



Memorandum from the Office of the Inspector General

September 12, 2007

John E. Long Jr., WT 7B-K

FINAL REPORT – INSPECTION 2007-10998 – TVA AND CONTRACTOR HIRING PRACTICES

We conducted a review of TVA and contractor employment procedures. The objective of our review was to determine if TVA policies and procedures ensure the hiring of non-citizens complies with legal requirements. In summary, it appears that TVA has appropriate policies and procedures in place to ensure that (1) its hiring process is in compliance with applicable legal requirements, and (2) contractors are responsible for ensuring that principals/employees under contract to TVA meet Immigration and Naturalization Services (INS) requirements.

However, we selected 34 employees to verify TVA compliance with the INS requirements and found required information could not be provided for nine employees due to the loss of electronic files. The Personnel Records Imaging System (PRIS) backup and server failures were addressed in Office of the Inspector General Audit No. 2007-039T-01. The Chief Administrative Officer (CAO) should determine what actions are necessary since required information was lost due to system failures.

BACKGROUND

As of August 7, 2007, TVA employs about 12,089 individuals. The instructions for the Employment Eligibility Verification Form, INS I-9, note that the authority for collecting information is the Immigration Reform and Control Act of 1986. This law requires TVA to:

- Complete an Employment Eligibility Verification Form, INS I-9, for every employee hired after November 6, 1986, whether that person is a citizen or non-citizen.
- Complete and sign the Form I-9 within three business days from the date of hire.
- Ensure each item on the Form I-9 is completed, including signatures of employee and employer.
- Retain the Form I-9 for three years after the date the person begins work or one year after the person's employment is terminated, whichever is later.
- File Form I-9s either in paper or electronic format.
- Re-verify an employee's eligibility when his/her work authorization expires.

The *Handbook for Employers, Instructions for Completing Form I-9*, issued by the Department of Justice (DOJ), provides specific guidance for completion of the form and what documents must be reviewed to establish identity and employment eligibility. The law does not require TVA to complete Form I-9s for “Persons who are independent contractors,” or “Persons who provide labor to you who are employed by a contractor providing contract services (e.g., employee leasing).”¹

According to DOJ guidance, complying with the Form I-9 requirements is a “good faith” defense with respect to a charge of knowingly hiring an unauthorized alien, unless proven otherwise.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine if policies and procedures ensure the hiring of non-citizens complies with legal requirements. The scope of our review covered all new hires at TVA from June 1, 2004, through May 31, 2007. In addition, our review covered policies and procedures in place to ensure that suppliers of contract labor are notified of their responsibility to ensure the supplied individuals meet the standards required to work in the United States (U.S.). To achieve our objective, we:

- Interviewed Human Resources and Procurement personnel regarding TVA processes and control activities.
- Reviewed TVA hiring and procurement policies and procedures.
- Reviewed applicable Department of Homeland Security (DHS) and DOJ requirements and any other applicable laws and regulations to identify requirements associated with the hiring of non-citizens.
- Reviewed Form I-9 requirements and DOJ and DHS completion instructions for employers.
- Identified the population of TVA employees hired from June 1, 2004, through May 31, 2007, and selected a sample of 34 employees hired during that period to ensure that the Form I-9 requirements were met.
 - Thirty employees were randomly selected for review.
 - Four employees hired during our review period were selected because they were identified by the TVA Human Resource Information System (HRIS) as non-citizens.

This Inspection was performed in accordance with the “Quality Standards for Inspections.”

¹ The DHS assumed responsibility for the immigration enforcement and services programs of the former INS in 2003.

OBSERVATIONS

In summary, it appears that TVA has appropriate policies and procedures in place to ensure that its hiring process is in compliance with applicable legal requirements, and contractors are held accountable for meeting INS requirements. However, in testing TVA's compliance with Form I-9 requirements, we could only verify compliance for 25 of the 34 employees selected due to loss of TVA electronic files.

TVA Employees

TVA Employment Policy Number 5, *Citizenship Requirements*, states that:

- *A completed INS I-9 form verifying eligibility for employment is required for each person hired by TVA, whether the person is a citizen or non-citizen.*
- *Individuals who are not U.S. Citizens or protected individuals are eligible for employment if they meet the hiring criteria outlined below and the hiring is approved in advance by the Executive Vice President of Administrative Services:*
 - *A qualified U.S. citizen or protected individual is unavailable for the work.*
 - *The individual is qualified for the job.*
 - *The individual meets the Immigration and Naturalization Service (INS) criteria authorizing him or her to work in the United States and possesses acceptable documentation indicating such authorization.*

The above policy also applies to contractors in an employer employee relationship with TVA.

In addition to completing the I-9 forms, the non-Nuclear areas of TVA go a step further and use the Systematic Alien Verification for Entitlements (SAVE) Employment Verification Basic Pilot program through the DHS to help ensure that prospective employees are eligible for employment at TVA. According to the DHS website, the Basic Pilot:

- Removes guesswork from document review during the Form I-9 process;
- Allows participating employers to confirm employment eligibility of all newly hired employees;
- Improves the accuracy of wage and tax reporting; and
- Protects jobs for authorized U.S. workers.

Contractor Employees

Employment Policy Number 5, *Citizenship Requirements*, states that:

- *Companies that provide their principals/employees under contract to TVA are responsible for ensuring that these individuals meet Immigration and Naturalization requirements to work in the United States. The contractor is responsible for acquiring and maintaining appropriate documentation such as I-9 forms and obtaining all contractually required security clearances.*

In addition to Employment Policy Number 5, the TVA Contractor Workforce Management policy requires suppliers that provide non-citizen contractors to TVA to be responsible for ensuring that these individuals meet INS requirements to work in the U.S., as defined by the contract prior to the beginning work. The supplier is required to acquire and maintain appropriate documentation, such as I-9 forms, as well as obtaining all contractually required security clearances.

Employee I-9 Verification

We found that for 25 of the 34 employees reviewed, we were able to verify that proper documentation was obtained to identify the employee as eligible to work in the U.S. Specifically:

- TVA Personnel Security had the required I-9 documentation on file for 21 of the randomly selected employees. However, for those individuals hired prior to 2005 or by TVA Nuclear, we were unable to verify their eligibility due to PRIS System/Backup failures addressed in Audit Report 2007-039T-01.
- We found, for the four employees shown by HRIS as non-citizens, that (1) two were U.S. citizens and the Form I-9 requirements were met; and (2) two were non-citizens and the Form I-9 and TVA requirements were met, including obtaining the hiring approval of the Executive Vice President of Administrative Services.

As a result, it appears that other than the problems identified in Audit 2007-039T-01, proper procedures are in place to ensure that job applicants are eligible for employment at TVA.

RECOMMENDATIONS

The CAO should determine TVA's responsibility for having I-9 forms on file for those employees whose information was lost due to the problems with PRIS and take any necessary actions.

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If you have any questions, please contact Rick C. Underwood, Project Manager, at (423) 751-3108 or Gregory C. Jaynes, Deputy Assistant Inspector General, Inspections, at (423) 751-7821. We appreciate the courtesy and cooperation received from your staff during the review.

A handwritten signature in black ink that reads "Ben R. Wagner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ben R. Wagner
Deputy Inspector General
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