

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.)