Conduct

OMB No. 1615-0047; Expires 08/31/12

Form I-9, Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last | First | Middle Initial | Maiden Name

Address *(Street Name and Number)* | Apt. # | Date of Birth *(month/day/year)*

City | State | Zip Code | Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien #)
- ☐ An alien authorized to work (Alien # or Admission #) until (expiration date, if applicable - *month/day/year*)

Employee's Signature | Date *(month/day/year)*

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature | Print Name

Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

	List A	OR	List B	AND	List C
Document title:					
Issuing authority:					
Document #:					
Expiration Date *(if any)*:					
Document #:					
Expiration Date *(if any)*:					

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative | Print Name | Title

Business or Organization Name and Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 3. Updating and Reverification *(To be completed and signed by employer.)*

A. New Name *(if applicable)* | B. Date of Rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: | Document #: | Expiration Date *(if any)*:

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative | Date *(month/day/year)*

the Form I-9 Audit and Protect Attorney-client Privilege

Immigration and Customs Enforcement (ICE)[1] has engaged in a new age of stepped-up worksite enforcement. It is the result of investigations of corporate compliance failures associated with the Form I-9 Employment Eligibility Verification process. While the fundamental requirements of the statutory and regulatory regime have changed little over the past two decades, enforcement — the number and severity of punishments pursued against employers in every industry and region of the country — has exponentially risen. Corporate counsel may not be aware how dramatically the stakes have changed.

By Martin J. McIntyre and Robert F. Loughran

When conducting a Form I-9 and policy compliance audit, the fundamental nature and limitations of the attorney-client privilege should be understood before committing to the process. Penalties no longer cease with civil monetary fines. Employers, including their officers and executives, now face criminal exposure for compliance failures — including potential Sarbanes-Oxley liability — if audits are handled incorrectly. Companies that engage in a flawed self-audit of their Forms I-9 may face felony charges, such as falsification, perjury, discrimination and tampering with a government record. Recent case experience shows that ICE is "working up the chain" in its worksite enforcement raids, apprehending not only employees, but also prosecuting the company managers and owners. The government actively recruits confidential informants from a business' workforce to gather information on worksites that may later be used against the company in any resulting litigation. Self-audits by non-lawyers can create a mistaken sense of well-being and often lead to the government perceiving criminal activity. Internal audits typically have high error rates and may actually increase a company's risk of acquiring actual or constructive knowledge of its employment of unauthorized employees or paperwork violations. Contrary to what you may think, the government's verification tool (E-Verify) can be more harmful than helpful. Risk of false non-confirmations and subsequent allegations of discrimination may compound civil exposure and run concurrently with the potential criminal exposure associated with the verification compliance failure.

Retaining experienced immigration counsel to help you develop a "best practices" I-9 verification process may be the best way to protect your company and help your management avoid personal liability for employment eligibility verification compliance failures. Experienced immigration attorneys should guide companies through an audit of existing Forms I-9, ensuring that correctable errors are appropriately mitigated, and potentially protecting the company from additional liability with the shield of the attorney-client privilege.

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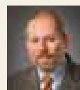

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Attorney-led audits and the attorney-client privilege

For a company to reasonably calculate its active exposure for Forms I-9 for all employees companywide, experienced counsel must determine the existence of technical and substantive errors under the applicable laws, and track the number of those errors remedied during the mitigation process.

During every phase of the employment eligibility verification process, counsel should be available to provide legal analysis and recommendations on all issues, from the collection of information on new employees, to any other Form I-9-related inquiries that arise during initial Form I-9 completion or re-verification. Immigration counsel can provide customized, factual and situation-specific legal advice in relation to adverse employment action when required under federal law, and should prepare the company for the possible fluctuation in the labor pool that may result from the audit. They should analyze real-time exposure and determine and track liability estimates under all legal regulations during the audit process. This will allow the company to properly evaluate the exposure created in the past and how much proper mitigation has reduced liability.

Training should come from legal specialists

Designated company representatives involved in the employment eligibility verification process should undergo a comprehensive Form I-9 training conducted by experienced immigration counsel. The verification process is increasingly complex, and employers must recognize that even the most well-intentioned individuals may attract both civil and criminal liability on themselves, the company executives and the company itself, for failure to accurately and completely follow the verification process.

Attorney-client privilege

The primary purpose of an audit is to remedy compliance failures in an expeditious fashion to minimize exposure. Corporate counsel should commit to the audit in a manner that best insulates the results from disclosure. Unless a full-scale audit is conducted, an employer may be exposed to allegations of "knowing hire" or "reckless disregard" related to unauthorized employees.

In a matter involving employer sanctions, the company's lawyers must have all available information to best handle compliance failures and to conduct an audit so that the company is as compliant as possible, all while trying to avoid consequences like mass disruptions in the labor supply. The privilege involved with an external immigration counsel conducted audit should also encourage

full disclosure of this information by creating a trusting, confidential relationship.[2]

For the exposure analysis identified by the Forms I-9 audit to be protected from disclosure pursuant to attorney-client privilege, the audit must have been conducted for the purpose of rendering legal advice or assistance.[3] This is particularly true when those alleged of wrongdoing maintain a good faith belief that their actions were appropriate and in the company's best interest.[4] Generally speaking, a thorough Form I-9 audit involves continual legal analysis of detailed fact patterns, which are not easily compartmentalized and require interactive legal evaluation and attorney-directed remediation. Merely having an attorney review an audit report may not protect it from disclosure.[5]

Additionally, audit results may be protected from disclosure under the work product doctrine. Under the doctrine, audit results and related materials are confidential and not subject to disclosure if they reflect an attorney's legal strategy and thought processes. Investigations and audits may be protected from discovery if they are prepared "in anticipation of litigation." They may be protected as long as litigation is reasonably anticipated and not merely speculative — even if legal counsel did not direct the audit and if no lawsuit was filed at the time.[6] Courts have consistently held that the "investigation by a federal agency, such as ICE — in light of its recent stepped-up enforcement activity, presents more than [the] remote prospect of future litigation, and provides reasonable grounds for anticipating litigation sufficient to trigger application of the work product doctrine."[7] Unlike the attorney-client privilege, the work product doctrine may extend to protect materials prepared "in anticipation of litigation" by non-lawyers who have assisted lawyers in the audit process.[8]

Attacks on privilege

In consideration for cooperation in its investigations, the government has often been willing to provide an amount of immunization under an array of "voluntary disclosure" programs.[9] Law enforcement has often promised that if a company discloses material protected by the attorney-client privilege, it will receive credit for cooperation. Unfortunately, as a result of corporate scandals involving a few bad actors,[10] the ease with which US attorneys were able to strengthen their criminal cases with evidence from internal memos and investigations, led to a tactical realization: in lieu of collecting new evidence and testimony, it may yield greater results with greater efficiency for the government to attack the privilege of the internal investigation, to obtain the evidence already gathered by the company itself.

Increasingly, in the employment verification compliance context, US attorneys commonly cite the authority granted them to consider privilege waiver as a component in assessing a company's good faith defense.[11] In the context of a Forms I-9 audit, maintaining a privilege of the results of the inspection should be paramount in light of the increasing pressure to identify evidence of cooperation. Taking advantage of the Thompson Memo as a weapon to dislodge the privilege was identified in the KPMG tax shelter cases. Specifically, Judge Kaplan noted that the Justice Department's tactics — wielding the Thompson Memo against corporate defendants — violated the Fifth and Sixth Amendments.[12] Unfortunately, even as refined by the subsequent McNulty Memo, a corporation's refusal to turn over protected materials can still be considered in determining whether a corporation has cooperated in the government's investigation.[13]

> When leading an audit, **experienced outside immigration counsel** (unlike non-lawyer company owners, employees or third-party non-lawyers) may make **recommendations about hiring** before the **mitigation** process of the audit commences.

While human resources managers or other employees may be helpful to the Form I-9 verification and audit processes, the work performed and knowledge gained by an attorney-led audit is protected by the attorney-client privilege. When leading an audit, experienced outside immigration counsel (unlike non-lawyer company owners, employees or third-party non-lawyers) may make recommendations about hiring before the mitigation process of the audit commences. This approach can save the company from potential labor shortages attributable directly to the discovery of unauthorized workers on the payroll. In-house counsel remain responsible for managing potentially competing and sometimes conflicting legal obligations. They should evaluate and adapt external counsel's advice in the context of the company's past actions, corporate culture issues that impact advice implementation, and competing compliance obligations. The company may also be able to limit the information discovered during the audit on a need-to-know basis, as the general counsel determines. In-house counsel should evaluate when and under what circumstances any employee should be terminated because their Form I-9 information appears inaccurate or because an indication is raised, but not confirmed, that the employee does not have the right to work in the United States. There are risks in taking action and risks in not taking action. General Counsel (GC) should closely guard the decision of when sufficient information has been accumulated to take an employment action — a decision that clears discriminatory hurdles and meets the reasonable employer standard. If mishandled, companies may face employee-filed civil rights lawsuits and/or government-filed criminal charges — conversely harboring, unlawfully continuing to employ, conspiracy, etc.

This compartmentalization may also limit potential constructive knowledge charges on those who would be required to dismiss unauthorized workers immediately.

For the audit to be successful, employees who may not be members of the control group for privilege purposes, may nevertheless come upon information — such as an estimate of administrative or criminal exposure — that may be subject to disclosure. When the audit is conducted under the privilege provided by experienced counsel, such information, like the overall exposure, is still subject to the privilege because it is not discoverable beyond the members of the control group.

Sarbanes-Oxley Act of 2002

The requirements of the Sarbanes-Oxley Act (SOX) put at risk companies who chose to involve managers and/or employees in the self-audit process. Conducting an internal Form I-9 audit under attorney supervision adds the protection that employees may not be required to disclose information pertaining to exposure uncovered by the audit, as may be required under SOX. Passed in 2002 as a result of corporate financial scandals, SOX requires that employees of publicly traded companies disclose information regarding questionable practices that may violate any rule or regulation of the SEC, or any provision of federal law relating to fraud against shareholders, including immigration-related exposure. [14] It also requires an attorney to report material violations through the GC, to take reasonable steps under the circumstances to document the report and the response to the violation, and to retain such documentation for a reasonable time.

If an internal audit is performed and the exposure is identified, it must be shared with all impacted parties.

Furthermore, if ICE or another governmental agency arrives for questioning, the employee is obligated under the Act to testify as to this information.[15] Given DHS' extensive use of press releases as a deterrence and education tool, this scenario leads to potentially extensive exposure and publication of the company's hiring practices. Finally, there is a perilous document tampering provision in the Act that must be scrupulously observed by those individuals engaged in determining which Forms I-9 may be legally purged.[16]

SOX requires an articulated compliance regime from each corporation on its work authorization verification. Internal self-audits would likely fail this requirement if they are conducted by the same individuals responsible for the defective practices. The validity of the process could be challenged and a conflict of interest could be asserted when the same staff responsible for supervision of the original process are used in the audit; those staff members have an incentive to minimize the exposure analysis for their own reputational and career benefit. This understatement of liability could result in fraud on the shareholders.

Problems and risks associated with self-help

Traditional internal audit procedures

Traditionally, internal Forms I-9 audits have been left to the same human resources specialists generally responsible for completing the initial Form I-9 process for newly hired employees. As enforcement of employment and immigration laws waned in the 1990s, human resources managers may have shifted focus, and many companies may no longer be equipped to handle the meticulous Form I-9 audit process. Human resource professionals may perceive the internal audit as a challenge to their responsibility, or worse, as a criticism of past performance; they may be less inclined to identify errors and more inclined to make matters worse through failed or improper attempts at corrections. ICE commonly regards these attempts as document tampering or obstruction of justice.

It is not unusual to encounter evidence that human resource professionals failed to follow the strict protocol outlined by counsel during an internal audit, and made corrections in an effort to make the Form I-9 appear as if it were originally compliant on the date of hire. A second common scenario is to encounter evidence of substantive corrections being intentionally overlooked to skew the exposure data. The professionals responsible for the audit may have been concerned about raising questions of competency, or of how identified liability risk might affect their future employment with the company. Finally, there is the scenario of haphazardly audited Forms I-9, resulting in what appears to be forged information intended to be attributable to the original employee or HR professional. In each of these very serious scenarios, the presumably well-intentioned HR professional has opened the door for the government's allegations of fraud, conspiracy to commit fraud and racketeering.

High error rates

When an original form has been altered, and because the alteration cannot be excised from the document, ICE may be left with evidence of an apparent forgery of this election. Even if, during the attorney-supervised inspection, the wrongdoer is identified and disciplined, the original form cannot be remediated. One cannot simply strike through the information provided and believe a successful mitigation has occurred, because the information is still visible through the interlineations. Moreover, a "white-out" or "black stripe" will likely be perceived as an attempt to obstruct justice, making the civil matter much worse and introducing the potential for a criminal charge.

A company's failure to ensure a uniform and properly supervised audit may result in significantly more dire consequences. A failed mitigation will likely result in finding constructive knowledge of unlawfully employing an unauthorized worker, and may undermine an employer's chances at a good faith defense.

As noted earlier, companies that engage in a flawed self-audit of their Forms I-9 may face felony charges. Also, while a company may offer that being more thorough in its mitigation efforts during a self-audit constitutes evidence of its good faith, being too thorough can paradoxically lead to discrimination charges. In 2001, Swift & Co., was forced to pay $200,000 to the Department of Justice Special Counsel[17] in a settlement for excessively scrutinizing documentation of workers who appeared to be foreign or who spoke with an accent.[18] While Swift may have held good intentions to comply with the law, their good faith was not enough to avoid discrimination charges or to escape a hefty fine and damaging public attention.

By attempting internal self-audits, companies frequently compound the exposure. Therefore, companies should not engage in self-audits without the supervision of an experienced immigration attorney.

E-Verify

In an attempt to facilitate compliance with employment verification policies, many companies have begun to use the government's internet-based electronic employment verification database known as E-Verify (formerly Basic Pilot), which was developed by the former INS and the Social Security Administration (SSA).[19] The E-Verify system requires that an employee be newly hired with a completed Form I-9.[20] The information is first checked against the database

of the SSA and then checked against the DHS database.[21]

Companies that attempt to use E-Verify as a solution to their internal compliance defects may increase ICE scrutiny. Company decision makers are often led to believe that E-Verify is a panacea to their verification ills. Companies that sign up for E-Verify are providing critical intelligence data through using the E-Verify program that the government can call upon as evidence of their defective hiring practices. If these companies are later raided, they can face the potential of significant criminal penalties associated with their failed practices, which are documented through the companies' E-Verify participation.

Heightened civil and criminal expose

Exponentially increased enforcement and new tactics

Company managers, executives and owners have an added incentive to ensure that Form I-9 verification and audits are properly conducted in the wake of increasing attention to worksite compliance. Over the past three years, the federal government has greatly increased the imposition of criminal sanctions against employers who knowingly hire unauthorized workers.[22] The number of worksite immigration raids has increased, and more sanctions, both criminal and civil, have been levied against employers.[23]

On July 1, 2009, subpoenas and an accompanying press release were issued to investigate 652 business owners, executives and managers evidencing the Obama administration's intention to "double down" on the existing immigration enforcement regime. On Nov. 19, 2009, immigration subpoenas were issued to 1,000 businesses. These rounds of immigration subpoenas are anticipated to increase in frequency and quantity.

Working up the chain

In shifting its strategies in worksite enforcement, ICE has developed a practice of "working up the chain" by raiding worksites and arresting ground-level workers in order to collect evidence to build a case against higher level employees and, ultimately, the employer. Julie Myers, former assistant secretary of ICE,[24] told the media following one of these events, "This investigation clearly shows our resolve to pursue those who willfully violate our nation's hiring laws, regardless of their place on the corporate ladder."[25]

Confidential informants

Another trend is ICE's use of confidential informants purporting to be employees within the targeted business. In the Agriprocessors raid alone, ICE used at least seven confidential informants to build its case.[26] One of the main confidential informants was an individual ICE had previously used, who was not a US citizen or lawful permanent resident, but who had a counterfeit work authorization document. Agriprocessors accepted the document, and the confidential informant immediately started working at the plant. The informant reported to work at the company as any other employee, and some days was wearing concealed microphones so ICE could record his conversations. The confidential informant in the Agriprocessors case was compensated for living expenses, rent, transportation costs, new cell phone service, and lost wages due to the wage disparity from the informant's prior job. ICE was able to use this illegal alien to gather confidential information to execute one of the largest worksite raids in history.

The media is now notified before every large raid. Press releases are already written, with blank spaces that can later be filled in as to how many individuals are detained. Whereas once only undocumented foreign nationals had to fear if ICE came knocking, now employers, including company owners and executives, must work diligently to prevent and to avoid constructive knowledge of illegal hiring practices. The Obama administration has announced a de-prioritization of the detention of unauthorized workers, and a corresponding escalation of prosecution of employers. Not only must companies fear the business disruption created by the loss of a significant part of their workforces, but also the damaging impact that such negative public exposure from DHS press releases would create.

Ask the experts and involve them early

Implementing a thorough Form I-9 policy and external immigration attorney-led audit is a proactive step that will ensure compliance with lawful hiring practices. This is true especially considering the fundamental shortcomings of the electronic employment verification databases and the potential impact that could result from unscrupulous inspection. If technical and substantive violations contained in the forms may be corrected uniformly under the proper supervision, the employer may reduce administrative exposure by hundreds of thousands of dollars by committing to a proper process of remediation. By involving an experienced immigration attorney in the Form I-9 auditing and mitigation process, companies can employ a best practices model that will be consistent company-wide, and may also be protected by the additional benefits of the attorney-client privilege.

Have a comment on this article? Email editorinchief@acc.com.

Notes

1. On March 1, 2003, the US Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS). Service and benefit functions are managed by US Citizenship and Immigration Services (USCIS); investigations are led by Immigration and Customs Enforcement (ICE); and

responsibilities for securing and facilitating trade and travel are within Customs and Border Protection (CBP); See *www.uscis.gov; www.ice.gov; www.cbp.gov*.

2. Stephen Ellmann, *Truth and Consequences*, 69 Fordham l. Rev. 895, 901 (2000).
3. The underlying purpose of the privilege is to allow clients to receive the most competent legal advice from fully informed counsel. See *In re Colton*, 201 F. Supp. 13, 15 (S.D.N.Y. 1961), aff'd, 306 F.2d 633 (2d Cir.1962), cert. denied, 371 US 951 (1963); *see also*, VII J. Wigmore, Evidence, § 2292, at 558 (McNaughton Rev. 1940) ("are at [its] insistence permanently protected").
4. See N. Richard Janis, *Deputizing Company Counsel as Agents of the Federal Government*, Washington lawyer, March 2005, at 32; Michael Farber, *Interviewing Company Employees in the Internal Investigation: Navigating the Minefield*, 19 Insights 10 (2005); John Gibeaut, *Junior G-Men: Corporate Lawyers Worry that They're Doing the Government's Bidding While Doing Internal Investigations*, 89 ABA J. 46, 51 (2005) ("[C]orporate lawyers are particularly worried that Justice is trying to drive a wedge between companies and employees."); Michael Burr, et al., *The CLT Top 20: The Events, People & Stories of 2005*, 15 Corp. legal times 36, 42 (2005) (citing the August 2005 KPMG deferred prosecution agreement as the fifth most significant legal development in 2005 because it represents the larger problem of attacks on attorney-client privilege due to government demands for waiver of the privilege).
5. *C.f. Deel v. Bank of America*, 227 F.R.D. 456, 459-61 (W.D. Va. 2005) (where company conducted a self-audit of its payroll practices while FLSA litigation was pending, the attorney-client privilege protected documents sent to in-house or outside

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counsel for legal advice, including documents relating to the self-audit, a draft employee questionnaire and drafts of the employee notices about the questionnaire, but the completed questionnaires were not protected because the company "did not clarify to the employees completing the questionnaire that it needed the information to obtain legal advice.") *with Hardy v. New York News*, 114 F.R.D. 633 (S.D.N.Y. 1987) (where company's equal employment manager created documents about its minority employment goals and consulting firm then analyzed the work done and created draft affirmative action plans, these documents were discoverable in subsequent litigation because an attorney did not direct their preparation or prepare the documents).

6. *Jeffers v. Russell County Bd. of Ed*. Case No. 3:06 CV 685-CSC (M.D. Ala. Oct. 4, 2007)(protecting school board's investigation of sexual assault and harassment claims).
7. See, e.g., *Scurto v. Commonwealth Edison Co*., 1999 WL 35311, at *2 (N.D. Ill. Jan. 11, 1999) (*quoting Pacamor Bearings Inc. v. Mineba Co., Ltd*., 918 F. Supp. 491, 513 (D.N.H. 1996)); *see also In re Grand Jury Subpoena*, 220 F.R.D. 130, at *147(D. Mass. 2004).
8. *United States v. Nobels*, 422 U.S. 225, 238-39 (1975).
9. See e.g. US Securities & Exchange Comm'n, 94TH Cong., Report on Questionable and Illegal Corporate Payments and Practices, 10-13 (Comm. Print 1976).
10. See e.g. Letter from David Kelly, US Attorney for the Southern District of New York, to Robert S. Bennett, Counsel to KPMG LLP (Aug. 26, 2005), *available at www.usdoj.gov/usao/nys/press%20releases/august%2005/kpmg%20dp%20agmt.pdf*; Letter from US DOJ to Alan Vinegard and Philip C. Korologos, Counsel to Adelphia Communications Corp. (Apr. 25, 2005); deferred Prosecution Agreement, *United States v. Bristol-Myers Squibb Co.,* Cr. No. 2:05-mj-06076 (D.N.J.2005), available at *www.usdoj.gov/usao/nj/publicaffairs/nj_press/files/pdffiles/deferredpros.pdf*; Deferred Prosecution Agreement, *United States v. America Online, Inc., Cr.* No. 1:04_m_1133 (E.D.N.Y.2004), *available at www.usdoj.gov/dag/cftf/chargingdocs/aolagreement.pdf;* Deferred Prosecution Agreement, *United States v. Computer Assocs. Int'l,* Cr. No. 04-837 (E.D.N.Y.2004), *available at www.usdoj.gov/dag/cftf/chargingdocs/compassocagreement.pdf*.
11. See Memorandum from Deputy Attorney General Larry Thompson to Heads of Department Components and US Attorneys, "Principles of Federal Prosecution of Business Organizations," (Jan. 20, 2003), "Thompson Memo" *available at www.usdoj.gov/dag/cftf/corporate_guidelines.htm.*
12. *US v. Jeffrey Stein*, et al.**,** S1 05 Crim. 0888 (LAK), (June 28, 2006) *available at www.acca.com/public/attyclientpriv/kpmg_decision.pdf*.
13. See Memorandum from Paul J. McNulty, Deputy Attorney General, to Heads of Department Components and United States Attorneys (Dec. 12, 2006), available at *www.usdoj.gov/dag/speech/2006/mcnulty_memo.pdf.*
14. Sarbanes-Oxley Act, Publ. No. 107-204, 116 Stat. 745 (2002); (codified as amended in 15 U.S.C. § 7201-7266 and scattered sections of 18 U.S.C.).
15. Joint Drafting Committee of the American College of Trial Lawyers, *The Erosion of the Attorney-Client Privilege and Work Product Doctrine in Federal Criminal Investigations* (March 2002), available at *www.actl.com/am/template.cfm?section=all_publications&template=/cm/contentdisplay.cfm&contentfileid=68*.
16. See 18 USC § 1519 (In order for an employer to be liable under 1519, the government must prove an employer has the "intent to impede, obstruct or influence" an investigation by a federal department or agency).
17. The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), in the Civil Rights Division, is responsible for enforcing the anti-discrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, which protect US citizens and certain work authorized individuals from employment discrimination based upon citizenship or immigration status. OSC works in partnership with the Equal Employment Opportunity Commission to provide workshops for employers throughout the United States to increase understanding of employer sanctions and protections against discrimination, *www.usdoj.gov/crt/osc/index.html*.
18. Staff Reports, "Swift Responds to Plant Raids," *The Greeley Tribune*, (Dec. 22, 2006), *www.greeleytribune.com/article/20061212/news/61212014*.
19. IIRIRA, Pub. L. No. 104-208, § 401-405, 110 Stat. 3009, 3009-655 to 3009-666, (1996) (codified as amended at 8 U.S.C. § 1252 (2000).
20. See E-Verify User Manual (Form M-574) [hereinafter "E-Verify User Manual"], United States Citizenship and Immigration Services, (April 2008), at 7.
21. US Citizenship and Immigration Services' *Findings of the Web Basic Pilot Evaluation* [hereinafter "Findings"], (Westat, Sept. 2007), *www.uscis.gov/files/articles/webbasicpilotrprtsept2007.pdf*, at xvi, xvii.
22. Statement from Julie Myers, former Assistant Secretary of DHS and head of ICE. *USA Today*, (April 25, 2006).
23. "ICE Fiscal Year 2007 Annual Report," US Immigration and Customs Enforcement, *www.ice.gov/doclib/about/ice07ar_final.pdf*, (2007), at 8.
24. Julie Myers announced on November 5, 2008, that she would resign from her position as Assistant Secretary for Immigration and Customs Enforcement effective November 15, 2008. See "Bush immigration chief resigns," CNN, (Nov. 6, 2008), *www.cnn.com/2008/politics/11/06/dhs.myers.resignation/*.
25. ICE News Releases, *supra* note 100.
26. See Affidavit of David M. Hoagland, Senior Special Agent with ICE Office of Investigations in Cedar Rapids, Iowa, in connection with search warrant of the premises of Agriprocessors, Inc., Postville, Iowa, May 9, 2008.