

*The Honorable David A. Montoya, Inspector General*

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**Hiring by Public Housing Agencies** (<https://www.hudoig.gov/sites/default/files/Hiring%20for%20Public%20Housing%20Agencies..pdf>)

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**DATE:** December 4, 2013

Hiring the right public housing agency staff is fundamental to lasting success. In this bulletin we share with you best practices and practical advice that you can apply immediately to assure you have the best information, and avoid a hire that could result in fraud or mismanagement issues.

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## **HIRING BY PUBLIC HOUSING AGENCIES**

This bulletin discusses best practices and techniques that boards and executive directors can use in hiring public housing agency (PHA) staff, especially positions of trust (such as bookkeepers, procurement staff, or anyone else who deals with financial records or spending). While there are many aspects to hiring such as having a certain number of years of experience, possessing people skills, attaining specialized knowledge, etc., this bulletin deals with ensuring that a potential hire has integrity and trustworthiness.

The U.S. Department of Housing and Urban Development (HUD) does not review hiring by the PHAs. While PHA hiring is subject to State and local laws, boards and executive directors have great latitude in making these decisions. While the majority of hires have not had integrity issues, there are continuing occurrences in which high level staff members in positions of trust have been fired for committing fraud or mismanagement, and were later hired by another PHA, where the abuses recurred.

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## **EXAMPLES OF CONCERN**

The process of hiring new employees can be expensive and time-consuming, but making a bad hiring decision is even more costly. The Office of Inspector General (OIG) is currently investigating more than two dozen cases in which PHAs have hired individuals who have committed frauds or serious abuses at previous jobs.

- The former financial director of the Gary Housing Authority was forced out of similar positions at PHAs in Chicago, Detroit, and Camden, N.J. after involvement in alleged scandals at each location. The former director was fired after the Authority executive director discovered that over a period of a year, the former director had issued a series of Authority checks to herself that she was not entitled to receive.

Some of the checks were in the precise amount of her regular bi-weekly salary check to make it appear that these were salary checks. The former director also removed certain checks from the monthly bank records and instructed Authority employees not to reconcile certain bank statements.

It is alleged that more than \$100,000 was embezzled. The former director pled guilty to embezzlement and tax evasion and was sentenced to 18 months in federal prison and ordered to pay the Authority \$111,000 in restitution and the Internal Revenue Service \$39,000 in back taxes.

- The Mayor of Lawrence, New Jersey was also at the same time the executive director for the East Orange Housing Authority (EOHA). He was fired from his job for violating the Hatch Act because he was running for re-election while employed as the Executive Director. After being fired, he was hired approximately one year later as the Deputy Executive Director for Asbury Park Housing Authority (APHA) and later promoted to Executive Director. At the time he was hired, he was in the process of declaring bankruptcy.

After receiving a complaint, OIG investigators determined approximately \$232,000 in HUD and Department of Labor, State of New Jersey funding had been misused and/or embezzled. During the course of the investigation, the Executive Director resigned his position.

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## PREVENTION

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Usually PHA's fill key positions by having applicants submit a resume and salary history in a format of their own choosing. Interviews often are unstructured and undocumented, and only a cursory check of references is conducted.

One way a PHA can protect itself from a bad hire is to ensure that it practices due diligence in the hiring process. Due diligence is conducting a systematic pre-screening of a prospective employee. It also protects the agency from "negligent hiring" lawsuits.

"Negligent hiring" may be found when the employee had a reputation or record that showed his or her propensity to misuse the kind of authority given by the employer, and this record would have been easily discoverable by the employer, had the employer exercised "due diligence".

Few people will want to "self-report" previous offenses so it is the agency's job to ensure that any negative information is discovered beforehand.

There are four keys to ensure you are hiring an individual with integrity and trustworthiness:

- 1. Establish a strong hiring policy**
- 2. Require application forms**
- 3. Conduct reference checks**
- 4. Perform background checks**



### **STRONG HIRING POLICY**

The place to start is ensuring that you have formal hiring policy. While a hiring policy can be extensive on a variety of issues, key best practices for integrity issues includes ensuring that the hiring policy includes:

- A provision creating and requiring completion of a PHA application form.
- A provision stating that an applicant's failure to provide complete and accurate information is

grounds for denial of the position, or termination if discovered later.

- A provision stating that deliberate failure or refusal to sign certifications is grounds for denial of the position.
- Confidentiality of interview information, and penalties for misuse by PHA staff.
- Provisions creating and requiring consent from the applicant to authorize PHA staff to conduct specific background checks. (Consult local counsel for what background checks may be prohibited by State law). Some background checks must be relevant to the position. (Criminal history and credit checks for positions of trust when the individual handles or is responsible for cash, checks, assets, or financial records or authorizations would meet this requirement).
- A provision stating what information will be released if the PHA is asked for a reference on prior employees. Those agencies that have “no comment policy” are at risk based on court decisions such as Jerner vs. Allstate Insurance (Florida Circuit Court 1995). With the growth of negligence cases, agencies that do not give information in turn receive no information and are no longer protected by a “no comment policy”. Agencies may want to consult counsel on State laws addressing how much or how little information may be disclosed.
- Use employment contract provisions that protect the PHA. The employment contracts should avoid unreasonable bonuses, buy-out clauses, and separation pay, and include liability clauses for acts of fraud, financial non-compliance, personal tort claims (harassment, hostility), etc. The employment contract should also include provisions requiring financial disclosures for positions of trust as permitted by State law.

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## REQUIRE APPLICATION FORMS

The image shows a screenshot of a 'Job Application Template' form. The form is titled 'Job Application Template' and has a section for 'Personal Information'. It includes fields for 'Surname', 'First Name', 'Middle Name', 'Address', 'City', 'State', 'Zip Code', and 'Tel Number'. Below these fields, there are two questions with radio button options: 'Are you legally allowed in the United States?' and 'Have you ever been jailed for felony?'. Both questions have 'YES' and 'NO' options. A note says '(Please answer YES or NO to the questions below)'. At the bottom, there is a line for 'If yes, explain:'.

To have the information you need to conduct a background investigation you need to specify in an application form what data you want the applicant to provide. Having your own form also enables you to include certifications you will want the applicant to attest to.

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## CONDUCT REFERENCE CHECKS

**Data:** At a minimum you will want applicants to provide their Social Security number, other names used, address, their education, and degrees earned. This not only ensures that the application contains key data needed to conduct the background check, but also if a misrepresentation is discovered, it is a formal record that can be used as evidence in support of any action to deny the selection or terminate employment.

**Certifications:** Another best practice is to include certifications that the applicants sign. Examples of certifications to include are:

- I certify that in the last 10 years, I have not committed a felony offense.
- I certify that in the last 10 years I have not filed for bankruptcy and am not currently more than 180 days delinquent on any financial obligation.
- I certify that neither my immediate family nor I have any conflicts of interest with housing authority business.
- I certify that all of my answers on this certification are true and complete.

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**Just because the applicant gave you a name as a reference doesn't mean that the reference has the ability to provide you with high-quality information.**

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Once the application is completed, agencies must verify the information listed, paying particular attention to unexplained gaps in employment, lost licenses, frequent job changes, terminations, **admissions of criminal behavior, and potential falsifications of any kind.**

- **Talk to others not listed:** Often reference checks are limited to names provided by the applicant. While it may be more time consuming, it is a good practice to ask those references to provide contact information for other people who would know or have worked with the applicant.

Just because the applicant gave you a name as a reference, it doesn't mean that the reference has the ability to provide you with high-quality information that will help you during your hiring process. The more people you speak with, the better insight you will have into the applicants work and personality. Also according to a Harris Interactive Poll, 29 percent of employers reported that they had caught a fake reference on a candidate's application.

Be sure to talk to previous employers. Nothing puts up a red flag with a potential employer more quickly than a reference that is unwilling to talk about a former employee. Employers convey a tremendous amount of negative information by saying, "This is all I can tell you."

- **Dig deep:** Ask more than a few cursory questions. The more questions you ask, the better the information that you accumulate will be. Ask questions about why the applicant left or wants to leave his or her last position ,and inquire about the applicant's work ethic, timeliness, professionalism, and ability to work well with others. Don't be afraid to ask the difficult questions and press for information.

Writing out questions in advance will help you remember all that you want to cover. Taking notes will help you remember who said what, and documents your discussion if you need to relate the conversation to others. Even a "no comment" response, it should be documented.

Good documentation is critical in today's employment environment. Alarms should sound if an applicant places emphasis on past jobs rather than the most recent employment. Investigators should also be wary of an applicant's willingness to accept a drastic pay cut. Without further examination of these red flags, an employer may be opening the door for a negligent hiring claim.

- **Avoid gut feelings:** An error sometimes made is being so "charmed" by the applicant during the interview that you hurry the rest of the hiring process because you are "sold." Human resources experts call this a halo effect. You place confidence in this applicant that has not been earned or verified. It causes you to miss the little red flags or omit verification steps.

Some bad hires rely on their "gift of gab" to talk themselves into a new position. Human resource directors often caution against making hiring decisions based on gut feelings or appearance. Verified past behavior is considered the best indicator for future performance.



## PERFORM BACKGROUND CHECKS

The final step in protecting yourself against a corrupt hire is to conduct background checks. Statistics from a company that does background checks reports:

- 39 percent of all background checks had at least one serious flag
- 10 percent of county criminal record checks had serious flags
- 10 percent of education verifications had serious flags
- 23 percent of employment verifications had serious flags

(Source: Matter of Fact - <http://www.amof.info/statistics.htm> (<http://www.amof.info/statistics.htm>))

There are a number of services available to assist you in obtaining this information. The cost is usually minimal, when compared to the cost of potential embezzlement losses.

You can find a service to provide the following checks:

1. Criminal history
2. Prior employment
3. Sex offender registry
4. Credit report
5. Education

- **HUD information:** In addition, you may want to add to your employment process checklist information you can request from HUD to help evaluate how well the applicant performed in his or her previous jobs.
- **Departmental Enforcement Center:** Limited denials of participation and suspensions and debarments information can be found at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/enforcement](http://portal.hud.gov/hudportal/HUD?src=/program_offices/enforcement) ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/enforcement](http://portal.hud.gov/hudportal/HUD?src=/program_offices/enforcement)). HUD Limited Denials of Participation searches can be made from this HUD website.

Government-wide suspensions and debarments are maintained by General Services Administration in the System for Award Management. The link to this system is also on the HUD Website or online at: <https://www.sam.gov/portal/public/SAM> (<https://www.sam.gov/portal/public/SAM/>) (Note: Free registration is required to access the system.)

- **Audits:** You may view OIG audit reports for PHAs where the applicant may have been previously employed. The findings in the report may provide information on the applicant's past performance. Available on the internet at: <http://www.hudoig.gov/search/node/> (<http://www.hudoig.gov/search/node/>)
- **OIG investigations:** Closed criminal investigations may be available through Freedom of Information Act (FOIA) requests. You may request publically available information by writing to the attention of:

**OIG FOIA OFFICER**  
**451 7TH STREET SW – ROOM 8260**  
**WASHINGTON, D.C. 20410**

Learn more about Fraud Prevention  
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