

FAIR CHANCE ACT

JANUARY 24, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. CAROLYN B. MALONEY (NY), from the Committee on Oversight and Reform, submitted the following

R E P O R T

[To accompany H.R. 1076]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Reform, to whom was referred the bill (H.R. 1076) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Summary and Purpose of the Legislation	9
Background and Need for Legislation	9
Statement of Oversight Findings and Recommendations of the Committee	10
Statement of General Performance Goals and Objectives	10
Legislative History	10
Hearings	11
Committee Consideration	11
Roll Call Votes	11
Explanation of Amendments	14
Application of Law to the Legislative Branch	14
Duplication of Federal Programs	14
Federal Advisory Committee Act	14
Unfunded Mandates Statement	15
Earmark Identification	15
Committee Estimate	15
New Budget Authority and Congressional Budget Office Cost Estimate	15
Section-by-Section Analysis	17
Changes in Existing Law Made by the Bill, as Reported	21

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. PROHIBITION ON CRIMINAL HISTORY INQUIRIES PRIOR TO CONDITIONAL OFFER FOR FEDERAL EMPLOYMENT.

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

**“CHAPTER 92—PROHIBITION ON CRIMINAL HISTORY INQUIRIES
PRIOR TO 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.

“§ 9201. Definitions

“In this chapter—

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

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

“(B) the Executive Office of the President;

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

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

“(4) the term ‘criminal history record information’—

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

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

“(C) includes information collected by a criminal justice agency, relating to an act or alleged act of juvenile delinquency, that is analogous to criminal history record information (including such information that has been sealed or expunged pursuant to law); and

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

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

“(a) INQUIRIES PRIOR TO CONDITIONAL OFFER.—Except as provided in subsections (b) and (c), an employee of an agency may not request, in oral or written form (including through the Declaration for Federal Employment (Office of Personnel Management Optional Form 306) or any similar successor form, the USAJOBS internet website, or any other electronic means) that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant.

“(b) OTHERWISE REQUIRED BY LAW.—The prohibition under subsection (a) shall not apply with respect to an applicant for a position in the civil service if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

“(c) EXCEPTION FOR CERTAIN POSITIONS.—

“(1) IN GENERAL.—The prohibition under subsection (a) shall not apply with respect to an applicant for an appointment to a position—

“(A) that requires a determination of eligibility described in clause (i), (ii), or (iii) of section 9101(b)(1)(A);

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

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

“(2) REGULATIONS.—

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

“(B) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under subparagraph (A) shall—

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

“(ii) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

“§ 9203. Agency policies; complaint procedures

“The Director of the Office of Personnel Management shall—

“(1) develop, implement, and publish a policy to assist employees of agencies in complying with section 9202 and the regulations issued pursuant to such section; and

“(2) establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202.

“§ 9204. Adverse action

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

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

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

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

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

“(2) For a third violation, suspension of the employee for a period of more than 7 days.

“(3) For a fourth violation—

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

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

“(4) For a fifth violation—

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

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

“(5) For any subsequent violation—

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

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

“§ 9205. Procedures

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

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

“(1) the procedures under chapter 75; or

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

“§ 9206. Rules of construction

“Nothing in this chapter may be construed to—

“(1) authorize any officer or employee of an agency to request the disclosure of information described under subparagraphs (B) and (C) of section 9201(4); or

“(2) create a private right of action for any person.”.

(b) REGULATIONS; EFFECTIVE DATE.—

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

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

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

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

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

(1) **IN GENERAL.**—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

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

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

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

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

“SEC. 207. RIGHTS AND PROTECTIONS RELATING TO CRIMINAL HISTORY INQUIRIES.

“(a) **DEFINITIONS.**—In this section, the terms ‘agency’, ‘criminal history record information’, and ‘suspension’ have the meanings given the terms in section 9201 of title 5, United States Code, except as otherwise modified by this section.

“(b) **RESTRICTIONS ON CRIMINAL HISTORY INQUIRIES.**—

“(1) **IN GENERAL.**—

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

“(B) **CONDITIONAL OFFER.**—For purposes of applying that section 9202 under subparagraph (A), a reference in that section 9202 to a conditional offer shall be considered to be an offer of employment as a covered employee that is conditioned upon the results of a criminal history inquiry.

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

“(c) **REMEDY.**—

“(1) **IN GENERAL.**—The remedy for a violation of subsection (b)(1) shall be such remedy as would be appropriate if awarded under section 9204 of title 5, United States Code, if the violation had been committed by an employee of an agency, consistent with regulations issued under subsection (d), except that the reference in that section to a suspension shall be considered to be a suspension with the level of compensation provided for a covered employee who is taking unpaid leave under section 202.

“(2) **PROCESS FOR OBTAINING RELIEF.**—An applicant for employment as a covered employee who alleges a violation of subsection (b)(1) may rely on the provisions of title IV (other than section 407 or 408, or a provision of this title that permits a person to obtain a civil action or judicial review), consistent with regulations issued under subsection (d).

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

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

“(2) **PARALLEL WITH AGENCY REGULATIONS.**—The regulations issued under paragraph (1) shall be the same as substantive regulations issued by the Director of the Office of Personnel Management under section 2(b)(1) of the Fair Chance to Compete for Jobs Act of 2019 to implement the statutory provisions referred to in subsections (a) through (c) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

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

(2) **CLERICAL AMENDMENTS.**—

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

(i) by redesignating the item relating to section 207 as the item relating to section 208; and

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

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

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

(e) APPLICATION TO JUDICIAL BRANCH.—

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

“(i) RESTRICTIONS ON CRIMINAL HISTORY INQUIRIES.—

“(1) DEFINITIONS.—In this subsection—

“(A) the terms ‘agency’ and ‘criminal history record information’ have the meanings given those terms in section 9201 of title 5;

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

“(i) any judge or justice who is entitled to hold office during good behavior;

“(ii) a United States magistrate judge; or

“(iii) a bankruptcy judge; and

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

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

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

“(4) ADVERSE ACTION.—

“(A) ADVERSE ACTION.—The Director may take such adverse action with respect to a covered employee who violates paragraph (2) as would be appropriate under section 9204 of title 5 if the violation had been committed by an employee of an agency.

“(B) APPEALS.—The Director shall by rule establish procedures providing for an appeal from any adverse action taken under subparagraph (A) by not later than 30 days after the date of the action.

“(C) APPLICABILITY OF OTHER LAWS.—Except as provided in subparagraph (B), an adverse action taken under subparagraph (A) (including a determination in an appeal from such an action under subparagraph (B)) shall not be subject to appeal or judicial review.

“(5) REGULATIONS TO BE ISSUED.—

“(A) IN GENERAL.—Not later than 18 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Director shall issue regulations to implement this subsection.

“(B) PARALLEL WITH AGENCY REGULATIONS.—The regulations issued under subparagraph (A) shall be the same as substantive regulations promulgated by the Director of the Office of Personnel Management under section 2(b)(1) of the Fair Chance to Compete for Jobs Act of 2019 except to the extent that the Director of the Administrative Office of the United States Courts may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this subsection.

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

SEC. 3. PROHIBITION ON CRIMINAL HISTORY INQUIRIES BY CONTRACTORS PRIOR TO CONDITIONAL OFFER.

(a) CIVILIAN AGENCY CONTRACTS.—

(1) IN GENERAL.—Chapter 47 of title 41, United States Code, is amended by adding at the end the following new section:

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

“(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an executive agency—

“(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding

that individual or sole proprietor before determining the apparent awardee; and

“(B) shall require, as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally, or through written form, request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before the contractor extends a conditional offer to the applicant.

“(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

“(3) EXCEPTION FOR CERTAIN POSITIONS.—

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

“(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

“(ii) a position that the Administrator of General Services identifies under the regulations issued under subparagraph (B).

“(B) REGULATIONS.—

“(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Administrator of General Services, in consultation with the Secretary of Defense, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

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

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

“(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

“(b) COMPLAINT PROCEDURES.—The Administrator of General Services shall establish and publish procedures under which an applicant for a position with a Federal contractor may submit to the Administrator a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

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

“(1) FIRST VIOLATION.—If the head of an executive agency determines that a contractor has violated subsection (a)(1)(B), such head shall—

“(A) notify the contractor;

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

“(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

“(2) SUBSEQUENT VIOLATION.—If the head of an executive agency determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), such head shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor’s history of violations, including—

“(A) providing written guidance to the contractor that the contractor’s eligibility for contracts requires compliance with this section;

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

“(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

“(d) DEFINITIONS.—In this section:

“(1) CONDITIONAL OFFER.—The term ‘conditional offer’ means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

“(2) CRIMINAL HISTORY RECORD INFORMATION.—The term ‘criminal history record information’ has the meaning given that term in section 9201 of title 5.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 41, United States Code, is amended by adding at the end the following new item:

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

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

(b) DEFENSE CONTRACTS.—

(1) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2338 the following new section:

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

“(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the head of an agency—

“(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

“(B) shall require as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally or through written form request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before such contractor extends a conditional offer to the applicant.

“(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

“(3) EXCEPTION FOR CERTAIN POSITIONS.—

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

“(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

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

“(B) REGULATIONS.—

“(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Secretary of Defense, in consultation with the Administrator of General Services, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

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

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

“(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

“(b) COMPLAINT PROCEDURES.—The Secretary of Defense shall establish and publish procedures under which an applicant for a position with a Department of Defense contractor may submit a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

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

“(1) FIRST VIOLATION.—If the Secretary of Defense determines that a contractor has violated subsection (a)(1)(B), the Secretary shall—

“(A) notify the contractor;

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

“(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

“(2) SUBSEQUENT VIOLATIONS.—If the Secretary of Defense determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), the Secretary shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor’s history of violations, including—

“(A) providing written guidance to the contractor that the contractor’s eligibility for contracts requires compliance with this section;

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

“(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

“(d) DEFINITIONS.—In this section:

“(1) CONDITIONAL OFFER.—The term ‘conditional offer’ means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

“(2) CRIMINAL HISTORY RECORD INFORMATION.—The term ‘criminal history record information’ has the meaning given that term in section 9201 of title 5.”.

(2) EFFECTIVE DATE.—Section 2339(a) of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts awarded pursuant to solicitations issued after the effective date described in section 2(b)(2) of this Act.

(3) CLERICAL AMENDMENT.—The table of sections for chapter 137 of title 10, United States Code, is amended by inserting after the item relating to section 2338 the following new item:

“2339. Prohibition on criminal history inquiries by contractors prior to conditional offer.”.

(c) REVISIONS TO FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation to implement section 4714 of title 41, United States Code, and section 2339 of title 10, United States Code, as added by this section.

(2) CONSISTENCY WITH OFFICE OF PERSONNEL MANAGEMENT REGULATIONS.—The Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation under paragraph (1) to be consistent with the regulations issued by the Director of the Office of Personnel Management under section 2(b)(1) to the maximum extent practicable. The Council shall include together with such revision an explanation of any substantive modification of the Office of Personnel Management regulations, including an explanation of how such modification will more effectively implement the rights and protections under this section.

SEC. 4. REPORT ON EMPLOYMENT OF INDIVIDUALS FORMERLY INCARCERATED IN FEDERAL PRISONS.

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

(1) means an individual who has completed a term of imprisonment in a Federal prison for a Federal criminal offense; and

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

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

(1) not later than 180 days after the date of enactment of this Act, design and initiate a study on the employment of covered individuals after their release from Federal prison, including by collecting—

(A) demographic data on covered individuals, including race, age, and sex; and

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

(2) not later than 2 years after the date of enactment of this Act, and every 5 years thereafter, submit a report that does not include any personally identifiable information on the study conducted under paragraph (1) to—

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

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

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

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

SEC. 5. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SUMMARY AND PURPOSE OF LEGISLATION

The Fair Chance Act would help formerly-incarcerated individuals obtain non-sensitive federal jobs by prohibiting federal agencies and contractors from asking about the criminal histories of job applicants until after making conditional offers of employment. The bill does not prohibit a criminal history inquiry entirely. It sets a standard for when the inquiry may be made. The bill includes exceptions for positions related to law enforcement and national security duties, positions requiring access to classified information, and positions for which access to criminal history information is otherwise required by law.¹

BACKGROUND AND NEED FOR LEGISLATION

The Fair Chance Act is already the current practice of the federal government. Pursuant to a Presidential Memorandum issued by President Barack Obama in 2015, the Office of Personnel Management finalized a rule in December 2016 to “ban the box” for hiring federal employees.² The bill extends this practice to federal contractors and the legislative and judicial branches of the federal government.

Studies have shown that ban the box policies in the public sector substantially increase the odds of employment for formerly incarcerated individuals.³ There have been “dramatic improvements in the employment of those with convictions” as a result of ban the box policies, including a 33% increase in employment for formerly incarcerated individuals in Washington, D.C.⁴ Studies have also shown that employment is the single greatest factor in reducing recidivism among formerly incarcerated individuals.⁵

Other studies have critiqued ban the box policies for having unintended consequences. For example, one study suggests that such policies may have negative impacts on employment among younger black and Latino men.⁶ The study found that “black and Hispanic men without college degrees are significantly less likely to be employed after “ban the box“ than before”⁷ because employers dis-

¹ Committee on Oversight and Reform, *Booker, Cummings, Johnson, Issa, Members of Congress Introduce Bipartisan Legislation to Give Formerly Incarcerated a Fair Chance at Federal Employment* (Sept. 10, 2015) (online at <https://oversight.house.gov/news/press-releases/booker-cummings-johnson-issa-members-of-congress-introduce-bipartisan>).

² Office of Personnel Management, *Recruitment, Selection, and Placement (General) and Suitability*, 81 Fed. Reg. 86555 (Dec. 1, 2016) (5 CFR 330; 5 CFR 731).

³ *Ban the Box, Convictions, and Public Sector Employment*, SSRN Online (Jan. 28, 2017) (online at papers.ssrn.com/sol3/papers.cfm?abstract_id=2906893).

⁴ *Id.*

⁵ See, e.g., *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, Justice Quarterly, Vol. 28 Issue 2 (2011) (online at www.tandfonline.com/doi/abs/10.1080/07418825.2010.498383).

⁶ “*Ban the Box*” *Does More Harm than Good*, Brookings Institution (May 31, 2016) (online at www.brookings.edu/opinions/ban-the-box-does-more-harm-than-good/).

⁷ *Id.*

criminate more against these populations when they are not permitted to ask about criminal backgrounds. An analysis of the study emphasized that finding fault with ban the box policies, instead of illegal and racist hiring practices, is the wrong conclusion to draw.⁸

In 2017, after reviewing the relevant studies, the Senate Homeland Security and Governmental Affairs Committee concluded:

These studies do not expose any significant flaws in ban the box policies. On the contrary, the data gathered confirms that individuals with criminal records experience higher call back and employment rates after the introduction of fair chance hiring practices, which is precisely the intended outcome. The more concerning revelation for policymakers to consider is the continued role race and implicit bias play in the hiring process.⁹

Currently, 33 states and more than 150 cities and counties have acted to give formerly incarcerated people a fair chance to secure employment by instituting ban the box policies or laws.¹⁰ Of these jurisdictions, 11 states and 17 cities and counties have extended their laws to include private-sector entities.¹¹ Companies such as Walmart, Koch Industries, Target, Home Depot, and Bed, Bath & Beyond have also embraced ban the box policies.¹²

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the previous section.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives of this bill are to prohibit Federal agencies and contractors from requesting that applicants for employment disclose criminal history information before they receive conditional offers of employment, and for other purposes.

LEGISLATIVE HISTORY

On February 7, 2019, Chairman Elijah Cummings (D–MD) introduced H.R. 1076, the Fair Chance Act, with Representative Doug Collins (R–GA). H.R. 1076 was referred to the Committee on Oversight and Reform, with additional referrals to the Committee on the Judiciary, the Committee on House Administration, the Committee on Armed Services, and the Committee on Education and Labor.

⁸ See, e.g., *Racial Profiling in Hiring: A Critique of New "Ban the Box" Studies*, National Employment Law Project (Aug. 11, 2016) (online at www.nelp.org/publication/racial-profiling-in-hiring-a-critique-of-new-ban-the-box-studies/).

⁹ Senate Homeland Security and Governmental Affairs Committee, *Fair Chance Act*, 115th Cong. (Sept. 25, 2017) (S. Rept. 115–162) (online at www.congress.gov/bill/115th-congress/senate-bill/842/text).

¹⁰ *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, National Employment Law Project (Sept. 25, 2018) (online at www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/).

¹¹ *Id.*

¹² *Koch Industries to Stop Asking About Job Candidates' Criminal History*, Politico (Apr. 27, 2015) (online at www.politico.com/story/2015/04/koch-industries-brothers-criminal-history-job-applicants-ban-the-box-117382).

The Subcommittees on Government Operations and Civil Rights and Civil Liberties held a joint hearing on H.R. 1076 on March 13, 2019. The Committee considered H.R. 1076 at a business meeting on March 26, 2019, and ordered the bill favorably reported, as amended, by voice vote.

Senator Cory Booker (D–NJ) and Senator Ron Johnson (R–WI) introduced S. 387, the Senate companion to H.R. 1076, on February 7, 2019. The Senate Homeland Security and Governmental Affairs Committee considered S. 387 at a business meeting on February 13, 2019, and ordered the bill reported favorably by voice vote.

In the 115th Congress, Chairman Cummings introduced H.R. 1905, the Fair Chance Act, an identical bill to H.R. 1076.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 adopted by the House in the 116th Congress, the Subcommittees on Government Operations and Civil Rights and Civil Liberties held a joint hearing on H.R. 1076 on March 13, 2019. The following witnesses testified: Rep. Doug Collins (R–GA); Senator Cory Booker (D–NJ); Senator Ron Johnson (R–WI); Ms. Holly Harris, Executive Director, Justice Action Network; and Ms. Teresa Y. Hodge, Co-Founder and CEO, R3 Score Technologies, Inc.

COMMITTEE CONSIDERATION

On March 26, 2019, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported, as amended, by voice vote.

ROLL CALL VOTES

There were two roll call votes during consideration of H.R. 1076:

COMMITTEE ON OVERSIGHT AND REFORM
 116TH CONGRESS
 RATIO 24-18
 ROLL CALL

Date: 3-26-19

VOTE #: 1

Vote on: H.R. 1076 - Wasserman Schultz Motion to Table the Appeal of the Ruling of the Chair that the Roy amendment (#3) is non-germane.

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CUMMINGS (MD)	X			MR. JORDAN (OH)		X	
MS. MALONEY (NY)	X			MR. AMASH (MI)		X	
MS. NORTON (DC)				MR. GOSAR (AZ)		X	
MR. CLAY (MO)	X			MS. FOXX (NC)			
MR. LYNCH (MA)	X			MR. MASSIE (KY)			
MR. COOPER (TN)				MR. MEADOWS (NC)			
MR. CONNOLLY (VA)	X			MR. HICE (GA)		X	
MR. KRISHNAMOORTHY (IL)				MR. GROTHMAN (WI)		X	
MR. RASKIN (MD)	X			MR. COMER (KY)		X	
MR. ROUDA (CA)	X			MR. CLOUD (TX)		X	
MS. HILL (CA)	X			MR. GIBBS (OH)		X	
MS. WASSERMAN SCHULTZ (FL)	X			MR. HIGGINS (LA)			
MR. SARBANES (MD)	X			MR. NORMAN (SC)		X	
MR. WELCH (VT)	X			MR. ROY (TX)		X	
MS. SPEIER (CA)				MS. MILLER (WV)		X	
MS. KELLY (IL)				MR. GREEN (TN)		X	
MR. DeSAULNIER (CA)	X			MR. ARMSTRONG (ND)		X	
MS. LAWRENCE (MI)				MR. STEUBE (FL)		X	
MS. PLASKETT (VI)							
MR. KHANNA (CA)	X						
MR. GOMEZ (CA)	X						
MS. OCASIO-CORTEZ (NY)	X						
MS. PRESSLEY (MA)	X						
MS. TLAIB (MI)	X						

Roll Call Totals: Ayes: 17 Nays: 14 Present:

Passed: X Failed: _____

COMMITTEE ON OVERSIGHT AND REFORM
116TH CONGRESS
RATIO 24-18
ROLL CALL

Date: 3-26-19

VOTE #: 3

Vote on: H.R. 1076 – Miller amendment (#2) to the Cummings ANS.

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CUMMINGS (MD)		X		MR. JORDAN (OH)	X		
MS. MALONEY (NY)		X		MR. AMASH (MI)		X	
MS. NORTON (DC)				MR. GOSAR (AZ)	X		
MR. CLAY (MO)		X		MS. FOXX (NC)	X		
MR. LYNCH (MA)				MR. MASSIE (KY)	X		
MR. COOPER (TN)		X		MR. MEADOWS (NC)	X		
MR. CONNOLLY (VA)				MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. COMER (KY)			
MR. ROUDA (CA)		X		MR. CLOUD (TX)			
MS. HILL (CA)		X		MR. GIBBS (OH)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. HIGGINS (LA)	X		
MR. SARBANES (MD)		X		MR. NORMAN (SC)			
MR. WELCH (VT)		X		MR. ROY (TX)	X		
MS. SPIER (CA)				MS. MILLER (WV)	X		
MS. KELLY (IL)		X		MR. GREEN (TN)			
MR. DeSAULNIER (CA)		X		MR. ARMSTRONG (ND)	X		
MS. LAWRENCE (MI)				MR. STEUBE (FL)	X		
MS. PLASKETT (VI)							
MR. KHANNA (CA)							
MR. GOMEZ (CA)		X					
MS. OCASIO-CORTEZ (NY)		X					
MS. PRESSLEY (MA)		X					
MS. TLAIB (MI)		X					

Roll Call Totals: Ayes: 13 Nays: 18 Present:

Passed: _____ Failed: X

EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Representative Elijah Cummings (D–MD), the Chairman of the Committee, offered an Amendment in the Nature of a Substitute, to make technical corrections to the bill. The Cummings amendment was adopted by voice vote.

Representative Carol Miller (R–WV) offered an amendment to the Amendment in the Nature of a Substitute that would exempt federal contractors from liability for complying with provisions of the Act. The Miller amendment failed by a recorded vote of 13–18.

Representative Chip Roy (R–TX) offered an amendment to the Amendment in the Nature of a Substitute that would rewrite the disciplinary procedures related to all federal government employees within the merit system. Representative Gerald Connolly (D–VA) raised a point of order on the Roy amendment for lack of germaneness. The Chairman ruled that the amendment was not germane. Representative Roy appealed the Chairman’s ruling. In response, Representative Wasserman-Schultz moved to table the appeal of the ruling of the chair. The motion to table passed by recorded vote of 17–14.

Representative Chip Roy (R–TX) offered an amendment to the Amendment in the Nature of a Substitute that would remove the provisions of the bill that apply to federal contractors. The Roy amendment failed by voice vote.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch when the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill would prohibit legislative branch offices from asking about the criminal histories of job applicants until after making conditional offers of employment. The bill does not relate to access to public services and accommodations.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 3(c)(5) of rule XIII, no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the *Congressional Budget Act of 1974*, the Committee has included a letter received from the Congressional Budget Office below.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974*.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the *Congressional Budget Act of 1974* is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 5, 2019.

Hon. ELIJAH E. CUMMINGS,
*Chairman, Committee on Oversight and Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1076, the Fair Chance Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1076, Fair Chance Act			
As ordered reported by the House Committee on Oversight and Reform on March 26, 2019			
Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	*	*
Revenues	0	*	*
Deficit Effect	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	n.a.
Pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
n.a. = not applicable; * = between -\$500,000 and \$500,000.			

H.R. 1076 would amend federal law to prevent federal employers and contractors from inquiring about a job applicant's criminal history until after the applicant has received a conditional job offer. The bill would direct federal hiring agencies within the executive, legislative, and judicial branches to issue and implement regulations, policies, and procedures to ensure compliance. H.R. 1076 also would direct the Bureau of Justice Statistics to report to the Congress periodically on the employment statistics of former federal prisoners.

There is no general prohibition against hiring employees with a criminal history; however, regulations do prevent their employment in certain positions. Most of the bill's major provisions would codify an existing regulation that delays inquiries into the criminal history of potential employees until later in the hiring process.¹ Therefore, CBO estimates that implementing H.R. 1076 would cost less than \$500,000 annually; any spending would be subject to the availability of appropriated funds.

Enacting H.R. 1076 could affect direct spending by some agencies (such as the Tennessee Valley Authority) because they are authorized to use receipts from fees, the sale of goods, and other collections to cover their operating costs. Because most of those agencies can adjust the amounts they collect as operating costs change, CBO estimates that any net changes in direct spending by those agencies would be negligible.

H.R. 1076 mandates that employees who violate the bill's provisions repeatedly would be required to pay civil penalties. Therefore, H.R. 1076 could increase the collection of civil fines from federal employees who inquire about an applicant's criminal history prematurely. Because civil penalties are recorded in the federal budget as revenues, enacting the legislation could increase revenues. CBO estimates that such increases would not be significant in any year.

On March 8, 2019, CBO transmitted a cost estimate for S. 387, the Fair Chance to Compete for Jobs Act of 2019, as ordered reported by the Senate Committee on Homeland Security and Gov-

¹ See Recruitment, Selection, and Placement (General) and Suitability, 81 Fed. Reg. 86555 (January 3, 2017), <http://go.usa.gov/xEf84>.

ernmental Affairs on February 13, 2019. The two bills are similar and CBO's estimates of the budgetary effects are the same.

The CBO staff contacts for this estimate are David Hughes and Matthew Pickford. This estimate was reviewed by H. Samuel Papenfuss, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title—“Fair Chance to Compete for Jobs Act of 2019” or the “Fair Chance Act.”

Sec. 2. Prohibition on criminal history inquiries prior to conditional offer for federal employment

Section 2(a). Adds a new Chapter 92 to title 5, U.S.C. as follows:

Section 9201. Definitions—This section defines key terms used in the Act.

- The Act defines “agency” to include “executive agency” as defined in 5 U.S.C. §105 and the U.S. Postal Service, the Postal Regulatory Commission, and the Executive Office of the President.
- The Act defines “appointing authority” to be a federal employee in the executive branch with authority to make civil service appointments.
- The Act defines “conditional offer” to be an offer for a civil service job that is conditioned on the results of a criminal history inquiry.
- The Act defines “criminal history record information” to be the meaning given the term in 5 U.S.C. §9101 and sealed or expunged criminal convictions and juvenile convictions.
- The Act defines “suspension” as the meaning given in 5 U.S.C. §7501.

Section 9202. Limitations on Requests for Criminal History Record Information—This section prohibits federal agency employers from requesting an applicant’s criminal history information until the applicant receives a conditional job offer. Exceptions are included for positions involving classified information, sensitive national security duties, armed forces, and law enforcement jobs, and when criminal history information is legally required prior to a conditional offer of employment.

Section 9203. Agency Policies; Complaint Procedures—This section requires the Office of Personnel Management (OPM) to develop and carry out policies to assist agency employees to implement the criminal history inquiry prohibition.

This section also mandates that OPM establish and publish procedures for a civil service applicant to file a complaint with OPM related to compliance with the limitations on requests for criminal history record information.

Section 9204. Adverse Action—This section establishes civil penalties against a federal employee if OPM finds, after notice and a hearing, a violation of section 9202. The first violation mandates a warning. Subsequent violations are addressed through discretionary, graduated penalties that involve a combination of days of suspension and civil penalties that individually may not exceed \$1,000.00.

Section 9205. Procedures—This section requires OPM to establish procedures providing for an appeal of an adverse action, but makes clear that such actions are not subject to judicial review or the provisions of chapter 75 of title 5, U.S.C.

Section 9206. Rules of Construction—This section makes clear that this bill does not authorize an agency employee or officer to request the disclosure of juvenile delinquency or sealed or expunged information. This section also clarifies that this bill does not create private rights of action.

Section 2(b). Regulations; Effective Date—This section requires OPM to issue regulations to implement chapter 92 of title 5 no later than one year after enactment. It also states that chapter 92 becomes effective two years after the date of enactment of this enactment.

Section 2(c). Technical and Conforming Amendment—This section adds the prohibition on criminal history inquiries prior to conditional offers to the relevant table of chapters.

Section 2(d)(1). Application to Legislative Branch—This section amends the Congressional Accountability Act to add a prohibition on criminal history inquiries in a new section on “Rights and Protections Relating to Criminal History Inquiries.”

Section 207(a). Definitions—This section defines the terms “agency” and “criminal history record information” and “suspension” to have the same meaning given those terms in 5 U.S.C. § 9201.

Section 207(b). Restrictions on Criminal History Inquiries—This section prohibits an employee of a legislative office from requesting a criminal history record in the same manner federal agency employees are prohibited from doing so in 5 U.S.C. § 9202. This section also clarifies that agency rules of construction (Sec. 9206) apply to legislative offices.

Section 207(c). Remedy—This section mandates that the remedies for a criminal history inquiry violation by a legislative office employee are the same as in 5 U.S.C. § 9204 with the exception of how the suspension is referenced. This section also allows legislative office applicants to rely on title IV of the Congressional Accountability Act to obtain relief, with some exceptions.

Section 207(d). Regulations to Implement Section—This section requires regulations substantively the same as those required under section 2(b) to be promulgated no later than 18 months after enactment.

Section 207(e). Effective Date—This section requires the modified provisions of the Congressional Accountability Act to take effect on the same date that 5 U.S.C. § 9202 would apply to agencies.

Section 2(d)(2). Clerical Amendments—Modifies the table of contents to reflect changes.

Section 2(e). Application to Judicial Branch—28 U.S.C. § 604 is modified to apply restrictions on criminal history inquiries to the judicial branch as follows:

Section 604 (i)(1). Definitions—This section defines the terms “agency” and “criminal history record information” to have the meanings given those terms in 5 U.S.C. § 9201. This section defines the term “covered employee” to mean employee of the fed-

eral judicial branch other than federal judge, federal justice, federal magistrate judge, or bankruptcy judge. This section defines the term “employing office” to mean any office or entity of the federal judicial branch that employs covered employees.

Section 604(i)(2). Restriction—This section prohibits a covered employee from requesting that an applicant disclose criminal history information in the same manner requests are prohibited under 5 U.S.C. § 9202.

Section 604(i)(3). Employing Office Policies; Complaint Procedure—This section requires that the same complaint procedures for federal agencies apply to judicial branch offices.

Section 604(i)(4). Adverse Action—This section requires that the same adverse actions regarding a violation of the prohibition on criminal history inquiries that apply to federal agencies would apply to judicial offices. It also requires that the Director of the Administrative Office of the U.S. Courts create procedures for appealing adverse actions, and that these shall not be subject to judicial review.

Section 604(i)(5). Regulations to be Issued—This section requires the Director of the Administrative Office of the U.S. Courts to issue regulations within 18 months after the bill is enacted that are substantively the same as those required by section 2(b), allowing discretion for some modifications.

Section 604(i)(6). Effective Date—The provisions relating to the judicial branch shall take effect on the date 5 U.S.C. § 9202 applies to federal agencies.

Sec. 3—Prohibition on criminal history inquiries by contractors prior to conditional offer

Section 3(a)(1). Civilian Agency Contracts In General—Adds to title 41 related new section 4714.

Section 4714(a). Limitation on Criminal History Inquiries—This section prohibits agencies from requiring individuals or sole proprietors to disclose criminal history information before determining the apparent awardee for a contract.

It mandates that agencies require, as a condition of receiving a federal contract or payment, that the contractor not request criminal history information of an applicant for a position related to work under the contract prior to extending a conditional offer to the applicant.

The section clarifies that the bar against criminal history inquiries does not apply if access to the information is otherwise required by law before a conditional offer for a position, nor does it apply to positions dealing with classified information or sensitive national security or law enforcement duties.

Section 4714(b). Complaint Procedures—This section requires the Administrator of the General Services Administration to establish and publish complaint procedures for applicants for positions with federal contractors related to enforcement of the subsection limiting contractors’ criminal history inquiries.

Section 4714(c). Action for Violations of Prohibition on Criminal History Inquiries—This section requires the head of a federal agency to issue a warning to the contractor for the first violation if the agency head determines a violation occurred. It

also allows for a range of adverse actions on a discretionary basis for subsequent violations, including written guidance, requiring a written response that the contractor will comply, suspension of payment, termination of the contract, and referral for debarment.

Section 4713(d). Definitions—This section defines “conditional offer” and “criminal history record information” to match 5 U.S.C. § 9101.

Section 3(a)(2). Clerical Amendment—Adds Section 4714 to the relevant table of sections.

Section 3(a)(3). Effective Date—Ensures Section 4714 applies to those contracts awarded pursuant to solicitations issued after the effective date of the Act.

Section 3(b)(1). Defense Contracts in General—Adds the relevant Section 2339 to Chapter 137 of Title 10 of the U.S. Code.

Section 2339(a). Limitation on Criminal History Inquiries—This section prohibits the Department of Defense from requiring individuals or sole proprietors to disclose criminal history information before determining the apparent awardee for a contract.

The section mandates that agencies require, as a condition of receiving a federal contract or payment, that the contractor not request criminal history information of an applicant for a position related to work under the contract prior to extending a conditional offer to the applicant.

The section clarifies that the bar against criminal history inquiries does not apply if access to the information is otherwise required by law before a conditional offer for a position, nor does it apply to positions dealing with classified information or sensitive national security or law enforcement duties.

Section 2339(b). Complaint Procedures—This section requires the Secretary of Defense to establish and publish complaint procedures for applicants for positions with Department of Defense contractors related to enforcement of the subsection limiting defense contractors’ criminal history inquiries.

Section 2339(c). Action for Violations of Prohibition on Criminal History Inquiries—This section requires the Secretary of Defense to issue a warning to the contractor for the first violation if the Secretary determines a violation occurred. It also allows for a range of adverse actions on a discretionary basis for subsequent violations, including written guidance, requiring a written response that the contractor will comply, suspension of payment, termination of the contract, and referral for debarment.

Section 2339(d). Definitions—This section defines “conditional offer” and “criminal history record information” to match 5 U.S.C. § 9101.

Section 3(b)(2). Effective Date—Ensures Section 2339 applies to those contracts awarded pursuant to solicitations issued after the effective date of the Act.

Section 3(b)(3). Clerical Amendment—Adds Section 2339 to the table of sections.

Section 3(c). Revisions to Federal Acquisition Regulation—This section requires that the Federal Acquisition Regulation be amended within 18 months of the Act’s enactment to carry out both civil-

ian and defense contracting portions of the Act. Such regulations should be substantively similar to those promulgated by OPM with limited exceptions.

Sec. 4—Report on employment of individuals formerly incarcerated in federal prisons

This section requires the U.S. Census Bureau and Bureau of Justice Statistics to conduct a study and issue a report to relevant Congressional Committees every five years. The report and study shall be on employment statistics of formerly incarcerated individuals and must contain data on individuals denied employment and demographic data without disclosing personally-identifiable information.

Sec. 5—Determination of budgetary effects

This section requires compliance with the Statutory Pay-As-You-Go Act of 2010.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

SUBPART A—GENERAL PROVISIONS

Chap.	21. Definitions	Sec. 2101
	* * * * *	

SUBPART H—ACCESS TO CRIMINAL HISTORY RECORD INFORMATION

91. Access to Criminal History Records for National Security and Other Purposes	9101
92. Prohibition on criminal history inquiries prior to conditional offer	9201

SUBPART H—ACCESS TO CRIMINAL HISTORY RECORD INFORMATION

* * * * *

CHAPTER 92—PROHIBITION ON CRIMINAL HISTORY INQUIRIES PRIOR TO 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.

§ 9201. Definitions

In this chapter—

(1) the term “agency” means “Executive agency” as such term is defined in section 105 and includes—

(A) the United States Postal Service and the Postal Regulatory Commission; and

(B) the Executive Office of the President;

(2) the term “appointing authority” means an employee in the executive branch of the Government of the United States that has authority to make appointments to positions in the civil service;

(3) the term “conditional offer” means an offer of employment in a position in the civil service that is conditioned upon the results of a criminal history inquiry;

(4) the term “criminal history record information”—

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

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

(C) includes information collected by a criminal justice agency, relating to an act or alleged act of juvenile delinquency, that is analogous to criminal history record information (including such information that has been sealed or expunged pursuant to law); and

(5) the term “suspension” has the meaning given the term in section 7501.

§ 9202. Limitations on requests for criminal history record information

(a) *INQUIRIES PRIOR TO CONDITIONAL OFFER.*—Except as provided in subsections (b) and (c), an employee of an agency may not request, in oral or written form (including through the Declaration for Federal Employment (Office of Personnel Management Optional Form 306) or any similar successor form, the USAJOBS internet website, or any other electronic means) that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant.

(b) *OTHERWISE REQUIRED BY LAW.*—The prohibition under subsection (a) shall not apply with respect to an applicant for a position in the civil service if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(c) *EXCEPTION FOR CERTAIN POSITIONS.*—

(1) *IN GENERAL.*—The prohibition under subsection (a) shall not apply with respect to an applicant for an appointment to a position—

(A) that requires a determination of eligibility described in clause (i), (ii), or (iii) of section 9101(b)(1)(A);

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

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

(2) REGULATIONS.—

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

(B) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under subparagraph (A) shall—

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

(ii) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

§ 9203. Agency policies; complaint procedures

The Director of the Office of Personnel Management shall—

(1) develop, implement, and publish a policy to assist employees of agencies in complying with section 9202 and the regulations issued pursuant to such section; and

(2) establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202.

§ 9204. Adverse action

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

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

(2) file such warning in the employee's official personnel record file.

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

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

(2) For a third violation, suspension of the employee for a period of more than 7 days.

(3) For a fourth violation—

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

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

(4) For a fifth violation—

- (A) suspension of the employee for a period of more than 7 days; and
 - (B) a civil penalty against the employee in an amount that is not more than \$500.
- (5) For any subsequent violation—
- (A) suspension of the employee for a period of more than 7 days; and
 - (B) a civil penalty against the employee in an amount that is not more than \$1,000.

§ 9205. Procedures

- (a) *APPEALS.*—The Director of the Office of Personnel Management shall by rule establish procedures providing for an appeal from any adverse action taken under section 9204 by not later than 30 days after the date of the action.
- (b) *APPLICABILITY OF OTHER LAWS.*—An adverse action taken under section 9204 (including a determination in an appeal from such an action under subsection (a) of this section) shall not be subject to—
- (1) the procedures under chapter 75; or
 - (2) except as provided in subsection (a) of this section, appeal or judicial review.

§ 9206. Rules of construction

- Nothing in this chapter may be construed to—
- (1) authorize any officer or employee of an agency to request the disclosure of information described under subparagraphs (B) and (C) of section 9201(4); or
 - (2) create a private right of action for any person.

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CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Congressional Accountability Act of 1995”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—GENERAL

Sec. 101. Definitions.

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Sec. 207. *Rights and protections relating to criminal history inquiries.*
[Sec. 207.] Sec. 208. Prohibition of intimidation or reprisal.

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TITLE I—GENERAL

* * * * *

SEC. 102. APPLICATION OF LAWS.

(a) **LAWS MADE APPLICABLE.**—The following laws shall apply, as prescribed by this Act, to the legislative branch of the Federal Government:

(1) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(2) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.).

(5) The Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.).

(6) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(7) Chapter 71 (relating to Federal service labor-management relations) of title 5, United States Code.

(8) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(9) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).

(10) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(11) Chapter 43 (relating to veterans' employment and reemployment) of title 38, United States Code.

(12) *Section 9202 of title 5, United States Code.*

(b) **LAWS WHICH MAY BE MADE APPLICABLE.**—

(1) **IN GENERAL.**—The Board shall review provisions of Federal law (including regulations) relating to (A) the terms and conditions of employment (including hiring, promotion, demotion, termination, salary, wages, overtime compensation, benefits, work assignments or reassignments, grievance and disciplinary procedures, protection from discrimination in personnel actions, occupational health and safety, and family and medical and other leave) of employees, and (B) access to public services and accommodations.

(2) **BOARD REPORT.**—Beginning on December 31, 1996, and every 2 years thereafter, the Board shall report on (A) whether or to what degree the provisions described in paragraph (1) are applicable or inapplicable to the legislative branch, and (B) with respect to provisions inapplicable to the legislative branch, whether such provisions should be made applicable to the legislative branch. The presiding officers of the House of Representatives and the Senate shall cause each such report to be printed in the Congressional Record and each such report shall be referred to the committees of the House of Representatives and the Senate with jurisdiction.

(3) **REPORTS OF CONGRESSIONAL COMMITTEES.**—Each report accompanying any bill or joint resolution relating to terms and conditions of employment or access to public services or accommodations reported by a committee of the House of Representatives or the Senate shall—

(A) describe the manner in which the provisions of the bill or joint resolution apply to the legislative branch; or

(B) in the case of a provision not applicable to the legislative branch, include a statement of the reasons the provision does not apply.

On the objection of any Member, it shall not be in order for the Senate or the House of Representatives to consider any such bill or joint resolution if the report of the committee on such bill or joint resolution does not comply with the provisions of this paragraph. This paragraph may be waived in either House by majority vote of that House.

TITLE II—EXTENSION OF RIGHTS AND PROTECTIONS

PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYEE POLYGRAPH PROTECTION, WORKER ADJUSTMENT AND RETRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION

* * * * *

SEC. 207. RIGHTS AND PROTECTIONS RELATING TO CRIMINAL HISTORY INQUIRIES.

(a) *DEFINITIONS.*—*In this section, the terms “agency”, “criminal history record information”, and “suspension” have the meanings given the terms in section 9201 of title 5, United States Code, except as otherwise modified by this section.*

(b) *RESTRICTIONS ON CRIMINAL HISTORY INQUIRIES.*—

(1) *IN GENERAL.*—

(A) *IN GENERAL.*—*Except as provided in subparagraph (B), an employee of an employing office may not request that an applicant for employment as a covered employee disclose criminal history record information if the request would be prohibited under section 9202 of title 5, United States Code, if made by an employee of an agency.*

(B) *CONDITIONAL OFFER.*—*For purposes of applying that section 9202 under subparagraph (A), a reference in that section 9202 to a conditional offer shall be considered to be an offer of employment as a covered employee that is conditioned upon the results of a criminal history inquiry.*

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

(c) *REMEDY.*—

(1) *IN GENERAL.*—*The remedy for a violation of subsection (b)(1) shall be such remedy as would be appropriate if awarded under section 9204 of title 5, United States Code, if the violation had been committed by an employee of an agency, consistent with regulations issued under subsection (d), except that the reference in that section to a suspension shall be considered to be a suspension with the level of compensation provided for a covered employee who is taking unpaid leave under section 202.*

(2) *PROCESS FOR OBTAINING RELIEF.*—An applicant for employment as a covered employee who alleges a violation of subsection (b)(1) may rely on the provisions of title IV (other than section 407 or 408, or a provision of this title that permits a person to obtain a civil action or judicial review), consistent with regulations issued under subsection (d).

(d) *REGULATIONS TO IMPLEMENT SECTION.*—

(1) *IN GENERAL.*—Not later than 18 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Board shall, pursuant to section 304, issue regulations to implement this section.

(2) *PARALLEL WITH AGENCY REGULATIONS.*—The regulations issued under paragraph (1) shall be the same as substantive regulations issued by the Director of the Office of Personnel Management under section 2(b)(1) of the Fair Chance to Compete for Jobs Act of 2019 to implement the statutory provisions referred to in subsections (a) through (c) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

(e) *EFFECTIVE DATE.*—Section 102(a)(12) and subsections (a) through (c) shall take effect on the date on which section 9202 of title 5, United States Code, applies with respect to agencies.

SEC. [207.] 208. PROHIBITION OF INTIMIDATION OR REPRISAL.

(a) *IN GENERAL.*—It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this Act, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this Act.

(b) *REMEDY.*—The remedy available for a violation of subsection (a) shall be such legal or equitable remedy as may be appropriate to redress a violation of subsection (a).

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INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter B—COMPUTATION OF TAXABLE INCOME

* * * * *

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

* * * * *

SEC. 62. ADJUSTED GROSS INCOME DEFINED.

(a) **GENERAL RULE.**—For purposes of this subtitle, the term “adjusted gross income” means, in the case of an individual, gross income minus the following deductions:

(1) **TRADE AND BUSINESS DEDUCTIONS.**—The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) **CERTAIN TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES.**—

(A) **REIMBURSED EXPENSES OF EMPLOYEES.**—The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) **CERTAIN EXPENSES OF PERFORMING ARTISTS.**—The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) **CERTAIN EXPENSES OF OFFICIALS.**—The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) **CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.**—The deductions allowed by section 162 which consist of expenses, not in excess of \$250, paid or incurred by an eligible educator—

(i) by reason of the participation of the educator in professional development courses related to the curriculum in which the educator provides instruction or to the students for which the educator provides instruction, and

(ii) in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) **CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.**—The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any pe-

riod during which such individual is more than 100 miles away from home in connection with such services.

(3) LOSSES FROM SALE OR EXCHANGE OF PROPERTY.—The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) DEDUCTIONS ATTRIBUTABLE TO RENTS AND ROYALTIES.—The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) CERTAIN DEDUCTIONS OF LIFE TENANTS AND INCOME BENEFICIARIES OF PROPERTY.—In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) PENSION, PROFIT-SHARING, AND ANNUITY PLANS OF SELF-EMPLOYED INDIVIDUALS.—In the case of an individual who is an employee within the meaning of section 401(c)(1), the deduction allowed by section 404.

(7) RETIREMENT SAVINGS.—The deduction allowed by section 219 (relating to deduction of certain retirement savings).

(9) PENALTIES FORFEITED BECAUSE OF PREMATURE WITHDRAWAL OF FUNDS FROM TIME SAVINGS ACCOUNTS OR DEPOSITS.—The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

(10) ALIMONY.—The deduction allowed by section 215.

(11) REFORESTATION EXPENSES.—The deduction allowed by section 194.

(12) CERTAIN REQUIRED REPAYMENTS OF SUPPLEMENTAL UNEMPLOYMENT COMPENSATION BENEFITS.—The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(13) JURY DUTY PAY REMITTED TO EMPLOYER.—Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term "jury pay" means any payment received by the individual for the discharge of jury duty.

(15) MOVING EXPENSES.—The deduction allowed by section 217.

(16) ARCHER MSAs.—The deduction allowed by section 220.

(17) INTEREST ON EDUCATION LOANS.—The deduction allowed by section 221.

(18) HIGHER EDUCATION EXPENSES.—The deduction allowed by section 222.

(19) HEALTH SAVINGS ACCOUNTS.—The deduction allowed by section 223.

(20) COSTS INVOLVING DISCRIMINATION SUITS, ETC.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code, or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

(21) ATTORNEYS' FEES RELATING TO AWARDS TO WHISTLEBLOWERS.—

(A) IN GENERAL.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under—

(i) section 7623(b), or

(ii) in the case of taxable years beginning after December 31, 2017, any action brought under—

(I) section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u-6),

(II) a State false claims act, including a State false claims act with qui tam provisions, or

(III) section 23 of the Commodity Exchange Act (7 U.S.C. 26).

(B) MAY NOT EXCEED AWARD.—Subparagraph (A) shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.

Nothing in this section shall permit the same item to be deducted more than once. Any deduction allowed by section 199A shall not be treated as a deduction described in any of the preceding paragraphs of this subsection.

(b) QUALIFIED PERFORMING ARTIST.—

(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the term “qualified performing artist” means, with respect to any taxable year, any individual if—

(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed \$16,000.

(2) **NOMINAL EMPLOYER NOT TAKEN INTO ACCOUNT.**—An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds \$200.

(3) **SPECIAL RULES FOR MARRIED COUPLES.**—

(A) **IN GENERAL.**—Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) **APPLICATION OF PARAGRAPH (1).**—In the case of a joint return—

(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) **DETERMINATION OF MARITAL STATUS.**—For purposes of this subsection, marital status shall be determined under section 7703(a).

(D) **JOINT RETURN.**—For purposes of this subsection, the term “joint return” means the joint return of a husband and wife made under section 6013.

(c) **CERTAIN ARRANGEMENTS NOT TREATED AS REIMBURSEMENT ARRANGEMENTS.**—For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if—

(1) such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2) such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

(d) **DEFINITION; SPECIAL RULES.**—

(1) **ELIGIBLE EDUCATOR.**—

(A) **IN GENERAL.**—For purposes of subsection (a)(2)(D), the term “eligible educator” means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

(B) **SCHOOL.**—The term “school” means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(2) **COORDINATION WITH EXCLUSIONS.**—A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the ex-

tent the amount of such expenses exceeds the amount excludable under section 135, 529(c)(1), or 530(d)(2) for the taxable year.

(3) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after 2015, the \$250 amount in subsection (a)(2)(D) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2014” for “calendar year 2016” in subparagraph (A)(ii) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$50.

(e) UNLAWFUL DISCRIMINATION DEFINED.—For purposes of subsection (a)(20), the term “unlawful discrimination” means an act that is unlawful under any of the following:

(1) Section 302 of the Civil Rights Act of 1991 (42 U.S.C. 2000e–16b).

(2) Section 201, 202, 203, 204, 205, 206, **[or 207]** 207, or 208 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

(8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

(i) providing for the enforcement of civil rights, or

(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

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TITLE 28, UNITED STATES CODE

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PART III—COURT OFFICERS AND EMPLOYEES

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CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

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§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

(1) Supervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts;

(2) Examine the state of the dockets of the courts; secure information as to the courts' need of assistance; prepare and transmit semiannually to the chief judges of the circuits, statistical data and reports as to the business of the courts;

(3) Submit to the annual meeting of the Judicial Conference of the United States, at least two weeks prior thereto, a report of the activities of the Administrative Office and the state of the business of the courts, together with the statistical data submitted to the chief judges of the circuits under paragraph (a)(2) of this section, and the Director's recommendations, which report, data and recommendations shall be public documents.

(4) Submit to Congress and the Attorney General copies of the report, data and recommendations required by paragraph (a)(3) of this section;

(5) Fix the compensation of clerks of court, deputies, librarians, criers, messengers, law clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law, and, notwithstanding any other provision of law, pay on behalf of Justices and judges of the United States appointed to hold office during

good behavior, United States magistrate judges, bankruptcy judges appointed under chapter 6 of this title, judges of the District Court of Guam, judges of the District Court for the Northern Mariana Islands, judges of the District Court of the Virgin Islands, bankruptcy judges and magistrate judges retired under section 377 of this title, and judges retired under section 373 of this title, who are, aged 65 or over, any increases in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the Judicial Conference of the United States;

(6) Determine and pay necessary office expenses of courts, judges, and those court officials whose expenses are by law allowable, and the lawful fees of United States magistrate judges;

(7) Regulate and pay annuities to widows and surviving dependent children of justices and judges of the United States, judges of the United States Court of Federal Claims, bankruptcy judges, United States magistrate judges, Directors of the Federal Judicial Center, and Directors of the Administrative Office, and necessary travel and subsistence expenses incurred by judges, court officers and employees, and officers and employees of the Administrative Office, and the Federal Judicial Center, while absent from their official stations on official business, without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5, except that the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;

(8) Disburse appropriations and other funds for the maintenance and operation of the courts;

(9) Establish pretrial services pursuant to section 3152 of title 18, United States Code;

(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services providing pretrial services, agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 6101(b) to (d) of title 41;

(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the offices providing pretrial services, and their clerical and administrative personnel;

(12) Provide accommodations for the courts, the Federal Judicial Center, the offices providing pretrial services and their clerical and administrative personnel;

(13) Lay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts, and all other pertinent data relating to such courts;

(14) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

(15) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

(16)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

(17) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;

(18) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;

(19) Regulate and pay annuities to bankruptcy judges and United States magistrate judges in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988;

(20) Periodically compile—

(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

(B) the rules which are prescribed under section 358 of this title; and

(C) the orders which are required to be publicly available under section 360(b) of this title;

so as to provide a current record of such rules and orders;

(21) Establish a program of incentive awards for employees of the judicial branch of the United States Government, other than any judge who is entitled to hold office during good behavior;

(22) Receive and expend, either directly or by transfer to the United States Marshals Service or other Government agency, funds appropriated for the procurement, installation, and

maintenance of security equipment and protective services for the United States Courts in courtrooms and adjacent areas, including building ingress/egress control, inspection of packages, directed security patrols, and other similar activities;

(23) Regulate and pay annuities to judges of the United States Court of Federal Claims in accordance with section 178 of this title; and

(24) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.

(b) The clerical and administrative personnel of the courts shall comply with all requests by the Director for information or statistical data as to the state of court dockets.

(c) Inspection of court dockets outside the continental United States may be made through United States officials residing within the jurisdiction where the inspection is made.

(d) The Director, under the supervision and direction of the conference, shall:

(1) supervise all administrative matters relating to the offices of the United States magistrate judges;

(2) gather, compile, and evaluate all statistical and other information required for the performance of his duties and the duties of the conference with respect to such officers;

(3) lay before Congress annually statistical tables and other information which will accurately reflect the business which has come before the various United States magistrate judges, including (A) the number of matters in which the parties consented to the exercise of jurisdiction by a magistrate judge, (B) the number of appeals taken pursuant to the decisions of magistrate judges and the disposition of such appeals, and (C) the professional background and qualifications of individuals appointed under section 631 of this title to serve as magistrate judge;

(4) prepare and distribute a manual, with annual supplements and periodic revisions, for the use of such officers, which shall set forth their powers and duties, describe all categories of proceedings that may arise before them, and contain such other information as may be required to enable them to discharge their powers and duties promptly, effectively, and impartially.

(e) The Director may promulgate appropriate rules and regulations approved by the conference and not inconsistent with any provision of law, to assist him in the performance of the duties conferred upon him by subsection (d) of this section. Magistrate judges shall keep such records and make such reports as are specified in such rules and regulations.

(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Director's functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.

(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

(B) The sale or disposal of recyclable materials under subparagraph (A) shall be consistent with the procedures provided in sections 541–555 of title 40 for the sale of surplus property.

(C) Proceeds from the sale of recyclable materials under subparagraph (A) shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.

(4) The Director is hereby authorized:

(A) to enter into contracts for the acquisition of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 253*l* of title 41, United States Code;

(B) to enter into contracts for multiple years for the acquisition of property and services to the same extent as executive agencies under the authority of section 254*c* of title 41, United States Code; and

(C) to make advance, partial, progress or other payments under contracts for property or services to the same extent as executive agencies under the authority of section 255 of title 41, United States Code.

(h)(1) The Director shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under chapter 16 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under chapter 16 of this title.

(2) The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under chapter 16 of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.

(i) *RESTRICTIONS ON CRIMINAL HISTORY INQUIRIES.*—

(1) *DEFINITIONS.*—*In this subsection—*

(A) the terms “agency” and “criminal history record information” have the meanings given those terms in section 9201 of title 5;

(B) the term “covered employee” means an employee of the judicial branch of the United States Government, other than—

(i) any judge or justice who is entitled to hold office during good behavior;

(ii) a United States magistrate judge; or

(iii) a bankruptcy judge; and

(C) the term “employing office” means any office or entity of the judicial branch of the United States Government that employs covered employees.

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

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

(4) *ADVERSE ACTION.*—

(A) *ADVERSE ACTION.*—The Director may take such adverse action with respect to a covered employee who violates paragraph (2) as would be appropriate under section 9204 of title 5 if the violation had been committed by an employee of an agency.

(B) *APPEALS.*—The Director shall by rule establish procedures providing for an appeal from any adverse action taken under subparagraph (A) by not later than 30 days after the date of the action.

(C) *APPLICABILITY OF OTHER LAWS.*—Except as provided in subparagraph (B), an adverse action taken under subparagraph (A) (including a determination in an appeal from such an action under subparagraph (B)) shall not be subject to appeal or judicial review.

(5) *REGULATIONS TO BE ISSUED.*—

(A) *IN GENERAL.*—Not later than 18 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Director shall issue regulations to implement this subsection.

(B) *PARALLEL WITH AGENCY REGULATIONS.*—The regulations issued under subparagraph (A) shall be the same as substantive regulations promulgated by the Director of the Office of Personnel Management under section 2(b)(1) of the Fair Chance to Compete for Jobs Act of 2019 except to the extent that the Director of the Administrative Office of the United States Courts may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this subsection.

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

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TITLE 41, UNITED STATES CODE

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SUBTITLE I—FEDERAL PROCUREMENT POLICY

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DIVISION C—PROCUREMENT

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CHAPTER 47—MISCELLANEOUS

Sec.

4701. Determinations and decisions.

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

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

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

(1) *IN GENERAL.*—Except as provided in paragraphs (2) and (3), an executive agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

(B) shall require, as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally, or through written form, request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before the contractor extends a conditional offer to the applicant.

(2) *OTHERWISE REQUIRED BY LAW.*—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(3) *EXCEPTION FOR CERTAIN POSITIONS.*—

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

(i) a contract that requires an individual hired under the contract to access classified information or to have

sensitive law enforcement or national security duties;
or

(ii) a position that the Administrator of General Services identifies under the regulations issued under subparagraph (B).

(B) REGULATIONS.—

(i) **ISSUANCE.**—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Administrator of General Services, in consultation with the Secretary of Defense, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

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

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

(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

(b) **COMPLAINT PROCEDURES.**—The Administrator of General Services shall establish and publish procedures under which an applicant for a position with a Federal contractor may submit to the Administrator a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

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

(1) **FIRST VIOLATION.**—If the head of an executive agency determines that a contractor has violated subsection (a)(1)(B), such head shall—

(A) notify the contractor;

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

(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

(2) **SUBSEQUENT VIOLATION.**—If the head of an executive agency determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), such head shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor's history of violations, including—

(A) providing written guidance to the contractor that the contractor's eligibility for contracts requires compliance with this section;

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

(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

(d) DEFINITIONS.—In this section:

(1) CONDITIONAL OFFER.—The term “conditional offer” means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

(2) CRIMINAL HISTORY RECORD INFORMATION.—The term “criminal history record information” has the meaning given that term in section 9201 of title 5.

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TITLE 10, UNITED STATES CODE

SUBTITLE A—GENERAL MILITARY LAW

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**PART IV—SERVICE, SUPPLY, AND
PROCUREMENT**

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CHAPTER 137—PROCUREMENT GENERALLY

Sec.

2302. Definitions.

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2339. Prohibition on criminal history inquiries by contractors prior to conditional offer.

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§ 2339. Prohibition on criminal history inquiries by contractors prior to conditional offer

(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the head of an agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

(B) shall require as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally or through written form request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before such contractor extends a conditional offer to the applicant.

(2) *OTHERWISE REQUIRED BY LAW.*—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(3) *EXCEPTION FOR CERTAIN POSITIONS.*—

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

(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

(ii) a position that the Secretary of Defense identifies under the regulations issued under subparagraph (B).

(B) *REGULATIONS.*—

(i) *ISSUANCE.*—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Secretary of Defense, in consultation with the Administrator of General Services, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

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

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

(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

(b) *COMPLAINT PROCEDURES.*—The Secretary of Defense shall establish and publish procedures under which an applicant for a position with a Department of Defense contractor may submit a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

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

(1) *FIRST VIOLATION.*—If the Secretary of Defense determines that a contractor has violated subsection (a)(1)(B), the Secretary shall—

(A) notify the contractor;

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

(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

(2) *SUBSEQUENT VIOLATIONS.*—If the Secretary of Defense determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), the Secretary shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the deter-

mination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor's history of violations, including—

(A) providing written guidance to the contractor that the contractor's eligibility for contracts requires compliance with this section;

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

(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

(d) *DEFINITIONS.—In this section:*

(1) *CONDITIONAL OFFER.—The term “conditional offer” means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.*

(2) *CRIMINAL HISTORY RECORD INFORMATION.—The term “criminal history record information” has the meaning given that term in section 9201 of title 5.*

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