

## GUIDE FOR CONDUCTING REFERENCE CHECKS

### I. Policy

This tribe or tribal organization has a policy of selecting and employing only those persons' whose performance, conduct and suitability will promote the efficiency of this tribe or tribal organization. To comply with this policy, selected officials will conduct reference checks before a final employment selection or job commitment is made.

### II. Coverage

This policy applies to all tribe or tribal organization applicants and employees who apply for a position with this tribe or tribal organization. It covers filling a position in any manner, e.g., by promotion, reassignment, transfer, change to lower grade, new hire, etc. Nothing in this policy will be construed to violate the provisions of Indian preference.

### III. Responsibilities

#### A. Personnel Offices:

1. When the personnel office issues a candidate referral roster to the selecting official or individual Department charged with the responsibility of reference checks, a copy of this Guide should be included. Reference checks must be conducted on the tentative selectee. This statement should be inserted at the top of the first page of the candidate referral roster. In the remark's column of the candidate referral roster, the personnel office will insert the following statement: "This is to certify that I conducted reference checks on the selectee." This statement will be signed by the selecting official.
2. The personnel office is available to advise the selecting official or Individual Department charged with the responsibility of reference checks on the handling of any adverse or suitability information developed during the reference checks in accordance with Public Law 101-630, Indian Child Protection and Family Violence Prevention Act, Minimum Standards.

#### B. Selecting official or individual Department charged with the responsibility of reference checks.

1. After receiving the candidate referral roster from the personnel office, the selecting official or individual Department charged with the responsibility of reference checks will review the candidate's job applications and related papers and decide whether to conduct reference checks on several candidates or

only on the tentative selectee. Reference checks must be conducted on the tentative selectee.

2. Before starting the reference check, the selecting official or individual Department charged with the responsibility of reference checks should check to see if the applicant has suggested on the job application that the present employer should not be contacted. The selecting officials or individual Department charged with the responsibility of reference checks should contact the applicant to learn why the present employer should not be contacted. If a satisfactory or plausible answer is given (i.e., the supervisor is not aware of the candidate's seeking of another position), the candidate should supply alternate reference sources.

However, at some point before final selection, the candidate should allow the selecting official or individual Department charged with the responsibility of reference checks to contact the current employer for a reference check. A selecting official or individual Department charged with the responsibility of reference checks should be cautious about hiring a candidate who refuses such contact with the current employer. As a potential new employer, the selecting official or individual Department charged with the responsibility of reference checks has the right to make an employment selection based on an evaluation of information both collected and withheld.

3. The selecting official or individual Department charged with the responsibility of reference checks will decide who to contact for references. The most likely reference sources are the current and former supervisors of the candidate, some co-workers and possibly the personal references listed on the candidate's application.
4. The selecting official or individual Department charged with the responsibility of reference checks will decide the appropriate questions to ask. This will be based on consideration of the information already available and the job requirements of the position to be filled. A list of sample questions is attached. Any of the sample questions may be omitted if clearly the question does not apply to the specific situation. Additional questions may be included depending on the situation or position.

5. The selecting official or individual Department charged with the responsibility of reference checks will decide how to conduct the reference checks and the methods to be used. Typically, it will be by telephone contact. (NOTE: telephone contacts are faster and better than letters for obtaining references because people are much more likely to verbalize negative comments than to commit them to writing. To avoid litigation, some employers will only confirm what former employees have asserted in job applications).
6. The selecting official or individual Department charged with the responsibility of reference checks should note the candidate's answers to questions concerning being fired, felony violations, firearms or explosives violations, other violations of the law, probation or parole, court-martial convictions, and federal debt delinquencies. If there is a "Yes" answer to any of these questions, the personnel office should be consulted to help resolve the suitability issue.
7. The selection official or individual Department charged with the responsibility of reference checks is responsible for assuring that reference checks are conducted. In signing the candidate selection roster, the selecting official or individual Department charged with the responsibility of reference checks also certifies that reference checks were conducted on the selectee.

IV. Interpretation of Reference Check Information

Reference check information must be carefully interpreted. The value of checks with current employers and associates can be maximized by listening closely and being alert for information that warrants clarification. A discernible lack of enthusiasm by the current employer in talking about a candidate may suggest a reluctance to be candid about the candidate's problems or substandard performance. When such reluctance cannot be overcome, selecting official or individual Department charged with the responsibility of reference checks should contact previous employers who may have other perspectives on the candidate's work or character, and may be more willing to talk about problem areas. On the other hand, the current employer may not be the best source of information if he/she is attempting to encourage the move of an unwanted employee.

V. Release of Information

Information collected through reference checks are considered the selecting official's memory jogger notes and must not be revealed to

any other persons not involved in the selection decision. These notes must always remain under the control of the selecting official or individual Department charged with the responsibility of reference checks and are to be destroyed by the selecting official or individual Department charged with the responsibility of reference checks when he/she decides they have served their purpose. These notes must be retained for a sufficient time to assure that any potential complaints regarding the selection are resolved.

At the end of the job application, there is an authorization for the release of information clause that the candidate has to sign. This is the basis for collecting additional information about the candidate.

### **Suitability Adjudication Process**

#### **A. Purpose of Suitability Adjudications**

1. The adjudicative process involves an assessment of past and present conduct as it may indicate probably future actions with adverse impact on the efficiency of the interest of the Tribe or Tribal Organization and Public Law 101-630, Indian Child Protection and Family Violence Prevention Act.

#### **B. Criteria for Suitability Standards**

1. The assessment is made to establish a reasonable expectation that the employment of continued employment of a person either would or would not promote the efficiency of the Tribe or Tribal Organization. This determination is based on considerations of whether the conduct of the person indicates a potential for behavior which would interfere with, prevent, or otherwise impact adversely on (1) the performance of the person in the position applied for or employed in; (2) the accomplishment of the duties and responsibilities of others in the Tribe or Tribal Organization; or (3) the ability of the employing agency to fully and effectively carry out their mandated responsibilities.

#### **C. Determination Factors for Suitability Standards**

1. In determining potential impact on the efficiency of the service, two issues are considered: (1) whether the conduct in question indicates a potential for inadequate or reduced accomplishment of specific duties; and (2) whether the conduct indicates any immediate or long-term risk for abuse of the trust in carrying out the responsibilities of the position. Conduct paralleling any of the following factors used by the Office of Personnel

Management may be considered as a basis for disqualification under this criteria:

- a. Delinquency or misconduct in prior employment;
  - b. Criminal, dishonest, infamous or notoriously disgraceful conduct;
  - c. Intentional false statement or deception or fraud in examination or appointment;
  - d. Habitual use of intoxicating beverages to excess; or,
  - e. Abuse of narcotics, drugs, or other controlled substances.
2. Additional considerations. In making the suitability determination the responsible official shall consider the following additional factors to the extent that these factors are deemed pertinent to the individual case:
- a. The kind of position for which the person is applying or in which the person is employed, including its trust risks;
  - b. The nature and seriousness of the conduct;
  - c. The circumstances surrounding the conduct;
  - d. The recency of the conduct;
  - e. The age of the applicant or employee at the time of the conduct;
  - f. Contributing social or environmental conditions; and
  - g. The absence or presence of rehabilitation or efforts toward rehabilitation.
- D. Basic Steps in the Suitability Adjudication Process
1. Review all available material – SUBJECT’s application, investigative reports, etc.
  2. Check to see if the level of investigation scheduled correlated with the requirements from P.L.101-630.
  3. Identify the issues raised in the investigation.
  4. Determine if there is enough information in the file to adjudicate the issues raised.
  5. If there is not enough information in the file to make a adjudication, determine where the additional information can be obtained and schedule accordingly (EXAMPLE: further information can be obtained from the SUBJECT, local law enforcement checks, local credit checks, etc.).
  6. Consider mitigating (additional considerations) factors before making an adjudication decision.

7. Confront the SUBJECT with the issues developed through an interview or correspondence to obtain the SUBJECT's comments.
8. Make a decision on all the facts of the case to determine if the SUBJECT is suitable for appointment to or continued employment in the position.
9. If the SUBJECT is denied the appointment to or continued employment in the position they should be advised of the final suitability decision.
10. In-house procedures including union contracts, personnel procedures, etc., should be checked to make sure that the employee's rights are not violated.

E. Responsibilities of the Adjudicator

1. The adjudicator must have an appropriate background investigation, been found suitable and have a need to know. (EXAMPLE: an adjudicator should not read the investigative file on a co-worker without a need to know.) The adjudicator should have a balanced, unbiased approach in the review of all investigations. A subordinate should not adjudicate his/her immediate supervisor's case, also there are potential problems if the adjudicator personally knows the SUBJECT. Potential conflicts of interest should be avoided.

F. Procedures for Handling Reports of Investigation

1. All reports of investigation should be treated as confidential material for their mailing and storage. When reports are mailed they should be wrapped in double envelopes with the inside envelope marked "Security Sensitive." Investigative reports should be stored in a locking file when not in use.
2. The investigative reports should be mailed directly to the individual designated as the responsible adjudicator.
3. If the background investigation is on the designated official responsible for adjudication, the name of the adjudicator should be specified on the envelope to insure that unauthorized individuals do not see it.
4. The designated adjudicator should have their files appropriately stored in the custody of the Chairman of the Tribe or Tribal Organization. The designated adjudicator should not have access to his/her own file. Double wrap envelopes should be used to contain security files of the adjudicative staff personnel. Initial and date the envelope when sealing it.

G. Adjudicative Process

Project Making Medicine  
Center on Child Abuse and Neglect  
University of Oklahoma Health Sciences Center  
P.O. Box 26901- CHO 3B 3406  
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1. Through the use of adjudicative guidelines, the same standards and consistency are applied in handling cases. This standardization protects the rights of the SUBJECT and helps to avoid cultural and personal bias in the adjudication process.
2. If serious questions are raised about the mental and emotional stability of the SUBJECT, consider the use of a medical referral.
3. Obtain concurrence on a adjudication decision from the Chairman of the Tribe or Tribal Organization.
4. Document everything, including telephone calls from the SUBJECT.
5. Document the security file when the individual resigns, retires or transfers to another position that does not require the investigations.
6. Keep the security file in chronological order.
7. Regarding issues raised – How was the adverse information developed? Did the SUBJECT try to hide this information or was it admitted?
8. Prepare a adjudication summary sheet to be retained in the security file.
9. Prepare a certification which included the investigation date and favorable suitability determination date.
10. Notify the SUBJECT that he/she has been found suitable for the position, provide briefing, and notify the employing agency.

H. Recommended Due Process Guidelines

1. A letter outlining the issues developed in the investigation must be sent to the SUBJECT. The letter should explain that the SUBJECT can provide mitigating circumstances to those identified issues. The SUBJECT can respond by writing or a oral interview. A suspense date in which to respond is given to the SUBJECT. Based on the SUBJECT's response, additional investigation may be scheduled.
2. While equity demands uniformity in evaluating individual cases, to assure fair and consistent judgment from one situation to the next, each case must be weighed on its own merits taking into consideration all relevant facts, and the experience of similar cases. All information of record, favorable or unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, and overall significance.

3. After a final decision is made the adjudicator should write the applicant or employee about the decision and state that a written appeal may be filed with the Tribal Chairman.

I. Records System

1. Keep a active and inactive file for easier purge of the records.
2. Set up a flagging system for periodic reinvestigation requirements – monthly time schedule – 5 year anniversary.
3. Note the certificate of favorable determination in the security file when the individual vacates the covered position and move to the inactive files.

J. Security Briefings

1. Provide for suitability briefings.
2. Provide a statement that individuals must sign indicating that they have received the briefing.
3. For those staff members with access to the background investigation – avoid the tendency to gossip about files as this may result in leaks of information.