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North South Law Group, PLLC



- We are a law firm created by two former federal law enforcement officers with over 50 years of experience;
- Our main focus is to work with pha's, and other entities in assisting with compliance, internal investigations and audits, white-collar criminal defense and consultation;
- Have a team of additional retired law enforcement agents that have background/concentration in forensic accounting at our disposal.

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Statutes, Scenarios,
Strategies and Survival

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AGENDA

- Most common statutes used by OIG
- Examples of past bad acts
- Surviving bad acts committed by employees

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DISCLAIMER

The information provided in this presentation does not constitute legal advice. All information, content and materials available in this presentation are for general informational purposes only. In order to provide you with a proper assessment regarding your specific legal needs, please contact our office to arrange an individual consultation.

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Basic Enforcement Actions by HUD OIG: Burdens of Proof



- For Criminal Cases-
 - Beyond a reasonable doubt- 100% sure the act alleged occurred.
 - Federal, State and Local criminal matters.
- For Administrative Cases-
 - Preponderance of the evidence- 51% sure the alleged act occurred.
 - Applies to Civil cases and Administrative cases.

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HUD OIG Investigations



- Have arrest authority per the IG Act of 1978;
- Authorized to carry firearms, etc.;
- Work closely with United States Attorney's Office as well as State and local prosecutorial authorities;
- Need search warrants to obtain evidence of suspected crimes in pha's;
- May serve you with OIG subpoena or a Grand Jury Subpoena.



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HUD OIG Audit



- Audit authority per the IG Act of 1978;
- Not authorized to carry firearms, etc.;
- May work closely with United States Attorney's Office as well as State and local prosecutorial authorities with OIG agents;
- Have access to pha records w/o search warrants;
- May serve you with OIG subpoena;
- Publish Report of Findings.



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18 U.S. Code § 666 Theft or Bribery



- (a) Whoever, if the circumstance described in subsection (b) of this section exists—(1) being an **agent** of an organization, or of a **State, local, or Indian tribal government**, or any agency thereof—(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—(i) is valued at \$5,000 or more, and
- (ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or
- (B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of **value** from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of **value** of \$5,000 or more; or
- (2) corruptly gives, offers, or agrees to give anything of **value** to any person, with intent to influence or reward an **agent** of an organization or of a **State, local, or Indian tribal government**, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of **value** of \$5,000 or more;
- shall be fined under this title, imprisoned not more than 10 years, or both.
- (b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

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18 U.S. Code § 641 Theft of money, property

- Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of **value** of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or
- Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—
- Shall be fined under this title or imprisoned not more than ten years, or both; but if the **value** of such property in the aggregate, combining amounts from all the counts in which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.



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18 USC 371 Conspiracy



- If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.
- If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

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18 USC 1001 False Statements



- **(a)** Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—**(1)** falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- **(2)** makes any materially false, fictitious, or fraudulent statement or representation; or
- **(3)** makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title, imprisoned not more than 5 years

18 USC 1343 Wire Fraud

- Whoever, having devised or intending to devise any [scheme or artifice to defraud](#), or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the [Robert T. Stafford Disaster Relief and Emergency Assistance Act \(42 U.S.C. 5122\)](#)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.



41 USC 4712 Whistleblower Protection Act

- **(a) PROHIBITION OF REPRISALS.—(1) IN GENERAL.**—An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority, relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
- **(2) PERSONS AND BODIES COVERED.**—The persons and bodies described in this paragraph are the persons and bodies as follows: **(A)** A Member of Congress or a representative of a committee of Congress.
- **(B)** An Inspector General.
- **(C)** The Government Accountability Office.
- **(D)** A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- **(E)** An authorized official of the Department of Justice or other law enforcement agency.
- **(F)** A court or grand jury.
- **(G)** A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.
- **(3) RULES OF CONSTRUCTION.**—For the purposes of paragraph (1)—**(A)** an employee who initiates or provides evidence of contractor, subcontractor, grantee, or subgrantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and
- **(B)** a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

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18 USC Code 1516-Obstruction of Federal Audit

(a) Whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person, entity, or program receiving in excess of \$100,000, directly or indirectly, from the United States in any 1 year period under a contract or subcontract, grant, or cooperative agreement, or relating to any property that is security for a mortgage note that is insured, guaranteed, acquired, or held by the Secretary of Housing and Urban Development pursuant to any Act administered by the Secretary, or relating to any property that is security for a loan that is made or guaranteed under title V of the Housing Act of 1949, shall be **fin**ed under this title, or **imprisoned not more than 5 years**, or both.

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False Claims Act 31 US Code Section 3729

- (a) **LIABILITY FOR CERTAIN ACTS.—(1) IN GENERAL.**—Subject to paragraph (2), any person who—(A) **knowingly** presents, or causes to be presented, a false or fraudulent **claim** for payment or approval;
- (B) **knowingly** makes, uses, or causes to be made or used, a false record or statement **material** to a false or fraudulent **claim**;
- (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
- (D) has possession, custody, or control of property or money used, or to be used, by the Government and **knowingly** delivers, or causes to be delivered, less than all of that money or property;
- (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely **knowing** that the information on the receipt is true;
- (F) **knowingly** buys, or receives as a pledge of an **obligation** or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
- (G) **knowingly** makes, uses, or causes to be made or used, a false record or statement **material** to an **obligation** to pay or transmit money or property to the Government, or **knowingly** conceals or **knowingly** and improperly avoids or decreases an **obligation** to pay or transmit money or property to the Government,
- is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the **Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461)** note; **Public Law 104-410 (11)**, plus 3 times the amount of damages which the Government sustains because of the act of that person.

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Program Fraud Civil Remedies Act

- To provide Federal agencies which are the victims of false, fictitious, and fraudulent claims and statements with an administrative **remedy** to recompense such agencies for losses resulting from such claims and statements, to permit administrative proceedings to be brought against persons who make, present, or submit such claims and statements, and to deter the making, presenting, and submitting of such claims and statements in the future;
- Limits of upwards of \$150,000 per claim up to two times the amount of damages;
- Handled by HUD attorneys within Enforcement Center not USAO

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Suspensions and Debarments



- Administrative Proceeding headed by HUD;
- Burden of proof is “preponderance of the evidence”;
- Suspend after Indictment, debarment after conviction;
- Incorporate debarments in plea agreements;

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Sanford Housing Authority Audit



- HUD OIG Audit recommended HUD should seek reimbursement of \$1.2 million from the former ED, a past board chairperson and former employee who were responsible for the long-time mismanagement of the pha’s Section 8 program funds or operations.
- Audit Report Number 2012-AT-1002
- Credit Card and Leave abuses;
- Failure to follow procurement guidelines;
- Inadequate management and oversight by board;
- Expenditures for costs not properly supported;
- Inadequate attention to the projects’ physical needs.

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Sanford Housing Authority...



- Rep. John Mica is outraged that the Department of Justice will not pursue legal action involving past behavior at the Sanford Housing Authority.
- Criminal referral was made to USAO by Office of Audit.

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Sanford Housing Authority Audit Inadequate Board Mgt and Oversight



- Prepare annual evaluations of the prior ED's performance;
- Require compliance with budget requirements;
- Follow controls over the electronic check signing process;
- Follow the Authority's policy that prohibited the payment of cash for accrued leave in reference to the prior ED...

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Bradenton Housing Authority

- Former ED convinced the board to hire his inexperienced son to take the job and retain him as a consultant;
- ED was charged with theft of time and HUD funds. ED would take vacations, long lunches and not use his vacation time. He would then sell his "unused" vacation hours every six months for thousands of dollars; "Professional loafer"
- Began a relationship with an employee and they would continuously cheat the pha of their time;
- ED admitted to stealing at least \$276,000 in HUD funds. Girlfriend admitted to stealing at least \$104,500 in HUD funds;
- Board of commissioners wasn't aware of the finances, not aware that all pha employees had "take home" vehicles, cell phones and laptops;
- Both ED and girlfriend agreed to be debarred from working in any housing industry capacity;
- ED was sentenced to one year in federal prison, girlfriend was sentenced to probation due to her cooperation, and full restitution.

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Bradenton Housing Authority...



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Bradenton Housing Authority...

- Before he was sentenced, the ED expressed his regrets to the judge and blamed what he did on job stress. "I'm a different man than I was back then... I want to say I'm sorry to the community. I want to say I'm sorry to those residents. I want to say I'm sorry to my family."
- "He's been humiliated in his own community by his own actions," ED's public defender, Frank Zaremba, told the judge.
- "It's not an easy thing for me to stand here and listen to the charges and admission of guilt by my son," the elder and former ED, a minister, told the judge. "... My son is not a criminal."
- He is a criminal, the judge countered. He pleaded guilty.

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BHA, Continued

- Chairman stated to media he wanted to review employee policies prior to a new hire...
- In the past the board would approve resolutions w/o seeing the language of certain policies, including performance-based bonuses lacking specifics;
- Another board member (22 years on board) blamed HUD and refused to accept responsibility for her lack of oversight... "we are not responsible since we are volunteers..."

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Indiantown Nonprofit Housing, Inc.

- Beginning as early as August 21, 2014, ED began siphoning funds for her own personal use, including repairs and upgrades made to real property she owned. ED used the Indiantown credit card on numerous occasions to purchase goods and services for herself and others unrelated to Indiantown's mission. Obtained credit cards for staff and encouraged personal use including daughter;
- "I did it in order to stimulate the economy" ... Thousands of dollars spent at local casino...
- Two questionable "loans" from contractor (who remodeled the office building) used to purchase two additional properties.
- Was sentenced to 1 year in jail, debarred from working in housing and \$50,000.00 restitution.

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Indiantown Nonprofit Housing, Inc...

- Board members received assistance that was questionable and raised conflict of interest concerns;
- No policy on how board members were "vetted" to receive assistance from the organization;
- Board members were not charged; however, they were interviewed and experienced substantial stress during the process.

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Indiantown Nonprofit Housing, Inc.



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Avon Housing Authority



- Section 8 Manager sold spots on the waitlist for an average of \$5,000.00 per transaction;
- Obtained vouchers from local pha and made them appear as portables;
- Caused over \$180,000 in losses to the pha and victims;
- Sentenced to 70 months in federal prison;
- Charged with 6 counts of 18 USC 666 and 15 counts of 18 USC 1001;
- The pha filed a lien against defendant's home to recover some of the losses;
- The pha lost its HAP of over \$5 million... ED lost her job!

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Chelsea Housing Authority

- The former ED of the CHA was sentenced to 36 months in prison for falsely reporting his salary in annual budgets required by HUD.
- From 2008 through 2011, the ED, who served since 2000 as ED to the CHA, falsified his salary figure in the annual fiscal year budgets of the CHA and submitted them electronically to the Massachusetts Department of Housing and Community Development.
- In 2008, ED falsely stated that his budgeted annual salary was \$151,945, when his actual salary was at least \$242,908 under his existing contract. ED made the same kind of concealment of his increasing salary in the ensuing three years. Specifically, in FY 2009 ED falsely reported that his budgeted annual salary was \$156,503, when his actual salary was at least \$267,199 under his existing contract and his total compensation was at least \$292,902, as reflected in his 2008 W-2. Then in FY 2010, ED falsely reported that his budgeted annual salary was \$160,415, when his actual salary was at least \$275,215 under his existing contract and his total compensation was at least \$324,896. In FY 2011 ED falsely reported that his budgeted annual salary was \$160,415, when his actual salary was at least \$283,471 under his existing contract and his total compensation was at least \$324,896.

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Chelsea Housing Authority



- Multiple trips to FL in excess of thousands of \$;
- \$175,000 in unauthorized expenses;
- Undisclosed salary of up to \$360,000
- ED stood to collect an extra \$889,728 in lifetime pension benefits based on his real salary, compared to the one he reported.
- ED stepped down in 2011 following Gov. Deval Patrick's demand for his resignation after it was shown he was one of the country's highest-paid public housing officials. The housing authority's board of commissioners also resigned, and the authority was temporarily placed into receivership.

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Springfield Housing Authority

- The ED was charged with stealing excess of \$6 million in HUD funds including laundry machine quarters in pha units \$2,000/month;
- Federal dollars to build a seawall on his waterfront estate in Cape Cod;
- Theft of materials such as high-end heating systems, hundreds of tons of cement and other materials for his homes and kids' homes; Total of 8 family members charged;
- HUD funds used to finance campaign of one of the ED's sons;
- Charged with Section 666, wire fraud, conspiracy, among others (100 count indictment);
- Sentenced to ten years in federal prison; \$87,500 in restitution, BMW, 20-foot boat and his \$2.5 million dollar summer home seized (plus other homes), as well as \$200k found in search warrant!

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Strategies and Survival



- Training on understanding financial statements;
- Encourage Department Heads to participate in Board Meetings;
- Checks and balances of key positions, i.e., accounts payable and accounts receivable should be different people.



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Strategies and Survival



- Review policies and ensure they are current and relevant;
- Have a good understanding of procurement policies;
- Have strong pha property policies regarding use of government owned vehicles (GOV), credit cards, electronic equipment, etc.;
- Maintain good internal records;
- Stay in your lane. Let others do their job;
- Properly “vet” candidates for “fiduciary” type positions;
- Have a designated “gatekeeper” to deal with HUD OIG.

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Strategies and Survival



- Be consistent in acting once a complaint comes in;
- Have a basic fraud response policy and follow it;
- Have a basic employee complaint policy and follow it;
- Have a “go-to” group to assist with internal review on speed dial. Try to stay away from internal groups.
- Maintain notes and MOI if employees are interviewed. Recording with **consent** would be best evidence;
- Cooperate with HUDOIG inquiries AFTER consulting with legal team.

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Questions?

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