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116TH CONGRESS
2^D SESSION

H. R. 1076

[Report No. 116-380, Part I]

To prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2019

Mr. CUMMINGS (for himself and Mr. COLLINS of Georgia) introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committees on House Administration, the Judiciary, Armed Services, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JANUARY 24, 2020

Additional sponsors: Mr. NADLER, Mr. RASKIN, Ms. NORTON, Mr. KHANNA, Ms. OCASIO-CORTEZ, Mr. CONNOLLY, Mrs. CAROLYN B. MALONEY of New York, Ms. PRESSLEY, Mr. TRONE, Mr. COHEN, Mr. BUDD, Mr. THOMPSON of California, Mr. SARBANES, Mr. CISNEROS, Mr. DESAULNIER, Mr. RYAN, Ms. SCHAKOWSKY, Mr. LYNCH, Mr. HASTINGS, Mr. TAKANO, Mr. MORELLE, Mr. PAPPAS, Mr. SMITH of Washington, and Mr. PASCRELL

JANUARY 24, 2020

Reported from the Committee on Oversight and Reform with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

JANUARY 24, 2020

Committees on House Administration, the Judiciary, Armed Services, and Education and Labor discharged, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 7, 2019]

A BILL

To prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Fair Chance to Compete*
 5 *for Jobs Act of 2019” or the “Fair Chance Act”.*

6 **SEC. 2. PROHIBITION ON CRIMINAL HISTORY INQUIRIES**

7 **PRIOR TO CONDITIONAL OFFER FOR FED-**
 8 **ERAL EMPLOYMENT.**

9 *(a) IN GENERAL.—Subpart H of part III of title 5,*
 10 *United States Code, is amended by adding at the end the*
 11 *following:*

12 **“CHAPTER 92—PROHIBITION ON CRIMI-**
 13 **NAL HISTORY INQUIRIES PRIOR TO**
 14 **CONDITIONAL OFFER**

“Sec.

“9201. Definitions.

“9202. Limitations on requests for criminal history record information.

“9203. Agency policies; complaint procedures.

“9204. Adverse action.

“9205. Procedures.

“9206. Rules of construction.

15 **“§9201. Definitions**

16 *“In this chapter—*

17 *“(1) the term ‘agency’ means ‘Executive agency’*
 18 *as such term is defined in section 105 and includes—*

19 *“(A) the United States Postal Service and*
 20 *the Postal Regulatory Commission; and*

21 *“(B) the Executive Office of the President;*

1 “(2) the term ‘appointing authority’ means an
2 employee in the executive branch of the Government
3 of the United States that has authority to make ap-
4 pointments to positions in the civil service;

5 “(3) the term ‘conditional offer’ means an offer
6 of employment in a position in the civil service that
7 is conditioned upon the results of a criminal history
8 inquiry;

9 “(4) the term ‘criminal history record informa-
10 tion’—

11 “(A) except as provided in subparagraphs
12 (B) and (C), has the meaning given the term in
13 section 9101(a);

14 “(B) includes any information described in
15 the first sentence of section 9101(a)(2) that has
16 been sealed or expunged pursuant to law; and

17 “(C) includes information collected by a
18 criminal justice agency, relating to an act or al-
19 leged act of juvenile delinquency, that is analo-
20 gous to criminal history record information (in-
21 cluding such information that has been sealed or
22 expunged pursuant to law); and

23 “(5) the term ‘suspension’ has the meaning given
24 the term in section 7501.

1 **“§ 9202. Limitations on requests for criminal history**
2 **record information**

3 “(a) *INQUIRIES PRIOR TO CONDITIONAL OFFER.*—*Ex-*
4 *cept as provided in subsections (b) and (c), an employee*
5 *of an agency may not request, in oral or written form (in-*
6 *cluding through the Declaration for Federal Employment*
7 *(Office of Personnel Management Optional Form 306) or*
8 *any similar successor form, the USAJOBS internet website,*
9 *or any other electronic means) that an applicant for an*
10 *appointment to a position in the civil service disclose crimi-*
11 *nal history record information regarding the applicant be-*
12 *fore the appointing authority extends a conditional offer to*
13 *the applicant.*

14 “(b) *OTHERWISE REQUIRED BY LAW.*—*The prohibi-*
15 *tion under subsection (a) shall not apply with respect to*
16 *an applicant for a position in the civil service if consider-*
17 *ation of criminal history record information prior to a con-*
18 *ditional offer with respect to the position is otherwise re-*
19 *quired by law.*

20 “(c) *EXCEPTION FOR CERTAIN POSITIONS.*—

21 “(1) *IN GENERAL.*—*The prohibition under sub-*
22 *section (a) shall not apply with respect to an appli-*
23 *cant for an appointment to a position—*

24 “(A) *that requires a determination of eligi-*
25 *bility described in clause (i), (ii), or (iii) of sec-*
26 *tion 9101(b)(1)(A);*

1 “(B) as a Federal law enforcement officer
2 (as defined in section 115(c) of title 18); or

3 “(C) identified by the Director of the Office
4 of Personnel Management in the regulations
5 issued under paragraph (2).

6 “(2) REGULATIONS.—

7 “(A) ISSUANCE.—The Director of the Office
8 of Personnel Management shall issue regulations
9 identifying additional positions with respect to
10 which the prohibition under subsection (a) shall
11 not apply, giving due consideration to positions
12 that involve interaction with minors, access to
13 sensitive information, or managing financial
14 transactions.

15 “(B) COMPLIANCE WITH CIVIL RIGHTS
16 LAWS.—The regulations issued under subpara-
17 graph (A) shall—

18 “(i) be consistent with, and in no way
19 supersede, restrict, or limit the application
20 of title VII of the Civil Rights Act of 1964
21 (42 U.S.C. 2000e et seq.) or other relevant
22 Federal civil rights laws; and

23 “(ii) ensure that all hiring activities
24 conducted pursuant to the regulations are

1 *conducted in a manner consistent with rel-*
2 *evant Federal civil rights laws.*

3 **“§ 9203. Agency policies; complaint procedures**

4 *“The Director of the Office of Personnel Management*
5 *shall—*

6 *“(1) develop, implement, and publish a policy to*
7 *assist employees of agencies in complying with section*
8 *9202 and the regulations issued pursuant to such sec-*
9 *tion; and*

10 *“(2) establish and publish procedures under*
11 *which an applicant for an appointment to a position*
12 *in the civil service may submit a complaint, or any*
13 *other information, relating to compliance by an em-*
14 *ployee of an agency with section 9202.*

15 **“§ 9204. Adverse action**

16 *“(a) FIRST VIOLATION.—If the Director of the Office*
17 *of Personnel Management determines, after notice and an*
18 *opportunity for a hearing on the record, that an employee*
19 *of an agency has violated section 9202, the Director shall—*

20 *“(1) issue to the employee a written warning*
21 *that includes a description of the violation and the*
22 *additional penalties that may apply for subsequent*
23 *violations; and*

24 *“(2) file such warning in the employee’s official*
25 *personnel record file.*

1 “(b) *SUBSEQUENT VIOLATIONS.*—*If the Director of the*
2 *Office of Personnel Management determines, after notice*
3 *and an opportunity for a hearing on the record, that an*
4 *employee that was subject to subsection (a) has committed*
5 *a subsequent violation of section 9202, the Director may*
6 *take the following action:*

7 “(1) *For a second violation, suspension of the*
8 *employee for a period of not more than 7 days.*

9 “(2) *For a third violation, suspension of the em-*
10 *ployee for a period of more than 7 days.*

11 “(3) *For a fourth violation—*

12 “(A) *suspension of the employee for a period*
13 *of more than 7 days; and*

14 “(B) *a civil penalty against the employee in*
15 *an amount that is not more than \$250.*

16 “(4) *For a fifth violation—*

17 “(A) *suspension of the employee for a period*
18 *of more than 7 days; and*

19 “(B) *a civil penalty against the employee in*
20 *an amount that is not more than \$500.*

21 “(5) *For any subsequent violation—*

22 “(A) *suspension of the employee for a period*
23 *of more than 7 days; and*

24 “(B) *a civil penalty against the employee in*
25 *an amount that is not more than \$1,000.*

1 **“§ 9205. Procedures**

2 “(a) *APPEALS.*—*The Director of the Office of Personnel*
3 *Management shall by rule establish procedures providing*
4 *for an appeal from any adverse action taken under section*
5 *9204 by not later than 30 days after the date of the action.*

6 “(b) *APPLICABILITY OF OTHER LAWS.*—*An adverse*
7 *action taken under section 9204 (including a determination*
8 *in an appeal from such an action under subsection (a) of*
9 *this section) shall not be subject to—*

10 “(1) *the procedures under chapter 75; or*

11 “(2) *except as provided in subsection (a) of this*
12 *section, appeal or judicial review.*

13 **“§ 9206. Rules of construction**

14 “*Nothing in this chapter may be construed to—*

15 “(1) *authorize any officer or employee of an*
16 *agency to request the disclosure of information de-*
17 *scribed under subparagraphs (B) and (C) of section*
18 *9201(4); or*

19 “(2) *create a private right of action for any per-*
20 *son.*”.

21 (b) *REGULATIONS; EFFECTIVE DATE.*—

22 (1) *REGULATIONS.*—*Not later than 1 year after*
23 *the date of enactment of this Act, the Director of the*
24 *Office of Personnel Management shall issue such regu-*
25 *lations as are necessary to carry out chapter 92 of*
26 *title 5, United States Code (as added by this Act).*

1 (2) *EFFECTIVE DATE.*—Section 9202 of title 5,
 2 *United States Code (as added by this Act), shall take*
 3 *effect on the date that is 2 years after the date of en-*
 4 *actment of this Act.*

5 (c) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 6 *table of chapters for part III of title 5, United States Code,*
 7 *is amended by inserting after the item relating to chapter*
 8 *91 the following:*

**“92. Prohibition on criminal history inquiries prior to
 conditional offer 9201”.**

9 (d) *APPLICATION TO LEGISLATIVE BRANCH.*—

10 (1) *IN GENERAL.*—The *Congressional Account-*
 11 *ability Act of 1995 (2 U.S.C. 1301 et seq.) is amend-*
 12 *ed—*

13 (A) *in section 102(a) (2 U.S.C. 1302(a)), by*
 14 *adding at the end the following:*

15 “*(12) Section 9202 of title 5, United States*
 16 *Code.*”;

17 (B) *by redesignating section 207 (2 U.S.C.*
 18 *1317) as section 208; and*

19 (C) *by inserting after section 206 (2 U.S.C.*
 20 *1316) the following new section:*

21 **“SEC. 207. RIGHTS AND PROTECTIONS RELATING TO CRIMI-**
 22 **NAL HISTORY INQUIRIES.**

23 “(a) *DEFINITIONS.*—*In this section, the terms ‘agency’,*
 24 *‘criminal history record information’, and ‘suspension’*

1 *have the meanings given the terms in section 9201 of title*
2 *5, United States Code, except as otherwise modified by this*
3 *section.*

4 “(b) *RESTRICTIONS ON CRIMINAL HISTORY INQUIR-*
5 *IES.—*

6 “(1) *IN GENERAL.—*

7 “(A) *IN GENERAL.—Except as provided in*
8 *subparagraph (B), an employee of an employing*
9 *office may not request that an applicant for em-*
10 *ployment as a covered employee disclose criminal*
11 *history record information if the request would*
12 *be prohibited under section 9202 of title 5,*
13 *United States Code, if made by an employee of*
14 *an agency.*

15 “(B) *CONDITIONAL OFFER.—For purposes*
16 *of applying that section 9202 under subpara-*
17 *graph (A), a reference in that section 9202 to a*
18 *conditional offer shall be considered to be an*
19 *offer of employment as a covered employee that*
20 *is conditioned upon the results of a criminal his-*
21 *tory inquiry.*

22 “(2) *RULES OF CONSTRUCTION.—The provisions*
23 *of section 9206 of title 5, United States Code, shall*
24 *apply to employing offices, consistent with regulations*
25 *issued under subsection (d).*

1 “(c) *REMEDY.*—

2 “(1) *IN GENERAL.*—*The remedy for a violation*
3 *of subsection (b)(1) shall be such remedy as would be*
4 *appropriate if awarded under section 9204 of title 5,*
5 *United States Code, if the violation had been com-*
6 *mitted by an employee of an agency, consistent with*
7 *regulations issued under subsection (d), except that*
8 *the reference in that section to a suspension shall be*
9 *considered to be a suspension with the level of com-*
10 *ensation provided for a covered employee who is tak-*
11 *ing unpaid leave under section 202.*

12 “(2) *PROCESS FOR OBTAINING RELIEF.*—*An ap-*
13 *plicant for employment as a covered employee who al-*
14 *leges a violation of subsection (b)(1) may rely on the*
15 *provisions of title IV (other than section 407 or 408,*
16 *or a provision of this title that permits a person to*
17 *obtain a civil action or judicial review), consistent*
18 *with regulations issued under subsection (d).*

19 “(d) *REGULATIONS TO IMPLEMENT SECTION.*—

20 “(1) *IN GENERAL.*—*Not later than 18 months*
21 *after the date of enactment of the Fair Chance to*
22 *Compete for Jobs Act of 2019, the Board shall, pursu-*
23 *ant to section 304, issue regulations to implement this*
24 *section.*

1 “(2) *PARALLEL WITH AGENCY REGULATIONS.*—
2 *The regulations issued under paragraph (1) shall be*
3 *the same as substantive regulations issued by the Di-*
4 *rector of the Office of Personnel Management under*
5 *section 2(b)(1) of the Fair Chance to Compete for Jobs*
6 *Act of 2019 to implement the statutory provisions re-*
7 *ferred to in subsections (a) through (c) except to the*
8 *extent that the Board may determine, for good cause*
9 *shown and stated together with the regulation, that a*
10 *modification of such regulations would be more effec-*
11 *tive for the implementation of the rights and protec-*
12 *tions under this section.*

13 “(e) *EFFECTIVE DATE.*—*Section 102(a)(12) and sub-*
14 *sections (a) through (c) shall take effect on the date on which*
15 *section 9202 of title 5, United States Code, applies with*
16 *respect to agencies.”.*

17 (2) *CLERICAL AMENDMENTS.*—

18 (A) *The table of contents in section 1(b) of*
19 *the Congressional Accountability Act of 1995*
20 *(Public Law 104–1; 109 Stat. 3) is amended—*

21 (i) *by redesignating the item relating*
22 *to section 207 as the item relating to section*
23 *208; and*

24 (ii) *by inserting after the item relating*
25 *to section 206 the following new item:*

“*Sec. 207. Rights and protections relating to criminal history inquiries.*”.

1 (B) Section 62(e)(2) of the Internal Revenue
2 Code of 1986 is amended by striking “or 207”
3 and inserting “207, or 208”.

4 (e) APPLICATION TO JUDICIAL BRANCH.—

5 (1) IN GENERAL.—Section 604 of title 28,
6 United States Code, is amended by adding at the end
7 the following:

8 “(i) RESTRICTIONS ON CRIMINAL HISTORY INQUIR-
9 IES.—

10 “(1) DEFINITIONS.—In this subsection—

11 “(A) the terms ‘agency’ and ‘criminal his-
12 tory record information’ have the meanings
13 given those terms in section 9201 of title 5;

14 “(B) the term ‘covered employee’ means an
15 employee of the judicial branch of the United
16 States Government, other than—

17 “(i) any judge or justice who is enti-
18 tled to hold office during good behavior;

19 “(ii) a United States magistrate judge;
20 or

21 “(iii) a bankruptcy judge; and

22 “(C) the term ‘employing office’ means any
23 office or entity of the judicial branch of the
24 United States Government that employs covered
25 employees.

1 “(2) *RESTRICTION.*—A covered employee may
2 not request that an applicant for employment as a
3 covered employee disclose criminal history record in-
4 formation if the request would be prohibited under
5 section 9202 of title 5 if made by an employee of an
6 agency.

7 “(3) *EMPLOYING OFFICE POLICIES; COMPLAINT*
8 *PROCEDURE.*—The provisions of sections 9203 and
9 9206 of title 5 shall apply to employing offices and
10 to applicants for employment as covered employees,
11 consistent with regulations issued by the Director to
12 implement this subsection.

13 “(4) *ADVERSE ACTION.*—

14 “(A) *ADVERSE ACTION.*—The Director may
15 take such adverse action with respect to a cov-
16 ered employee who violates paragraph (2) as
17 would be appropriate under section 9204 of title
18 5 if the violation had been committed by an em-
19 ployee of an agency.

20 “(B) *APPEALS.*—The Director shall by rule
21 establish procedures providing for an appeal
22 from any adverse action taken under subpara-
23 graph (A) by not later than 30 days after the
24 date of the action.

1 “(C) *APPLICABILITY OF OTHER LAWS.—*Except
2 as provided in subparagraph (B), an ad-
3 verse action taken under subparagraph (A) (in-
4 cluding a determination in an appeal from such
5 an action under subparagraph (B)) shall not be
6 subject to appeal or judicial review.

7 “(5) *REGULATIONS TO BE ISSUED.—*

8 “(A) *IN GENERAL.—*Not later than 18
9 months after the date of enactment of the Fair
10 Chance to Compete for Jobs Act of 2019, the Di-
11 rector shall issue regulations to implement this
12 subsection.

13 “(B) *PARALLEL WITH AGENCY REGULA-*
14 *TIONS.—*The regulations issued under subpara-
15 graph (A) shall be the same as substantive regu-
16 lations promulgated by the Director of the Office
17 of Personnel Management under section 2(b)(1)
18 of the Fair Chance to Compete for Jobs Act of
19 2019 except to the extent that the Director of the
20 Administrative Office of the United States
21 Courts may determine, for good cause shown and
22 stated together with the regulation, that a modi-
23 fication of such regulations would be more effec-
24 tive for the implementation of the rights and
25 protections under this subsection.

1 “(6) *EFFECTIVE DATE.*—Paragraphs (1) through
2 (4) shall take effect on the date on which section 9202
3 of title 5 applies with respect to agencies.”.

4 **SEC. 3. PROHIBITION ON CRIMINAL HISTORY INQUIRIES BY**
5 **CONTRACTORS PRIOR TO CONDITIONAL**
6 **OFFER.**

7 (a) *CIVILIAN AGENCY CONTRACTS.*—

8 (1) *IN GENERAL.*—Chapter 47 of title 41, United
9 States Code, is amended by adding at the end the fol-
10 lowing new section:

11 **“§4714. Prohibition on criminal history inquiries by**
12 **contractors prior to conditional offer**

13 “(a) *LIMITATION ON CRIMINAL HISTORY INQUIRIES.*—

14 “(1) *IN GENERAL.*—Except as provided in para-
15 graphs (2) and (3), an executive agency—

16 “(A) may not require that an individual or
17 sole proprietor who submits a bid for a contract
18 to disclose criminal history record information
19 regarding that individual or sole proprietor be-
20 fore determining the apparent awardee; and

21 “(B) shall require, as a condition of receiv-
22 ing a Federal contract and receiving payments
23 under such contract that the contractor may not
24 verbally, or through written form, request the
25 disclosure of criminal history record information

1 *regarding an applicant for a position related to*
2 *work under such contract before the contractor*
3 *extends a conditional offer to the applicant.*

4 “(2) *OTHERWISE REQUIRED BY LAW.—The pro-*
5 *hibition under paragraph (1) does not apply with re-*
6 *spect to a contract if consideration of criminal his-*
7 *tory record information prior to a conditional offer*
8 *with respect to the position is otherwise required by*
9 *law.*

10 “(3) *EXCEPTION FOR CERTAIN POSITIONS.—*

11 “(A) *IN GENERAL.—The prohibition under*
12 *paragraph (1) does not apply with respect to—*

13 “(i) *a contract that requires an indi-*
14 *vidual hired under the contract to access*
15 *classified information or to have sensitive*
16 *law enforcement or national security duties;*
17 *or*

18 “(ii) *a position that the Administrator*
19 *of General Services identifies under the reg-*
20 *ulations issued under subparagraph (B).*

21 “(B) *REGULATIONS.—*

22 “(i) *ISSUANCE.—Not later than 16*
23 *months after the date of enactment of the*
24 *Fair Chance to Compete for Jobs Act of*
25 *2019, the Administrator of General Serv-*

1 ices, in consultation with the Secretary of
2 Defense, shall issue regulations identifying
3 additional positions with respect to which
4 the prohibition under paragraph (1) shall
5 not apply, giving due consideration to posi-
6 tions that involve interaction with minors,
7 access to sensitive information, or man-
8 aging financial transactions.

9 “(ii) *COMPLIANCE WITH CIVIL RIGHTS*
10 *LAWS.—The regulations issued under clause*
11 *(i) shall—*

12 “(I) be consistent with, and in no
13 way supersede, restrict, or limit the
14 application of title VII of the Civil
15 Rights Act of 1964 (42 U.S.C. 2000e et
16 seq.) or other relevant Federal civil
17 rights laws; and

18 “(II) ensure that all hiring activi-
19 ties conducted pursuant to the regula-
20 tions are conducted in a manner con-
21 sistent with relevant Federal civil
22 rights laws.

23 “(b) *COMPLAINT PROCEDURES.—The Administrator of*
24 *General Services shall establish and publish procedures*
25 *under which an applicant for a position with a Federal*

1 contractor may submit to the Administrator a complaint,
2 or any other information, relating to compliance by the
3 contractor with subsection (a)(1)(B).

4 “(c) ACTION FOR VIOLATIONS OF PROHIBITION ON
5 CRIMINAL HISTORY INQUIRIES.—

6 “(1) FIRST VIOLATION.—If the head of an execu-
7 tive agency determines that a contractor has violated
8 subsection (a)(1)(B), such head shall—

9 “(A) notify the contractor;

10 “(B) provide 30 days after such notification
11 for the contractor to appeal the determination;
12 and

13 “(C) issue a written warning to the con-
14 tractor that includes a description of the viola-
15 tion and the additional remedies that may apply
16 for subsequent violations.

17 “(2) SUBSEQUENT VIOLATION.—If the head of an
18 executive agency determines that a contractor that
19 was subject to paragraph (1) has committed a subse-
20 quent violation of subsection (a)(1)(B), such head
21 shall notify the contractor, shall provide 30 days after
22 such notification for the contractor to appeal the de-
23 termination, and, in consultation with the relevant
24 Federal agencies, may take actions, depending on the

1 *severity of the infraction and the contractor’s history*
2 *of violations, including—*

3 *“(A) providing written guidance to the con-*
4 *tractor that the contractor’s eligibility for con-*
5 *tracts requires compliance with this section;*

6 *“(B) requiring that the contractor respond*
7 *within 30 days affirming that the contractor is*
8 *taking steps to comply with this section; and*

9 *“(C) suspending payment under the con-*
10 *tract for which the applicant was being consid-*
11 *ered until the contractor demonstrates compli-*
12 *ance with this section.*

13 *“(d) DEFINITIONS.—In this section:*

14 *“(1) CONDITIONAL OFFER.—The term ‘condi-*
15 *tional offer’ means an offer of employment for a posi-*
16 *tion related to work under a contract that is condi-*
17 *tioned upon the results of a criminal history inquiry.*

18 *“(2) CRIMINAL HISTORY RECORD INFORMA-*
19 *TION.—The term ‘criminal history record informa-*
20 *tion’ has the meaning given that term in section 9201*
21 *of title 5.”.*

22 *(2) CLERICAL AMENDMENT.—The table of sec-*
23 *tions for chapter 47 of title 41, United States Code,*
24 *is amended by adding at the end the following new*
25 *item:*

“4714. Prohibition on criminal history inquiries by contractors prior to conditional offer.”.

1 (3) *EFFECTIVE DATE.*—Section 4714 of title 41,
2 *United States Code, as added by paragraph (1), shall*
3 *apply with respect to contracts awarded pursuant to*
4 *solicitations issued after the effective date described in*
5 *section 2(b)(2) of this Act.*

6 (b) *DEFENSE CONTRACTS.*—

7 (1) *IN GENERAL.*—Chapter 137 of title 10,
8 *United States Code, is amended by inserting after sec-*
9 *tion 2338 the following new section:*

10 **“§2339. Prohibition on criminal history inquiries by**
11 **contractors prior to conditional offer**

12 “(a) *LIMITATION ON CRIMINAL HISTORY INQUIRIES.*—

13 “(1) *IN GENERAL.*—*Except as provided in para-*
14 *graphs (2) and (3), the head of an agency—*

15 “(A) *may not require that an individual or*
16 *sole proprietor who submits a bid for a contract*
17 *to disclose criminal history record information*
18 *regarding that individual or sole proprietor be-*
19 *fore determining the apparent awardee; and*

20 “(B) *shall require as a condition of receiv-*
21 *ing a Federal contract and receiving payments*
22 *under such contract that the contractor may not*
23 *verbally or through written form request the dis-*
24 *closure of criminal history record information*

1 *regarding an applicant for a position related to*
2 *work under such contract before such contractor*
3 *extends a conditional offer to the applicant.*

4 “(2) *OTHERWISE REQUIRED BY LAW.*—*The pro-*
5 *hibition under paragraph (1) does not apply with re-*
6 *spect to a contract if consideration of criminal his-*
7 *tory record information prior to a conditional offer*
8 *with respect to the position is otherwise required by*
9 *law.*

10 “(3) *EXCEPTION FOR CERTAIN POSITIONS.*—

11 “(A) *IN GENERAL.*—*The prohibition under*
12 *paragraph (1) does not apply with respect to—*

13 “(i) *a contract that requires an indi-*
14 *vidual hired under the contract to access*
15 *classified information or to have sensitive*
16 *law enforcement or national security duties;*
17 *or*

18 “(ii) *a position that the Secretary of*
19 *Defense identifies under the regulations*
20 *issued under subparagraph (B).*

21 “(B) *REGULATIONS.*—

22 “(i) *ISSUANCE.*—*Not later than 16*
23 *months after the date of enactment of the*
24 *Fair Chance to Compete for Jobs Act of*
25 *2019, the Secretary of Defense, in consulta-*

1 *tion with the Administrator of General*
2 *Services, shall issue regulations identifying*
3 *additional positions with respect to which*
4 *the prohibition under paragraph (1) shall*
5 *not apply, giving due consideration to posi-*
6 *tions that involve interaction with minors,*
7 *access to sensitive information, or man-*
8 *aging financial transactions.*

9 *“(ii) COMPLIANCE WITH CIVIL RIGHTS*
10 *LAWS.—The regulations issued under clause*
11 *(i) shall—*

12 *“(I) be consistent with, and in no*
13 *way supersede, restrict, or limit the*
14 *application of title VII of the Civil*
15 *Rights Act of 1964 (42 U.S.C. 2000e et*
16 *seq.) or other relevant Federal civil*
17 *rights laws; and*

18 *“(II) ensure that all hiring activi-*
19 *ties conducted pursuant to the regula-*
20 *tions are conducted in a manner con-*
21 *sistent with relevant Federal civil*
22 *rights laws.*

23 *“(b) COMPLAINT PROCEDURES.—The Secretary of De-*
24 *fense shall establish and publish procedures under which an*
25 *applicant for a position with a Department of Defense con-*

1 *tractor may submit a complaint, or any other information,*
2 *relating to compliance by the contractor with subsection*
3 *(a)(1)(B).*

4 “(c) *ACTION FOR VIOLATIONS OF PROHIBITION ON*
5 *CRIMINAL HISTORY INQUIRIES.—*

6 “(1) *FIRST VIOLATION.—If the Secretary of De-*
7 *fense determines that a contractor has violated sub-*
8 *section (a)(1)(B), the Secretary shall—*

9 “(A) *notify the contractor;*

10 “(B) *provide 30 days after such notification*
11 *for the contractor to appeal the determination;*
12 *and*

13 “(C) *issue a written warning to the con-*
14 *tractor that includes a description of the viola-*
15 *tion and the additional remedies that may apply*
16 *for subsequent violations.*

17 “(2) *SUBSEQUENT VIOLATIONS.—If the Secretary*
18 *of Defense determines that a contractor that was sub-*
19 *ject to paragraph (1) has committed a subsequent vio-*
20 *lation of subsection (a)(1)(B), the Secretary shall no-*
21 *tify the contractor, shall provide 30 days after such*
22 *notification for the contractor to appeal the deter-*
23 *mination, and, in consultation with the relevant Fed-*
24 *eral agencies, may take actions, depending on the se-*

1 *verity of the infraction and the contractor’s history of*
2 *violations, including—*

3 *“(A) providing written guidance to the con-*
4 *tractor that the contractor’s eligibility for con-*
5 *tracts requires compliance with this section;*

6 *“(B) requiring that the contractor respond*
7 *within 30 days affirming that the contractor is*
8 *taking steps to comply with this section; and*

9 *“(C) suspending payment under the con-*
10 *tract for which the applicant was being consid-*
11 *ered until the contractor demonstrates compli-*
12 *ance with this section.*

13 *“(d) DEFINITIONS.—In this section:*

14 *“(1) CONDITIONAL OFFER.—The term ‘condi-*
15 *tional offer’ means an offer of employment for a posi-*
16 *tion related to work under a contract that is condi-*
17 *tioned upon the results of a criminal history inquiry.*

18 *“(2) CRIMINAL HISTORY RECORD INFORMA-*
19 *TION.—The term ‘criminal history record informa-*
20 *tion’ has the meaning given that term in section 9201*
21 *of title 5.”.*

22 *(2) EFFECTIVE DATE.—Section 2339(a) of title*
23 *10, United States Code, as added by paragraph (1),*
24 *shall apply with respect to contracts awarded pursu-*

1 *ant to solicitations issued after the effective date de-*
2 *scribed in section 2(b)(2) of this Act.*

3 (3) *CLERICAL AMENDMENT.*—*The table of sec-*
4 *tions for chapter 137 of title 10, United States Code,*
5 *is amended by inserting after the item relating to sec-*
6 *tion 2338 the following new item:*

 “2339. *Prohibition on criminal history inquiries by contractors prior to condi-*
 tional offer.”.

7 (c) *REVISIONS TO FEDERAL ACQUISITION REGULA-*
8 *TION.*—

9 (1) *IN GENERAL.*—*Not later than 18 months*
10 *after the date of enactment of this Act, the Federal*
11 *Acquisition Regulatory Council shall revise the Fed-*
12 *eral Acquisition Regulation to implement section*
13 *4714 of title 41, United States Code, and section 2339*
14 *of title 10, United States Code, as added by this sec-*
15 *tion.*

16 (2) *CONSISTENCY WITH OFFICE OF PERSONNEL*
17 *MANAGEMENT REGULATIONS.*—*The Federal Acquisi-*
18 *tion Regulatory Council shall revise the Federal Ac-*
19 *quisition Regulation under paragraph (1) to be con-*
20 *sistent with the regulations issued by the Director of*
21 *the Office of Personnel Management under section*
22 *2(b)(1) to the maximum extent practicable. The Coun-*
23 *cil shall include together with such revision an expla-*
24 *nation of any substantive modification of the Office*

1 of Personnel Management regulations, including an
2 explanation of how such modification will more effec-
3 tively implement the rights and protections under this
4 section.

5 **SEC. 4. REPORT ON EMPLOYMENT OF INDIVIDUALS FOR-**
6 **MERLY INCARCERATED IN FEDERAL PRIS-**
7 **ONS.**

8 (a) *DEFINITION.*—In this section, the term “covered
9 individual”—

10 (1) means an individual who has completed a
11 term of imprisonment in a Federal prison for a Fed-
12 eral criminal offense; and

13 (2) does not include an alien who is or will be
14 removed from the United States for a violation of the
15 immigration laws (as such term is defined in section
16 101 of the Immigration and Nationality Act (8
17 U.S.C. 1101)).

18 (b) *STUDY AND REPORT REQUIRED.*—The Director of
19 the Bureau of Justice Statistics, in coordination with the
20 Director of the Bureau of the Census, shall—

21 (1) not later than 180 days after the date of en-
22 actment of this Act, design and initiate a study on
23 the employment of covered individuals after their re-
24 lease from Federal prison, including by collecting—

1 (A) demographic data on covered individ-
2 uals, including race, age, and sex; and

3 (B) data on employment and earnings of
4 covered individuals who are denied employment,
5 including the reasons for the denials; and

6 (2) not later than 2 years after the date of enact-
7 ment of this Act, and every 5 years thereafter, submit
8 a report that does not include any personally identifi-
9 able information on the study conducted under para-
10 graph (1) to—

11 (A) the Committee on Homeland Security
12 and Governmental Affairs of the Senate;

13 (B) the Committee on Health, Education,
14 Labor, and Pensions of the Senate;

15 (C) the Committee on Oversight and Reform
16 of the House of Representatives; and

17 (D) the Committee on Education and Labor
18 of the House of Representatives.

19 **SEC. 5. DETERMINATION OF BUDGETARY EFFECTS.**

20 The budgetary effects of this Act, for the purpose of
21 complying with the Statutory Pay-As-You-Go Act of 2010,
22 shall be determined by reference to the latest statement titled
23 “Budgetary Effects of PAYGO Legislation” for this Act,
24 submitted for printing in the Congressional Record by the
25 Chairman of the House Budget Committee, provided that

- 1 *such statement has been submitted prior to the vote on pas-*
- 2 *sage.*

Union Calendar No. 301

116TH CONGRESS
2^D SESSION

H. R. 1076

[Report No. 116-380, Part I]

A BILL

To prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes.

JANUARY 24, 2020

Reported from the Committee on Oversight and Reform
with an amendment

JANUARY 24, 2020

Committees on House Administration, the Judiciary, Armed Services, and Education and Labor discharged, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed