

ADJOURNMENT

Mr. WEBER of Texas. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 27 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, December 11, 2024, at 10 a.m. for morning-hour debate.

NOTICE OF ADOPTION OF REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

U.S. CONGRESS, OFFICE OF
CONGRESSIONAL WORKPLACE RIGHTS,
Washington, DC, December 10, 2024.

Hon. MIKE JOHNSON,
Office of the Speaker of the House of Representatives,
The United States Capitol, Washington, DC.

DEAR MR. SPEAKER: Section 207(d) of the Congressional Accountability Act (CAA), 2 U.S.C. 1316b(d), requires the Board of Directors of the Office of Congressional Workplace Rights (Board) to issue substantive regulations implementing section 207 of the CAA relating to the Fair Chance to Compete for Jobs Act of 2019.

Section 304(b)(3) of the CAA, 2 U.S.C. 1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board has published a general notice of proposed rulemaking as required by subsection (b)(1) and received comments pursuant to subsection (b)(2), "the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal."

The Board has adopted the regulations in the Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval, which accompany this transmittal letter. The Board requests that the accompanying Notice be published in the House version of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. The Board has adopted the same regulations for the Senate, the House of Representatives, and the other covered entities and facilities, and therefore recommends that the adopted regulations be approved by concurrent resolution of the Congress.

Any inquiries regarding this notice should be addressed to Martin J. Crane, Executive Director of the Office of Congressional Workplace Rights, Room LA-200, 110 Second Street SE, Washington, DC 20540-1999; 202-724-9250.

Sincerely,

BARBARA CHILDS WALLACE,
Chair of the Board of Directors,
Office of Congressional Workplace Rights.

FROM THE BOARD OF DIRECTORS OF
THE OFFICE OF CONGRESSIONAL
WORKPLACE RIGHTS

NOTICE OF ADOPTION OF REGULATIONS
AND TRANSMITTAL FOR CONGRES-
SIONAL APPROVAL

Regulations Implementing Certain Substantive Rights and Protections for Job Applicants, as Required by Section 207 of the Congressional Accountability Act ("CAA").

Notice of Adoption of Substantive Regulations and Submission for Approval as Required by 2 U.S.C. § 1316b of the CAA.

Procedural Summary:**Issuance of the Board's Notice of Proposed Rulemaking.**

The Fair Chance to Compete for Jobs Act of 2019 ("FCA") was enacted as part of the National Defense Authorization Act for 2020 (H. Rept. 116-333, Title XI, Sections 1121-1124). Under the FCA, Federal employers (including employing offices in the legislative branch) may not request from most job applicants information on arrest and conviction history until a conditional job offer has been extended. Congress applied the FCA to the legislative branch by amending the CAA to add a new section 207, 2 U.S.C. § 1316b.

On June 13, 2024, the Board of Directors ("Board") of the Office of Congressional Workplace Rights ("OCWR") published a Notice of Proposed Rulemaking ("NPR") in the *Congressional Record*. 170 Cong. Rec. H4056-02, S4091-04 (daily ed. June 13, 2024). The NPR proposed substantive regulations relating to implementation of the FCA in the legislative branch. The Board, now having considered comments to the NPR, has adopted, and is submitting for approval by the Congress, final substantive regulations implementing section 207 of the CAA.

Why did the Board propose these substantive regulations?

Section 207(d) of the CAA requires the Board to issue substantive regulations implementing section 207. Section 207(d) requires the Board's regulations to be:

the same as substantive regulations promulgated by the Director of the Office of Personnel Management . . . 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.

What procedure followed the Board's Notice of Proposed Rulemaking?

The NPR included a 30-day comment period, which began on June 13, 2024. The Board received three sets of comments to the proposed substantive regulations. The Board has reviewed these comments, made certain changes to its proposed substantive regulations in response to the comments, adopted final substantive regulations, and is submitting them for approval by Congress pursuant to section 304 of the CAA, 2 U.S.C. § 1384.

What is the effect of the Board's adoption of these substantive regulations?

Adoption of these substantive regulations by the Board does not complete the promulgation process. Pursuant to section 304, following the Board's adoption of the regulations, it must transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President Pro Tempore of the Senate for publication in the *Congressional Record*. This Notice of Adoption of Substantive Regulations and Submission for Congressional Approval completes this step.

What are the next steps in the process of promulgation of these regulations?

Pursuant to section 304(b)(4) of the CAA, the Board is required to "include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution." The Board has adopted the same regulations for the Senate, the House of Representatives, and the other covered entities and facilities, and the Board recommends that the adopted regulations be approved by concurrent resolution of the Congress.

Are these substantive regulations also recommended by OCWR's Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

As required by section 304(b)(1) of the CAA, these substantive regulations are recommended by the Deputy Director for the Senate in regard to regulations under subsection (a)(2)(B)(i), the Deputy Director for the House of Representatives in regard to regulations under subsection (a)(2)(B)(ii), and the Executive Director for regulations under subsection (a)(2)(B)(iii).

Has the Board previously adopted substantive regulations implementing 2 U.S.C. § 1316b?

No.

Are these substantive regulations available to persons with disabilities in an alternate format?

This Notice is available on the OCWR's website, www.ocwr.gov, which is compliant with Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794d. This Notice can also be made available in large print, braille, or other alternative format. Requests for this Notice in an alternative format should be made to the Office of Congressional Workplace Rights, 202-724-9250 (voice); 202-426-1913 (fax); or ADAaccess@ocwr.gov (email).

The Board's Responses to Comments Received

The Board received comments from three sources. The comments addressed four major points, and one commenter also proposed a number of minor corrections, most of which the Board has incorporated.

Political Appointees

The FCA directs the Office of Personnel Management ("OPM") to issue regulations identifying positions in the executive branch with respect to which the prohibitions under subsection (a) of the Act shall not apply. OPM's substantive regulations thus provide at 5 CFR § 920.201(b)(2) that such prohibitions shall not apply with respect to an applicant for a "political appointment." OPM's regulations define "political appointment" at 5 CFR § 920.101:

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 non-career, 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.

In the NPR, the Board did not include a parallel exception for political appointments

in the legislative branch, noting the lack of hiring authorities for political appointees comparable to those cited by OPM for the executive branch.

Two commenters, however, urged the Board to include an exception for “political appointments” in the legislative branch, contending that the omission of such a definition would expand the scope of the FCA for the legislative branch beyond its scope in the executive branch, in a manner inconsistent with section 207(b)(1)(A) of the CAA.

Both commenters referenced OPM’s reasoning for its own exception as set forth in its notice of proposed rulemaking:

The Fair Chance Act applies to applicants to positions in the “civil service,” which, under 5 U.S.C. 2101(1), extends to “all appointive positions” in the executive branch. Proposed paragraph (b) makes an exception for applicants for political appointments, since political appointees provide confidential, policy-determining, or policy-advocating functions on behalf of the President or presidentially-appointed agency heads, and serve as personal advisors and representatives to the President and other senior administration officials. Pre-employment criminal history screening may be required for these positions prior to a conditional offer of employment, because of the utmost trust and discretion required in these positions and the potential for adverse publicity associated with unfit applicants.

Fair Chance to Compete for Jobs, 87 Fed. Reg. 24885-01, 24894 (Apr. 27, 2022).

The commenters also stressed the inherently political nature of congressional employment, noting that many appointees are hired to perform confidential, policy-determining, and policy-advocating functions on behalf of Members of Congress. One commenter noted in particular that section 502 of the CAA explicitly allows consideration of “party affiliation” and “political compatibility with the employing office” for employment with a committee, a member, or a number of other offices in the House or Senate. Another commenter argued that a definition of “political appointment” was necessary to “ensure employing office employees have pre-offer access to applicant criminal history information on par with Executive Branch employees’ access to such information.”

Upon further consideration, the Board agrees with the commenters that good cause exists to modify rather than omit OPM’s exception for applicants for political appointments. The Board therefore includes for adoption in its substantive regulations the following definition:

Political appointment means an appointment to a position in an employing office defined in 2 U.S.C. § 1301(9)(A)–(C) that requires the incumbent to: (1) file a report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App. § 101 et seq.); or (2) perform confidential, policy-determining, or policy-advocating functions equivalent to those performed by Executive Schedule (5 U.S.C. §§ 5312 through 5316) or Schedule C (5 CFR §§ 213.3301–213.3302) appointees in the executive branch.

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

Subparagraph (1) of this definition exempts appointments to employing offices of the House and the Senate listed in 2 U.S.C. § 1301(9)(A)–(C) that require the incumbent to file a financial disclosure report under title I of the Ethics in Government Act—the defining characteristic of “senior staff” under the CAA. See 2 U.S.C. § 1416(d)(7). This filing requirement applies to congressional em-

ployees whose rate of pay is 120% of the minimum rate of pay for GS–15 of the General Schedule and to individuals who are designated as a “principal assistant.” See 5 U.S.C. §§ 13101, 13103. In the Board’s view, exempting all such highly-compensated senior staff positions in the House and the Senate is on par with OPM’s across-the-board exemptions for appointments by the President without Senate confirmation; appointments to a position compensated under the Executive Schedule; and Schedule C appointments.

Because not all positions performing confidential, policy-determining, or policy-advocating functions in the House and Senate fall under the Ethics in Government Act, subparagraph (2) sets forth a functional test to determine whether a non-senior staff position falls within the exception for applicants for political appointments. Such positions that require incumbents to perform confidential, policy-determining, or policy-advocating functions that are the equivalent to duties of positions under the Executive Schedule or positions appointed under Schedule C would also be excepted political appointments. No commenters contended that a political appointment exception should apply to appointments to employing offices outside of those in the House and Senate. Accordingly, this exception only extends to appointments to employing offices defined in 2 U.S.C. § 1301(9)(A)–(C).

Sensitive National Security Positions

The FCA, by reference to 5 U.S.C. § 9101(b)(1)(A)(ii) in 5 U.S.C. § 9202(c)(1)(A), created an exception for an appointment to sensitive national security duties or positions. OPM included the exception in its section 920.201(b)(1)(iii) regulations for any position that:

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.

The Board was not aware of any positions in the legislative branch that were so designated. However, at the urging of the commenters, the Board has adopted the following exception, incorporating an alternative test for whether a position can be considered “sensitive”:

Has been designated as a sensitive position under the Position Designation System issued by OPM and the Office of Director of National Intelligence (or similar authority in the legislative branch), which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security, or that requires the performance of duties consistent with a national security position as defined in 5 CFR § 1400.102.

Posting Requirement

OPM’s regulations require agencies to publicize the FCA’s requirements in its job postings. The Board proposed a similar regulation at section 920.201(c) for job postings in the legislative branch. Two commenters noted, however, that the statutory authority for OPM’s regulation is derived from 5 U.S.C. § 9203. Because the CAA only incorporates §§ 9201(1), (4), and (5), 9202, 9204, and 9206 of title 5, we agree that the Board lacks the statutory authority to adopt such a regulation. Accordingly, we have removed proposed section 920.201(c) from these regulations.

Definition of Criminal History Record Information

One commenter urged the Board to revise its definition of “criminal history record information,” in section 920.101 rather than

follow OPM’s definition, which merely cited section 9101. The Board does not find good cause to modify OPM’s definition.

PART 920—TIMING OF CRIMINAL HISTORY INQUIRIES

Subpart A—General Provisions

Sec.

920.101 Definitions.

920.102 Positions covered by Fair Chance Act regulations.

Subpart B—Timing of Inquiries Regarding Criminal History

920.201 Limitations on criminal history inquiries.

920.202 Violations.

§ 920.101 Definitions.

For the purpose of this part:

Employing office means:

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Office of Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Congressional Workplace Rights, the Office of Technology Assessment, the Library of Congress, the Stennis Center for Public Service, the United States Commission on International Religious Freedom, the U.S.-China Economic and Security Review Commission, Congressional-Executive Commission on China, and the Commission on Security and Cooperation in Europe.

Applicant means a person who has applied to an employing office for employment as a covered employee under the employing office’s procedures for accepting applications consistent with governmentwide regulations, as applicable.

Conditional offer means an offer of employment as a covered employee that is conditioned upon the results of a background investigation, including, as relevant here, the results of a criminal history inquiry.

Covered employee means any employee of—

(1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the United States Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Congressional Workplace Rights; (9) the Office of Technology Assessment; (10) the Library of Congress; (11) the Stennis Center for Public Service; (12) the United States Commission on International Religious Freedom; (13) the U.S.-China Economic and Security Review Commission; (14) the Congressional-Executive Commission on China; or (15) the Commission on Security and Cooperation in Europe.

Criminal history record information—(1) Has the meaning given the term in section 9101(a) of title 5, United States Code; and

(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).

Political appointment means an appointment to a position in an employing office defined in 2 U.S.C. § 1301(9)(A)–(C) that requires

the incumbent to: (1) file a report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App. §101 et seq.); or (2) perform confidential, policy-determining, or policy-advocating functions equivalent to those performed by Executive Schedule (5 U.S.C. §§5312 through 5316) or Schedule C (5 CFR §§213.3301–213.3302) appointees in the executive branch.

§ 920.102 Positions covered by Fair Chance Act regulations.

(a) *Positions covered.* Except as provided in paragraph (b), this part applies to all covered employee positions in any employing office.

(b) *Exempt positions.* For purposes of this part an exempt position is any position for which an employing office 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 employing office 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 employment with an employing office disclose criminal history record information regarding the applicant before the employing office 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 employing office's website/social media, etc.;

(2) After an employing office 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 employing office personnel, including when they act through shared service providers, contractors (acting on behalf of the employing office) involved in the employing office's recruitment and hiring process, or automated systems (specific to the employing office 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 (or similar authority in the legislative branch), which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security, or that requires the performance of duties consistent with a national security position as defined in 5 CFR §1400.102.

(iv) 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.

§ 920.202. Violations.

(a) An employing office 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 an employing office employee (or employing office personnel, shared service providers, or contractors acting at the direction of an employing office employee) involved in the employing office's recruitment and hiring process, either personally or through automated systems (specific to the employing office or governmentwide), make oral or written requests of an applicant or applicants prior to giving a conditional offer of employment as a covered employee—

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

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

(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 claim and penalty procedures under subchapter IV of title 2 (other than section 1407 or 1408 of title 2, or a provision of this subchapter that permits a person to obtain a civil action or judicial review) and the OCFR Procedural Rules, consistent with these regulations.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV,

EC-6304. A letter from the Chair of the Board of Directors, Office of Congressional Workplace Rights, transmitting notification of proposed rulemaking, pursuant to 2 U.S.C. 1384(b)(3); Public Law 104-1, Sec. 304(b)(3); (109 Stat. 29), was taken from the Speaker's table, referred jointly to the Committees on House Administration and Education and the Workforce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. AUSTIN SCOTT of Georgia: Committee on Rules. House Resolution 1612. Resolution providing for consideration of the bill (H.R. 7673) to prohibit the Secretary of Energy from prescribing or enforcing energy conservation standards for clothes washers that are not cost-effective or technologically feasible, and for other purposes; providing for consideration of the bill (S. 4199) to authorize additional district judges for the district courts and convert temporary judgeships; and providing for consideration of the Senate amendment to the bill (H.R. 5009) to reauthorize wildlife habitat and conservation programs, and for other purposes (Rept. 118-825). Referred to the House Calendar.

Mr. GREEN of Tennessee: Committee on Homeland Security. H.R. 6229. A bill to amend the Homeland Security Act of 2002 to authorize a program to assess the threat, vulnerability, and consequences of terrorism or other security threats, as appropriate, to

certain events, and for other purposes (Rept. 118-826, Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 5874. A bill to amend the United States-Mexico Transboundary Aquifer Assessment Act to reauthorize the United States-Mexico transboundary aquifer assessment program; with an amendment (Rept. 118-827). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 6235. A bill to amend the Harmful Algal Blooms and Hypoxia Research and Control Act of 1998 to address harmful algal blooms, and for other purposes; with an amendment (Rept. 118-828, Pt. 1). Ordered printed.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 7072. A bill to require the Secretary of Agriculture to convey certain National Forest System land in the Chequamegon-Nicolet National Forest to Tony's Wabeno Redi-Mix, LLC, and for other purposes; with an amendment (Rept. 118-829, Pt. 1). Ordered to be printed.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 7375. A bill to amend the Mineral Leasing Act to improve the assessment of expression of interest fees, and for other purposes; with an amendment (Rept. 118-830). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 6482. A bill to amend the Geothermal Steam Act of 1970 to promote timely exploration for geothermal resources under geothermal leases, and for other purposes; with an amendment (Rept. 118-831). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 1437. A bill to authorize livestock producers and their employees to take black vultures in order to prevent death, injury, or destruction to livestock, and for other purposes; with an amendment (Rept. 118-832). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 8450. A bill to direct the Secretary of the Interior to evaluate certain minerals for designation as critical minerals; with an amendment (Rept. 118-833). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 7776. A bill to amend the Boulder Canyon Project Act to authorize the Secretary of the Interior to expend amounts in the Colorado River Dam fund, and for other purposes (Rept. 118-834). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 1647. A bill to redesignate the Salem Maritime National Historic Site as the "Salem Maritime National Historical Park", and for the purposes (Rept. 118-835). Referred to the Committee of the Whole House on the state of the Union.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 3119. A bill to provide for the issuance of a Manatee Semipostal Stamp (Rept. 118-836, Pt. 1). Ordered to be printed.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 8704. A bill to require the Secretary of Commerce to establish a grant program to foster enhanced coexistence between ocean users and North Atlantic right whales and other large cetacean species; with an amendment (Rept. 118-837 Pt. 1). Ordered to be printed.

Mr. WESTERMAN: Committee on Natural Resources. H.R. 6085. A bill to prohibit the implementation of the Draft Resource Management Plan and Environmental Impact Statement for the Rock Springs RMP Revision, Wyoming, and for other purposes; with