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[Report No. 114–200]

To prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2015

Mr. BOOKER (for himself, Mr. JOHNSON, Ms. BALDWIN, Mrs. ERNST, Mr. BROWN, Mr. PETERS, Mr. PORTMAN, Mrs. MURRAY, Mr. KAINE, Mr. FRANKEN, Mr. WYDEN, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JANUARY 12, 2016

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Chance to Com-
3 pete for Jobs Act of 2015” or the “Fair Chance Act”.

4 **SEC. 2. PROHIBITION ON CRIMINAL HISTORY INQUIRIES**
5 **PRIOR TO CONDITIONAL OFFER FOR FED-**
6 **ERAL EMPLOYMENT.**

7 (a) IN GENERAL.—Subpart H of part III of title 5,
8 United States Code, is amended by adding at the end the
9 following:

10 **“CHAPTER 92—PROHIBITION ON CRIMI-**
11 **NAL HISTORY INQUIRIES PRIOR TO**
12 **CONDITIONAL OFFER**

“Sec.

“9201. Definitions.

“9202. Limitations on requests for criminal history record information.

“9203. Agency policies; whistleblower complaint procedures.

“9204. Adverse action.

“9205. Procedures.

“9206. Rules of construction.

13 **“§ 9201. Definitions**

14 “In this chapter—

15 “(1) the term ‘agency’ means ‘Executive agen-
16 cy’ as such term is defined in section 105 and in-
17 cludes—

18 “(A) the United States Postal Service and
19 the Postal Regulatory Commission; and

20 “(B) the Executive Office of the President;

21 “(2) the term ‘appointing authority’ means an
22 employee in the executive branch of the Government

1 of the United States that has authority to make ap-
2 pointments to positions in the civil service;

3 “(3) the term ‘conditional offer’ means an offer
4 of employment in a position in the civil service that
5 is conditioned upon the results of a criminal history
6 inquiry;

7 “(4) the term ‘criminal history record informa-
8 tion’—

9 “(A) except as provided in subparagraph
10 (B), has the meaning given the term in section
11 9101(a);

12 “(B) includes any information described in
13 the first sentence of section 9101(a)(2) that has
14 been sealed or expunged pursuant to law; and

15 “(C) includes information collected by a
16 criminal justice agency, relating to an act or al-
17 leged act of juvenile delinquency, that is analo-
18 gous to criminal history record information (in-
19 cluding such information that has been sealed
20 or expunged pursuant to law); and

21 “(5) the term ‘suspension’ has the meaning
22 given the term in section 7501.

1 **“§ 9202. Limitations on requests for criminal history**
2 **record information**

3 “(a) INQUIRIES PRIOR TO CONDITIONAL OFFER.—
4 Except as provided in subsections (b) and (c), an employee
5 of an agency may not request, in oral or written form (in-
6 cluding through the Declaration for Federal Employment
7 (OPM Optional Form 306), or any similar successor
8 form); including through the USA Jobs Internet Web site
9 or any other electronic means, that an applicant for an
10 appointment to a position in the civil service disclose
11 criminal history record information regarding the appli-
12 cant before the appointing authority extends a conditional
13 offer to the applicant.

14 “(b) OTHERWISE REQUIRED BY LAW.—The prohibi-
15 tion under subsection (a) shall not apply with respect to
16 an applicant for a position in the civil service if consider-
17 ation of criminal history record information prior to a con-
18 ditional offer with respect to the position is otherwise re-
19 quired by law.

20 “(c) EXCEPTION FOR SENSITIVE POSITIONS.—The
21 prohibition under subsection (a) shall not apply with re-
22 spect to an applicant for an appointment to a position—

23 “(1) that requires a determination of eligibility
24 described in subparagraph (A), (B), or (C) of section
25 9101(b)(1); or

1 “(2) as a Federal law enforcement officer (as
2 defined in section 115(e) of title 18).

3 **“§ 9203. Agency policies; whistleblower complaint**
4 **procedures**

5 “The Director of the Office of Personnel Manage-
6 ment shall—

7 “(1) develop, implement, and publish a policy to
8 assist employees of agencies in complying with sec-
9 tion 9202 and the regulations issued pursuant to
10 such section; and

11 “(2) establish and publish procedures under
12 which an applicant for an appointment to a position
13 in the civil service may submit to the Office of Per-
14 sonnel Management a complaint, or any other infor-
15 mation, relating to compliance by an employee of an
16 agency with section 9202.

17 **“§ 9204. Adverse action**

18 “(a) FIRST VIOLATION.—If the Director of the Office
19 of Personnel Management determines, after notice and an
20 opportunity for a hearing on the record, that an employee
21 of an agency has violated section 9202, the Director
22 shall—

23 “(1) issue to the employee a written warning
24 that includes a description of the violation and the

1 additional penalties that may apply for subsequent
2 violations; and

3 ~~“(2) file such warning in the employee’s official~~
4 ~~personnel record file.~~

5 ~~“(b) SUBSEQUENT VIOLATIONS.—If the Director of~~
6 ~~the Office of Personnel Management determines, after no-~~
7 ~~tice and an opportunity for a hearing on the record, that~~
8 ~~an employee that was subject to subsection (a) has com-~~
9 ~~mitted a subsequent violation of section 9202, the Director~~
10 ~~may take the following action:~~

11 ~~“(1) For a second violation, suspension of the~~
12 ~~employee for a period of not more than 7 days.~~

13 ~~“(2) For a third violation, suspension of the~~
14 ~~employee for a period of more than 7 days.~~

15 ~~“(3) For a fourth violation—~~

16 ~~“(A) suspension of the employee for a pe-~~
17 ~~riod of more than 7 days; and~~

18 ~~“(B) a civil penalty against the employee~~
19 ~~in an amount that is not more than \$250.~~

20 ~~“(4) For a fifth violation—~~

21 ~~“(A) suspension of the employee for a pe-~~
22 ~~riod of more than 7 days; and~~

23 ~~“(B) a civil penalty against the employee~~
24 ~~in an amount that is not more than \$500.~~

25 ~~“(5) For any subsequent violation—~~

1 “(A) suspension of the employee for a pe-
2 riod of more than 7 days; and

3 “(B) a civil penalty against the employee
4 in an amount that is not more than \$1,000.

5 **“§ 9205. Procedures**

6 “(a) APPEALS.—The Director of the Office of Per-
7 sonnel Management shall by rule establish procedures pro-
8 viding for an appeal from any adverse action taken under
9 section 9204 by not later than 30 days after the date of
10 the action.

11 “(b) APPLICABILITY OF OTHER LAWS.—An adverse
12 action taken under section 9204 (including a determina-
13 tion in an appeal from such an action under subsection
14 (a) of this section) shall not be subject to—

15 “(1) the procedures under chapter 75; or

16 “(2) except as provided in subsection (a) of this
17 section, appeal or judicial review.

18 **“§ 9206. Rules of construction**

19 “Nothing in this chapter may be construed to—

20 “(1) authorize any officer or employee of an
21 agency to request the disclosure of information de-
22 scribed under subparagraphs (B) and (C) of section
23 9201(4); or

24 “(2) create a private right of action for any
25 person.”.

1 (b) REGULATIONS; EFFECTIVE DATE.—

2 (1) REGULATIONS.—Not later than 1 year after
3 the date of enactment of this Act, the Director of
4 the Office of Personnel Management shall issue such
5 regulations as are necessary to carry out chapter 92
6 of title 5, United States Code (as added by this
7 Act).

8 (2) EFFECTIVE DATE.—Section 9202 of title 5,
9 United States Code (as added by this Act), shall
10 take effect on the date that is 2 years after the date
11 of enactment of this Act.

12 (c) TECHNICAL AND CONFORMING AMENDMENT.—
13 The table of chapters for part III of title 5, United States
14 Code, is amended by inserting after the item relating to
15 chapter 91 the following:

**“92. Prohibition on criminal history inquiries prior to
conditional offer 9201”.**

16 (d) APPLICATION TO LEGISLATIVE BRANCH.—

17 (1) IN GENERAL.—Part A of title II of the Con-
18 gressional Accountability Act of 1995 (2 U.S.C.
19 1311 et seq.) is amended—

20 (A) in section 102(a) (2 U.S.C. 1302(a)),
21 by adding at the end the following:

22 “(12) Section 9202 of title 5, United States
23 Code.”;

1 (B) by redesignating section 207 (2 U.S.C.
2 1317) as section 208; and

3 (C) by inserting after section 206 (2
4 U.S.C. 1316) the following new section:

5 **“SEC. 207. RIGHTS AND PROTECTIONS RELATING TO CRIMI-**
6 **NAL HISTORY INQUIRIES.**

7 “(a) DEFINITIONS.—In this section, the terms ‘agen-
8 cy’, ‘criminal history record information’, and ‘suspension’
9 have the meanings given the terms in section 9201 of title
10 5, United States Code, except as otherwise modified by
11 this section.

12 “(b) RESTRICTIONS ON CRIMINAL HISTORY INQUIR-
13 IES.—

14 “(1) IN GENERAL.—An employee of an employ-
15 ing office may not request that an applicant for em-
16 ployment as a covered employee disclose criminal
17 history record information if the request would be
18 prohibited under section 9202 of title 5, United
19 States Code, if made by an employee of an agency.

20 “(2) RULES OF CONSTRUCTION.—The provi-
21 sions of section 9206 of title 5, United States Code,
22 shall apply to employing offices, consistent with reg-
23 ulations issued under subsection (d).

24 “(c) REMEDY.—

1 “(1) IN GENERAL.—The remedy for a violation
2 of subsection (b)(1) shall be such remedy as would
3 be appropriate if awarded under section 9204 of title
4 5, United States Code, if the violation had been
5 committed by an employee of an agency, consistent
6 with regulations issued under subsection (d), except
7 that the reference in that section to a suspension
8 shall be considered to be a suspension with the level
9 of compensation provided for a covered employee
10 who is taking unpaid leave under section 202.

11 “(2) PROCESS FOR OBTAINING RELIEF.—An
12 applicant for employment as a covered employee who
13 alleges a violation of subsection (b)(1) may rely on
14 the provisions of title IV (other than sections
15 404(2), 407, and 408), consistent with regulations
16 issued under subsection (d).

17 “(d) REGULATIONS TO IMPLEMENT SECTION.—

18 “(1) IN GENERAL.—Not later than 18 months
19 after the date of enactment of the Fair Chance to
20 Compete for Jobs Act of 2015, the Board shall, pur-
21 suant to section 304, issue regulations to implement
22 this section.

23 “(2) PARALLEL WITH AGENCY REGULATIONS.—
24 The regulations issued under paragraph (1) shall be
25 the same as substantive regulations issued by the

1 Director of the Office of Personnel Management
 2 under section 2(b)(1) of the Fair Chance to Com-
 3 pete for Jobs Act of 2015 to implement the statu-
 4 tory provisions referred to in subsections (a) through
 5 (e) except to the extent that the Board may deter-
 6 mine, for good cause shown and stated together with
 7 the regulation, that a modification of such regula-
 8 tions would be more effective for the implementation
 9 of the rights and protections under this section.

10 “(e) EFFECTIVE DATE.—Section 102(a)(12) and
 11 subsections (a) through (e) shall take effect on the date
 12 on which section 9202 of title 5, United States Code, ap-
 13 plies with respect to agencies.”.

14 (2) CLERICAL AMENDMENT.—The table of con-
 15 tents of such Act is amended—

16 (A) by redesignating the item relating to
 17 section 207 as the item relating to section 208;
 18 and

19 (B) by inserting after the item relating to
 20 section 206 the following new item:

“Sec. 207. Rights and protections relating to criminal history inquiries.”.

21 (e) APPLICATION TO JUDICIAL BRANCH.—

22 (1) IN GENERAL.—Section 604 of title 28,
 23 United States Code, is amended by adding at the
 24 end the following:

1 “(i) RESTRICTIONS ON CRIMINAL HISTORY INQUIR-
2 RIES.—

3 “(1) DEFINITIONS.—In this subsection—

4 “(A) the terms ‘agency’ and ‘criminal his-
5 tory record information’ have the meanings
6 given those terms in section 9201 of title 5;

7 “(B) the term ‘covered employee’ means an
8 employee of the judicial branch of the United
9 States Government, other than—

10 “(i) any judge or justice who is enti-
11 tled to hold office during good behavior;

12 “(ii) a United States magistrate
13 judge; or

14 “(iii) a bankruptcy judge; and

15 “(C) the term ‘employing office’ means any
16 office or entity of the judicial branch of the
17 United States Government that employs covered
18 employees.

19 “(2) RESTRICTION.—A covered employee may
20 not request that an applicant for employment as a
21 covered employee disclose criminal history record in-
22 formation if the request would be prohibited under
23 section 9202 of title 5 if made by an employee of an
24 agency.

1 ~~“(3) EMPLOYING OFFICE POLICIES; WHISTLE-~~
2 ~~BLOWER COMPLAINT PROCEDURE.—~~The provisions
3 of sections ~~9203~~ and ~~9206~~ of title ~~5~~ shall apply to
4 employing offices and to applicants for employment
5 as covered employees, consistent with regulations
6 issued by the Director to implement this subsection.

7 ~~“(4) ADVERSE ACTION.—~~

8 ~~“(A) ADVERSE ACTION.—~~The Director
9 may take such adverse action with respect to a
10 covered employee who violates paragraph ~~(2)~~ as
11 would be appropriate under section ~~9204~~ of
12 title ~~5~~ if the violation had been committed by
13 an employee of an agency.

14 ~~“(B) APPEALS.—~~The Director shall by
15 rule establish procedures providing for an ap-
16 peal from any adverse action taken under sub-
17 paragraph ~~(A)~~ by not later than ~~30~~ days after
18 the date of the action.

19 ~~“(C) APPLICABILITY OF OTHER LAWS.—~~
20 Except as provided in subparagraph ~~(B)~~, an ad-
21 verse action taken under subparagraph ~~(A)~~ (in-
22 cluding a determination in an appeal from such
23 an action under subparagraph ~~(B)~~) shall not be
24 subject to appeal or judicial review.

25 ~~“(5) REGULATIONS TO BE ISSUED.—~~

1 “(A) IN GENERAL.—Not later than 18
2 months after the date of enactment of the Fair
3 Chance to Compete for Jobs Act of 2015, the
4 Director shall issue regulations to implement
5 this subsection.

6 “(B) PARALLEL WITH AGENCY REGULA-
7 TIONS.—The regulations issued under subpara-
8 graph (A) shall be the same as substantive reg-
9 ulations promulgated by the Director of the Of-
10 fice of Personnel Management under section
11 2(b)(1) of the Fair Chance to Compete for Jobs
12 Act of 2015 except to the extent that the Direc-
13 tor of the Administrative Office of the United
14 States Courts may determine, for good cause
15 shown and stated together with the regulation,
16 that a modification of such regulations would be
17 more effective for the implementation of the
18 rights and protections under this subsection.

19 “(6) EFFECTIVE DATE.—Paragraphs (1)
20 through (4) shall take effect on the date on which
21 section 9202 of title 5 applies with respect to agen-
22 cies.”.

1 **SEC. 3. PROHIBITION ON CRIMINAL HISTORY INQUIRIES BY**
 2 **CONTRACTORS PRIOR TO CONDITIONAL**
 3 **OFFER.**

4 (a) CIVILIAN AGENCY CONTRACTS.—

5 (1) IN GENERAL.—Division C of subtitle I of
 6 title 41, United States Code, is amended by adding
 7 at the end the following new section:

8 **“§ 4713. Prohibition on criminal history inquiries by**
 9 **contractors prior to conditional offer**

10 **“(a) LIMITATION ON CRIMINAL HISTORY INQUIR-**
 11 **IES.—**

12 **“(1) IN GENERAL.—**Except as provided in para-
 13 **graphs (2) and (3),** an executive agency—

14 **“(A)** may not require that an individual or
 15 sole proprietor who submits a bid for a contract
 16 to disclose criminal history record information
 17 regarding that individual or sole proprietor be-
 18 fore determining the apparent awardee; and

19 **“(B)** shall require as a condition of receiv-
 20 ing a Federal contract and receiving payments
 21 under such contract that the contractor may
 22 not verbally or through written form request
 23 the disclosure of criminal history record infor-
 24 mation regarding an applicant for a position re-
 25 lated to work under such contract before the

1 contractor extends a conditional offer to the ap-
2 plicant.

3 “(2) OTHERWISE REQUIRED BY LAW.—The
4 prohibition under paragraph (1) does not apply with
5 respect to a contract if consideration of criminal his-
6 tory record information prior to a conditional offer
7 with respect to the position is otherwise required by
8 law.

9 “(3) EXCEPTION FOR SENSITIVE POSITIONS.—
10 The prohibition under paragraph (1) does not apply
11 with respect to a contract that requires an individual
12 hired under the contract to access classified informa-
13 tion or to have sensitive law enforcement or national
14 security duties.

15 “(b) WHISTLEBLOWER COMPLAINT PROCEDURES.—
16 The Administrator of General Services shall establish and
17 publish procedures under which an applicant for a position
18 with a Federal contractor may submit to the Adminis-
19 trator a complaint, or any other information, relating to
20 compliance by the contractor with subsection (a)(1)(B).

21 “(c) ADVERSE ACTION FOR VIOLATIONS OF PROHIBI-
22 TION ON CRIMINAL HISTORY INQUIRIES.—

23 “(1) FIRST VIOLATION.—If the head of an execu-
24 tive agency determines that a contractor has vio-
25 lated subsection (a)(1)(B), such head shall—

1 “(A) notify the contractor;

2 “(B) provide 30 days after such notifica-
3 tion for the contractor to appeal the determina-
4 tion; and

5 “(C) issue a written warning to the con-
6 tractor that includes a description of the viola-
7 tion and the additional penalties that may apply
8 for subsequent violations.

9 “(2) SUBSEQUENT VIOLATION.—If the head of
10 an executive agency determines that a contractor
11 that was subject to paragraph (1) has committed a
12 subsequent violation of subsection (a)(1)(B), such
13 head shall notify the contractor, shall provide 30
14 days after such notification for the contractor to ap-
15 peal the determination, and, in consultation with the
16 relevant Federal agencies, may take actions, depend-
17 ing on the severity of the infraction and the contrac-
18 tor’s history of violations, including—

19 “(A) providing written guidance to the
20 contractor that the contractor’s eligibility for
21 contracts requires compliance with this section;

22 “(B) requiring that the contractor respond
23 within 30 days affirming that the contractor is
24 taking steps to comply with this section;

1 “(C) suspending payment under the con-
2 tract for which the applicant was being consid-
3 ered;

4 “(D) terminating the contract under which
5 the applicant was being considered; and

6 “(E) referring the contractor to the sus-
7 pension and debarment office of the agency for
8 consideration of actions pursuant to section 9.4
9 of the Federal Acquisition Regulation.

10 “(d) DEFINITIONS.—In this section:

11 “(1) CONDITIONAL OFFER.—The term ‘condi-
12 tional offer’ means an offer of employment for a po-
13 sition related to work under a contract that is condi-
14 tioned upon the results of a criminal history inquiry.

15 “(2) CRIMINAL HISTORY RECORD INFORMA-
16 TION.—The term ‘criminal history record informa-
17 tion’ has the meaning given that term in section
18 9201 of title 5.”.

19 “(2) CLERICAL AMENDMENT.—The table of sec-
20 tions for division C of subtitle I of title 41, United
21 States Code, is amended by inserting after the item
22 relating to section 4712 the following new item:

“4713. Prohibition on criminal history inquiries by contractors prior to condi-
 tional offer.”.

23 “(3) EFFECTIVE DATE.—Section 4713(a) of title
24 41, United States Code, as added by paragraph (1),

1 shall apply with respect to contracts awarded pursu-
 2 ant to solicitations issued after the effective date de-
 3 scribed in section 2(b)(2).

4 (b) DEFENSE CONTRACTS.—

5 (1) IN GENERAL.—Chapter 137 of title 10,
 6 United States Code, is amended by adding at the
 7 end the following new section:

8 **“§ 2338. Prohibition on criminal history inquiries by**
 9 **contractors prior to conditional offer**

10 **“(a) LIMITATION ON CRIMINAL HISTORY INQUIR-**
 11 **IES.—**

12 **“(1) IN GENERAL.—**Except as provided in para-
 13 graphs (2) and (3), the head of an agency—

14 **“(A)** may not require that an individual or
 15 sole proprietor who submits a bid for a contract
 16 to disclose criminal history record information
 17 regarding that individual or sole proprietor be-
 18 fore determining the apparent awardee; and

19 **“(B)** shall require as a condition of receiv-
 20 ing a Federal contract and receiving payments
 21 under such contract that the contractor may
 22 not verbally or through written form request
 23 the disclosure of criminal history record infor-
 24 mation regarding an applicant for a position re-
 25 lated to work under such contract before such

1 contractor extends a conditional offer to the ap-
2 plicant.

3 “(2) OTHERWISE REQUIRED BY LAW.—The
4 prohibition under paragraph (1) does not apply with
5 respect to a contract if consideration of criminal his-
6 tory record information prior to a conditional offer
7 with respect to the position is otherwise required by
8 law.

9 “(3) EXCEPTION FOR SENSITIVE POSITIONS.—
10 The prohibition under paragraph (1) does not apply
11 with respect to a contract that requires an individual
12 hired under the contract to access classified informa-
13 tion or to have sensitive law enforcement or national
14 security duties.

15 “(b) WHISTLEBLOWER COMPLAINT PROCEDURES.—
16 The Secretary of Defense shall establish and publish pro-
17 cedures under which an applicant for a position with a
18 Department of Defense contractor may submit a com-
19 plaint, or any other information, relating to compliance
20 by the contractor with subsection (a)(1)(B).

21 “(c) ADVERSE ACTION FOR VIOLATIONS OF PROHIBI-
22 TION ON CRIMINAL HISTORY INQUIRIES.—

23 “(1) FIRST VIOLATION.—If the Secretary of
24 Defense determines that a contractor has violated
25 subsection (a)(1)(B), the Secretary shall—

1 “(A) notify the contractor;

2 “(B) provide 30 days after such notifica-
3 tion for the contractor to appeal the determina-
4 tion; and

5 “(C) issue a written warning to the con-
6 tractor that includes a description of the viola-
7 tion and the additional penalties that may apply
8 for subsequent violations.

9 “(2) SUBSEQUENT VIOLATIONS.—If the Sec-
10 retary of Defense determines that a contractor that
11 was subject to paragraph (1) has committed a sub-
12 sequent violation of subsection (a)(1)(B), the Sec-
13 retary shall notify the contractor, shall provide 30
14 days after such notification for the contractor to ap-
15 peal the determination, and, in consultation with the
16 relevant Federal agencies, may take actions, depend-
17 ing on the severity of the infraction and the contrac-
18 tor’s history of violations, including—

19 “(A) providing written guidance to the
20 contractor that the contractor’s eligibility for
21 contracts requires compliance with this section;

22 “(B) requiring that the contractor respond
23 within 30 days affirming that the contractor is
24 taking steps to comply with this section;

1 “(C) suspending payment under the con-
2 tract for which the applicant was being consid-
3 ered;

4 “(D) terminating the contract under which
5 the applicant was being considered; and

6 “(E) referring the contractor to the sus-
7 pension and debarment office of the agency for
8 consideration of actions pursuant to section 9.4
9 of the Federal Acquisition Regulation.

10 “(d) DEFINITIONS.—In this section:

11 “(1) CONDITIONAL OFFER.—The term ‘condi-
12 tional offer’ means an offer of employment for a po-
13 sition related to work under a contract that is condi-
14 tioned upon the results of a criminal history inquiry.

15 “(2) CRIMINAL HISTORY RECORD INFORMA-
16 TION.—The term ‘criminal history record informa-
17 tion’ has the meaning given that term in section
18 9201 of title 5.”.

19 “(2) EFFECTIVE DATE.—Section 2338(a) of title
20 10, United States Code, as added by paragraph (1),
21 shall apply with respect to contracts awarded pursu-
22 ant to solicitations issued after the effective date de-
23 scribed in section 2(b)(2).

24 “(3) CLERICAL AMENDMENT.—The table of sec-
25 tions for chapter 137 of title 10, United States

1 Code, is amended by inserting after the item relating
2 to section 2337 the following new item:

“2338. Prohibition on criminal history inquiries by contractors prior to conditional offer.”.

3 (e) REVISIONS TO FEDERAL ACQUISITION REGULA-
4 TION.—

5 (1) IN GENERAL.—Not later than 18 months
6 after the date of enactment of this Act, the Federal
7 Acquisition Regulatory Council shall revise the Fed-
8 eral Acquisition Regulation to implement section
9 4713 of title 41, United States Code, and section
10 2338 of title 10, United States Code, as added by
11 this section.

12 (2) CONFORMITY WITH OFFICE OF PERSONNEL
13 MANAGEMENT REGULATIONS.—The Federal Acquisi-
14 tion Regulatory Council shall revise the Federal Ac-
15 quisition Regulation under paragraph (1) in con-
16 formity with the regulations issued by the Director
17 of the Office of Personnel Management under sec-
18 tion 2(b)(1) to the maximum extent practicable. The
19 Council shall include together with such revision an
20 explanation of any substantive modification of the
21 Office of Personnel Management regulations, includ-
22 ing an explanation of how such modification will
23 more effectively implement the rights and protec-
24 tions under this section.

1 **SEC. 4. REPORT ON EMPLOYMENT OF INDIVIDUALS FOR-**
 2 **MERLY INCARCERATED IN FEDERAL PRIS-**
 3 **ONS.**

4 (a) **DEFINITION.**—In this section, the term “covered
 5 individual”—

6 (1) means an individual who has completed a
 7 term of imprisonment in a Federal prison for a Fed-
 8 eral criminal offense; and

9 (2) does not include an alien who is or will be
 10 removed from the United States for a violation of
 11 the immigration laws (as such term is defined in sec-
 12 tion 101 of the Immigration and Nationality Act (8
 13 U.S.C. 1101)).

14 (b) **STUDY AND REPORT REQUIRED.**—Not later than
 15 6 months after the date of enactment of this Act, and
 16 every 5 years thereafter, the Secretary of Labor, in coordi-
 17 nation with the Director of the Bureau of the Census and
 18 the Director of the Bureau of Justice Statistics, shall—

19 (1) conduct a study on the employment of cov-
 20 ered individuals after their release from Federal
 21 prison, including by collecting—

22 (A) demographic data on covered individ-
 23 uals, including race, age, and sex; and

24 (B) data on covered individuals who are
 25 denied employment, including the reasons for
 26 the denials; and

1 (2) submit a report that does not include any
2 personally identifiable information on the study con-
3 ducted under paragraph (1) to—

4 (A) the Committee on Homeland Security
5 and Governmental Affairs of the Senate;

6 (B) the Committee on Health, Education,
7 Labor, and Pensions of the Senate;

8 (C) the Committee on Oversight and Gov-
9 ernment Reform of the House of Representa-
10 tives; and

11 (D) the Committee on Education and the
12 Workforce of the House of Representatives.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Fair Chance to Compete*
15 *for Jobs Act of 2015” or the “Fair Chance Act”.*

16 **SEC. 2. PROHIBITION ON CRIMINAL HISTORY INQUIRIES**
17 **PRIOR TO CONDITIONAL OFFER FOR FED-**
18 **ERAL EMPLOYMENT.**

19 (a) *IN GENERAL.*—*Subpart H of part III of title 5,*
20 *United States Code, is amended by adding at the end the*
21 *following:*

22 **“CHAPTER 92—PROHIBITION ON CRIMI-**
23 **NAL HISTORY INQUIRIES PRIOR TO**
24 **CONDITIONAL OFFER**

“Sec.

“9201. Definitions.

“9202. Limitations on requests for criminal history record information.

“9203. *Agency policies; whistleblower complaint procedures.*

“9204. *Adverse action.*

“9205. *Procedures.*

“9206. *Rules of construction.*

1 **“§ 9201. Definitions**

2 “*In this chapter—*

3 “(1) *the term ‘agency’ means ‘Executive agency’*
4 *as such term is defined in section 105 and includes—*

5 “(A) *the United States Postal Service and*
6 *the Postal Regulatory Commission; and*

7 “(B) *the Executive Office of the President;*

8 “(2) *the term ‘appointing authority’ means an*
9 *employee in the executive branch of the Government*
10 *of the United States that has authority to make ap-*
11 *pointments to positions in the civil service;*

12 “(3) *the term ‘conditional offer’ means an offer*
13 *of employment in a position in the civil service that*
14 *is conditioned upon the results of a criminal history*
15 *inquiry;*

16 “(4) *the term ‘criminal history record informa-*
17 *tion’—*

18 “(A) *except as provided in subparagraph*
19 *(B), has the meaning given the term in section*
20 *9101(a);*

21 “(B) *includes any information described in*
22 *the first sentence of section 9101(a)(2) that has*
23 *been sealed or expunged pursuant to law; and*

1 “(C) includes information collected by a
 2 criminal justice agency, relating to an act or al-
 3 leged act of juvenile delinquency, that is analo-
 4 gous to criminal history record information (in-
 5 cluding such information that has been sealed or
 6 expunged pursuant to law); and

7 “(5) the term ‘suspension’ has the meaning given
 8 the term in section 7501.

9 **“§9202. Limitations on requests for criminal history**
 10 **record information**

11 “(a) *INQUIRIES PRIOR TO CONDITIONAL OFFER.*—*Ex-*
 12 *cept as provided in subsections (b) and (c), an employee*
 13 *of an agency may not request, in oral or written form (in-*
 14 *cluding through the Declaration for Federal Employment*
 15 *(Office of Personnel Management Optional Form 306), or*
 16 *any similar successor form), including through the*
 17 *USAJOBS Internet Web site or any other electronic means,*
 18 *that an applicant for an appointment to a position in the*
 19 *civil service disclose criminal history record information re-*
 20 *garding the applicant before the appointing authority ex-*
 21 *tends a conditional offer to the applicant.*

22 “(b) *OTHERWISE REQUIRED BY LAW.*—*The prohibi-*
 23 *tion under subsection (a) shall not apply with respect to*
 24 *an applicant for a position in the civil service if consider-*
 25 *ation of criminal history record information prior to a con-*

1 *ditional offer with respect to the position is otherwise re-*
2 *quired by law.*

3 “(c) *EXCEPTION FOR CERTAIN POSITIONS.*—

4 “(1) *IN GENERAL.*—*The prohibition under sub-*
5 *section (a) shall not apply with respect to an appli-*
6 *cant for an appointment to a position—*

7 “(A) *that requires a determination of eligi-*
8 *bility described in subparagraph (A), (B), or (C)*
9 *of section 9101(b)(1);*

10 “(B) *as a Federal law enforcement officer*
11 *(as defined in section 115(c) of title 18); or*

12 “(C) *identified by the Director of the Office*
13 *of Personnel Management in the regulations*
14 *issued under paragraph (2).*

15 “(2) *REGULATIONS.*—

16 “(A) *ISSUANCE.*—*The Director of the Office*
17 *of Personnel Management shall issue regulations*
18 *identifying additional positions with respect to*
19 *which the prohibition under subsection (a) shall*
20 *not apply, giving due consideration to positions*
21 *that involve interaction with minors, access to*
22 *sensitive information, or managing financial*
23 *transactions.*

1 “(B) *COMPLIANCE WITH CIVIL RIGHTS*
2 *LAWS.—The regulations issued under subpara-*
3 *graph (A) shall—*

4 “(i) *be consistent with, and in no way*
5 *supersede, restrict, or limit the application*
6 *of title VII of the Civil Rights Act of 1964*
7 *(42 U.S.C. 2000e et seq.) or other relevant*
8 *Federal civil rights laws; and*

9 “(ii) *ensure that all hiring activities*
10 *conducted pursuant to the regulations are*
11 *conducted in a manner consistent with rel-*
12 *evant Federal civil rights laws.*

13 **“§ 9203. Agency policies; complaint procedures**

14 *“The Director of the Office of Personnel Management*
15 *shall—*

16 “(1) *develop, implement, and publish a policy to*
17 *assist employees of agencies in complying with section*
18 *9202 and the regulations issued pursuant to such sec-*
19 *tion; and*

20 “(2) *establish and publish procedures under*
21 *which an applicant for an appointment to a position*
22 *in the civil service may submit a complaint, or any*
23 *other information, relating to compliance by an em-*
24 *ployee of an agency with section 9202.*

1 **“§ 9204. Adverse action**

2 “(a) *FIRST VIOLATION.*—*If the Director of the Office*
3 *of Personnel Management determines, after notice and an*
4 *opportunity for a hearing on the record, that an employee*
5 *of an agency has violated section 9202, the Director shall—*

6 “(1) *issue to the employee a written warning*
7 *that includes a description of the violation and the*
8 *additional penalties that may apply for subsequent*
9 *violations; and*

10 “(2) *file such warning in the employee’s official*
11 *personnel record file.*

12 “(b) *SUBSEQUENT VIOLATIONS.*—*If the Director of the*
13 *Office of Personnel Management determines, after notice*
14 *and an opportunity for a hearing on the record, that an*
15 *employee that was subject to subsection (a) has committed*
16 *a subsequent violation of section 9202, the Director may*
17 *take the following action:*

18 “(1) *For a second violation, suspension of the*
19 *employee for a period of not more than 7 days.*

20 “(2) *For a third violation, suspension of the em-*
21 *ployee for a period of more than 7 days.*

22 “(3) *For a fourth violation—*

23 “(A) *suspension of the employee for a period*
24 *of more than 7 days; and*

25 “(B) *a civil penalty against the employee in*
26 *an amount that is not more than \$250.*

1 “(4) For a fifth violation—

2 “(A) suspension of the employee for a period
3 of more than 7 days; and

4 “(B) a civil penalty against the employee in
5 an amount that is not more than \$500.

6 “(5) For any subsequent violation—

7 “(A) suspension of the employee for a period
8 of more than 7 days; and

9 “(B) a civil penalty against the employee in
10 an amount that is not more than \$1,000.

11 **“§ 9205. Procedures**

12 “(a) APPEALS.—The Director of the Office of Personnel
13 Management shall by rule establish procedures providing
14 for an appeal from any adverse action taken under section
15 9204 by not later than 30 days after the date of the action.

16 “(b) APPLICABILITY OF OTHER LAWS.—An adverse
17 action taken under section 9204 (including a determination
18 in an appeal from such an action under subsection (a) of
19 this section) shall not be subject to—

20 “(1) the procedures under chapter 75; or

21 “(2) except as provided in subsection (a) of this
22 section, appeal or judicial review.

23 **“§ 9206. Rules of construction**

24 “Nothing in this chapter may be construed to—

1 “(1) authorize any officer or employee of an
2 agency to request the disclosure of information de-
3 scribed under subparagraphs (B) and (C) of section
4 9201(4); or

5 “(2) create a private right of action for any per-
6 son.”.

7 **(b) REGULATIONS; EFFECTIVE DATE.—**

8 (1) **REGULATIONS.**—Not later than 1 year after
9 the date of enactment of this Act, the Director of the
10 Office of Personnel Management shall issue such regu-
11 lations as are necessary to carry out chapter 92 of
12 title 5, United States Code (as added by this Act).

13 (2) **EFFECTIVE DATE.**—Section 9202 of title 5,
14 United States Code (as added by this Act), shall take
15 effect on the date that is 2 years after the date of en-
16 actment of this Act.

17 **(c) TECHNICAL AND CONFORMING AMENDMENT.**—The
18 table of chapters for part III of title 5, United States Code,
19 is amended by inserting after the item relating to chapter
20 91 the following:

**“92. Prohibition on criminal history inquiries prior to
conditional offer 9201”.**

21 **(d) APPLICATION TO LEGISLATIVE BRANCH.—**

22 (1) **IN GENERAL.**—The Congressional Account-
23 ability Act of 1995 (2 U.S.C. 1301 et seq.) is amend-
24 ed—

1 (A) in section 102(a) (2 U.S.C. 1302(a)), by
2 adding at the end the following:

3 “(12) Section 9202 of title 5, United States
4 Code.”;

5 (B) by redesignating section 207 (2 U.S.C.
6 1317) as section 208; and

7 (C) by inserting after section 206 (2 U.S.C.
8 1316) the following new section:

9 **“SEC. 207. RIGHTS AND PROTECTIONS RELATING TO CRIMI-**
10 **NAL HISTORY INQUIRIES.**

11 “(a) *DEFINITIONS.*—In this section, the terms ‘agency’,
12 ‘criminal history record information’, and ‘suspension’
13 have the meanings given the terms in section 9201 of title
14 5, United States Code, except as otherwise modified by this
15 section.

16 “(b) *RESTRICTIONS ON CRIMINAL HISTORY INQUIR-*
17 *IES.*—

18 “(1) *IN GENERAL.*—

19 “(A) *IN GENERAL.*—Except as provided in
20 subparagraph (B), an employee of an employing
21 office may not request that an applicant for em-
22 ployment as a covered employee disclose criminal
23 history record information if the request would
24 be prohibited under section 9202 of title 5,

1 *United States Code, if made by an employee of*
2 *an agency.*

3 “(B) *CONDITIONAL OFFER.*—*For purposes*
4 *of applying that section 9202 under subpara-*
5 *graph (A), a reference in that section 9202 to a*
6 *conditional offer shall be considered to be an*
7 *offer of employment as a covered employee that*
8 *is conditioned upon the results of a criminal his-*
9 *tory inquiry.*

10 “(2) *RULES OF CONSTRUCTION.*—*The provisions*
11 *of section 9206 of title 5, United States Code, shall*
12 *apply to employing offices, consistent with regulations*
13 *issued under subsection (d).*

14 “(c) *REMEDY.*—

15 “(1) *IN GENERAL.*—*The remedy for a violation*
16 *of subsection (b)(1) shall be such remedy as would be*
17 *appropriate if awarded under section 9204 of title 5,*
18 *United States Code, if the violation had been com-*
19 *mitted by an employee of an agency, consistent with*
20 *regulations issued under subsection (d), except that*
21 *the reference in that section to a suspension shall be*
22 *considered to be a suspension with the level of com-*
23 *pen-sation provided for a covered employee who is tak-*
24 *ing unpaid leave under section 202.*

1 “(2) *PROCESS FOR OBTAINING RELIEF.*—An ap-
2 plicant for employment as a covered employee who al-
3 leges a violation of subsection (b)(1) may rely on the
4 provisions of title IV (other than sections 404(2), 407,
5 and 408), consistent with regulations issued under
6 subsection (d).

7 “(d) *REGULATIONS TO IMPLEMENT SECTION.*—

8 “(1) *IN GENERAL.*—Not later than 18 months
9 after the date of enactment of the Fair Chance to
10 Compete for Jobs Act of 2015, the Board shall, pursu-
11 ant to section 304, issue regulations to implement this
12 section.

13 “(2) *PARALLEL WITH AGENCY REGULATIONS.*—
14 The regulations issued under paragraph (1) shall be
15 the same as substantive regulations issued by the Di-
16 rector of the Office of Personnel Management under
17 section 2(b)(1) of the Fair Chance to Compete for Jobs
18 Act of 2015 to implement the statutory provisions re-
19 ferred to in subsections (a) through (c) except to the
20 extent that the Board may determine, for good cause
21 shown and stated together with the regulation, that a
22 modification of such regulations would be more effec-
23 tive for the implementation of the rights and protec-
24 tions under this section.

1 “(e) *EFFECTIVE DATE.*—Section 102(a)(12) and sub-
 2 sections (a) through (c) shall take effect on the date on which
 3 section 9202 of title 5, United States Code, applies with
 4 respect to agencies.”.

5 (2) *CLERICAL AMENDMENT.*—The table of con-
 6 tents of such Act is amended—

7 (A) by redesignating the item relating to
 8 section 207 as the item relating to section 208;
 9 and

10 (B) by inserting after the item relating to
 11 section 206 the following new item:

“Sec. 207. *Rights and protections relating to criminal history inquiries.*”.

12 (e) *APPLICATION TO JUDICIAL BRANCH.*—

13 (1) *IN GENERAL.*—Section 604 of title 28,
 14 United States Code, is amended by adding at the end
 15 the following:

16 “(i) *RESTRICTIONS ON CRIMINAL HISTORY INQUIR-*
 17 *IES.*—

18 “(1) *DEFINITIONS.*—In this subsection—

19 “(A) the terms ‘agency’ and ‘criminal his-
 20 tory record information’ have the meanings
 21 given those terms in section 9201 of title 5;

22 “(B) the term ‘covered employee’ means an
 23 employee of the judicial branch of the United
 24 States Government, other than—

1 “(i) any judge or justice who is enti-
2 tled to hold office during good behavior;

3 “(ii) a United States magistrate judge;
4 or

5 “(iii) a bankruptcy judge; and

6 “(C) the term ‘employing office’ means any
7 office or entity of the judicial branch of the
8 United States Government that employs covered
9 employees.

10 “(2) *RESTRICTION*.—A covered employee may
11 not request that an applicant for employment as a
12 covered employee disclose criminal history record in-
13 formation if the request would be prohibited under
14 section 9202 of title 5 if made by an employee of an
15 agency.

16 “(3) *EMPLOYING OFFICE POLICIES; COMPLAINT*
17 *PROCEDURE*.—The provisions of sections 9203 and
18 9206 of title 5 shall apply to employing offices and
19 to applicants for employment as covered employees,
20 consistent with regulations issued by the Director to
21 implement this subsection.

22 “(4) *ADVERSE ACTION*.—

23 “(A) *ADVERSE ACTION*.—The Director may
24 take such adverse action with respect to a cov-
25 ered employee who violates paragraph (2) as

1 *would be appropriate under section 9204 of title*
2 *5 if the violation had been committed by an em-*
3 *ployee of an agency.*

4 “(B) *APPEALS.*—*The Director shall by rule*
5 *establish procedures providing for an appeal*
6 *from any adverse action taken under subpara-*
7 *graph (A) by not later than 30 days after the*
8 *date of the action.*

9 “(C) *APPLICABILITY OF OTHER LAWS.*—*Ex-*
10 *cept as provided in subparagraph (B), an ad-*
11 *verse action taken under subparagraph (A) (in-*
12 *cluding a determination in an appeal from such*
13 *an action under subparagraph (B)) shall not be*
14 *subject to appeal or judicial review.*

15 “(5) *REGULATIONS TO BE ISSUED.*—

16 “(A) *IN GENERAL.*—*Not later than 18*
17 *months after the date of enactment of the Fair*
18 *Chance to Compete for Jobs Act of 2015, the Di-*
19 *rector shall issue regulations to implement this*
20 *subsection.*

21 “(B) *PARALLEL WITH AGENCY REGULA-*
22 *TIONS.*—*The regulations issued under subpara-*
23 *graph (A) shall be the same as substantive regu-*
24 *lations promulgated by the Director of the Office*
25 *of Personnel Management under section 2(b)(1)*

1 *of the Fair Chance to Compete for Jobs Act of*
 2 *2015 except to the extent that the Director of the*
 3 *Administrative Office of the United States*
 4 *Courts may determine, for good cause shown and*
 5 *stated together with the regulation, that a modi-*
 6 *fication of such regulations would be more effec-*
 7 *tive for the implementation of the rights and*
 8 *protections under this subsection.*

9 “(6) *EFFECTIVE DATE.*—*Paragraphs (1) through*
 10 *(4) shall take effect on the date on which section 9202*
 11 *of title 5 applies with respect to agencies.*”.

12 **SEC. 3. PROHIBITION ON CRIMINAL HISTORY INQUIRIES BY**
 13 **CONTRACTORS PRIOR TO CONDITIONAL**
 14 **OFFER.**

15 *(a) CIVILIAN AGENCY CONTRACTS.*—

16 *(1) IN GENERAL.*—*Division C of subtitle I of*
 17 *title 41, United States Code, is amended by adding*
 18 *at the end the following new section:*

19 **“§4713. Prohibition on criminal history inquiries by**
 20 **contractors prior to conditional offer**

21 “(a) *LIMITATION ON CRIMINAL HISTORY INQUIRIES.*—

22 “(1) *IN GENERAL.*—*Except as provided in para-*
 23 *graphs (2) and (3), an executive agency—*

24 “(A) *may not require that an individual or*
 25 *sole proprietor who submits a bid for a contract*

1 to disclose criminal history record information
2 regarding that individual or sole proprietor be-
3 fore determining the apparent awardee; and

4 “(B) shall require, as a condition of receiv-
5 ing a Federal contract and receiving payments
6 under such contract that the contractor may not
7 verbally, or through written form, request the
8 disclosure of criminal history record information
9 regarding an applicant for a position related to
10 work under such contract before the contractor
11 extends a conditional offer to the applicant.

12 “(2) OTHERWISE REQUIRED BY LAW.—The pro-
13 hibition under paragraph (1) does not apply with re-
14 spect to a contract if consideration of criminal his-
15 tory record information prior to a conditional offer
16 with respect to the position is otherwise required by
17 law.

18 “(3) EXCEPTION FOR CERTAIN POSITIONS.—

19 “(A) IN GENERAL.—The prohibition under
20 paragraph (1) does not apply with respect to—

21 “(i) a contract that requires an indi-
22 vidual hired under the contract to access
23 classified information or to have sensitive
24 law enforcement or national security duties;
25 or

1 “(i) a position that the Administrator
2 of General Services identifies under the reg-
3 ulations issued under subparagraph (B).

4 “(B) REGULATIONS.—

5 “(i) ISSUANCE.—Not later than 16
6 months after the date of enactment of the
7 Fair Chance to Compete for Jobs Act of
8 2015, the Administrator of General Serv-
9 ices, in consultation with the Secretary of
10 Defense, shall issue regulations identifying
11 additional positions with respect to which
12 the prohibition under paragraph (1) shall
13 not apply, giving due consideration to posi-
14 tions that involve interaction with minors,
15 access to sensitive information, or man-
16 aging financial transactions.

17 “(ii) COMPLIANCE WITH CIVIL RIGHTS
18 LAWS.—The regulations issued under clause
19 (i) shall—

20 “(I) be consistent with, and in no
21 way supersede, restrict, or limit the
22 application of title VII of the Civil
23 Rights Act of 1964 (42 U.S.C. 2000e et
24 seq.) or other relevant Federal civil
25 rights laws; and

1 “(II) ensure that all hiring activi-
2 ties conducted pursuant to the regula-
3 tions are conducted in a manner con-
4 sistent with relevant Federal civil
5 rights laws.

6 “(b) COMPLAINT PROCEDURES.—The Administrator of
7 General Services shall establish and publish procedures
8 under which an applicant for a position with a Federal
9 contractor may submit to the Administrator a complaint,
10 or any other information, relating to compliance by the
11 contractor with subsection (a)(1)(B).

12 “(c) ACTION FOR VIOLATIONS OF PROHIBITION ON
13 CRIMINAL HISTORY INQUIRIES.—

14 “(1) FIRST VIOLATION.—If the head of an execu-
15 tive agency determines that a contractor has violated
16 subsection (a)(1)(B), such head shall—

17 “(A) notify the contractor;

18 “(B) provide 30 days after such notification
19 for the contractor to appeal the determination;
20 and

21 “(C) issue a written warning to the con-
22 tractor that includes a description of the viola-
23 tion and the additional remedies that may apply
24 for subsequent violations.

1 “(2) *SUBSEQUENT VIOLATION.*—*If the head of an*
 2 *executive agency determines that a contractor that*
 3 *was subject to paragraph (1) has committed a subse-*
 4 *quent violation of subsection (a)(1)(B), such head*
 5 *shall notify the contractor, shall provide 30 days after*
 6 *such notification for the contractor to appeal the de-*
 7 *termination, and, in consultation with the relevant*
 8 *Federal agencies, may take actions, depending on the*
 9 *severity of the infraction and the contractor’s history*
 10 *of violations, including—*

11 “(A) *providing written guidance to the con-*
 12 *tractor that the contractor’s eligibility for con-*
 13 *tracts requires compliance with this section;*

14 “(B) *requiring that the contractor respond*
 15 *within 30 days affirming that the contractor is*
 16 *taking steps to comply with this section; and*

17 “(C) *suspending payment under the con-*
 18 *tract for which the applicant was being consid-*
 19 *ered until the contractor demonstrates compli-*
 20 *ance with this section.*

21 “(d) *DEFINITIONS.*—*In this section:*

22 “(1) *CONDITIONAL OFFER.*—*The term ‘condi-*
 23 *tional offer’ means an offer of employment for a posi-*
 24 *tion related to work under a contract that is condi-*
 25 *tioned upon the results of a criminal history inquiry.*

1 “(2) *CRIMINAL HISTORY RECORD INFORMA-*
 2 *TION.—The term ‘criminal history record informa-*
 3 *tion’ has the meaning given that term in section 9201*
 4 *of title 5.”.*

5 (2) *CLERICAL AMENDMENT.—The table of sec-*
 6 *tions for division C of subtitle I of title 41, United*
 7 *States Code, is amended by inserting after the item*
 8 *relating to section 4712 the following new item:*

“4713. Prohibition on criminal history inquiries by contractors prior to condi-
tional offer.”.

9 (3) *EFFECTIVE DATE.—Section 4713(a) of title*
 10 *41, United States Code, as added by paragraph (1),*
 11 *shall apply with respect to contracts awarded pursu-*
 12 *ant to solicitations issued after the effective date de-*
 13 *scribed in section 2(b)(2) of this Act.*

14 (b) *DEFENSE CONTRACTS.—*

15 (1) *IN GENERAL.—Chapter 137 of title 10,*
 16 *United States Code, is amended by adding at the end*
 17 *the following new section:*

18 **“§2338. Prohibition on criminal history inquiries by**
 19 **contractors prior to conditional offer**

20 “(a) *LIMITATION ON CRIMINAL HISTORY INQUIRIES.—*

21 “(1) *IN GENERAL.—Except as provided in para-*
 22 *graphs (2) and (3), the head of an agency—*

23 “(A) *may not require that an individual or*
 24 *sole proprietor who submits a bid for a contract*

1 to disclose criminal history record information
2 regarding that individual or sole proprietor be-
3 fore determining the apparent awardee; and

4 “(B) shall require as a condition of receiv-
5 ing a Federal contract and receiving payments
6 under such contract that the contractor may not
7 verbally or through written form request the dis-
8 closure of criminal history record information
9 regarding an applicant for a position related to
10 work under such contract before such contractor
11 extends a conditional offer to the applicant.

12 “(2) OTHERWISE REQUIRED BY LAW.—The pro-
13 hibition under paragraph (1) does not apply with re-
14 spect to a contract if consideration of criminal his-
15 tory record information prior to a conditional offer
16 with respect to the position is otherwise required by
17 law.

18 “(3) EXCEPTION FOR CERTAIN POSITIONS.—

19 “(A) IN GENERAL.—The prohibition under
20 paragraph (1) does not apply with respect to—

21 “(i) a contract that requires an indi-
22 vidual hired under the contract to access
23 classified information or to have sensitive
24 law enforcement or national security duties;
25 or

1 “(i) a position that the Secretary of
2 Defense identifies under the regulations
3 issued under subparagraph (B).

4 “(B) REGULATIONS.—

5 “(i) ISSUANCE.—Not later than 16
6 months after the date of enactment of the
7 Fair Chance to Compete for Jobs Act of
8 2015, the Secretary of Defense, in consulta-
9 tion with the Administrator of General
10 Services, shall issue regulations identifying
11 additional positions with respect to which
12 the prohibition under paragraph (1) shall
13 not apply, giving due consideration to posi-
14 tions that involve interaction with minors,
15 access to sensitive information, or man-
16 aging financial transactions.

17 “(i) COMPLIANCE WITH CIVIL RIGHTS
18 LAWS.—The regulations issued under clause
19 (i) shall—

20 “(I) be consistent with, and in no
21 way supersede, restrict, or limit the
22 application of title VII of the Civil
23 Rights Act of 1964 (42 U.S.C. 2000e et
24 seq.) or other relevant Federal civil
25 rights laws; and

1 “(II) ensure that all hiring activi-
2 ties conducted pursuant to the regula-
3 tions are conducted in a manner con-
4 sistent with relevant Federal civil
5 rights laws.

6 “(b) *COMPLAINT PROCEDURES.*—*The Secretary of De-*
7 *fense shall establish and publish procedures under which an*
8 *applicant for a position with a Department of Defense con-*
9 *tractor may submit a complaint, or any other information,*
10 *relating to compliance by the contractor with subsection*
11 *(a)(1)(B).*

12 “(c) *ACTION FOR VIOLATIONS OF PROHIBITION ON*
13 *CRIMINAL HISTORY INQUIRIES.*—

14 “(1) *FIRST VIOLATION.*—*If the Secretary of De-*
15 *fense determines that a contractor has violated sub-*
16 *section (a)(1)(B), the Secretary shall—*

17 “(A) *notify the contractor;*

18 “(B) *provide 30 days after such notification*
19 *for the contractor to appeal the determination;*
20 *and*

21 “(C) *issue a written warning to the con-*
22 *tractor that includes a description of the viola-*
23 *tion and the additional remedies that may apply*
24 *for subsequent violations.*

1 “(2) *SUBSEQUENT VIOLATIONS.*—*If the Secretary*
2 *of Defense determines that a contractor that was sub-*
3 *ject to paragraph (1) has committed a subsequent vio-*
4 *lation of subsection (a)(1)(B), the Secretary shall no-*
5 *tify the contractor, shall provide 30 days after such*
6 *notification for the contractor to appeal the deter-*
7 *mination, and, in consultation with the relevant Fed-*
8 *eral agencies, may take actions, depending on the se-*
9 *verity of the infraction and the contractor’s history of*
10 *violations, including—*

11 “(A) *providing written guidance to the con-*
12 *tractor that the contractor’s eligibility for con-*
13 *tracts requires compliance with this section;*

14 “(B) *requiring that the contractor respond*
15 *within 30 days affirming that the contractor is*
16 *taking steps to comply with this section; and*

17 “(C) *suspending payment under the con-*
18 *tract for which the applicant was being consid-*
19 *ered until the contractor demonstrates compli-*
20 *ance with this section.*

21 “(d) *DEFINITIONS.*—*In this section:*

22 “(1) *CONDITIONAL OFFER.*—*The term ‘condi-*
23 *tional offer’ means an offer of employment for a posi-*
24 *tion related to work under a contract that is condi-*
25 *tioned upon the results of a criminal history inquiry.*

1 “(2) *CRIMINAL HISTORY RECORD INFORMA-*
 2 *TION.—The term ‘criminal history record informa-*
 3 *tion’ has the meaning given that term in section 9201*
 4 *of title 5.”.*

5 (2) *EFFECTIVE DATE.—Section 2338(a) of title*
 6 *10, United States Code, as added by paragraph (1),*
 7 *shall apply with respect to contracts awarded pursu-*
 8 *ant to solicitations issued after the effective date de-*
 9 *scribed in section 2(b)(2) of this Act.*

10 (3) *CLERICAL AMENDMENT.—The table of sec-*
 11 *tions for chapter 137 of title 10, United States Code,*
 12 *is amended by inserting after the item relating to sec-*
 13 *tion 2337 the following new item:*

 “2338. *Prohibition on criminal history inquiries by contractors prior to condi-*
 tional offer.”.

14 (c) *REVISIONS TO FEDERAL ACQUISITION REGULA-*
 15 *TION.—*

16 (1) *IN GENERAL.—Not later than 18 months*
 17 *after the date of enactment of this Act, the Federal*
 18 *Acquisition Regulatory Council shall revise the Fed-*
 19 *eral Acquisition Regulation to implement section*
 20 *4713 of title 41, United States Code, and section 2338*
 21 *of title 10, United States Code, as added by this sec-*
 22 *tion.*

23 (2) *CONSISTENCY WITH OFFICE OF PERSONNEL*
 24 *MANAGEMENT REGULATIONS.—The Federal Acquisi-*

1 *tion Regulatory Council shall revise the Federal Ac-*
2 *quisition Regulation under paragraph (1) to be con-*
3 *sistent with the regulations issued by the Director of*
4 *the Office of Personnel Management under section*
5 *2(b)(1) to the maximum extent practicable. The Coun-*
6 *cil shall include together with such revision an expla-*
7 *nation of any substantive modification of the Office*
8 *of Personnel Management regulations, including an*
9 *explanation of how such modification will more effec-*
10 *tively implement the rights and protections under this*
11 *section.*

12 **SEC. 4. REPORT ON EMPLOYMENT OF INDIVIDUALS FOR-**
13 **MERLY INCARCERATED IN FEDERAL PRIS-**
14 **ONS.**

15 (a) *DEFINITION.*—*In this section, the term “covered*
16 *individual”—*

17 (1) *means an individual who has completed a*
18 *term of imprisonment in a Federal prison for a Fed-*
19 *eral criminal offense; and*

20 (2) *does not include an alien who is or will be*
21 *removed from the United States for a violation of the*
22 *immigration laws (as such term is defined in section*
23 *101 of the Immigration and Nationality Act (8*
24 *U.S.C. 1101)).*

1 **(b) STUDY AND REPORT REQUIRED.**—*The Director of*
2 *the Bureau of Justice Statistics, in coordination with the*
3 *Director of the Bureau of the Census, shall—*

4 (1) *not later than 6 months after the date of en-*
5 *actment of this Act, design and initiate a study on*
6 *the employment of covered individuals after their re-*
7 *lease from Federal prison, including by collecting—*

8 (A) *demographic data on covered individ-*
9 *uals, including race, age, and sex; and*

10 (B) *data on employment and earnings of*
11 *covered individuals who are denied employment,*
12 *including the reasons for the denials; and*

13 (2) *not later than 2 years after the date of enact-*
14 *ment of this Act, and every 5 years thereafter, submit*
15 *a report that does not include any personally identifi-*
16 *able information on the study conducted under para-*
17 *graph (1) to—*

18 (A) *the Committee on Homeland Security*
19 *and Governmental Affairs of the Senate;*

20 (B) *the Committee on Health, Education,*
21 *Labor, and Pensions of the Senate;*

22 (C) *the Committee on Oversight and Gov-*
23 *ernment Reform of the House of Representatives;*
24 *and*

- 1 *(D) the Committee on Education and the*
- 2 *Workforce of the House of Representatives.*

Calendar No. 344

114TH CONGRESS
2^D SESSION

S. 2021

[Report No. 114-200]

A BILL

To prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes.

JANUARY 12, 2016

Reported with an amendment