

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between Microsoft Corporation (“Microsoft”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively, “the Parties”).

I. BACKGROUND

WHEREAS, on April 13, 2018, IER notified Microsoft that it had initiated an independent investigation, DJ No. 197-79-515 (the “IER Investigation”), of Microsoft’s hiring and employment eligibility verification practices to determine whether Microsoft was violating the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b;

WHEREAS, the IER investigation found that from at least July 2019 to at least January 2020, Microsoft’s hiring process included a visa evaluation process, whereby certain applicants were required to complete a Visa Evaluation Questionnaire (“VEQ”) prior to receiving an offer of employment. Microsoft used the VEQ to evaluate the applicants’ current work authorization, and included questions directed at lawful permanent residents (“LPRs”). Microsoft’s visa evaluation process, which included the VEQ, also requested applicants to produce copies of their U.S. Department of Homeland Security-issued documents;

WHEREAS, the IER investigation found evidence that Microsoft repeatedly required that LPRs, refugees, and asylees complete a Visa Evaluation Questionnaire, even though they had permanent work authorization by virtue of their immigration status and therefore did not require Microsoft’s sponsorship for work authorization, thereby subjecting these workers to unnecessary document requests to verify their employment authorization, based on their immigration status;

WHEREAS, based on the IER Investigation, IER concluded that there is reasonable cause to believe that between February 2018 and January 2020, Microsoft committed unfair documentary practices against at least six (6) LPR applicants based on citizenship status during Microsoft’s visa evaluation process by requesting that they present a Permanent Resident Card (“PRC”) to establish employment authorization, in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, based on the IER Investigation, IER also concluded that there is reasonable cause to believe that from at least June 2019 until at least January 2020 Microsoft routinely sent emails to reverify the work authorization of LPRs with no legal basis, thus maintaining a policy of requesting more documents than necessary to comply with 8 U.S.C. § 1324a(b), based on citizenship status. In particular, Microsoft’s template emails encompassed LPRs who had previously presented a PRC, stating that such workers needed to be reverified and should present a PRC for reverification, in violation of 8 U.S.C. § 1324b(a)(6).

WHEREAS, on the basis of the IER Investigation, IER also concluded that there is reasonable cause to believe that between July 2019 and January 2020, Microsoft discriminated with respect to at least three (3) employees who became lawful permanent residents after starting their jobs and whose continued work authorization needed to be reverified, by requesting that they present a specific document (their PRCs) for reverification, in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, this Agreement does not constitute and shall not be construed as an admission by Microsoft of any act in violation of 8 U.S.C. § 1324b or guilt or liability for any violations of 8 U.S.C. § 1324b, or other applicable law, rule, or regulation.

WHEREAS, Microsoft contends that its actions were not unlawful and it did not engage in a pattern or practice of discrimination against any of its employees or candidates or applicants for employment or in any other violation of 8 USC 1324(b), or other applicable law, rule, or regulation, and makes no admission of wrongdoing; there have been no adjudicated findings of any unlawful actions, wrongdoing, or non-compliance and Microsoft disputes and denies any such allegations.

WHEREAS, Microsoft contends that it cooperated fully in response to IER's requests for information and throughout IER's Investigation, and that Microsoft is deeply committed to compliance, diversity and equity.

WHEREAS, the Parties wish to resolve the IER Investigation and avoid contested litigation, 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 the IER Investigation as of the date of this Agreement, the Parties agree as follows:

II. TERMS OF SETTLEMENT

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 two years from the Effective Date. This Agreement shall apply to Microsoft's recruiting activities anywhere in the world for employment positions in the United States.
2. Microsoft shall pay a civil penalty to the United States Treasury in the amount of \$17,352 (Seventeen thousand, three hundred and fifty-two dollars).
3. No later than 10 days after the Effective Date, Microsoft will provide IER with the name, position title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalty. Microsoft shall pay the civil penalty discussed in Paragraph 2 via the FedWire electronic fund transfer system within 10 days of receiving fund transfer instructions from IER. IER shall send fund transfer instructions to Annjanette M. Cooper, Assistant General Counsel, Microsoft Corporation, via email to [REDACTED], and to Eric Bord, Partner, Morgan, Lewis & Bockius, via email to [REDACTED]. On the day of payment, Microsoft shall send confirmation of the payment to Silvia Dominguez-Reese at silvia.dominguez-reese@usdoj.gov and Katelyn Davis at katelyn.davis@usdoj.gov. The email confirming payment shall include "Microsoft Corporation, DJ No. 197-79-515" in the subject line.
4. Pursuant to 8 U.S.C. § 1324b, Microsoft shall not unlawfully discriminate against employment applicants or employees based on citizenship, immigration status, or national origin, during the recruitment, screening, hiring, firing, visa evaluation process,

or employment eligibility verification and reverification processes (together, the “EEV process”).

5. Within 30 days of the Effective Date, Microsoft shall revise its EEV process, policies, and practices as follows:
 - a. not include in Microsoft’s written or other reverification communications with employees any language that a reasonable employee could interpret, erroneously, to mean that 1) all documents with expiration dates require reverification; 2) reverification is required to update an individual’s citizenship status or for individuals who previously presented Permanent Resident Cards; or 3) any employee who is subject to reverification must present a Permanent Resident Card for reverification. Specifically, Microsoft shall discontinue the use of the following standard template language:
 - i. “For employees who completed the Form I-9 with employment eligibility documents that expire, we are required to re-verify employment eligibility”
 - ii. “Attention to Green Card holders: Despite you obtaining your Permanent Resident status, we are still required to update your I-9 form to validate your work authorization. Please make sure to upload a copy of the front and back of your green card so we may do so.”
 - b. remove the words “or Permanent Resident Card (Green Card),” from the following template email:
 - i. “If on your first day with Microsoft, you presented your most recent work-authorized I-94 Document (with the status of H-1, L-2, H-1, H-2, E-3) Employment Authorization Document (EAD card), or Permanent Resident Card (Green Card), please provide us your updated work authorization documents so we can update your Form I-9.”
 - c. Include that Microsoft does not and will not:
 - i. seek to reverify work authorized individuals who do not need to be reverified; or
 - ii. require that individuals who obtain LPR status while employed with Microsoft reverify their employment eligibility by presenting a PRC, and will instead also accept any acceptable List A or List C document for purposes of Section 3 reverification;
 - d. discontinue the use of the following language in Microsoft’s employment authorization reverification emails to remove any reference to Microsoft’s knowledge of the individual’s adjustment of status and any suggestion that the company is required to have on file a copy of a Permanent Resident Card, along

with the reference to a particular List A document as an example of what the individual may provide:

“Your current work authorization visa will be expiring on [date] and our records indicate that you have received your Permanent Resident Card (also known as a “Green Card”), however, we are unable to locate a copy in our immigration portal. As a result, we are required by law to update your I-9 form to validate your work authorization. For us to do so, we require a [digital] copy of an original document which evidences your employment eligibility. For example, a copy of your Permanent Resident card would be acceptable as a List A document.”

6. Within 30 days of the Effective Date, Microsoft shall revise its visa evaluation process, including the use of Microsoft’s Visa Evaluation Questionnaire and Visa Hire Questionnaire, to:
 - a. ensure that Microsoft does not request or require job applicants who do not need sponsorship to work in the United States—such as U.S. citizens, U.S. nationals, LPRs, refugees, and asylees—to complete a Visa Evaluation Questionnaire or Visa Hire Questionnaire. Microsoft will train all relevant personnel to avoid such practices;
 - b. ensure that Microsoft does not request or require that job applicants who do not need sponsorship to work in the United States provide work authorization documents, including documents issued by the Department of Homeland Security, such as PRCs, or to prove that the applicant need not undergo that process;
 - c. revise Microsoft’s Visa Evaluation Questionnaire and Visa Hire Questionnaire by adding to the first page of each Questionnaire the following statement: “If you do not need sponsorship to work in the United States, such as if you are a U.S. citizen, U.S. national, lawful permanent resident, refugee, or asylee, you are not required to complete this Questionnaire.”; and
 - d. remove all questions regarding LPRs.
7. Microsoft shall not intimidate, threaten, coerce, or retaliate against any person for participating in the IER Investigation or otherwise exercising any right or privilege secured by 8 U.S.C. § 1324b.
8. No later than 14 days after the Effective Date, Microsoft shall post an English and Spanish version of the IER “If You Have The Right to Work” poster in color and measuring no smaller than 8.5” x 11,” an image of which is available at <https://www.justice.gov/crt/worker-information#poster>, in all places where notices to employees and job applicants are normally posted. The poster shall remain in place for the term of the Agreement or for as long as Microsoft participates in E-Verify, whichever is longer. Microsoft shall also provide a copy of the Lists of Acceptable Documents in

English and in Spanish to employees who are completing the Form I-9 at initial hire or being reverified.

9. Microsoft's Equal Employment Opportunity ("EEO") policy shall continue to prohibit discrimination based on citizenship, immigration status, and national origin in all of its personnel practices. Within 90 days of the Effective Date, Microsoft shall revise as needed its employment policies related to hiring and/or non-discrimination including all employment eligibility verification and reverification policies to prohibit:
 - a. Requesting more or different documents than required by law to establish initial or continued work authorization based on an individual's citizenship, immigration status, or national origin;
 - b. Requesting specific Form I-9 documents based on an individual's citizenship, immigration status, or national origin; and
 - c. Taking any reprisal action against an employee or applicant for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in any investigation or action under 8 U.S.C. § 1324b.
10. During the term of the Agreement, Microsoft shall ensure that all individuals, regardless of whether they are direct Microsoft employees or employees of third-party entities with whom Microsoft contracts, who work in Microsoft's Corporate, External, and Legal Affairs, including all individuals in Microsoft's U.S. Immigration team ("EEV Personnel") can readily access:
 - a. The most current version of the U.S. Citizenship and Immigration Services' ("USCIS") Handbook for Employers (M-274), available at www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274; and
 - b. The most current version of the USCIS E-Verify User Manual (M-775), available at www.e-verify.gov/e-verify-user-manual.
11. Within 90 days of the Effective Date, Microsoft will ensure that all EEV Personnel and individuals who engage in recruitment on behalf of Microsoft receive training regarding their obligations to comply with 8 U.S.C. § 1324b, as follows:
 - a. IER will provide two free, live training presentations for Microsoft (via virtual meeting or webinar platform) on two different dates within 60 days of the Effective Date, on dates and times to be mutually agreed upon by IER and Respondent. Microsoft will make good faith efforts to ensure maximum attendance at live trainings.
 - b. Within 15 days of the second live training presentation, IER will provide Microsoft with access to a recorded training.
 - c. Microsoft will ensure that individuals who are unable to attend a live training view the recorded training within 90 days of the Effective date. Any employees

on leave during the live training will complete the recorded training within 30 days of returning to work from leave.

- d. Microsoft will ensure that all EEV Personnel are paid their normal rate of pay during the training, and the training will take place during the individual's normally scheduled workday and work hours. Microsoft will bear all of its employee costs, if any, associated with the training session(s).
 - e. Microsoft shall compile attendance records listing the individuals who attend the training described in this paragraph, including each individual's full name, job title, direct employer (if not Microsoft), and the date(s) of the training session or the viewing of the recorded training. Microsoft will send the attendance records for each live training within 10 days of the training sessions, and on a quarterly basis for those who view the recorded training, via email to Silvia Dominguez-Reese at silvia.dominguez-reese@usdoj.gov and Katelyn Davis at katelyn.davis@usdoj.gov.
 - f. During the term of the Agreement, all new EEV Personnel who assume their duties after the initial training described in this paragraph takes place shall view the recorded training within 60 days of assuming such duties. Microsoft shall provide attendance records for these individuals to IER on a quarterly basis.
 - g. Notwithstanding paragraph 26 herein, the Parties may mutually agree in writing (including email) to modify the timelines referenced in this paragraph.
12. During the term of the Agreement, IER can make reasonable inquiries to Microsoft as IER, in its discretion, believes necessary or appropriate to determine Microsoft's compliance with the Agreement, including but not limited to: requiring written reports from Microsoft concerning its compliance; inspecting Microsoft's premises during a reasonably prompt and mutually agreed upon date and time, which shall have no effect on IER's statutory right to inspect Forms I-9 within the timeline specified in 8 C.F.R. § 274a.2(b)(2)(ii); interviewing Microsoft's employees, officials, or other persons; and requesting copies of Microsoft's documents. Microsoft's responses to such inquiries shall be due within 30 calendar days of the date of IER's request unless IER agrees to extend the time.
13. Nothing in this Agreement limits IER's right to inspect Microsoft's Forms I-9 pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
14. If IER has reason to believe that Microsoft is violating any provision of this Agreement, IER may, in its sole discretion, notify Microsoft of the purported violation rather than initiate a new investigation or seek to judicially enforce the Agreement. If IER exercises its discretion to notify Microsoft of a purported violation, Microsoft shall have 30 days from the date IER notifies it of the alleged violation to cure the violation to IER's satisfaction.
15. This Agreement does not affect the right of any individual to file a timely charge against Microsoft alleging an unfair immigration-related employment practice under 8 U.S.C.

§ 1324b, IER's authority to investigate Microsoft or file a complaint seeking relief on behalf of any such individual.

16. This Agreement does not affect IER's authority to conduct an independent investigation of Microsoft's employment practices occurring after the Effective Date or outside the scope of the IER Investigation.
17. This Agreement resolves any and all differences between the Parties with respect to the IER Investigation through the Effective Date. Except as specified in Paragraph 2, IER shall not seek from Microsoft any additional relief beyond that referenced in this Agreement for the violations that are the subject of the IER Investigation through the Effective Date. In exchange for the promises Microsoft makes in this Agreement, IER will not institute administrative or judicial enforcement proceedings against Microsoft with respect to the claims included in the IER Investigation through the Effective Date. Nothing in this paragraph prevents the U.S. Department of Justice from seeking to enforce the terms of this Agreement.

III. ADDITIONAL TERMS OF SETTLEMENT

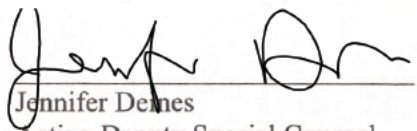
18. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both parties and shall not be construed against any one party in the event of a subsequent dispute regarding the terms of the Agreement. The Parties agree that the paragraphs set forth in Part II of this Agreement (entitled "Terms of Settlement") are material terms, without waiver of either party's right to argue that other terms in the Agreement are material.
19. This Agreement may be enforced in the United States District Court for the Western District of Washington. 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.
20. Should any court determine that any provision of this Agreement is 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 the 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.
21. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that are the subject of the IER Investigation is not reasonably foreseeable. To the extent that either party previously implemented a litigation hold to preserve documents or electronically stored information, 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.

22. All references to "days" in the Agreement are to calendar days. If any deadline for an obligation to be performed under this Agreement falls on a weekend or a federal holiday, the deadline shall be extended to the next business day.
23. Nothing in this Agreement modifies or abridges the Department of Justice's responsibilities under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, nor does it limit the protections, rights, or notice afforded to Microsoft under FOIA.
24. IER will not offer this Agreement as evidence of liability in a legal proceeding or action except if required to do so by law, and IER and Microsoft retain the right to use this Agreement in any legal proceeding or action to enforce the terms of this Agreement.
25. The Parties agree to bear their own costs, attorney's fees, and other expenses incurred in the IER Investigation through the Effective Date.
26. 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 or amendments to this Agreement must be agreed upon in writing and signed by all parties.
27. 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 agree to be bound by facsimile and/or scanned signatures.

Microsoft Corporation

By:  Dated: 12/1/21
Annjanette M. Cooper
Assistant General Counsel, Corporate, External, and Legal Affairs

Immigrant and Employee Rights Section

By:  Dated: 12/7/2021
Jennifer Demes
Acting Deputy Special Counsel

Jodi Danis
Special Litigation Counsel

Silvia Dominguez-Reese
Trial Attorney

Katelyn Davis
Equal Opportunity Specialist