

PART 920—TIMING OF CRIMINAL HISTORY INQUIRIES

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Subpart A—General Provisions

§ 920.101 Definitions.

For the purpose of this part:

Agency means—

(1) An Executive agency as such term is defined in 5 U.S.C. 105, including—

(i) An Executive department defined in 5 U.S.C. 101;

(ii) A Government corporation defined in 5 U.S.C. 103(1); and

(iii) An independent establishment defined in 5 U.S.C. 104, including the Government Accountability Office;

(2) A military department as defined in 5 U.S.C. 102;

(3) The United States Postal Service and the Postal Regulatory Commission; and

(4) Each component of the Executive Office of the President that is an independent establishment, or that has a position in the competitive service, with respect to an applicant for the position.

Applicant means a person who has applied to an agency under its procedures for accepting applications consistent with governmentwide regulations, as applicable.

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.

Conditional offer means an offer of employment to a position in the civil service that is conditioned upon the results of a background investigation, in-

cluding, as relevant here, the results of a criminal history inquiry.

Criminal history record information—(1) Except as provided in paragraphs (2) and (3) of this definition, has the meaning given the term in section 9101(a) of title 5, United States Code;

(2) Includes any information described in the first sentence of section 9101(a)(2) of title 5, United States Code, that has been sealed or expunged pursuant to law; and

(3) 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).

Employee means an “employee” as defined in 5 U.S.C. 2105 and an employee of the United States Postal Service or the Postal Regulatory Commission.

Political appointment means an appointment by the President without Senate confirmation (except those appointed under 5 CFR 213.3102(c)); an appointment to a position compensated under the Executive Schedule (5 U.S.C. 5312 through 5316); an appointment of a White House Fellow to be assigned as an assistant to a top-level Federal officer (5 CFR 213.3102(z)); a Schedule C appointment (5 CFR 213.3301, 213.3302); a noncareer, limited term, or limited emergency Senior Executive Service appointment (5 CFR part 317, subpart F); an appointee to serve in a political capacity under agency-specific authority; and a provisional political appointment.

§ 920.102 Positions covered by Fair Chance Act regulations.

(a) *Positions covered.* This part applies to all positions in the competitive service, excepted service, and Senior Executive Service in an agency.

(b) *Exempt positions.* For purposes of this part an exempt position is any position for which a hiring agency is required by statutory authority to make inquiries into an applicant’s criminal history prior to extending an offer of employment to the applicant.

Subpart B—Timing of Inquiries Regarding Criminal History

§ 920.201 Limitations on criminal history inquiries.

(a) *Applicability.* 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. This includes the following points in the recruitment and hiring process:

(1) Initial application, through a job opportunity announcement on USAJOBS, or through any recruitment/public notification such as on the agency's website/social media, etc.;

(2) After an agency receives an initial application through its back-end system, through shared service providers/recruiters/contractors, or orally or via email and other forms of electronic notification; and

(3) Prior to, during, or after a job interview. This prohibition applies to agency personnel, including when they act through shared service providers, contractors (acting on behalf of the agency) involved in the agency's recruitment and hiring process, or automated systems (specific to the agency or governmentwide).

(b) *Exceptions for certain positions.* (1) The prohibition under paragraph (a) of this section shall not apply with respect to an applicant for an appointment to a position:

(i) Which is exempt in accordance with § 920.102(b);

(ii) That requires a determination of eligibility for access to classified information;

(iii) Has been designated as a sensitive position under the Position Designation System issued by OPM and the Office of Director of National Intelligence, which describes in greater detail agency requirements for designating positions that could bring about

a material adverse effect on the national security;

(iv) Is a dual-status military technician position in which an applicant or employee is subject to a determination of eligibility for acceptance or retention in the armed forces, in connection with concurrent military membership; or

(v) Is a Federal law enforcement officer position meeting the definition in section 115(c) of title 18, U.S. Code.

(2) The prohibition under paragraph (a) of this section shall not apply with respect to an applicant for a political appointment.

(c) *Notification to applicants.* Each agency must publicize to applicants the prohibition described in paragraph (a) of this section in job opportunity announcements and on agency websites/portals for positions that do not require a posting on USAJOBS, such as excepted service positions, and in addition to information on where it has posted about its complaint intake process under as required by part 754 of this chapter.

§ 920.202 Violations.

(a) An agency employee may not request, orally or in writing, information about an applicant's criminal history prior to making a conditional offer of employment to that applicant unless the position is exempted or excepted in accordance with § 920.201(b).

(b) A violation (or prohibited action) as defined in paragraph (a) of this section occurs when agency personnel, shared service providers, or contractors (acting on behalf of the agency) involved in the agency's recruitment and hiring process, either personally or through automated systems (specific to the agency or governmentwide), make oral or written requests prior to giving a conditional offer of employment—

(1) In a job opportunity announcement on USAJOBS or in any recruitment/public notification such as on the agency's website or social media;

(2) In communications sent after an agency receives an initial application, through an agency's talent acquisition system, shared service providers/recruiters/contractors, orally or in writing (including via email and other forms of electronic notification); or

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(3) Prior to, during, or after a job interview or other applicant assessment.

(c) When a prohibited request, announcement, or communication is publicly posted or simultaneously distributed to multiple applicants, it constitutes a single violation.

(d) Any violation as defined in paragraph (a) of this section is subject to the complaint and penalty procedures in part 754 of this chapter.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

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Subpart C—Information Security Responsibilities for Employees who Manage or Use Federal Information Systems

930.301 Information systems security awareness training program.

Subpart A—Motor Vehicle Operators

AUTHORITY: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306. (Separate authority is listed under § 930.107).

SOURCE: 50 FR 34669, Aug. 27, 1985, unless otherwise noted.

§ 930.101 Purpose.

This subpart governs agencies in authorizing employees to operate Government-owned or -leased (acquired for other than short term use for which the Government does not have full control and accountability) motor vehicles for official purposes within the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§ 930.102 Definitions.

In this subpart:

Agency means a department, independent establishment, or other unit of the executive branch of the Federal Government, including a wholly owned Government corporation, in the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

Employee means an employee of an agency in either the competitive or excepted service or an enrollee of the Job Corps established by section 102 of the Economic Opportunity Act of 1964 (42 U.S.C. 2712).

Identification card means the United States Government Motor Vehicle Operator's Identification Card, Optional Form 346, or an agency-issued identification card that names the types of Government-owned or -leased vehicles the holder is authorized to operate.

Identification document means an official identification form issued by an