



# 2015 Annual Report



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Council on the Underground Economy  
Annual Report 2015



## **Definitions of Abbreviations**

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

## Table of contents

Section 1:	Executive summary	Page 1
Section 2:	2015 Noteworthy accomplishments	Page 5
Section 3:	CUE: The process	Page 9
Section 4:	2015 Partner agency enforcement activity	Page 10
Section5:	2015 Goals and initiatives	Page 13
Appendix A:	M.G.L. chapter 25, section 23	Page 15
Appendix B:	Member agencies	Page 17
Appendix C:	Common interest agreement	Page 24

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# Executive summary

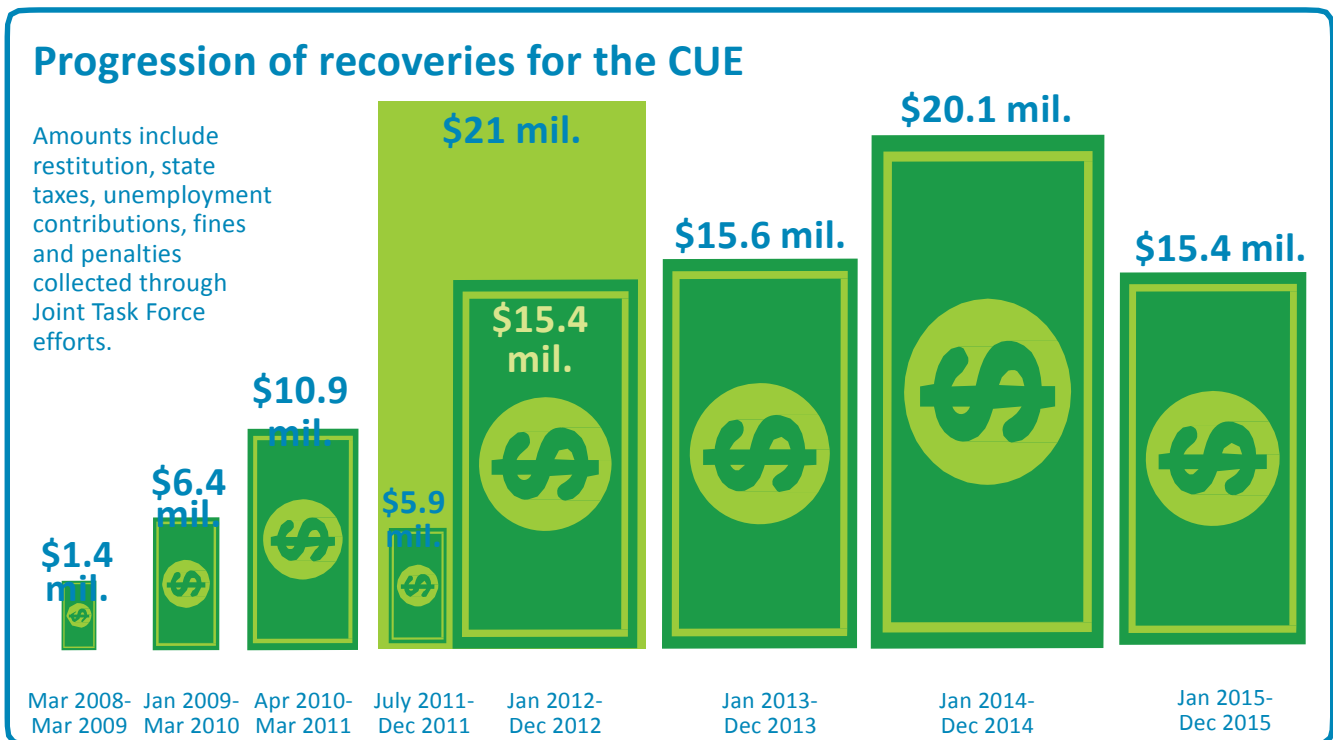
## CUE results

During this reporting period, calendar year 2015, as a result of referrals and cooperative oversight, partner agencies recovered **\$15,490,580** in wage restitution, state taxes, unemployment taxes, fines, and penalties.<sup>1</sup> Unless otherwise noted, all references to funds recovered represent recoveries through the cooperative efforts of the CUE and represent monies above and beyond what the member agencies collected through their ordinary enforcement efforts. In calendar year 2015, the CUE received 117 complaints through the CUE referral phone line and online referral service, along with hundreds of complaints made directly to partner agencies. The work of the CUE agencies resulted in over 27,000 compliance checks and investigations in the 12-month period.

**2015 total recoveries: \$15,490,580**

**To-date recoveries: \$91,512,402 (March 2008 - December 2015)**

For further details of each partner agencies' participation, please see the "Partner agency enforcement activity" Section on pages 10–12.



<sup>1</sup> Prior CUE/JTF reports represented activities as follows:  
 2009 Annual Report: March 2008-March 2009  
 2010 Annual Report: April 2009-March 2010  
 2011 Annual Report: April 2010-March 2011 and April 2011-June 2011  
 2012 Annual Report: July 2011-December 2011 and January 2012-December 2012  
 Beginning with the 2013 Annual Report, activities will be reported on a calendar year cycle  
 2015 Annual Report includes activities as the JTF and CUE

## 2015 accomplishments

2015 Accomplishments During 2015, the CUE had several noteworthy accomplishments:

- DUA has substantial recoveries as a result of compliance checking;
- DUA identifies over 1,100 misclassified workers and \$22.7 million in unreported wages as a result of CUE Case Referrals
- ABCC licensing compliance checks reap over \$7.3M in recovered funds from applicants seeking liquor licenses
- EOLWD Hosts 51<sup>st</sup> Annual Inter-State Labor Standards National Conference
- AGO-FLO recovers more than \$100,000 in restitution and penalties for minimum wage, overtime, and payroll records violations
- Baker administration makes appointments to Council on the Underground Economy
- Instituted cross-agency training for partner investigative agencies for the purpose of increasing efficiency and promoting best practices;

During 2016, the CUE looks forward to continued success by focusing on the following goals:

- Creating education and outreach material for businesses and workers;
- Continuing and expanding cross-agency training opportunities;
- Expanding CUE partnerships both inside and outside the Executive Branch agencies; and
- Enhancing multi-state and federal cooperation channels to maximize future engagements.

## The issue in Massachusetts

The "underground economy" is a term that refers to those individuals and businesses that utilize schemes to conceal or misrepresent their employee population to avoid one or more of their employer responsibilities related to business laws and regulatory requirements. The underground economy encompasses other activities such as tax evasion, payroll fraud, "under-the-table" work, and wage theft. These activities may include but are not limited to: paying wages in cash, skimming some or all of the cash takings, not paying overtime, paying sub-minimum wages, charging individuals for transportation or supplies essential to the work, under-reporting employees, misclassifying employees as independent contractors, forcing employees to set up shell subcontractor entities, running a portion of normal business activities "off-the-books," and not registering a business to avoid tax obligations or to avoid obtaining the necessary licenses and insurance policies. Some unscrupulous employers methodically operate this way as part of their business model; other employers may be unaware of legal requirements prescribed by employment laws or feel the financial pressure or incentive to cut corners in their business operations. For those employers who knowingly break the laws, the lure of greater profits, lower costs, and less responsibility for workers often drives their decision-making.

## Impact to law-abiding businesses:

By reducing the amount of money expended in a host of categories like wages, insurance, payroll taxes, licenses, employee benefits, materials and transportation, safety equipment, and safety conditions, these employers can gain a competitive advantage over companies that comply with business and tax laws and regulations. This results in unfair competition in the marketplace because law-abiding businesses must pay greater direct costs to stay in business and subsidize public benefits like health care, unemployment compensation, and workers' compensation for those companies and individuals who do not play by the rules.

The underground economy also compromises the legitimate business community and the Massachusetts economy. Legitimate businesses are economically disadvantaged when competing with other companies who are able to charge less for their goods or services because they are not law abiding. Further, legitimate businesses subsidize those entities that do not follow the labor, licensing, and tax laws, as their tax dollars underwrite the systems that provide benefits to eligible workers when there is no employer of record to charge.

### Impact to the workers:

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

### Impact to the Commonwealth:

Taxpayers are also unduly burdened as many workers who are misclassified, paid below minimum wage, or are without employer-provided benefits often utilize existing social safety nets. Finally, the sheer number of workers who now fall into the underground economy puts stress on the social safety net and the underlying societal norms that we share.

Massachusetts communities are also adversely impacted by the underground economy. Consumers drive the demand for labor, goods, and services, and may unwittingly be contributing to the underground economy through their buying choices.

Collectively, the costs of the underground economy are high. Operating outside the law allows businesses to have an unfair advantage by illegitimately lowering costs, therefore undercutting their competitors. This takes business away from law-abiding companies and their employees who are trying to make an honest living. This race-to-the bottom hurts the economy, legitimate businesses, and results in the erosion of the social fabric, economic stability, wage levels, and working conditions in the Commonwealth.

### History/future

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

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

# Council on the Underground Economy Annual Report 2015

On June 26th 2014, Chapter 144 “[An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms](#),” was signed into law. In addition to increasing the state’s minimum wage, the law also codified the Joint Task Force on the Underground Economy (JTF), making it a permanent fixture under the Executive Office of Labor and Workforce Development as the Council on the Underground Economy.

On March 24, 2015 the law became effective officially transitioning the JTF into the CUE. The CUE is formally listed in [M.G.L. Chapter 23 Section 25](#). The law requires that government agencies work together in a concerted manner to uncover businesses that conceal or misrepresent their employee population to circumvent their employer responsibilities related to business laws and regulatory requirements. The Council on the Underground Economy will continue Massachusetts’ work to level the playing field by bringing businesses and individuals into compliance with applicable state labor, licensing, and tax laws.

## Recovered funds 2015

	Year 7	Year 6	Year 5	Year 4		Year 3	Year 2	Year 1
	Jan 15 - Dec 15	Jan 14 - Dec 14	Jan 13 - Dec 13	Jan 12 - Dec 12	Jul 11 - Dec 11	Apr 10 - Jun 11	Apr 09 - Mar 10	Mar 08 - Mar 09
DUA UI taxes:	\$13,060,560	\$15,709,335	\$12,935,304	\$12,712,702	\$4,287,848	\$2,365,237	\$2,071,211	\$737,439
DUA FSC*:		\$60,878	\$236,738	\$276,439	\$16,830		\$188,788	\$239,742
DOR:	\$1,328,420	\$826,324	\$728,697	\$327,869	\$835,178	\$3,665,097	\$1,568,166	\$233,468
AGO:	\$75,000	\$2,314,002	\$405,000	\$593,398	\$272,567	\$3,033,148	\$788,690	\$200,425
IFB:		\$45,000		\$100,000				
DIA**:	\$1,1013,600	\$1,140,300	\$1,333,337	\$1,433,371	\$537,450	\$2,167,311	\$1,872,694	\$24,750
DLS	\$13,000	\$1,300	\$3,650					
DPL		\$13,300	\$15,500					
Sub Total:				\$15,443,779	\$5,949,873			
Total:	\$15,490,580	\$20,110,438	\$15,658,226	\$21,393,652		\$10,930,933	\$6,489,549	\$1,439,024

The blank spaces above indicate data was not available or there was no number to report.

\* Program State health insurance legislation (Chapter 58 of the Acts of 2006) enacted in April of 2006 contains obligations for Massachusetts’ employers who employ eleven (11) or more full-time equivalent (FTE) employees. Employers meeting this minimum employment threshold must file a Fair Share Contribution (FSC) report. Employers with eleven (11) or more FTE employees who do not make a “fair and reasonable contribution” to their employees’ health insurance, as defined in Division of Health Care Finance and Policy (DHCFP) regulation (114.5 CMR 16.00), are required to pay a per-employee FSC to the Commonwealth Care Fund, payable to Department of Unemployment Assistance (DUA). Recoveries listed are payments made on delinquent accounts prior to the dissolution. **This Program was repealed in July of 2013. Revenue for past dues FSC was tracked by DUA through 6/27/2014. As of 07/01/14 Finance took over the debts owed to FSC so it no longer is considered a CUE effort.)**

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



# 2015 Noteworthy accomplishments

## DUA has substantial recoveries as a result of compliance checking

Results The revenue audit team at DUA, working in conjunction with the Alcohol Beverages Control Commission (ABCC), Division of Capital Asset Management and Maintenance (DCAMM), Department of Career Services (DCS), Department of Industrial Accidents (DIA), and Department of Labor Standards (DLS) through a CUE effort, recovered \$12,260,560 from employers in unpaid unemployment and fair share contributions in calendar year 2015. As part of their roles with the CUE, investigators and staff among these agencies conducted over 27,000 cross-agency compliance checks. As a result of these checks, a number of businesses were found to be in violation of state law and were required to pay unemployment taxes owed in order to be considered for a state license or certification. Following is an accounting of DUA's 2015 recoveries for previously unpaid UI Trust Fund contributions working with each of the agencies listed below. Compliance checks performed by these entities for licenses, certifications, grants, etc., resulted in DUA collections of the following:

<b>DUA recoveries – Agency compliance checks</b>		
<b>January 2015 – December 2015</b>		
Agency sending compliance check:	Amount assessed	Number of compliance checks completed
ABCC	\$1,703,637	2,852
ABCC (Renewals)	\$5,638,965	13,201
Lottery	\$481,158	6,658
DAT	\$19,302	61
Commonwealth Corporation	\$394,187	1,292
DCAM	\$594,749	1,271
DCS	\$839,841	289
DIA	\$9,794	74
DLS	\$268,251	1,589
EOLWD	\$2,307,595	274
Section 30	\$3,083	91
<b>Grand Total:</b>	<b>\$12,260,560.00</b>	<b>27,652</b>

## **DUA identifies over 1,100 misclassified workers and \$22.7 million in unreported wages as a result of CUE case referrals**

DUA's revenue audit department reported that from the CUE referrals their office completed 102 audits, 72 of the audits had findings, meaning their office either discovered new workers, the employer was under reporting the number of employees or wages to DUA, or were misclassifying workers as independent contractors. The audits uncovered over 1,100 new workers and approximately \$22.7 million dollars in unreported wages; and resulted in nearly \$800,000 in new taxes due to the DUA.

Among DUA's findings in these audits:

- An auto body repair company which failed to report wages of over \$1.4 million.
- A plumbing/HVAC contractor which failed to report any wages for 180 workers and under reported wages of over \$2.9 million.
- A trucking company which misclassified 135 workers and under reported wages of over \$2.6 million.

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

## **ABCC licensing compliance checks reap over \$7.3M in recovered funds from applicants seeking liquor licenses**

The state's unemployment insurance department recovered \$7,342,602 during calendar year 2015 through efforts by the ABCC to hold initial and renewal applications for liquor licenses, until applicants paid outstanding unemployment taxes due to the Commonwealth. Through this interagency collaboration, ABCC has truly leveled the playing field for businesses with liquor licenses, ensuring these businesses pay their fair share and do not gain a competitive advantage by illegally reducing their expenses.

## **EOLWD hosts 51st annual inter-state labor Standards national conference**

In August 2015, EOLWD hosted the 51st Annual Inter-State Labor Standards National Conference in Downtown Boston, MA. The purpose of ILSA is to exchange information on recent developments in the area of Labor Standards for the purpose of encouraging, assisting and improving the enforcement of protective labor laws and regulations administered by the members of the association.

By hosting this national conference we were able to collaborate with labor officials from around the US and beyond to discuss best practices. Some of the highlighted topics included:

- Fair Wage Initiatives and Enforcement
- Twenty-First Century labor force -gender pay gap issues and family friendly labor standards
- Child Labor Laws
- Workplace safety education and enforcement
- Employee misclassification

- contractor registration programs
- public/private partnerships on prevailing wage requirements
- Protecting vulnerable workers
- Investigation, adjudication, and collection

ILSA is composed of labor standards agency representatives from each state, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and representatives of the U.S. Department of Labor. Representatives from countries around the world, such as Canada, Taiwan, and Russia, attend and participate in our conferences and information exchanges.

## AGO-FLO recovers more than \$100,000 in restitution and penalties for minimum wage, overtime, and payroll records violations

The Office of the Attorney General's Fair Labor Division settled a case in December 2015 against a Dorchester grocery store and its owner for failing to properly pay their employees. Truong-Thinh Market, Inc. and its president, Joseph Pham, agreed to pay more than \$100,000 in restitution to workers and in penalties for failure to pay minimum and overtime wages and for failing to keep accurate payroll records. The investigation determined that seven employees were working more than 40 hours per week and were paid a salary in cash that did not meet the statutory requirements for minimum wage or overtime. The store and Pham also failed to keep accurate payroll records. The Office of the Attorney General is committed to ending wage theft which threatens the economic security of the residents of Massachusetts. In 2015, the AGO-FLD recovered more than \$3.3 million in restitution and penalties for wage and hour violations.

## Baker Administration makes appointments to Council on the Underground Economy

As part of the transition of the JTF becoming the CUE, the new statute requires that executive branch, constitutional and independent agencies be partnered to form the CUE, of which nine are named partners and eight are appointed by the governor. The nine named agencies include:

- Secretary, Ronald L. Walker, II, Labor and Workforce Development- to serve as the chair
- Department of Unemployment Assistance (DUA)
- Department of Industrial Accidents (DIA)
- Department of Labor Standards (DLS)
- Department of Revenue (DOR)
- Attorney General's Fair Labor Division (AGO-FLD)
- Professional Licensure (DPL)
- Insurance Fraud Bureau (IFB)
- Public Safety (DPS)

# Council on the Underground Economy

## Annual Report 2015

In 2015 Governor Charlie Baker appointed the following eight agencies:

- Office of the State Treasurer, which includes the Alcohol Beverage Control Commission and the Lottery Commission.
- Secretary of the Commonwealth (SOC)
- Massachusetts Office for Refugees and Immigrants (MORI)
- Massachusetts Commission against Discrimination (MCAD)
- Executive Office of Administration and Finance (EOANF)
- Registry of Motor Vehicles (RMV)
- Executive Office of Housing Economic Development (EOHED)
- Department of Career Services (DCS)

In addition to the above named partner agencies the CUE has renewed its Common Interest agreement with the US DOL in 2014. The initiative commits the agencies within the US DOL to work with the agencies of the CUE which, since its inception, has collected nearly \$91.5 million from holding unscrupulous businesses accountable for fraudulent activities. The agreement was renewed on November 17th 2014.

## Cross-agency training

The Task Force partner agencies remain committed to cross agency education and training to ensure that our investigative agencies are familiar with each other's processes and enforcement authority. In 2015, DOR continued to offer its employee training and development programs to the Joint Task Force investigative team when training slots were available.

In addition, DOR University was launched which will provide e-learning tools for CUE members. More courses will be added in the future that will be beneficial to CUE member agencies. This very successful partnership allowed CUE partners to take courses that may not have otherwise been available to them. In addition to DOR training, DLS offered OSHA 10 (construction) training to CUE partner agencies and their investigators. As a result, many investigators from our partner agencies are OSHA 10 certified which will assist them in identifying and reporting workplace hazards while on an inspection.

Cross-training and awareness initiatives assist CUE agencies in operating in an efficient and coordinated manner 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 sister agencies and encourage inter-agency referrals.

## **CUE: The process**

### **Reporting suspected cases of fraud and misclassification to the Council**

The website of the Council on the Underground Economy, [www.mass.gov/cue](http://www.mass.gov/cue), 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 website provides the public with a form that can be completed and submitted to the CUE for suspected cases of fraud and misclassification. The CUE anonymous referral telephone line, 1-877-96-LABOR, provides another avenue for individuals to provide information on the underground economy to CUE partner agencies.

The existence of the CUE makes reporting suspect business practices easier for the public. To report employer fraud, an individual may have previously needed to call up to 10 different tip lines. With the CUE, an individual can report an employer paying wages in cash, safety concerns, wage and hour violations, insurance premium avoidance, and non-licensure, all in one place. The information is then dispatched to the agency that handles the non-compliance allegation for further investigation.

### **CUE referral investigations**

The CUE partner agencies that have enforcement authority over underground economy matters have tracked their activities with regard to CUE referrals and resulting investigations. During 2015, the CUE reviewed 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 recovered, 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 CUE.

In addition to the monetary recoveries, the CUE has opened the doors for agency collaboration that, in many ways, is unprecedented. This has allowed agencies to have quality tips provided, share resources, and reduce duplicative efforts. While each participating agency has the ability to recoup revenue on its own, our collective efforts provide greater enforcement and compliance; yields significantly more in revenue for the Commonwealth; and delivers better outcomes for both employees and employers in the state. The CUE continues to successfully work together to confront fraud and abuse among employers, to provide an equal playing field for businesses to compete, and to protect workers.

# 2015 Partner agency enforcement activity

**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 just over \$7.3 million for the state's UI Trust Fund, and assisted CUE agencies in reviewing investigations relative to employers maintaining or applying for a liquor license in the Commonwealth.

**Attorney General's Office- Fair Labor Division (AGO-FLO)** reviewed all relevant CUE complaints for potential violations of minimum wage and child labor laws; nonpayment of wages, prevailing wage violations; misclassification of employees; overtime pay violations; payroll record keeping and temp worker right-to-know violations; workers' compensation, and unemployment insurance fraud. The AGO-FLD undertook numerous investigations that originated from CUE referrals and employee misclassification complaints, some of which are ongoing. Amongst these efforts, the AGO-FLD issued seventeen civil citations or secured settlements totaling \$75,000 in restitution and penalties. Half of these cases were a result of referrals from the CUE.

**Department of Industrial Accidents (DIA)** reviewed all relevant complaints received by the CUE and checked each referred employer for workers' compensation insurance coverage. Based upon the review and investigation of all CUE referrals in calendar year 2015, DIA issued 19 stop work orders for lack of workers' compensation coverage. As a result, 47 workers were newly covered by workers' compensation policies and DIA received \$13,550 in fines. In its complementary enforcement actions by DIA investigators during calendar year 2015, DIA conducted 80,478 compliance checks, 5,032 investigations, and issued 2,057 stop work orders for lack of workers' compensation insurance, which resulted in \$1,013,600 in fines and 5154 workers brought under insurance coverage. Had any of those uncovered workers sustained an accident on the job, they would have turned to the state's Workers' Compensation Insurance Trust Fund to cover their weekly benefits and medical expenses; this represents an unfair dynamic for businesses that are dutifully paying their insurance premiums and operate in compliance with the state's workers' compensation laws.

**Department of Revenue (DOR)** For calendar year 2015 the Department of Revenue reviewed and closed 117 cases that were referred from the CUE. Those cases resulted in the assessment of \$1,328,420 of additional tax, interest and penalties. The DOR continues to identify and audit businesses that have: misclassified workers; underreported corporate, withholding, sales, meals and personal income taxes; and paid workers in cash.

**Department of Unemployment Assistance (DUA)** reviewed all relevant CUE referrals looking for Unemployment Insurance (UI) Trust Fund violations such as failure to file, underreporting, failure to register, and/or failure to pay in full. DUA recovered \$12,260,560 in unpaid employer contributions to the Unemployment Insurance Trust Fund through referrals and compliance cross-checks with the Alcoholic Beverages Control Commission (ABCC), Commonwealth Corporation (COMM. CORP), Department of Labor Standards (DLS), Division of Capital Asset Management and Maintenance (DCAMM), Department of Industrial Accidents (DIA), and Executive Office of Labor and Workforce Development (EOLWD).

## Council on the Underground Economy

### Annual Report 2015

**Division of Capital Asset Management and Maintenance (DCAMM)**, in 2015, assisted the Commonwealth in recovering \$594,749 from applicants for DCAMM contractor certification found not to be in compliance with DUA at the time of application. This was accomplished by sending notices to applicants that they must settle their DUA obligation before they can be eligible for DCAMM certification to bid on Chapter 149 public building construction contracts. DCAMM halts the certification process for any contractors that have not brought themselves into compliance with DUA obligations and denies these applications from certification. The increase in 2014 in the number of contractors brought into DUA compliance in part reflects DCAMM's attention to assuring that non--Massachusetts contractors fulfill their legal obligations of registering with DUA.

During 2015, DCAMM denied certification to one applicant and, further, administratively closed 23 application files without issuance of requested certificates for various reasons, including, for example, the applicant's failure to resolve outstanding DUA liabilities, excessive prevailing wage violations, poor performance and supervision, non-compliance, and mistreatment of sub-contractors. This record of achievement is attributable to DCAMM's insistence, as a condition to certification that applicants strictly comply with internal certification requirements, and to interagency enforcement with DUA and other CUE-participating agencies. DCAMM's practice of requiring that applications for renewal of certification be submitted at least three months prior to expiration of the applicant's current certificate also provides ample time for assuring such compliance and/or correction of non-- compliance.

Additionally, each contractor's application is checked against DCAMM's internal CUE case-tracking database, and on a weekly basis, a list of all contractor applicants received is sent to all CUE partner agencies to inquire whether any other agency is working on any matters relating to the applicant.

**Insurance Fraud Bureau (IFB)** In 2015, the IFB in collaboration with multiple state and federal investigative and prosecutorial agencies investigated fifteen (15) workers' compensation premium evasion cases that had evidence of hidden payroll schemes. One such case involves four family members who operated a temporary employment agency that provided unskilled labor to local companies. Between 2004 and 2009, the defendants reported to the IRS that their temporary employees made about \$2.2 million in wages, when the real figure was nearly \$30 million. The defendants also defrauded the agency's workers' compensation insurer by hiding the true number of temporary workers employed, thus avoiding about \$880,000 in insurance premiums. Margaret Mathes was sentenced to 80 months in prison. Her daughter, Bosea Prum, was sentenced to two years in prison and three years of supervised release. Prum's brother-in-law, Sam Pich, was sentenced to two years in prison and three years of supervised release. Prum's husband, Thaworn Promket, was sentenced to one year and a day in prison and three years of supervised release. All defendants were ordered to pay, jointly and severally, over \$6 million in back taxes and workers' compensation premiums.

**Occupational Safety and Health Administration (OSHA)** During the course of our relationship with the Council on the Underground Economy we've worked with the council members on several notable cases and exchanges of information, they include but are not limited to those listed below:

- OSHA worked with the **Attorney General's Office- Fair labor Division**, utilizing the MOU, to share information and evidence related to Twin Pines/Force Corporation. This employer currently has an outstanding balance of over \$1 million. This information was presented along by DOL and SOL to the US Department of Justice asset Forfeiture Division to open an investigation into potentially seizing assets related to the outstanding penalty. We also share information with this office on a continual basis such as certified payrolls to confirm ER relationships, and settlement agreements that the AG's office may issue in the course of their investigations.

- During a 2015 fatality at the Assembly Row project in Somerville, the compliance officers worked hand-in-hand with the **Department of Public Safety's Engineering Division** to issue several citations to two employers. Due to the information generated by our relationship we (OSHA) were able to settle both of these cases without protracted litigation.
- In today's unique work environment it is often extremely difficult to establish an employee/employer relationship; the bond that has developed between the **Massachusetts Department of Industrial Accidents** and OSHA has made that burden a little bit lighter. The DIA investigators are continually available to the CSHO's in the field and on countless occasions have responded to an inspection and assisted us with determining what the relationships are. We have also, in several cases, worked hand-in-hand with their field investigators and significant accident. During a recent tornado where our agency activated the REMP, we worked as a task force and conducted numerous outreach operations.
- OSHA along with the assistance of the **Department of Labor Standards, Employment Agency Program**, have crafted unique settlement agreements which utilized this council member. During one such settlement with OSHA the employer agreed to have the Massachusetts Department of Labor Standards, conduct training related to temporary worker regulations to their employees, the temporary agency and the actual temporary workers in the field. This was due to the working relationship with Brian Wong Chief of Investigations.
- OSHA has conducted several training sessions for both the **Department of Labor Standards** and the **Department of Public Safety Engineering Division** related to conducting fatality investigations and the collection of evidence. During this training session, relationships were developed that can be utilized in the field during these unique and often prolonged investigations.
- OSHA also met with Department of **Public Safety Engineering Division** to develop a unified front related to the enforcement of the new crane standard certification and to coordinate the enforcement of the Massachusetts hydraulic operator's licenses.



# 2015 Goals and initiatives

Now in its eighth year, the CUE remains focused on increasing the volume and impact of cross-agency enforcement. This will be accomplished by building on the existing processes by which partner agencies conduct cooperative investigations. These efforts raise awareness in the general public, the business community, and within government, about the work of the CUE agencies to combat the underground economy and the responsibilities of employers in the Commonwealth. There are a number of key initiatives being undertaken by the CUE in furtherance of these goals.

## Council on the Underground Economy's Goals:

Increase education, coordination and enforcement of the state's labor, licensing, and tax laws through the work of the Underground Economy Task Force

Estimate the frequency of employee misclassification and underground economic activity among the Commonwealth's industries through the undertaking of a research study

Increase revenue recovery through enforcement by inspection, audit, and information-sharing

Level the playing field for employers by publicizing Task Force enforcement successes that will serve as a deterrent to cutting corners on labor, licensing, and tax laws

## Education and outreach

The CUE will continue an education and outreach plan that involves the following multi-faceted approach:

1. Create educational material for workers and employers to bring awareness to the ongoing issues of the underground economy. Worker cards will have brief descriptions of signs of underground economy activity and how to report it. Business outreach will include a brochure focused on educating business owners of the adverse effects of contributing to the underground economy or misclassifying employees. The material will also have contact information to report fraudulent work practices.
2. Utilize its statewide advisory council to assist in educating workers and businesses, identify potential problem areas, and develop policy recommendations around specific legislative proposals.
3. Continue to enhance its web page with the goal of improving access to information about the underground economy and the work of the CUE.
4. Accept invitations from stakeholders to share information about the CUE, discuss best practices, opportunities, and challenges faced by employers, employees, regulators, and advocates.

## Cross-agency training

The CUE partner agencies remain committed to a cross-agency education and training plan to ensure that our investigative agencies are familiar with various processes and enforcement authority. Cross-training ensures efficiency, coordination and encourages interagency referrals. During 2016, the CUE will make training opportunities available for partner agency investigators.

## **Expanding additional partnerships**

The CUE has seen tremendous success as a result of compliance checks among our partner agencies. Monetary recoveries have increased dramatically as a result of cross-agency communication to increase compliance with multiple state agencies' requirements. This coordinated review helps to level the playing field for businesses as they are being required to pay all outstanding UI Trust Fund contributions and have a valid workers' compensation policy (if one is required) before being granted authorization to lawfully conduct a regulated activity. If a business chooses not to become compliant, it could potentially lose a license or forgo opportunities to bid on a state-funded project. Bringing additional partners into the CUE could mean additional revenue recovery to the Commonwealth and more businesses coming out of the shadows. Moreover, additional partners may be helpful to enforcement, as it is not uncommon for an unscrupulous business to have multiple compliance issues with multiple government agencies. The more avenues of enforcement available, the more likely we may be to curb illegal behaviors.

## **Multi-State and Federal cooperation**

Many CUE agencies and partners, such as DUA, DIA, DLS, DOR, AGO-FLD, and the IFB have strong, working relationships with federal authorities. The CUE is 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, the CUE has developed relationships with its counterparts in other states to share new ideas involving methods of cross-agency enforcement, and to open potential avenues for multi-state enforcement initiatives.

## Appendix A: M.G.L. chapter 23, section 25

Section 25. (a) There is hereby established a council on the underground economy.

The council shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements ; (2) conduct targeted investigations and enforcement actions against violators ; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term "underground economy" shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages.

(b) The council shall consist of 17 members including: the secretary of labor and workforce development, or a designee, who shall serve as the chair; the director of the department of unemployment assistance, or a designee; the director of the department of industrial accidents, or a designee; the director of labor standards, or a designee; the commissioner of revenue, or a designee; the chief of the attorney general's fair labor division, or a designee; the commissioner of public safety, or a designee; the director of professional licensure, or a designee; the executive director of the insurance fraud bureau, or a designee; and 8 persons appointed by the governor who represent government agencies. The council may create and appoint members to a subcommittee made up of members representing business, organized labor, not-for-profit organizations, government, the legislature and any political subdivision thereof including municipal governments, to solicit input.

(c) The council shall:

- (1) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;
- (2) identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target council members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- (3) assess existing investigative and enforcement methods, both in the commonwealth and in other jurisdictions, and develop and recommend strategies to improve those methods;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) work cooperatively with federal, state 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;

## Council on the Underground Economy

### Annual Report 2015

(8) 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

(9) consult with representatives of business and organized labor, members of the general court, community groups and other agencies to discuss the activities of the council and its members and ways of improving its effectiveness.

(d) The council shall file an annual report with the governor and the clerks of the House of Representatives and senate summarizing the council's activities during the preceding year. The report shall, without limitation: (1) describe the council's efforts and accomplishments during the year; (2) identify any administrative or legal barriers impeding the more effective operation of the council, including any barriers to information sharing or joint action; (3) propose, after consultation with representatives of business and organized labor, members of the general court and other agencies, appropriate administrative, legislative or regulatory changes to strengthen the council's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and (4) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. Reports of the council shall be made available on the webpage of the executive office of labor and workforce development.

I subdivision thereof including municipal governments, to solicit input.

## 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: [www.mass.gov/dia](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, Massachusetts Workplace Safety and Health Program, Occupational Safety and Health Statistics Program, and Industrial Hygiene Laboratory. **For more information, visit: [www.mass.gov/dols](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: [www.mass.gov/dua](http://www.mass.gov/dua).**

#### Department of Career Services (DCS)

The Department of Career Services is the designated State Workforce Agency (SWA) charged with the administration and oversight of employment and training grants funded through the U.S. Department of Labor with primary responsibility to provide oversight of the Massachusetts Workforce Development System. The Massachusetts Workforce Development System comprises 16 Workforce Investment Areas (WIAs) led by 16 Employer Driven Workforce Investment Boards (WIBs) currently operating 33 One-Stop Career Centers (OSCCs). The DCS's mission is to develop, coordinate, and maintain a coherent Workforce Development System that supports and promotes the Commonwealth's workforce and economic efforts through the delivery of quality employment, education, training, and career guidance services that fill the needs of employers for a skilled workforce and promote lifelong learning among employees. **For more information, visit: [www.mass.gov/dcs](http://www.mass.gov/dcs).**

## Office of the Attorney General

### Fair Labor Division (AGO-FLO)

The Attorney General Office's Fair Labor Division (AGO-FLD) enforces various laws that protect workers, including the prevailing wage, minimum wage, payment of wages, overtime, misclassification, tips, child labor, and Sunday and holiday premium pay laws. The AGO-FLD also enforces three new laws: the Earned Sick Time law, Domestic Violence Leave Act, and Domestic Workers Bill of Rights. The AGO-FLO's Bid Unit enforces the public construction bidding laws to ensure that public construction contracts are awarded in a fair and open process to the lowest responsible bidder. In order to achieve greater compliance, the Attorney General educates both employers and employees about the law and their corresponding rights and obligations.

The Attorney General has extensive powers to investigate and enforce Massachusetts' wage and hour laws through criminal and civil enforcement actions. The Attorney General may prosecute cases involving the underground economy under a broad set of laws, such as chapter 93A, the False Claims Act, and larceny, embezzlement, and the records keeping law. The AGO-FLO's broad jurisdiction enables it to partner with other CUE member agencies to effectively prosecute misclassification and other illegal practices prevalent in the underground economy. By protecting employees from employer exploitation, the AGO-FLD sets a level playing field for employers and employees throughout Massachusetts. **For more information, visit: [www.mass.gov/ago](http://www.mass.gov/ago).**

## Executive Office of Administration and Finance

### Division of Capital Asset Management and Maintenance (DCAMM)

The Division of Capital Asset Management and Maintenance (DCAMM) is charged with providing professional and comprehensive services to state agencies in the field of public building design, construction, maintenance, and real estate. DCAMM's scope of services includes planning, design, construction, capital repairs and improvements, asset management, contractor certification and compliance, leasing, acquisition and disposition of real estate, and maintenance. DCAMM serves the CUE by identifying DCAMM-certified contractors who have become non-compliant with other state agencies' regulations or requirements in an effort to bring the contractors back into compliance with state law or to decertify or debar such contractors when appropriate. DCAMM utilizes information obtained from various partner agencies as part of the certification process in order to make a final determination on whether the contractor meets the qualifications to be certified to perform public work. **For more information, visit: [www.mass.gov/dcam](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: [www.mass.gov/dor](http://www.mass.gov/dor).**

### Operational Services Division (OSD)

The Operational Services Division (OSD) is the Commonwealth of Massachusetts' central procurement office responsible for establishing Statewide Contracts for goods and services and for the oversight of multiple operational and socioeconomic programs and services, including the:

- Strategic Sourcing Services, which develops and manages statewide procurement objectives and sourcing strategies for implementation across state purchasing, resulting in statewide contracts that provide access to the goods and services state agencies and other public entities need to accomplish their missions. Strategic Sourcing Services also includes the Environmentally Preferable Products (EPP) Procurement Program, with a goal of using the Commonwealth's purchasing power to reduce the environmental and public health impact of state government and foster markets for EPPs.
- Supplier Diversity Office (SDO), which certifies minority, women, disadvantaged and service-disabled, veteran-owned business enterprises, and oversees the Small Business Purchasing Program, Supplier Diversity Program, and Construction Reform Program.
- Surplus Property Program, which is responsible for ensuring that the Commonwealth realizes the maximum benefit from State owned surplus personal property by regulating the manner of disposition of such property to State departments, municipalities, not-for-profit organizations, and the general public.
- COMMBUYS Market Center, which is a state-of-the-art, electronic market center designed to improve online commerce between government purchasers and sellers. **For more information, visit: [www.mass.gov/osd](http://www.mass.gov/osd).**

### 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, buildings and elevators. The DPS licenses individuals in many areas, including elevator mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinkler fitters, 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: [www.mass.gov/eopss](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 United States 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: [www.mass.gov/eohhs/gov/departments/ori/](http://www.mass.gov/eohhs/gov/departments/ori/)**

### Massachusetts Department of Public Health

The mission of the Massachusetts Department of Public Health is to prevent illness, injury, and premature death, to assure access to high-quality public health and health care services, and to promote wellness and health equity for all people in the Commonwealth. DPH envisions a Commonwealth in which all people enjoy optimal health. DPH provides programs to address specific diseases and conditions and offer services to address the needs of vulnerable populations. DPH also develops, implements, promotes, and enforces policies to assure that the conditions under which people live are most conducive to health and enable people to make healthy choices for themselves and their families. **For more information, visit: [www.mass.gov/dph](http://www.mass.gov/dph).**

## 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: [www.mass.gov/dob](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 30 boards of registration that license and regulate more than 370,000 licensees in some 50 trades and professions. DPL also oversees private occupational schools. DPL's mission is to protect the public health, safety, and welfare by licensing qualified individuals and businesses that 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 and adjudication of complaints, and DPL works with participating Joint Task Force agencies to prosecute unlicensed practice cases on behalf of its boards. **For more information, visit: [www.mass.gov/dpl](http://www.mass.gov/dpl).**



### Massachusetts Office of Business Development

The Massachusetts Office of Business Development (MOBD) is the state's one-stop source for businesses seeking to relocate to Massachusetts and businesses wishing to expand their current operations here. We offer a range of expertise and services to help your business flourish in Massachusetts. Our staff operates in regions across the state, so we are able to provide you with on-the-ground knowledge and viable connections for your business. We work closely with the private and public sectors to coordinate a whole range of resources at your disposal. For more information, visit: [www.mass.gov/hed/economic/eohed/bd](http://www.mass.gov/hed/economic/eohed/bd).

### Massachusetts Department of Transportation

#### Registry of Motor Vehicles Division

The Registry of Motor Vehicles Division is responsible for operator licensing and vehicle registrations. Transactions may be processed online (if applicable) or at any of the RMV branch offices across the Commonwealth. The RMV also oversees commercial and non-commercial vehicle inspection stations.

**For more information, visit: [www.massrmv.com](http://www.massrmv.com).**

### Office of the Treasury

#### 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: [www.mass.gov/abcc](http://www.mass.gov/abcc).**

#### Massachusetts State Lottery

Since selling its first ticket in March 1972, the Massachusetts State Lottery has generated \$90.7 billion in sales, awarded \$62.1 billion in prizes, returned \$19.7 billion in net profit to the Commonwealth for unrestricted local aid available to cities and towns and paid \$5.1 billion in commissions and bonuses to its statewide network of retailers. Over the last 40 years, Massachusetts has grown to become one of the most successful lotteries in the nation and adapted to the ever-changing marketplace to provide innovative and exciting games to its players. **For more information, visit: [www.masslottery.com](http://www.masslottery.com).**

## Office of the Secretary of the Commonwealth

### Corporations Division

The Corporations Division of the Secretary of the Commonwealth William Francis Galvin's Office is the repository for the public records of approximately 200,000 profit and nonprofit corporations and approximately 140,000 limited liability entities organized or registered to transact business in the Commonwealth. All corporations and certain other business entities transacting business in the Commonwealth and organized under the laws of a different state or country are required to file a registration with the Corporations Division. Those foreign corporations or other business entities transacting business in the Commonwealth without filing a registration with the Corporations are subject to several penalties pursuant to Massachusetts General Laws Chapter 1560, Section 15.02. In 2013 the Corporations Division joined the CUE. Since that time the Division has assisted the Task Force by pursuing entities organized under the laws of other states or countries that fail to comply with the laws of the Commonwealth regarding transacting business within Massachusetts. **For more information, visit: [www.sec.state.ma.us/cor/](http://www.sec.state.ma.us/cor/).**

## 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: [www.mass.gov/mcad](http://www.mass.gov/mcad).**

## Federal Partners

### United States Department of Labor (USDOL)

The mission of the U.S. Department of Labor and its agencies is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. Several of its agencies are CUE partners:

- The **Wage and Hour Division** enforces Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. It also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, WHO administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services. **For more information, visit: [www.dol.gov/whd](http://www.dol.gov/whd).**
- Under the **Occupational Safety and Health Act** of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance, as well as ensuring protections for whistleblowers under OSHA and several other statutes. **For more information, visit: [www.osha.gov](http://www.osha.gov).**

- The **Office of the Solicitor's** mission is to meet the legal service demands of the entire Department of Labor. It fulfills its mission by representing the Secretary of Labor and USDOL agencies in all necessary litigation, including both enforcement actions and defensive litigation, and in alternative dispute resolution activities; by assisting in the development of regulations, standards and legislative proposals; and by providing legal opinions and advice concerning all the Department's activities. The Regional Solicitor's Office for Region 1 is located in Boston, and covers the six New England states. **For more information, visit: [www.dol.gov/sol](http://www.dol.gov/sol).**
- The mission of the **Employee Benefits Security Administration** is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. It accomplishes this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law. **For more information, visit: [www.dol.gov/ebsa](http://www.dol.gov/ebsa).**
- The purpose of the **Office of Federal Contract Compliance Programs (OFCCP)** is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. **For more information, visit: [www.dol.gov/ofccp](http://www.dol.gov/ofccp).**

### National Labor Relations Board (NLRB)

The National Labor Relations Board is the federal agency that enforces the National Labor Relations Act, a law that applies to most private sector employers. Federal law protects the right of employees to engage in or refrain from protected, concerted activities with other employees in dealing with their employers with respect to wage, benefits, and other terms and conditions of employment. The Agency is most commonly associated with the protection of union activity and enforcing the requirement that where employees have chosen to be represented by a union that unions and employers engage in good faith collective-bargaining, but the protection of concerted employee action is not limited to union situations. The Act gives substantive legal protection for group employee action seeking to engage employers with respect to their wages, benefits, and other terms and conditions of employment; therefore, it provides important protections to employees engaged in self-help efforts with respect to their employment. Through its intake and public information activities, NLRB personnel frequently encounter individuals who have substantive rights protected by one or more member agencies of the CUE. **For more information, visit: [www.nlr.gov](http://www.nlr.gov).**

### 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 website at [www.ifb.org](http://www.ifb.org) or via the IFB hotline, 1-800-32-FRAUD. **For more information, visit: [www.ifb.org](http://www.ifb.org).**

# Appendix C: Common interest agreement

**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, COUNCIL ON THE UNDERGROUND ECONOMY AND EMPLOYEE  
MISCLASSIFICATION**

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 the Commonwealth of Massachusetts, Council on the Underground Economy and Employee Misclassification (CUE)<sup>1</sup> through the Secretary of the Executive Office of Labor and Workforce Development (EOLWD). 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.

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<sup>1</sup>In accordance with Chapter 144 of the Acts of 2014 *An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms* (M.G.L. Chapter 23 Section 25) on March 25th 2015, the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification became the Council on the Underground Economy and Employee Misclassification (CUE). The council, chaired by the Secretary of the Executive Office of Labor and Workforce Development and consisting of 17 members, shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term "underground economy" shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages. See Appendix B. This agreement extends to the CUE and its named member agencies.

### 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 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)/Council on the Underground Economy and Employee Misclassification (CUE)

- 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 CUE according to Massachusetts Executive Order 499 (E.O. 499).
- The CUE consists 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 Department of Unemployment Assistance.
- According to E.O. 499, CUE 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, CUE:
  - o Facilitates timely information sharing between and among CUE members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
  - o Identifies those industries and sectors where the underground economy and employee misclassification are most prevalent and target CUE members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
  - o Assesses existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develops and recommends strategies to improve those methods;
  - o 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;

- o 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 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;
- o 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;
- o 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
- o consults with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the CUE 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.

### Contacts

- Each party will designate a primary contact person, and each agency will also designate a contact person, responsible for coordinating activities covered under this Agreement.
- Each party 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 parties and/or their participating agencies may conduct coordinated investigations of common interest periodically in the Commonwealth of Massachusetts, as mutually agreed upon.
- The parties and their participating agencies will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The parties and their 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.

## Council on the Underground Economy

### Annual Report 2015

- 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 other 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 legal 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 law, 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 .2G), 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 Common 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 noncriminal 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.
- For information security purposes, information (including paper-based documents and electronic information such as emails and COs) exchanged pursuant to this Agreement remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated contact person when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date.
- For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.



- However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this Agreement, the agency experiencing the incident or disaster will send formal written notification to the donor agency's designated contact person within 3 days after detection of the incident or disaster. The written notification will describe the security incident or disaster in detail including what data exchanged pursuant to this Agreement may have been inadvertently disclosed.

**Subject to the foregoing constraints:**

- The parties and their participating agencies agree to exchange information on laws and regulations of common concern to the one another, as requested and to the extent practicable and allowable by law and policy.
- The parties and their 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 parties and their 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 parties' Points of Contact, or other officials designated by a party.

**Period of Agreement**

- This Agreement becomes effective upon the signing by all signatories below, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all signatories or their designees. Any party or 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 signatories or their designees.

**Council on the Underground Economy**  
**Annual Report 2015**

This Agreement is effective as of the 17th day of November 2017.

United States Department of Labor,  
Wage and Hour Division

By: \_\_\_\_\_

Administrator

By: \_\_\_\_\_

Regional Administrator, WHD

United States Department of Labor,  
Occupational Safety and Health Administration

BY: \_\_\_\_\_

Assistant Secretary

United States Department of Labor,  
Employee Benefits Security Administration

BY: \_\_\_\_\_

Assistant Secretary

United States Department of Labor,  
Office of Federal Contract Compliance Programs

BY: \_\_\_\_\_

Deputy Director

United States Department of Labor,  
Office of the Solicitor

BY: \_\_\_\_\_

Solicitor of Labor

United States Department of Labor,  
Office of the Solicitor

BY: \_\_\_\_\_

Regional Solicitor

Commonwealth of Massachusetts,  
Council on the Underground Economy and  
Misclassification

By: \_\_\_\_\_

Secretary, Executive Office of Labor and Workforce  
Development Chair,  
CUE/Council

**Appendix A**

- In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 218:
  - o 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.
  - o 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.
  - o 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.
  - o Access to confidential information may not be released to any third party without DOR's written approval.
- o 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.
- o 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:
  - o Privileged unemployment tax information shall be stored in a place physically secure from access by unauthorized persons.
  - o Privileged unemployment tax information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
  - o 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.
  - o 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.

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**UNDERGROUND  
ECONOMY**

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