

amended by section 1823(a) of Pub. L. 116-283, inserted after section 3572, and redesignated as section 3573 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Pub. L. 115-232 substituted “The micro-purchase threshold for the Department of Defense is \$10,000” for “Notwithstanding subsection (a) of section 1902 of title 41, the micro-purchase threshold for the Department of Defense for purposes of such section is \$5,000”.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

§ 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.

(Added Pub. L. 116-92, div. A, title XI, §1123(b)(1), Dec. 20, 2019, 133 Stat. 1612.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, pro-

vided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4656, and redesignated as section 4657 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The date of enactment of the Fair Chance to Compete for Jobs Act of 2019, referred to in subsec. (a)(3)(B)(i), is the date of enactment of subtitle B of title XI of div. A of Pub. L. 116–92, which was approved Dec. 20, 2019.

The Civil Rights Act of 1964, referred to in subsec. (a)(3)(B)(ii)(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 Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 2339, added Pub. L. 114–328, div. A, title II, §217(a)(1), Dec. 23, 2016, 130 Stat. 2051, set the micro-purchase threshold for basic research programs and activities of the Department of Defense science and technology reinvention laboratories, prior to repeal by Pub. L. 115–232, div. A, title VIII, §821(c)(1), Aug. 13, 2018, 132 Stat. 1853.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 116–92, div. A, title XI, §1123(b)(2), Dec. 20, 2019, 133 Stat. 1614, as amended by Pub. L. 116–283, div. A, title XVIII, §1862(c)(3)(A), Jan. 1, 2021, 134 Stat. 4278, provided that: “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 1122(b)(2) of this subtitle [2 years after Dec. 20, 2019, see Effective Date note set out under section 9202 of Title 5, Government Organization and Employees].”

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1862(c)(3)(A), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1123(b)(2) of Pub. L. 116–92, set out above, is amended by substituting “Section 4657(a)” for “Section 2339(a)”.]

REVISIONS TO FEDERAL ACQUISITION REGULATION

Pub. L. 116–92, div. A, title XI, §1123(c), Dec. 20, 2019, 133 Stat. 1614, as amended by Pub. L. 116–283, div. A, title XVIII, §1862(c)(3)(B), Jan. 1, 2021, 134 Stat. 4278, provided that:

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this subtitle [Dec. 20, 2019], 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 1122(b)(1) [5 U.S.C. 9201 note] 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.”

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1862(c)(3)(B), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1123(c)(1) of Pub. L. 116–92, set out above, is amended by substituting “section 4657” for “section 2339”.]

§ 2339a. Requirements for information relating to supply chain risk

(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—

(1) carry out a covered procurement action; and

(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence and Security, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 2304(f)(3) of this title;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence¹ that serves as the basis for the joint recommendation specified in paragraph (1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in sub-