

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between CFA Institute (“Respondent” or “CFAI”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively “the Parties”).

I. BACKGROUND

WHEREAS, by letter dated July 31, 2017, IER notified Respondent that it had initiated an independent investigation, DJ# 197-80-39 (“IER Investigation”), to determine whether Respondent had engaged in unfair immigration-related employment practices prohibited by 8 U.S.C. § 1324b (“Act”).

WHEREAS, IER concluded based upon the IER Investigation that there is reasonable cause to believe that from at least November 2016, until at least January 2018, Respondent engaged in a pattern or practice of discriminatory hiring based on citizenship status by: 1) preferring to hire individuals who hold or require sponsorship for temporary work visas; and 2) failing to consider U.S. workers for all available examination grading positions, in violation of 8 U.S.C. § 1324b(a)(1)(B). Specifically, IER concluded that Respondent preferred to hire and rehire individuals holding or requiring H-1B, H-1B1, and E-3 visas for certain grading positions that it set aside for them, based on their citizenship status, and that Respondent failed to consider qualified and available U.S. workers for those positions.

WHEREAS, Respondent denies that it engaged in a pattern or practice of discriminatory hiring based on citizenship, and further denies the specific conclusions reached by IER.

WHEREAS, the Parties wish to resolve IER’s reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve IER’s investigative findings and claims as of the date of this Agreement, the Parties agree as follows:

II. TERMS OF AGREEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement, referred to as the “Effective Date.” The term of this Agreement is three (3) years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$321,000.00. Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalties no later than five (5) federal business days from the Effective Date.
3. The monies discussed in paragraph 2 shall be paid via the FedWire electronic fund transfer system within ten (10) federal business days of the Effective Date or receipt of fund

transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm payment via email to Julia Heming Segal at Julia.Heming.Segal@usdoj.gov, with a subject line that includes "CFAI" and the file number DJ # 197-80-39.

4. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the pattern or practice of discriminatory hiring based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1)(B) that is the subject of the IER Investigation through the Effective Date.
5. Respondent shall not discriminate against any individual based on citizenship status in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(3). If Respondent wishes to consider individuals who do not currently have U.S. employment authorization for exam grading positions, it shall do so by implementing a citizenship-status-blind selection process in which Respondent is unaware of a candidate's citizenship status or need for employment sponsorship at the time of selection. Respondent also shall not consider an individual's address or location of residence in a foreign country as a proxy for citizenship status.
6. Within thirty (30) days of the Effective Date, Respondent shall review its employment policies and revise such policies to prohibit discrimination on the basis of citizenship, immigration status and national origin in the recruitment, hiring and firing processes.
7. During the term of this Agreement, Respondent shall keep a copy of all non-immigrant petitions and related documents, including all related forms, applications, letters, emails, and responses to requests for more information that Respondent submits to and/or receives from the U.S. Department of Labor and/or U.S. Citizenship and Immigration Services, and produce them, as requested, pursuant to paragraph 9.
8. Within ninety (90) days from the Effective Date, Respondent shall ensure that all individuals with any responsibility for recruiting, advertising, hiring, and terminating grader positions, are trained on their obligation to comply with 8 U.S.C. § 1324b.
 - a. The training will consist of viewing a free online IER Employer/HR webinar presentation, and/or subject to the mutual agreement of the Parties, an in-person IER presentation.
 - b. Respondent will pay all individuals their regular rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions.
 - c. During the term of this Agreement, all new staff Respondent hires, promotes, or contracts into positions with any responsibility for the activities listed in paragraph 8, shall view a free IER Employer/HR webinar within sixty (60) days of hire, promotion, or contract;

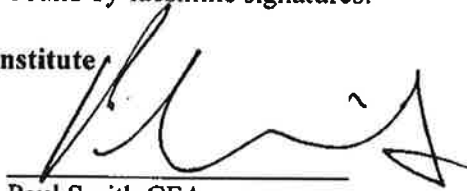
- d. Respondent shall compile attendance records listing the individuals who completed the trainings described in this paragraph, including their full name, title, hire date, and the date of the training, and send them to Julia.Heming.Segal@usdoj.gov or another subsequently agreed-upon IER designee within ten (10) days of completion of each training session. Such emails shall include “CFAI” and the file number DJ # 197-80-39.
9. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent as necessary to determine Respondent’s compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Respondent’s premises, examine witnesses, and examine and copy Respondent’s documents.
10. Nothing in this Agreement limits IER’s right to inspect Respondent’s Forms I-9 pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
11. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Respondent of the potential violation without opening an investigation. Respondent will then have thirty (30) days from the date of IER’s notification to cure the violation to IER’s satisfaction before IER deems Respondent to be in violation of this Agreement.
12. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent, IER’s authority to investigate or file a complaint on behalf of any such individual, or IER’s authority to conduct an independent investigation of Respondent’s employment practices. This Agreement does not affect Respondent’s right to defend against any charge by an individual or complaint by IER on behalf of any such individual alleging an unfair immigration-related employment practice against Respondent.
13. This Agreement resolves any and all differences between the parties with respect to DJ # 197-80-39 through the Effective Date. This Agreement does not address any of Respondent’s practices other than those that are the subject of the IER Investigation. Accordingly, the terms of this Agreement neither address nor evaluate Respondent’s practices for compliance with any law other than 8 U.S.C. § 1324b.
14. This Agreement may be enforced in the United States District Court for the Western District of Virginia. This paragraph, or the initiation of a lawsuit to enforce the Agreement under this paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement. For the purposes of an action to enforce this Agreement, the parties agree that the obligations set forth in each and every provision of Part II of this Agreement are material.

III. OTHER TERMS

- 15. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
- 16. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this agreement, both parties shall be deemed to have drafted it.
- 17. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
- 18. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. Any modifications to the Agreement must be in writing and signed or affirmed by both parties.
- 19. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties shall be bound by facsimile signatures.

CFA Institute

By:



Paul Smith CFA
President and CEO
CFA Institute

Dated: 2-21-19

Immigrant and Employee Rights Section

By:



Alberto Ruisanchez
Deputy Special Counsel

Dated: 2-25-19

Jodi Danis
Special Litigation Counsel

Liza Zamd
Senior Trial Attorney

Julia Heming Segal
Trial Attorney

Michaela Olson
Paralegal Specialist