obligations through a joint operation. 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 provided guidance to other JTF agencies in cases involving employers in each of these areas.

The Division of Capital Asset Management (DCAM) assisted the Commonwealth in collecting \$2,733,993 and bringing 111 contractors into compliance on outstanding DUA liabilities. This was accomplished by sending notices to the applicants that they must settle their DUA obligation before they can be eligible for DCAM certification to bid on Chapter 149 public building construction contracts. DCAM halts the certification process for any contractors who have not brought themselves into compliance with DUA obligations and denies these applicants from certification.

Additionally, DCAM denied certification to 3 contractors that failed to come into compliance with the DUA. Also, a total of 6 contractors were decertified and 32 were denied certification for a variety of reasons ranging from poor performance to non-compliance issues.

DCAM continues to cross-check the DIA's Stop Work Order Database, SDO's Decertification and Withdrawal Listings, DUA's listing of contractors with outstanding unemployment assistance liabilities, the OSHA website, Worker's Compensation Rating Insurance Bureau (WCRI) website, and the AG's list of debarred contractors as part of DCAM's standard certification application process. Additionally, each contractor's application is run through and checked against DCAM's internal JTF case tracking database prior to the issuance of a Certificate of Eligibility. Also, as part of its standard certification application process, DCAM circulates a weekly list of all contractor applicants received to all JTF partner agencies to inquire whether any other agency is working on any matters relating to the applicant.

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 in the employment setting, and strives to advance the civil rights of the people of the Commonwealth through law enforcement, outreach and training. MCAD provides guidance to JTF agencies regarding applicable laws and receives referrals where appropriate.

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

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. The DPS has provided background and specific information for investigations on the various license classifications which they oversee.

The Alcoholic Beverages Control Commission (ABCC), which investigates applications for liquor licenses, prosecutes violations of pertinent statutes and regulations and adjudicates disputes among members of the industry, participated in the recovery of over \$2 million for the state's unemployment tax system, and assisted JTF agencies in reviewing investigations relative to employers maintaining or applying for a liquor license in the Commonwealth.

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, the DOB provided assistance to JTF members with background information for ongoing investigations that involved Division licensed individuals and entities.

2011/2012 Goals and Initiatives

In its fourth year, the Task Force remains focused on increasing the volume and impact of cross-agency enforcement. This will be accomplished by building on the existing processes by which member agencies conduct cooperative investigations; and raising awareness and increasing education in the general public, the business community, and within government about the work of the Task Force agencies against the underground economy and the responsibilities facing employers in the Commonwealth.

There are a number of key initiatives being undertaken by the Task Force in furtherance of these goals.

Research Study on Employee Misclassification and the Underground Economy in Massachusetts

The Joint Task Force is commissioning a research study in an effort to determine and analyze the current state of the underground economy in Massachusetts, including, but not limited to the following factors: the current issues, statistics, policy considerations, lost revenues, and the impact on legitimate businesses that play by the rules, individual workers, and various business sectors. The need for hard data to better clarify and illustrate the problem is clear and the process of designing and commissioning a study is underway. The study is expected to be completed by 2013.

Education and Outreach

The Task Force is carrying out an education and outreach plan that involves the following multi-faceted approach:

- 1) The Task Force continues to regularly present information on its work and the basic requirements for businesses in the Commonwealth to its stakeholders, including worker advocacy groups, non-profits, trade associations, and small businesses. This includes the ongoing collaboration by OSBE, DUA, DIA, and AGO on the statewide "Compliance Made Simple" employer education program. (See description, page 3.)
- 2) The Task Force has established a statewide Advisory Council to assist Task Force agencies in educating workers and businesses, identify potential problem areas, and develop policy recommendations around specific statutory authority.
- 3) The JTF continues to design a new web page with the goal of improving access to information about the underground economy and the work of the Joint Task Force. The new web page is expected to launch during the fall of 2012.

Cross-Agency Training

The Task Force member agencies also remain committed to a cross-agency education and training plan to ensure that our investigative agencies are familiar with each other's processes and enforcement authority. The initiative assists agencies in operating in as efficient and coordinated a manner as possible 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 fellow agencies and encourage inter-agency referrals.

Fraud Detection Technology

DUA, working in conjunction with the Task Force, is implementing a technologically-advanced investigative system with the goal of increasing identification of possible employer fraud across all industries. This new tool involves strategic analyses of employer information across data files from a variety of state agencies, which are currently being compiled at DUA. The JTF will utilize the fraud detection technology to increase the number of impact cases developed through cross-agency enforcement activity.

Department of Revenue Information Sharing Agreements

DOR, over the past year, has worked with DUA, DIA, and AGO to sign individual agreements with each agency in an effort to facilitate the limited sharing of DOR information for JTF investigative purposes. These efforts represent a follow up to the successful passage of legislation during the Task Force's second year authorizing DOR to share information with other JTF agencies within the security and confidentiality standards adhered to by DOR. Such broad cooperation by a state revenue agency in pursuit of employer fraud is unprecedented. These agreements with DOR will serve to assist agencies in identifying and proving violations of the state's unemployment and workers' compensation insurance requirements, wage and hour laws, and the state's independent contractor law.

Multi-State and Federal Cooperation

Many JTF agencies and partners, such as DUA, DIA, DLS, DOR, AGO-FLD, and the IFB have strong, working relationships with federal authorities. We are focused on building on these existing channels of cooperation and maximizing any potential assistance that can be provided in addressing the underground economy in Massachusetts. Also, we have developed relationships with Task Force counterparts in other states to share new ideas involving methods of cross-agency enforcement, and to open potential avenues for multi-state enforcement initiatives.

Massachusetts and United States Department of Labor Common Interest Agreement

On September 19th 2011, at the offices of the United States Department of Labor (US DOL) in Washington D.C., United States Secretary of Labor Hilda L. Solis, Internal Revenue Service Commissioner Douglas H. Shulman, Massachusetts Secretary of Labor and Workforce Development Joanne Goldstein, representatives of Massachusetts Attorney General Martha Coakley's Office, Fair Labor Division Chief Jeffrey Webb, and Deputy Division Chief Jocelyn Jones, along with six state labor commissioners from around the country signed memorandums of understanding on the improper classification of employees as independent contractors or other non-employees. Following the signing, Secretary Solis, Commissioner Shulman and state officials took part in a national press teleconference to discuss how the U.S. Department of Labor, the IRS and state agencies will embark on new efforts, guided by these memorandums, to protect the rights of employees and level the playing field for responsible employers by reducing the practice conducted by some businesses of misclassifying employees.

Massachusetts' agreement with US DOL, one of seven state agreements signed in September 2011, includes participation from all JTF member agencies and the US DOL's Wage and Hour Division, Employee Benefit Security Administration, Occupational Safety and Health Administration, and the Office of Federal Contract Compliance Programs. This robust level of cooperation in the Commonwealth with these federal labor law enforcement entities only enhances the JTF's existing multi-agency efforts.

Appendix C of this report provides the complete text of the September 19, 2011 Agreement.

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:

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

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

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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
- 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

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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 & Health Program, Occupational Safety & 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 (DCAM)

The Division of Capital Asset Management (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 of real estate, and maintenance.

DCAM serves the JTF by identifying DCAM-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. DCAM 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 & Entrepreneurship (OSBE)

The Office of Small Business and Entrepreneurship's mission is to create policies and programs to support small businesses & 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; Technical Assistance Grants & Office, 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.

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.

- 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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Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

Annual Report 2011



COMMONWEALTH OF MASSACHUSETTS

Deval L. Patrick, Governor

Timothy P. Murray, Lieutenant Governor

Joanne F. Goldstein, Secretary

Executive Office of Labor and Workforce Development