

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
THE MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, DIVISION
OF EMPLOYMENT SECURITY

1. Introduction.

The Department of Housing and Urban Development, Region VII (hereinafter referred to as HUD) and the State of Missouri Division of Employment Security (hereinafter referred to as MODES) together collectively referred to as "the agencies or "the parties" enter into this Memorandum of Understanding (MOU) with the specific goal to recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern between the parties. The agencies herein enter into this joint initiative for the purpose of improving compliance with laws and regulations administered by HUD and MODES.

2. Purpose.

The sharing of information and collaboration between the parties is intended to reduce the incidence of misclassification of employees as independent contractors and improve compliance with federal prevailing wage labor laws (the Davis-Bacon Act and Related Acts) and with Missouri's employment security laws. Increased collaboration will also strengthen the relationship between HUD and MODES, enable both agencies to leverage existing resources and send a consistent message to employers about their duties to properly pay their employees and to pay employment taxes. This multi-agency approach presents a united compliance front to employers and their representatives.

3. Contacts.

Contacts for the purpose of this MOU will be HUD and MODES designees (See Attachment I).

4. Mutual Interests and Objective.

HUD is a Cabinet department in the Executive branch of the United States. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination, and transform the way HUD does business. HUD's Office of Labor Standards and Enforcement (OLSE) is responsible for HUD's overall compliance with the federal prevailing wage requirements applicable to HUD-assisted and insured housing and community development programs covered under the Davis-Bacon Act and Related Acts.

HUD is entering into this MOU to reduce the incidence of misclassification of employees as independent contractors and improve compliance with federal prevailing wage labor laws. HUD is authorized to conduct the actions contemplated herein pursuant to 29 C.F.R. § 5.6(a)(3).

MODES is an administrative agency of the state of Missouri. MODES's purpose is to promote employment security by providing for the payment of compensation to individuals who become unemployed through no fault of their own. MODES's responsibilities include determining whether workers are employees who thereby may be eligible for employment benefits when they lose their jobs and determining and collecting unemployment taxes, which are based on wages paid, due from employers. MODES is entering into this MOU to reduce misclassification, to better insure that eligible and qualified claimants receive unemployment benefits, and to improve compliance with state employment security laws.

5. Duties and Responsibilities of HUD.

- A. HUD will refer to MODES, at HUD's discretion and consistent with applicable law, employers who submit certified payrolls to HUD, Region VII where workers have been classified as 1099 or independent contractors. In doing so, HUD will provide MODES with the following information;
 - i. Company name, street address, and contact phone number;
 - ii. Number of employees who performed work on HUD funded/insured construction projects;
 - iii. Gross dollar amount of wages earned by employees as reported on certified payrolls submitted to HUD. No employee personally identifying information will be provided;
 - iv. The HUD project name and number on which the company performed work, and calendar dates during which time the company performed work on the applicable HUD project.
- B. HUD will not share confidential Tax Information with MODES unless disclosure is authorized by 26 U.S.C. § 6103.

6. Duties and Responsibilities of MODES.

- A. MODES may evaluate and classify employer referrals provided by HUD at MODES' discretion and conduct examinations to determine compliance with state employment tax laws.
- B. MODES may, at its discretion and consistent with applicable federal laws, request the non-confidential employer identifying data and information maintained by HUD.
- C. MODES may provide reports, at HUD's request, as needed to assess the effectiveness of this MOU. MODES will not be required to provide any confidential employer or employee information.

7. Disclosure, Safeguards, and Recordkeeping Requirements.

It is the policy of HUD 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 HUD's statutory obligations and enforcement efforts.

HUD will make its Local Contracting Agencies in the State of Missouri aware of this MOU and will request that they comply with the intent of this memorandum as it relates to similarly reporting to MODES the possible misclassification of workers as 1099 and/or independent contractors.

It is HUD's view that an exchange of information in cases in which both entities may proceed on related matters is to our mutual benefit. The parties intend to pursue their common interests by exchanging information pursuant to this MOU without waiving any legal privileges or other legal protections against disclosure to any entities or persons that are not party to this MOU. Parties will maintain confidentiality of information exchanged to the extent permissible in compliance with federal and applicable state law. HUD will comply with FOIA and the Privacy Act and MODES will comply with applicable state privacy and open records laws. Confidential information will not be shared pursuant to this MOU.

8. Transmittal Procedures.

A. Transmissions from HUD to MODES:

At its discretion, HUD will send any information, data, and materials subject to this MOU to MODES at the following address:

Thomas Pudlowski, Special Investigations Manager
Missouri Division of Employment Security
421 E. Dunklin Street
Jefferson City, MO 65104
Thomas.Pudlowski@labor.mo.gov
(573) 751-4825 (phone)
(573) 751-4251 (fax)

B. Transmissions from MODES to HUD:

At its discretion, MODES will send any information, data, and materials subject to this MOU to HUD at the following address:

Fannie J. Woods, Regional Supervisor
Office of Labor Standards and Enforcement
Department of Housing and Urban Development
400 State Avenue – Room 200
Kansas City, KS 66101-2406
913-551-5577 (phone)
913-551-5499 (fax)

MODES and HUD will exchange information, data, and materials via acceptable delivery methods including email, the United States Postal Service, Federal Express, United Parcel Service, or facsimile. Such information may be exchanged between the designees of both parties to this agreement.

9. Liability.

The liability of HUD and MODES is governed by both Federal and State Law or any other applicable federal or state statutory authority (including the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2672, et seq.; and Missouri's Sovereign Immunity Law, Mo. Rev. Stat. § 537.600).

10. Limitations.

The terms of this MOU are not intended to alter, amend, or rescind any current agreement or provision of federal or state law now in effect.

Any provision of this MOU which conflicts with federal or state law will be null and void.

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 does not authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations. In addition, each party will bear its own expenses in connection with the preparation, negotiation, and execution of the MOU and neither party shall be liable to the other party for such expenses.

Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations or decisions in carrying out their statutory and regulatory duties, or other current or future agreements between MODES or its component agencies and HUD.

This agreement also does not limit or restrict the parties from participating in similar activities or arrangements with other entities. Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.

11. Resolution of Disagreements

Disputes arising under this agreement will be resolved informally by discussions between agency points of contact or other officials designated by each agency.

12. Publicity

The parties will coordinate all public statements and other disclosures with regard to this MOU. No party may enter into any publicity regarding the MOU unless the parties consult in advance on the form, timing, and contents of any such publicity, announcement, or disclosure.

13. Statement of Non-Binding Obligation

This MOU does not obligate funds, personnel, services, or other resources of any party. This MOU is an expression of intent only. Each party shall act as an independent party with respect

to the performance of duties under this MOU. This MOU does not give any third party any benefit, legal or equitable right, remedy, or claim under this MOU.

14. Period of MOU Agreement

This MOU becomes effective upon the signing by both parties and shall last for three years. This MOU may be cancelled unilaterally by HUD or MODES by submitting thirty calendar days written notice to the other party or immediately by signed agreement of both parties. This MOU may be amended by deletion or modification of any provisions, provided that such amendment is written and is signed by authorized representatives of both HUD and MODES. This MOU may also be extended for subsequent durations of three years provided that the extension is written and signed by authorized representatives of both HUD and MODES.

This agreement is effective as of the 5th day of January, 2017.

U.S. Department of Housing and Urban
Development, Region VII

Missouri Department of Labor and Industrial
Relations, Division of Employment Security

By Jennifer Tidwell

By Michael Pritchett

Jennifer Tidwell
Regional Administrator
HUD, Region VII

Michael Pritchett
Acting Director
Missouri Department of Labor and Industrial
Relations

1/5/2017
[DATE]

1/5/2017
[DATE]

THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
THE MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,
DIVISION OF EMPLOYMENT SECURITY

Attachment I
Agency Contacts*

HUD Designee:

Name: Fannie J. Woods
Title: Regional Supervisor, Office of Labor Standards and Enforcement
E-Mail: Fannie.J.Woods@hud.gov
Address:
Department of Housing and Urban Development
Office of Labor Standards and Enforcement
400 State Avenue, Room 200
Kansas City, KS 66101-2406
Telephone: 913-551-5577
Fax: 913-551-5499

MODES Designee:

Name: Matthew Hankins
Title: Chief, Unemployment Insurance Tax Section
E-Mail: Matthew.Hankins@labor.mo.gov
Address:
MO Division of Employment Security
Unemployment Insurance Tax Section
421 E. Dunklin Street
Jefferson City, MO. 65104
Telephone: 573-526-8129
Fax: 573-751-4251

Name: Thomas Pudlowski
Title: Special Investigations Manager
E-Mail: Thomas.Pudlowski@labor.mo.gov
Address:
MO Division of Employment Security
421 E. Dunklin Street
Jefferson City, MO. 65104
Telephone: 573-751-4825
Fax: 573-751-4251

*Any modifications in contact information must be updated in writing to the other party.