

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and among:

The United States Department of Labor (“DOL”), Employment and Training Administration (“ETA”), and Facebook, Inc. and all of its subsidiaries and affiliates (“Facebook”), collectively (“Parties”).¹

WHEREAS, ETA is responsible for the administration of the permanent labor certification (“PERM”) program under section 212(a)(5)(A) of the Immigration and Nationality Act (“INA”) and DOL’s PERM regulations under 20 C.F.R. part 656.

WHEREAS, ETA issued 126 audit letters dated on or about August 27, 2020 (the “Audits”) of certain Facebook Applications for Permanent Employment Certifications (“PERM Applications”), as identified in Appendix B, and ETA issued requests for information (the “RFIs”) dated on or about March 8, 2021 and on or about April 16, 2021 with respect to the same PERM Applications.

WHEREAS, Facebook submitted responses to the Audits in a timely manner and responded to the RFIs in a timely manner.

WHEREAS, in or about May and June 2021, the Parties mutually agreed that ETA would pause processing of Facebook’s PERM Applications pending before ETA to facilitate settlement discussions.

WHEREAS, this Agreement is intended to resolve all issues identified in the ETA Audits and RFIs referenced above that pertain to the compliance of Facebook’s PERM program with 20 C.F.R. part 656 and the agreed-upon process for Facebook’s PERM applications currently in Analyst Review and prospective PERM applications for the three-year term of this Agreement.

WHEREAS, this Agreement does not constitute and shall not be construed as an admission by Facebook of any act in violation of 20 C.F.R. part 656, 8 U.S.C. § 1324b, or other applicable law, rule, or regulation with respect to any currently pending PERM Applications, any previously adjudicated PERM applications, or any prospective PERM applications filed during the three-year term of this Agreement, as more fully described below.

NOW THEREFORE, the Parties have agreed to resolve all matters as follows:

¹ A list of Facebook, Inc.’s subsidiaries and affiliates for which it currently has pending PERM applications and/or presently anticipates filing PERM applications is set forth in Appendix A. During the three-year term of this Agreement, Facebook agrees that it will notify ETA in writing by e-mail to Plc.atlanta2@dol.gov, and including the words “Attention: Facebook – OFLC Settlement Agreement Notification” in the subject line of the e-mail, at least 30 calendar days in advance of filing any PERM application for a position with a subsidiary or affiliate not listed in Appendix A. For the avoidance of doubt, such subsidiary or affiliate of Facebook, Inc. shall be covered by the terms of this 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 years following the Effective Date.
2. With respect to Facebook's prospective PERM applications:
 - a. Consistent with 20 C.F.R. part 656, and pursuant to this Agreement, Facebook will take the following steps, including the specified additional recruitment steps under 20 C.F.R. § 656.17(e)(1)(ii) as set forth in subparagraphs 2.a.ii., iii., and iv. for the duration of this Agreement:
 - i. Publish the notice of filing of the PERM applications in Facebook's in-house media, as required by 20 C.F.R. § 656.10(d) (*i.e.*, the notice of filing must be published in any and all in-house media that Facebook uses to post notice of available job openings to internal candidates), for a minimum of 10 consecutive business days. The notice of filing published in in-house media must be posted in substantially the same form as the example included at Appendix C.
 - ii. Utilize Facebook's Careers website (<https://www.facebook.com/careers>) as one of its additional recruitment steps pursuant to 20 C.F.R. § 656.17(e)(1)(ii)(B). The job advertisement must be posted in the same manner and format as other roles are posted on that website, and for a minimum of 14 calendar days.
 - iii. Utilize a job search website (other than Facebook's Careers website described in 2(a)(ii)) as one of the additional recruitment steps pursuant to 20 C.F.R. § 656.17(e)(1)(ii)(C). The job advertisement must be posted for a minimum of 14 calendar days on one of the following websites: (1) dice.com, (2) hired.com, (3) softwareengineer.com, or (4) ieee.org. In the event that one or all of the listed websites are unavailable, or if Facebook wishes to utilize a job search website not identified herein, Facebook must submit a request for such authorization in writing by e-mail to Plc.atlanta2@dol.gov, and including the words "Attention: Facebook – OFLC Settlement Agreement Notification" in the subject line of the e-mail, and ETA shall have twenty-one (21) days to make a determination with respect to Facebook's request. Unless and until ETA has provided express written approval under this subparagraph, Facebook may not utilize the new job search website to advertise for PERM applications.
 - iv. Utilize a trade or professional organization publication as one of the additional recruitment steps pursuant to 20 C.F.R. § 656.17(e)(1)(ii)(E).

- v. Accept electronic resumes or applications for PERM-related positions via Facebook's Careers website, in the same manner as electronic applications are accepted for other roles posted on Facebook's Careers website.
 - vi. Not require or encourage applicants to apply via mail for PERM-related positions.
 - vii. Ensure that online functionality is enabled to allow applicants for PERM-related positions to apply electronically through state workforce agency websites, where there is such an option.
 - viii. Complete a recruitment report, as described in 20 C.F.R. § 656.17(g), that includes a description of the recruitment steps required by this Agreement.
3. Facebook acknowledges that all PERM applications filed for a six-month period, beginning with the next application filed after the Effective Date of this Agreement, may be audited pursuant to 20 C.F.R. § 656.20. If requested pursuant to such audit(s), Facebook will submit documentation that includes, but is not limited to, proof of completion of the recruitment steps described in paragraph 2.a. of this Agreement.
- a. If the audited applications described in paragraph 3 materially comply with the regulations at 20 C.F.R. part 656 and the terms of this Agreement, it is the intent of ETA that the rate of audit(s) for all subsequent PERM applications filed by Facebook per month during the term of this Agreement would not exceed a rate of more than 40% of such applications.
 - b. If the audited applications described in paragraph 3 do not materially comply with the regulations at 20 C.F.R. part 656 and the terms of this Agreement, ETA, in its sole discretion, will determine an appropriate audit percentage of PERM applications for the remainder of the term of this Agreement.
 - c. Notwithstanding subparagraphs 3.a. and 3.b., this Agreement shall not limit ETA's discretion to take any actions it determines are appropriate and necessary under 20 C.F.R. part 656 to ensure compliance with the regulations at 20 C.F.R. part 656 and the terms of this Agreement, including, but not limited to, requiring supervised recruitment under 20 C.F.R. § 656.21, debarment under 20 C.F.R. § 656.31(f), or revocation of approved labor certifications under 20 C.F.R. § 656.32. If Facebook complies with the terms of the Agreement, ETA shall not take any actions based on the issues identified in the 126 ETA Audits and RFIs referenced above and that are addressed in this Agreement.

4. With respect to the 126 PERM applications that ETA has audited, and are identified in Appendix B, for which ETA has not yet issued final determinations:
 - a. The Certifying Officer will permit Facebook to withdraw any of these applications within 120 days of the Effective Date of this Agreement. Facebook acknowledges that:
 - i. Consistent with 20 C.F.R. § 656.30 and 8 C.F.R. § 204.5(d), withdrawal of an application will result in the loss of any “filing date” for purposes of establishing a “priority date” related to the filing of a petition for classification under section 203(b) of the INA. Following this 120-day period, no withdrawals will be permitted unless expressly authorized in writing by the Certifying Officer.
 - ii. Any applications not withdrawn within 120 days of the Effective Date of this Agreement, or pursuant to the Certifying Officer’s express written authorization, may be denied on the grounds that Facebook failed to meet the requirements of 20 C.F.R. § 656.10(d) and Facebook agrees it will accept such decision as the final agency action. Facebook further represents that it has been apprised by its undersigned counsel of its right of appeal under DOL’s regulations, fully understands its right to appeal under DOL’s regulations or any other statute or law, and agrees it will not seek further review of such decisions before DOL’s Board of Alien Labor Certification Appeals (“BALCA”) or other court of competent jurisdiction.
 - b. The Parties agree that the mere act of withdrawing a currently pending PERM Application under subparagraph 4.a. will not serve as the sole basis for an audit, RFI, and/or supervised recruitment.
5. With respect to Facebook’s PERM applications currently pending in Analyst Review as of the Effective Date of this Agreement:
 - a. ETA will permit Facebook to withdraw any of these applications within a 120-day period following the Effective Date of this Agreement. However, Facebook acknowledges that, consistent with 20 C.F.R. § 656.30 and 8 C.F.R. § 204.5(d), the withdrawal of an application will result in the loss of any “filing date” for purposes of establishing a “priority date” related to the filing of a petition for classification under section 203(b) of the INA. Facebook represents that this time period is needed to facilitate changes to

its internal systems. Accordingly, Facebook agrees that, during this 120-day period, Facebook will not file any new PERM Applications.²

- b. The Parties agree that any applications not withdrawn pursuant to subparagraph 5.a. will be subject to the following terms:
- i. Facebook must complete the notice and recruitment steps outlined above in paragraph 2.a. of this Agreement within 150 days of the Effective Date of this Agreement.
 - ii. Facebook acknowledges that all applications not withdrawn may be audited according to the procedures set forth at § 656.20. If requested pursuant to such audit(s), Facebook will submit documentation that includes, but is not limited to, proof of completion of the recruitment steps described in paragraph 2.a. of this Agreement and any other recruitment conducted prior to the Effective Date of this Agreement. ETA will issue audit letters describing the information and documents that Facebook must submit to ETA for any applications audited under this subparagraph.³
 - iii. This Agreement shall not limit ETA's discretion to take any actions it determines are appropriate under 20 C.F.R. part 656 to ensure compliance with the regulations at 20 C.F.R. part 656 and the terms of this Agreement, including, but not limited, to audit under 20 C.F.R. § 656.20, requiring supervised recruitment under 20 C.F.R. § 656.21, debarment under 20 C.F.R. § 656.31(f), or revocation of approved labor certifications under 20 C.F.R. § 656.32. If Facebook complies with the terms of this Agreement, ETA shall not take any of the actions described above based on the issues identified in the 126 ETA Audits and RFIs that are addressed in this Agreement.

² Should Facebook implement the changes to its internal systems prior to the expiration of the 120-day period in subparagraphs 4.a. and 5.a., Facebook will be permitted to resume filing new PERM applications so long as it agrees to cease withdrawing the aforementioned applications under subparagraphs 4.a. and 5.a.. Facebook, however, further agrees that it will not be permitted to resume filing new PERM applications under this provision for at least 75 days from the Effective Date of this Agreement and that it must notify ETA in writing by e-mail to Plc.atlanta2@dol.gov, and including the words "Attention: Facebook – OFLC Settlement Agreement Notification" in the subject line of the e-mail, at least 30 calendar days in advance of filing any new PERM applications before the expiration of the 120-day period in subparagraphs 4.a. and 5.a. Upon such notification, ETA will begin further processing of Facebook's PERM applications that were not withdrawn under the terms of this Agreement.

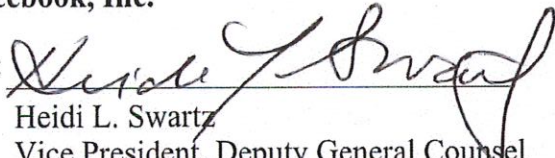
³ The Parties agree that ETA will not require that Facebook submit a new ETA Form 9089 as part of Facebook's response to an audit letter under subparagraph 5.b.ii. Additionally, the Parties agree that nothing in this Agreement will prevent Facebook from commencing the required notice and recruitment steps outlined in paragraph 2.a. after the Effective Date of the Agreement and, so long as Facebook has completed the notice and recruitment steps outlined in paragraph 2.a. between the Effective Date of this Agreement and the 150-day period specified in subparagraph 5.b.i., ETA will not consider those notice and recruitment actions stale.

- iv. The Parties further acknowledge that the Certifying Officer may determine it is necessary to issue lawful supplemental requests for information and/or deny any PERM application that does not meet the requirements of the regulations at 20 C.F.R. part 656 and the terms of this Agreement.
 - v. The Parties agree that the mere act of withdrawing a currently pending PERM Application under subparagraph 5.a. will not serve as the sole basis for an audit, RFI, and/or supervised recruitment.
- 6. ETA agrees that Facebook's compliance with the terms of this Agreement resolves the issues raised in connection with the Audits and the RFIs from the 126 applications referenced in paragraph 4. Additionally, this Agreement sets forth the additional recruitment steps that are required for the pending and prospective PERM applications referenced in paragraphs 2, 3, 4 and 5.
- 7. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, agreements, and understandings with respect thereto. This Agreement completely and accurately reflects the agreement of the Parties to resolve this matter and there are no other written or oral promises or statements binding upon the Parties with respect to the disposition of this matter.
- 8. If one of the Parties believes that the other party has breached the terms of this Agreement, the Parties agree that they will first confer in good faith to achieve a resolution prior to commencing an action to enforce the Agreement. The Parties further agree that they will each designate a representative to be available to discuss the issues underlying this Agreement. Additionally, the Parties acknowledge that Facebook has also executed a settlement agreement with the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") to resolve IER's investigation and litigation before the Office of the Chief Administrative Hearing Officer in *United States of America v. Facebook, Inc.*, OCAHO 2021B00007, concerning IER's allegations that Facebook violated the INA's anti-discrimination provision, 8 U.S.C. § 1324b, through a pattern or practice of discrimination against U.S. workers in the PERM process. ETA represents that it has reviewed Facebook's settlement agreement with IER and does not believe that agreement conflicts with section 212(a)(5)(A) of the INA, DOL's PERM regulations at 20 C.F.R. part 656, or the terms of this Agreement.
- 9. This Agreement may be enforced in the United States District Court for the Northern District of California.
- 10. Nothing contained in this Agreement shall require any party at any time to disclose any information protected by the attorney-client privilege, attorney work product, or any other applicable privileges or confidentiality protections recognized under the laws of the United States.

11. 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.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, or their duly authorized representatives below.

Facebook, Inc.

By: 
Heidi L. Swartz
Vice President, Deputy General Counsel
Head of Employment Law & Investigations

Dated: 10-18-21

**United States Department of Labor,
Employment and Training Administration**

By: 

Dated: 10-19-21

Brian David Pasternak
Administrator
Office of Foreign Labor Certification

Appendix A

Facebook, Inc.

Facebook Payments, Inc.

Facebook Miami, Inc.

Novi Financial, Inc.

Siculus, Inc.

WhatsApp LLC

Winner LLC

Andale, Inc.

Goldframe LLC

Greater Kudu LLC

Raven Northbrook LLC

Appendix B

	ETA_CASE_NO	CASE_RECEIVED_DATE
1	A-19364-00917	1/10/2020
2	A-20009-04863	2/3/2020
3	A-20015-07288	2/3/2020
4	A-20008-04177	2/4/2020
5	A-20006-03052	2/4/2020
6	A-20014-06541	2/4/2020
7	A-20009-04651	2/5/2020
8	A-20015-07264	2/6/2020
9	A-20014-06527	2/6/2020
10	A-20013-06253	2/7/2020
11	A-20016-07927	2/7/2020
12	A-20016-07785	2/7/2020
13	A-20007-03644	2/10/2020
14	A-20002-01896	2/11/2020
15	A-20008-04041	2/12/2020
16	A-20024-11087	2/13/2020
17	A-20022-10125	2/13/2020
18	A-20021-09656	2/14/2020
19	A-20010-05287	2/14/2020
20	A-20028-12505	2/14/2020
21	A-20038-16745	2/14/2020
22	A-20014-06603	2/17/2020
23	A-20031-13834	2/18/2020
24	A-20027-11588	2/18/2020
25	A-20024-11094	2/18/2020
26	A-20028-12210	2/19/2020
27	A-19364-00812	2/20/2020
28	A-20035-15121	2/21/2020
29	A-20027-11595	2/25/2020
30	A-20045-19278	2/26/2020
31	A-20041-17429	2/26/2020
32	A-20045-19470	2/27/2020

	ETA_CASE_NO	CASE_RECEIVED_DATE
33	A-20045-19493	2/27/2020
34	A-20042-17776	2/27/2020
35	A-20035-15274	2/27/2020
36	A-20045-19481	2/28/2020
37	A-19352-97488	3/2/2020
38	A-20036-15724	3/2/2020
39	A-20045-19388	3/3/2020
40	A-20042-17767	3/3/2020
41	A-20043-18283	3/3/2020
42	A-20050-20876	3/3/2020
43	A-20049-20279	3/4/2020
44	A-20021-09475	3/5/2020
45	A-20055-22601	3/6/2020
46	A-20055-22387	3/11/2020
47	A-20057-23524	3/13/2020
48	A-20035-14991	3/13/2020
49	A-20065-27057	3/13/2020
50	A-20037-16241	3/13/2020
51	A-20049-20159	3/13/2020
52	A-20057-23763	3/16/2020
53	A-20051-21187	3/16/2020
54	A-20053-22168	3/16/2020
55	A-20065-27073	3/20/2020
56	A-20069-28323	3/24/2020
57	A-20072-29753	3/25/2020
58	A-20070-28657	3/25/2020
59	A-20063-26092	3/27/2020
60	A-20072-29820	3/27/2020
61	A-20059-24637	3/28/2020
62	A-20083-33853	4/2/2020
63	A-20052-21842	4/3/2020
64	A-20091-37404	4/3/2020

	ETA_CASE_NO	CASE_RECEIVED_DATE
65	A-20072-29778	4/6/2020
66	A-20070-28801	4/7/2020
67	A-20056-23108	4/7/2020
68	A-20059-24595	4/8/2020
69	A-20063-26067	4/8/2020
70	A-20076-31418	4/9/2020
71	A-20080-33337	4/15/2020
72	A-20087-36205	4/16/2020
73	A-20084-34677	4/17/2020
74	A-20091-37431	4/20/2020
75	A-20073-30397	4/20/2020
76	A-20085-34960	4/21/2020
77	A-20083-34134	4/21/2020
78	A-20059-24804	4/21/2020
79	A-20073-30615	4/21/2020
80	A-20098-39979	4/27/2020
81	A-20084-34596	4/27/2020
82	A-20090-36754	4/27/2020
83	A-20070-29017	4/27/2020
84	A-20112-45576	4/29/2020
85	A-20099-40588	4/30/2020
86	A-20086-35505	5/5/2020
87	A-20104-42521	5/5/2020
88	A-20104-42370	5/7/2020
89	A-20111-45015	5/7/2020
90	A-20118-47615	5/11/2020
91	A-20083-34094	5/12/2020
92	A-20114-46279	5/13/2020
93	A-20118-47375	5/13/2020
94	A-20099-40663	5/14/2020
95	A-20125-50162	5/19/2020
96	A-20128-51753	5/20/2020
97	A-20114-46420	5/21/2020

	ETA_CASE_NO	CASE_RECEIVED_DATE
98	A-20120-48539	5/22/2020
99	A-20128-51605	5/22/2020
100	A-20118-47442	5/27/2020
101	A-20120-48551	5/27/2020
102	A-20139-55409	5/28/2020
103	A-20136-54851	6/2/2020
104	A-20129-52362	6/3/2020
105	A-20140-56225	6/10/2020
106	A-20126-50721	6/11/2020
107	A-20136-55075	6/11/2020
108	A-20140-55951	6/13/2020
109	A-20139-55452	6/15/2020
110	A-20111-45024	6/16/2020
111	A-20142-57347	6/24/2020
112	A-20161-63436	6/25/2020
113	A-20114-46321	6/26/2020
114	A-20150-59984	6/29/2020
115	A-20164-65151	6/30/2020
116	A-20162-64080	7/1/2020
117	A-20169-66555	7/1/2020
118	A-20162-63771	7/2/2020
119	A-20175-68648	7/6/2020
120	A-20169-66493	7/8/2020
121	A-20170-67256	7/9/2020
122	A-20157-62420	7/16/2020
123	A-20189-73513	7/16/2020
124	A-20190-74055	7/17/2020
125	A-20161-63349	7/20/2020
126	A-20177-69623	7/20/2020

Appendix C

Notice

Employer: Facebook, Inc.

Job Title: Software Engineer, Android (multiple openings)

Job Location: Austin, TX (telecommuting is permitted from any location in the U.S.)

Job Type: Full-time, 9am - 6pm, 40 hours a week, Monday - Friday

Salary: \$150,000 - \$170,000/year

Duties: Develop and implement detailed technical, engineering aspects of software systems. Analyze requirements and technical specifications, and develop test-driven/behavior-driven software. Maintain wiki pages, perform code group/peer review, and adhere to code style. Develop, maintain, and debug cloud-based micro-service APIs. Maintain and extend existing on-premise software systems. Troubleshoot pre-and post-production issues.

Requirements: Master's degree in Computer Science or Engineering (Computer/Mechanical/Electrical) and three years of experience in position offered or a software developer position or Bachelor's degree in Computer Science or Engineering (Computer/Mechanical/Electrical) and five years of post-Bachelor's progressive experience in the position offered or a software developer position. All required experience must have included developing software using Agile/Scrum/Kanban methodologies, Java, Javascript, Node.js, Angular, Bootstrap, and Python within a Git/Gitflow-based multi-branched software environment; using cloud development and deployment best practices on AWS (ECS, EC2, ECR, Lambda, VPC, S3 and IoT); developing data-driven applications and technologies to manage big data; and working with Linux, HTTP, REST, JSON, IP technologies.

Contact: Facebook, Inc. at immigration@fb.com, Reference Req. #47872

This Notice is being provided as a result of the filing of an application for permanent alien labor certification for the opportunity. Any person may provide documentary evidence bearing on the application to:

Certifying Officer
U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue NW, Room N-5311
Washington, DC 20210

Source: Requisition