

REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF PROVISIONS FOR INDEMNIFICATION AGREEMENTS

Pub. L. 99-169, title VIII, §803(a), Dec. 4, 1985, 99 Stat. 1010, as amended by Pub. L. 99-569, title IV, §402(b), Oct. 27, 1986, 100 Stat. 3196, directed Department of Justice, within two years after Dec. 4, 1985, and after consultation with Department of Defense, Office of Personnel Management, Central Intelligence Agency, and Federal Bureau of Investigation, to report to appropriate committees of Congress concerning the effect of 5 U.S.C. 9101(b)(3), as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under 5 U.S.C. 9101(b)(3) for such agreements.

CHAPTER 92—PROHIBITION ON CRIMINAL HISTORY INQUIRIES PRIOR TO CONDITIONAL OFFER

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§ 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.

(Added Pub. L. 116-92, div. A, title XI, §1122(a), Dec. 20, 2019, 133 Stat. 1605.)

REGULATIONS

Pub. L. 116-92, div. A, title XI, §1122(b)(1), Dec. 20, 2019, 133 Stat. 1607, provided that: “Not later than 1 year after the date of enactment of this subtitle [subtitle A of title XI of div. A of Pub. L. 116-92, approved Dec. 20, 2019], 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 subtitle).”

§ 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.

(Added Pub. L. 116-92, div. A, title XI, §1122(a), Dec. 20, 2019, 133 Stat. 1606.)

DELAYED EFFECTIVE DATE OF SECTION

Section effective 2 years after Dec. 20, 2019, see Effective Date note below.

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(B)(i), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The