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Is Your Business I-9 Compliant?

Priscilla Ro

All U.S. employers that hire new employees are responsible for having each one complete a Form I-9, Employment Eligibility Verification Form, in order to ensure that each employee is authorized to work in the United States. This applies to all employees hired after November 6, 1986, including U.S. citizens.

Employees are responsible for completing Section 1 of the Form I-9, preferably on or before the first day of work, while employers are responsible for completing Section 2. Once an employer hires a new employee, he or she is responsible for verifying that the documents provided by the employee are valid and current to determine whether the employee is authorized to work. Employers are prohibited from accepting expired documents as proof of employment eligibility. The list of documents that an employee can provide is listed on the last page of the Form I-9. Please note that the Form itself was recently updated by the Department of Homeland Security (DHS). So, for the most up-to-date version, go to the U.S. Citizenship and Immigration Services (USCIS) website.

Employers must retain an employee's completed Form I-9 for as long as the individual works for the employer. The Forms I-9 can be stored in paper or electronic form, as well as microform. Once the individual's employment ends, the employer must retain the Form I-9 either three (3) years after the date of hire, or one (1) year after the date of termination, whichever is later.

U.S. GOVERNMENT INSPECTIONS AND PENALTIES

The Immigration and Nationality Act (INA) authorizes the Department of Homeland Security (DHS), The U.S. Office of Special Counsel (OSC), and the Department of Labor (DOL) to inspect Forms I-9. Typically, the agencies will give an employer three days' notice prior to inspecting their Forms I-9 by issuing a Notice of Inspection (NOI). Once on notice, it is the employer's responsibility to make the Forms I-9 available. This includes making arrangements for the inspecting officer to be able to inspect the Forms I-9 if they are stored in a separate location.

If technical or procedural violations are found, the employer has 10 business days to make corrections. If an employer fails to comply with the Form I-9 requirements, he or she may receive a monetary fine for any substantive and/or uncorrected technical violations on any Forms I-9 at no less than $110 and no more than $1100 for each violation. In considering its decision, DHS considers the following factors:

- The size of the business of the employer being charged
- The good faith of the employer
- The seriousness of the violation
- Whether the violation involved unauthorized workers, and
- The history of previous violations of the employer

If an employer engages in a pattern or practice of knowingly hiring or continuing to employ unauthorized workers, and is convicted of such practices, he or she may face fines up to $3,000 per employee and/or six months of imprisonment.

It is vital for employers to ensure that their employees are authorized to work and are able to provide documentation to prove it. Our attorneys can assist you in auditing your current Forms I-9 policies and procedures to ensure your company is in compliance with the law. Should you have any questions, please feel free to contact our office regarding Form I-9 compliance requirements.

Inside this issue ...

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Agency Enforcement Highlights & Congressional Oversight

South Florida Company Settles Iran Sanctions Violation Matter

A South Florida microwave distribution company ("Dal-Tech") agreed to pay a fine to the US government to settle potential civil liability for apparent violations of Iran sanctions.

According to a Treasury Department announcement dated January 2013, "[U]nder its prior ownership and management, Dal-Tech [...] apparently violated the ITR by making an unlicensed sale and export of radio frequency measurement devices ("RF devices") to Austria with knowledge that the items were intended for transshipment to Iran. The total value of the RF devices was $3,226."

The government says that a Dal-Tech employee engaged in knowing and willful conduct attributable to the company and that Dal-Tech's prior management had reason to know that the company's goods were ultimately destined for Iran. The matter was not voluntarily disclosed. The settlement also coincides with a Deferred Prosecution Agreement ("DPA") between Dal-Tech and the U.S. Attorney's Office for the District of Delaware.

"Over the course of three years, Ellman engaged in unlawful sales of medical equipment to Iran. U.S. law allows for the export of medical equipment to Iran subject to the Iranian Transaction Regulations."

The base penalty was $500,000, but this matter was settled for $10,000. While Dal-Tech had not been the subject of any prior OFAC enforcement action, the government says that it lacked a sanctions compliance program at the time of the apparent violations. Consistent with similar cases, Dal-Tech agreed to implement a compliance program that includes sanctions and export compliance training for of all of its employees.

HSBC Group and the US Settle Matter Involving Alleged Violations of U.S. Sanctions on Cuba and Other Countries

In December 2012, the Treasury Department announced that the HSBC Group had agreed to pay a $375 million fine to settle potential liability for apparent violations of the U.S. economic sanctions programs on Cuba, Burma, Sudan, Libya, and Iran. The settlement resolves the U.S. government's "investigation into HSBC Group's engagement in payment practices that interfered with the implementation of U.S. economic sanctions by financial institutions in the United States, including its New York subsidiary." According to a Treasury Department Office of Foreign Assets Control (OFAC) announcement on the case, more than "2,300 payments, totaling approximately $430 million were routed through U.S. banks for or on behalf of sanctioned parties in apparent violation of U.S. sanctions."

Medical Equipment Company Settles Iran Sanctions Case

According to the Treasury Department, Ellman International, Inc. ("Ellman") of Oceanside, New York, agreed to pay a fine to settle potential civil liability for apparent violations of U.S.-Iran sanctions.

Over the course of three years, Ellman engaged in unlawful sales of medical equipment to Iran. U.S. law allows for the export of medical equipment to Iran subject to the Iranian Transaction Regulations. The alleged violations were disclosed by a private equity company that purchased Ellman in 2008; however, the government did not treat the disclosure as "voluntary" because OFAC had already inquired with Ellman management about a suspicious Iranian transaction.

According to the case documentation, Ellman's prior owners knew that what they were doing was illegal. For instance, according to the OFAC information on the case, Ellman's former owners willfully and knowingly "entered into an agreement with a Dubai company to act as a middleman for the sale of Ellman products to Iran, apparently for the purpose of evading sanctions." There also appears to have been other unlawful activity that was not reported in this announcement. Furthermore, Ellman did not have a compliance program in place at the time of the apparent violations.

According to OFAC, the base penalty amount for the apparent violations is $426,000, but this amount was reduced to $191,700 for the following reasons: (1) the transactions likely would have been eligible for an OFAC license;

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Measuring the Quality of Higher Education

Andy Gomez

This is the time of year when high school seniors begin to receive their acceptance letters to the college of their choice. Amidst all the jubilation, their parents now begin to worry about the cost of sending their sons and daughters to a "good" college or university. However, do they really know what the quality of the education is at their child's institution of choice? Sure, there is Harvard, Yale, and the rest of the Ivy League schools... as well as a few others that get "ranked" by US News and World Report. Each year this news publication determines the top fifty U.S. academic institutions which are worth the price of their tuition. BUT, what about the other ninety-five percent of undergraduate institutions in this country? How do THEY measure up?

> "We are prepared to develop a comprehensive plan for all types of educational institutions that will help them display not only the performance of their students in the classroom but also be able to measure and demonstrate how students learn."

One way of determining the quality of the education at given institutions is through the rigorous and formal accreditation process. The United States is divided into six regional accreditation agencies. Their main responsibility is to measure the quality of education at each institution every ten years. A similar process applies to the American k-12 system.

Education accreditation in the United States was established as a peer review process carefully coordinated to measure not only how good each institution is (public and private), but also to ascertain what students learn (and standardize American student's learning). Each accrediting agency is accountable to the U.S. Department of Education. Accrediting assures eligible institutions are able to receive federal financial aid for their students and all other types of funding from the federal government—such as research grants. Simply put, if an educational institution does not have accreditation from one of these agencies, they do not qualify for major federal funding sources.

In past years, most institutions were measured by their "input" factors such as; adequate facilities (like classrooms and libraries), and quality faculty and teachers. Today, these basic factors are not enough. They are not sufficient factors to consider an institution's quality of education. Therefore, now a days, an institution is also measured by the "out" factors. Meaning, the quality of the education a student received while at the institution--which is not easily measured—especially if you lack the proper methodology to evaluate/ascertain this outcome and make a proper determination on this factor.

Recently, columnist George Will questioned the relevance of a higher education degree in the U.S. by saying that they are too expensive and do not prepare students for today's labor force. This assessment, however, is not completely true. Admittedly, at all levels, the american educational system has resisted the call to be more transparent and show the public and consumer how good it really is in educating students. I know first hand. I have spent thirty-two years working for institutions of higher education and I can tell you that most institutions resist assessing their performance and the achievement of their students.

At Poblete Tamargo we are prepared to develop a comprehensive plan for all types of educational institutions that will help them display not only the performance of their students in the classroom but also be able to measure and demonstrate how students learn. We are prepared to develop a methodology of assessment catered to your institution that would demonstrate areas of strengths and weaknesses. We will develop a structure of continuous improvement for your institution that will help you meet accreditation agencies' standards.

So, parents, before you send your son or daughter off to college, check to see if the institution they are planning on attending measures their quality of education on a regular basis. Otherwise, you really cannot be sure that you are getting what you pay for. Information on the quality of a college or university's education can usually be found in reports posted on the institution's own website.

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Agency Enforcement, *Continued from page 2*

(2) Ellman's purchasers and new owners/management substantially cooperated with the investigation; (3) OFAC had no record of prior sanctions enforcement matters involving Ellman; and (4) the new owners/management of Ellman undertook significant remedial measures, including implementing a sanctions and export compliance program.

Eli Lilly Charged by SEC for Making Improper Payments to Foreign Officials in Russia, Brazil, China, and Poland

In late December 2012, the Securities and Exchange Commission (SEC) announced that Eli Lilly had been charged with violations of the Foreign Corrupt Practices Act (FCPA) for improper payments that its subsidiaries made to foreign government officials to win millions of dollars of business in Russia, Brazil, China, and Poland.

Kara Novaco Brockmeyer, Chief of the SEC Enforcement Division's Foreign Corrupt Practices Unit, added, "Eli Lilly and its subsidiaries possessed a 'check the box' mentality when it came to third-party due diligence. Companies can't simply rely on paper-thin assurances by employees, distributors, or customers. They need to look at the surrounding circumstances of any payment to adequately assess whether it could wind up in a government official's pocket."

Lilly agreed to pay disgorgement of $13,955,196, prejudgment interest of $6,743,538, and a penalty of $8.7 million for a total payment of $29,398,734. Without admitting or denying the allegations, Lilly consented to the entry of a final judgment permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. Lilly also agreed to comply with certain undertakings including the retention of an independent consultant to review and make recommendations about its foreign corruption policies and procedures. The settlement is subject to court approval.

Guam War Claims Bill Reintroduced in Congress

Guam's Delegate to Congress, Congresswoman Madeline Bordallo has reintroduced legislation to implement the recommendation of the Guam War Claims Review Commission. The *Guam World War II Loyalty Recognition Act of 2013* would create a claims fund at the Treasury Department for the payment of claims submitted by compensable Guam victims and survivors. In a press release issued earlier this year, Congresswoman Bordallo said "This [new bill] includes building on the progress we've made in previous years to advance Guam war claims legislation ... [t]he offset is a credible source of funding that will ensure the payment of claims while leaving the option for direct appropriations by Congress in the future. The compromise continues to uphold the intent of recognizing the people of Guam for their loyalty to the United States during World War II." For more information about Congresswoman Bordallo's efforts, visit http://bordallo.house.gov/issue/war-claims.

Export Control Reform on Congressional Radar

The incoming Chairman of the House Foreign Affairs Committee, Rep. Ed Royce (R-Calif.) included export control reform in the Committee's oversight plan for the 113th Congress: "The Committee will oversee proposed Executive Branch reforms of U.S. strategic export controls. In particular, the Committee will assess the extent to which proposed changes to the U.S. Munitions and Commerce Control Lists effectively safeguard critical technologies and national security, while supporting the defense industrial base and advancing U.S. commercial interests. The Committee will consider legislation on these and related matters as may be necessary and appropriate." For more information, visit the Committee's website at http://foreignaffairs.house.gov.

December 2012: *Poblete Tamargo's Jason Poblete was a keynote speaker at a conference in the Peruvian Congress co-hosted by the International Republican Institute (IRI) and the Second Vice-President of the Peruvian Congress, Congressman Juan Carlos Eguren. Poblete and IRI personnel met in Lima, Peru with Members of the Peruvian Congress and senior staff to discuss the importance of legislative oversight in the American federal system.*

American Citizens Owed Compensation by Iraq

Mauricio Tamargo

Last year we published a Client Alert on an Iraq Claims Settlement Agreement reached between the United States and the government of Iraq on *www.tinyurl.com/ClientAlert*. There are now new developments regarding the personal injury claims, which were within the scope of that 2010 Agreement. The Department of State has referred a new set of claims to the Foreign Claims Settlement Commission (FCSC) for further compensation.

When it comes to American claims against Iraq, or frankly any foreign government, that time-tested idiom, the squeaky wheel gets the grease, applies with full force. You see, although there are many types of U.S. claims against Iraq, the only claims that have actually been settled between the US and Iraq are personal injury related. Why?

The principal reason why the personal injury claims have garnered so much attention and been resolved, and so little attention has been given to the property claims, is because the personal injury claimants, and their attorneys, have been lobbying the State Department and Congress while the property claimants have not been as vocal in expressing their views.

With this new referral of these personal injury claims to the FCSC, the United States government is basically giving these claimants, who have already received compensation, a second bite at the apple while still ignoring the long neglected and unresolved property claims. The referral will create yet another Iraq Claims Program for what will likely be a small number of claims, maybe eight or twelve. These claims will involve special circumstances such as severe personal injuries that may merit additional compensation.

The State Department has specified that the claimants must have already been compensated directly by the State Department and involve a more severe serious personal injury warranting additional compensation to qualify for compensation under this new referral. As in the referred Libya Claims Program, we expect the referral itself will recommend a specific amount of compensation for the claims. The FCSC is not bound to follow the State Department's recommendation; however, it has in the past.

Many details about this referral still remain unknown. One question that comes to mind is how much of the $400 million paid by Iraq to settle these claims is still available to compensate these repeat claimants?

It seems hard to believe, though, that Americans, who suffered a loss of property instead of a physical injury, would continue to remain quiet despite their outstanding unresolved claims. One typical reason that we hear frequently from prospective and current clients is that potential claim holders simply do not know that they have legal recourse which can make them whole again by settling their claims.

Settling these property claims against Iraq is long overdue. Potential claim holders need to chime in and make their views heard. The more claim holders come forward, the better the chance that their class of claims will be attended to by the U.S. and Iraq.

Please contact us if you believe you hold a valid claim. We would be happy to review your claim matter and share with you the options that you may have for recovery.

Spotlight

U.S. Government published a FCPA Resource Guide

In November 2012, the U.S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) published a much-anticipated reference manual for the Foreign Corrupt Practices Act (FCPA). The Guide provides a fulsome summary of the FCPA as well as enforcement highlights. Whether a small or large business, seasoned or new to these issues, the Guide offers lawyers, compliance officials, and other practitioners a valuable tool for dealing with FCPA-related matters.

The Guide can be downloaded for free at *www.justice.gov/criminal/fraud/fcpa/guide.pdf*

Federal Regulatory Relief

Do you own a small or minority-owned business that is struggling to comply with federal regulations?

Under the *Regulatory Flexibility Act* federal agencies are required to review the impact of federal regulations and their impact on small businesses. And under the *Small Business Regulatory Enforcement Fairness Act*, small businesses are able to more actively participate in the federal regulatory processes including in cases where a company is being unduly burdened by federal regulations. Contact us for more information.

ask

A financial institution informed me that a wire transfer has been blocked because of U.S. government sanctions. How can I secure the release of these funds?

You will need to submit an application for the release of blocked funds with the Treasury Department Office of Foreign Assets Control ("OFAC"). You must be as detailed as possible and provide supporting documentation justifying for the requested release. In addition to completing form TD F 90-22.54, we recommend a detailed cover letter explaining the underlying transaction and why it should be released.

How long will it take to receive a response?

Once the application is submitted, the process can take several weeks or much longer to receive a decision from the U.S. Government.

Do I need to translate documents in foreign languages?

Yes. You must translate to English all foreign language documents. We recommend you submit a certified translation by a translator with experience translating technical documents from the language of origin to English.

Can I request a meeting to discuss my request?

The regulations allow you to request oral representation.

If my application is denied, can I appeal?

The regulations do not include a formal appeal process; however, if there is a change in circumstances or with the underlying facts of the case, you may be able to present the relevant new facts to OFAC.

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About Poblete Tamargo

Poblete Tamargo is a federal law and public policy practice headquartered in Washington, DC with an office in Coral Gables, Florida. We offer our clients a wide-range of services in unique practice areas with a concentration in commercial, regulatory and international litigation counsel as well we federal government public policy advice and government relations. We are committed to resolving your legal, public policy, and information analysis needs and have extensive experience in law, the federal government, as well as the private sector. Contact us today! In the meantime, visit our website for more information on how we can help you find your voice in Washington, DC: **www.PobleteTamargo.com**

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