

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

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.

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

Statutory Notes and Related Subsidiaries

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 [sub-

title 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.)

Editorial Notes

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

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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-92, div. A, title XI, subtitle B, §1122(b)(2), Dec. 20, 2019, 133 Stat. 1608, provided that: “Section 9202 of title 5, United States Code (as added by this subtitle), shall take effect on the date that is 2 years after the date of enactment of this subtitle [Dec. 20, 2019].”

§ 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.

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

§ 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.

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

§ 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.

(Added Pub. L. 116-92, div. A, title XI, §1122(a), Dec. 20, 2019, 133 Stat. 1607.)

§ 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.

(Added Pub. L. 116-92, div. A, title XI, §1122(a), Dec. 20, 2019, 133 Stat. 1607.)

Subpart I—Miscellaneous

CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

Sec. 9501.	Internal Revenue Service personnel flexibilities.
9502.	Pay authority for critical positions.
9503.	Streamlined critical pay authority.
9504.	Recruitment, retention, relocation incentives, and relocation expenses.
9505.	Performance awards for senior executives.
9506.	Limited appointments to career reserved Senior Executive Service positions.
9507.	Streamlined demonstration project authority.
9508.	General workforce performance management system.
9509.	General workforce classification and pay.
9510.	General workforce staffing.

§ 9501. Internal Revenue Service personnel flexibilities

(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

- (1) chapter 23 (relating to merit system principles and prohibited personnel practices);
- (2) provisions relating to preference eligibles;
- (3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);
- (4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and
- (5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

(b) The Secretary of the Treasury shall provide the Office of Personnel Management with