

**WHARTON
BUSINESS
ADMINISTRATORS**
Worker Classification

December 10, 2015

Background – External

- Increased federal agency compliance requirements:
 - Department of Labor “Misclassification Initiative” – combat employee misclassification and restore rights denied to workers
 - Various agencies/divisions involved – DOL Wage and Hour Division, Employee Benefits Security Administration (EBSA), Occupational Safety and Health Administration (OSHA), Office of the Solicitor
 - Labor commissioners from 14 states (so far) are participating through MOU’s with DOL
 - Employee entitlements – retirement and medical benefits, family and medical leave, overtime, minimum wage, unemployment insurance, workers compensation
 - Fair Labor Standards Act (FLSA) – defines requirements for minimum wage, overtime, employer time and pay record keeping; new guidance issued July 2015 aims to classify most workers as employees
 - Affordable Care Act – required essential health care coverage for eligible employees

Background – External, cont'd

- Increased IRS activity:
 - Recent court cases involving worker classification
 - Increased audits of colleges and universities
 - IRS Voluntary Compliance Program
 - Development of factors to assist in worker classification determination
- New DOL guidance:
 - Most workers would be employees under the FLSA's broad definitions, per Administrator's Interpretation issued July 15, 2015
 - DOL is responding to numerous complaints from workers alleging misclassification

Background – Penn

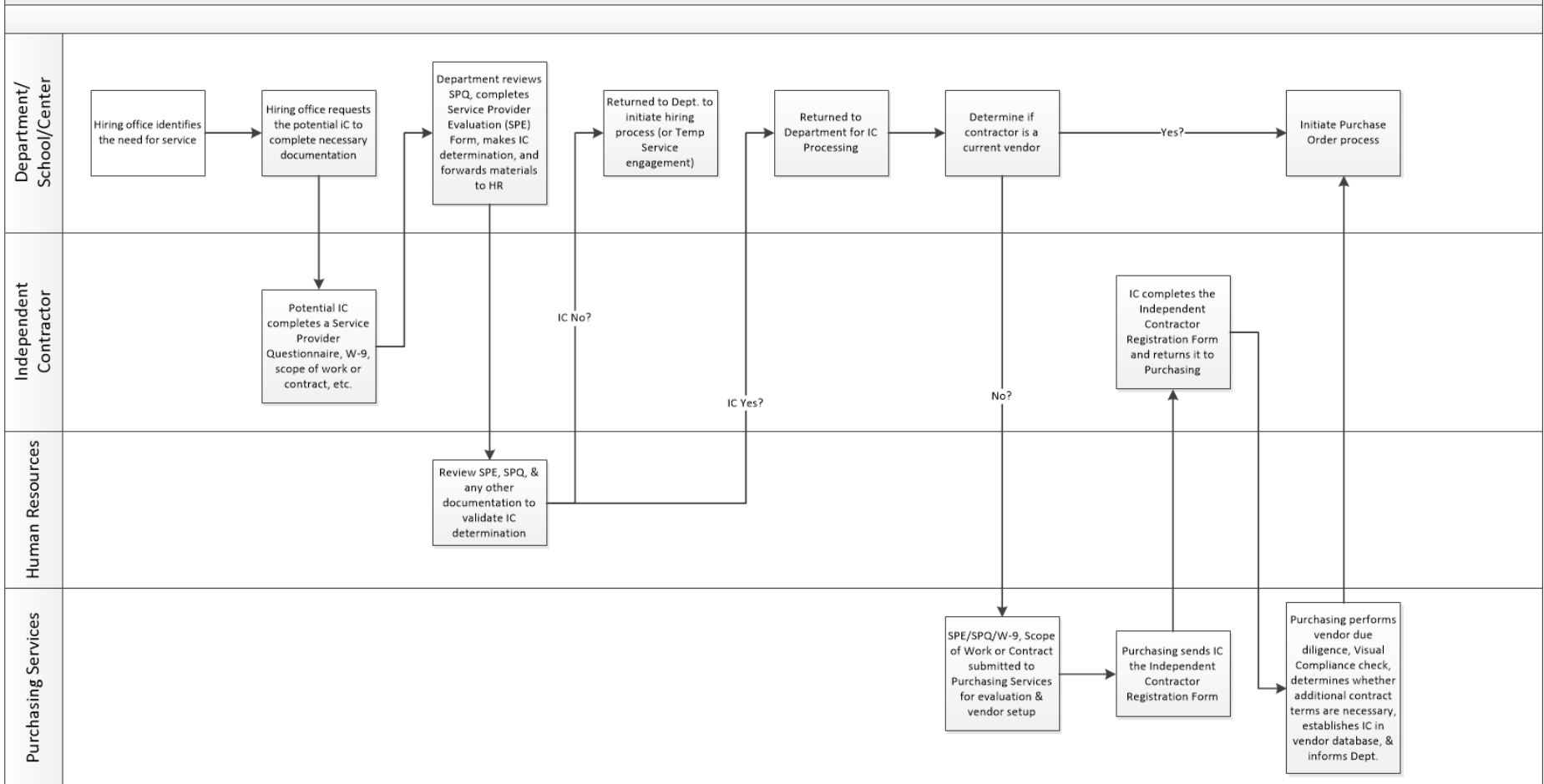
- Procurement and payment for independent contractor services:
 - “P2P” initiative to convert I/C’s from PDA forms to Purchase Orders
 - Development of “template” contract for I/C’s
 - Payment and tax reporting for travel and business expenses of I/C’s
- Existing University policies and procedures:
 - Policy 2319 – Payments to Individuals for Honoraria, Consulting Fees, Human Subject Fees and Other Services
 - Form C-12 – Independent Contractor Determination and Certification
 - H/R, Payroll and Tax policies related to employees

Where are we?

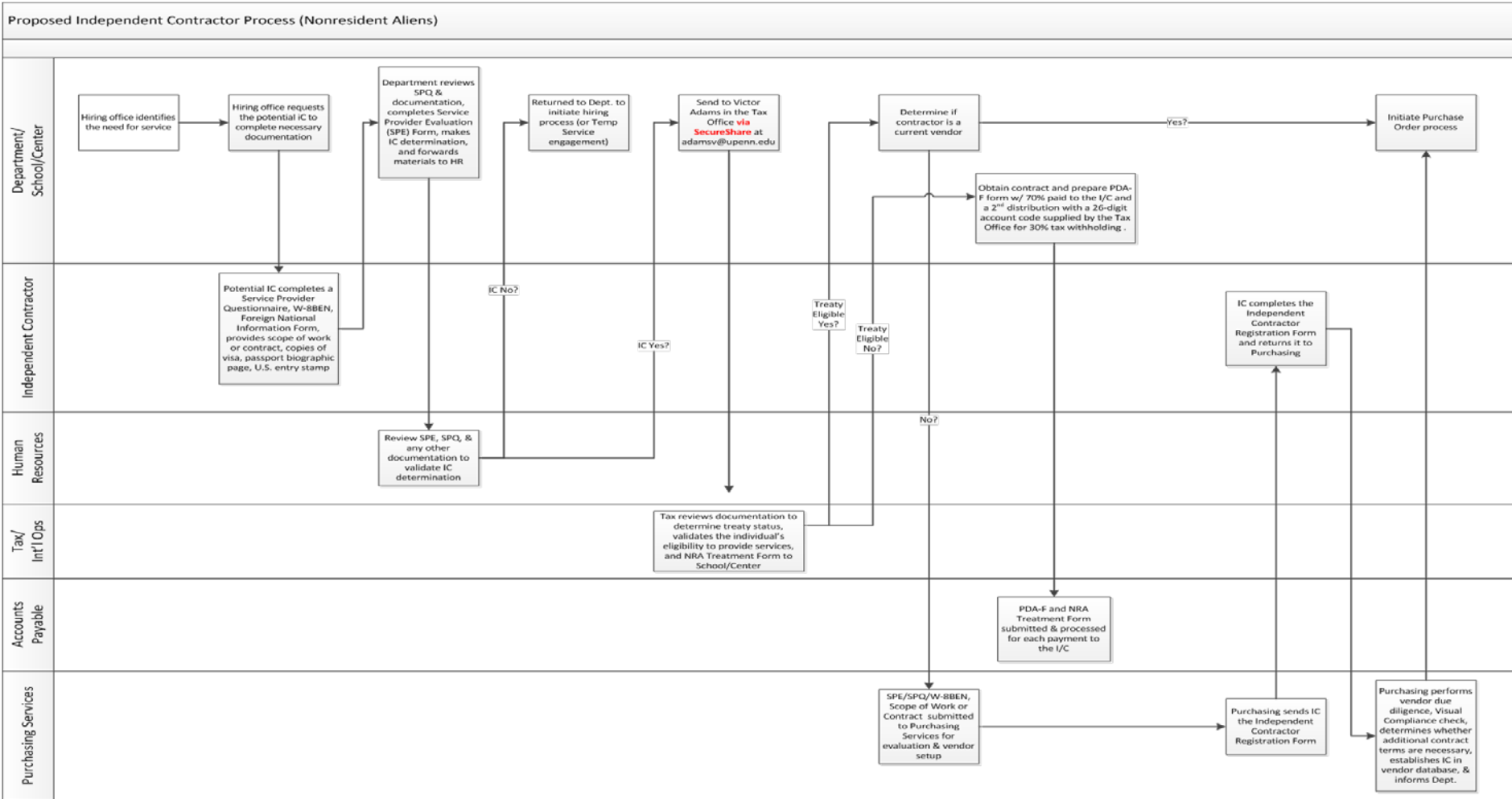
- Pilot program underway
 - Includes select organizations within PSOM, SAS and Wharton
- Incorporating ongoing feedback into policies, procedures, templates
 - New process for nonresident aliens (NRAs)
 - Created new job classification code (Professional Service Provider)
 - Created new forms and policies
 - Drafted new process flow and procedural guidelines
 - Presented best practices to pilot HR representatives
- Review of recommendations
 - Restructure Process Flow
 - Changes to Policies and Procedures
 - Develop and Communicate Best Practice Guidelines
 - Implement Tools and Templates
 - Develop and Deliver Training and Communication

Restructured Process Flow – US Citizens

Proposed Independent Contractor Process (US Citizens/Resident Aliens)



Restructured Process Flow – Nonresident Aliens



Best Practice Guidelines

- Procedural Guide for Independent Contractors and Limited Engagements
 - To provide faculty and staff with a step-by-step process for reviewing, engaging, and paying independent contractors and limited engagement service provider to ensure compliancy with federal, state, and local regulations. The guide is divided into four sections.
 - Definitions – provides a breakdown of the various types of payments and terms utilized within the guide.
 - Forms - provides a detailed listing of the various forms that are used when engaging and paying an independent contractor or limited engagement service provider.
 - Process - provides a step-by-step process to follow when a situation arises that potentially requires the use of an independent contractor or limited engagement service provider.
 - FAQs – provides answers to common questions that arise when dealing with an independent contractor or limited engagement service provider.

Tools and Templates

- Service Provider Questionnaire
 - Completed by the individual providing services to provide relevant information be used in determining independent contractor status
- Service Provider Evaluation Worksheet
 - Completed by the individual needing a service provider in concert with the applicable HR director to determine proper classification PRIOR to engaging the individual
- Template Contractor Agreements
 - Provided by Purchasing for standard contractor categories
- Limited Engagement Agreement for Guest Speakers/Guest Lecturers
 - Simplified process and documentation for one-time, non-recurring events (seminars/workshops)
- Forms and Procedural guide are posted on Wharton's HR Website on the [Forms Page](#) under Compensation

Open Issues

- **Advisory Group**
 - Adjustments to forms and policy language
 - Ongoing through Pilot (Pilot extended to February 2016 and expanded to other orgs within Pilot schools)
 - Develop training for HR representatives/business administrators in departments, schools and centers
- **Human Resources**
 - Address co-employment concerns with Personnel Employment Organizations
 - "Headcount" concern – new employee type "Professional Service Provider"
 - BA's being overruled by determination; who makes the final decision?
 - Unauthorized out-of-pocket payments by employees to service providers
 - Termination and re-hiring of temporary workers
- **Purchasing**
 - Determine alternative for processing NRA Independent Contractors through Purchasing when withholding is necessary
- **IT/ISC**
 - Development of electronic Work Flow (automation of forms, etc.)
 - Online repository for program related information

Risk of Non-Compliance

- There are approximately 45 agencies within the Federal government that can determine who is or who isn't an independent contractor
 - MaryKay Cosmetics – FMLA \$11 million dollar settlement
 - Not Independent Contractor
 - Time Warner
 - Misclassification of Workers – Department of Labor \$5-6 Million
 - Coca Cola
 - 8 Year Independent Contractor
 - Qualified Plan written properly; protected
- Many recent tax law cases, revenue rulings, and PLRs dealing with teaching by independent contractors that ruled in favor of the IRS
 - Common themes:
 - Exercising degree of control
 - Service is regular and ongoing
 - Service is necessary and incident to the business conducted by the organization
- Increased random audits are being scheduled by the IRS in this area

Risk of Non-Compliance

- IRS has an information sharing agreement with Federal, State and municipal agencies and over 30 state agencies in particular to facilitate exchange of taxpayer information.
- Some states known to be aggressive in this area
 - California
 - Connecticut
 - New Jersey
 - New Mexico
 - Oklahoma
- Audit triggers
 - Independent Contractors filing unemployment claims
 - Worker's Compensation Claims
 - Individual receiving W-2 and 1099 from the same organization
 - Independent contractors with on going relationships with the same organization

Risk of Non-Compliance

- Non-compliance implications
 - Penalties and interest; going back 3 years minimum (IRS can go back further)
 - Federal, state and local
 - Multiple agencies
 - Impact on employee and fringe benefits
 - Potential claims for unemployment and worker's compensation
 - Significant ACA fines
 - Reputational risk
 - Budgetary impact at the school/center level for payment of fines and fees

QUESTIONS

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