

Calendar No. 228115TH CONGRESS
1ST SESSION**S. 842****[Report No. 115–162]**

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

APRIL 5 (legislative day, APRIL 4), 2017

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

SEPTEMBER 25, 2017

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through 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 2017” 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)~~ *subparagraphs (B) and (C)*, has the mean-
 11 ing given the term in section 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 (Office of Personnel Management Optional Form 306); or
 8 any similar successor form), ~~including through~~ the
 9 USAJOBS Internet Web site, or any other electronic
 10 means;) that an applicant for an appointment to a posi-
 11 tion in the civil service disclose criminal history record in-
 12 formation regarding the applicant before the appointing
 13 authority extends a conditional 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 CERTAIN POSITIONS.—

21 “(1) IN GENERAL.—The prohibition under sub-
 22 section (a) shall not apply with respect to an appli-
 23 cant for an appointment to a position—

24 “(A) that requires a determination of eligi-
 25 bility described in clause (i), (ii), or (iii) of sec-
 26 tion 9101(b)(1)(A);

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

3 “(C) identified by the Director of the Of-
4 fice of Personnel Management in the regula-
5 tions issued under paragraph (2).

6 “(2) REGULATIONS.—

7 “(A) ISSUANCE.—The Director of the Of-
8 fice of Personnel Management shall issue regu-
9 lations identifying additional positions with re-
10 spect to which the prohibition under subsection
11 (a) shall not apply, giving due consideration to
12 positions that involve interaction with minors,
13 access to sensitive information, or managing fi-
14 nancial transactions.

15 “(B) COMPLIANCE WITH CIVIL RIGHTS
16 LAWS.—The regulations issued under subpara-
17 graph (A) shall—

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

23 “(ii) ensure that all hiring activities
24 conducted pursuant to the regulations are

1 conducted in a manner consistent with rel-
2 evant Federal civil rights laws.

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

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

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

10 “(2) establish and publish procedures under
11 which an applicant for an appointment to a position
12 in the civil service may submit a complaint, or any
13 other information, relating to compliance by an em-
14 ployee of an agency with section 9202.

15 **“§ 9204. Adverse action**

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

21 “(1) issue to the employee a written warning
22 that includes a description of the violation and the
23 additional penalties that may apply for subsequent
24 violations; and

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

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

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

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

13 “(3) For a fourth violation—

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

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

18 “(4) For a fifth violation—

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

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

23 “(5) For any subsequent violation—

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

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

3 **“§ 9205. Procedures**

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

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

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

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

16 **“§ 9206. Rules of construction**

17 “Nothing in this chapter may be construed to—

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

22 “(2) create a private right of action for any
23 person.”.

24 (b) REGULATIONS; EFFECTIVE DATE.—

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

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

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

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

15 (d) APPLICATION TO LEGISLATIVE BRANCH.—

16 (1) IN GENERAL.—The Congressional Account-
 17 ability Act of 1995 (2 U.S.C. 1301 et seq.) is
 18 amended—

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

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

23 (B) by redesignating section 207 (2 U.S.C.
 24 1317) as section 208; and

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

3 **“SEC. 207. RIGHTS AND PROTECTIONS RELATING TO CRIMI-**
4 **NAL HISTORY INQUIRIES.**

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

10 “(b) RESTRICTIONS ON CRIMINAL HISTORY INQUIR-
11 IES.—

12 “(1) IN GENERAL.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), an employee of an employing
15 office may not request that an applicant for em-
16 ployment as a covered employee disclose crimi-
17 nal history record information if the request
18 would be prohibited under section 9202 of title
19 5, United States Code, if made by an employee
20 of an agency.

21 “(B) CONDITIONAL OFFER.—For purposes
22 of applying that section 9202 under subpara-
23 graph (A), a reference in that section 9202 to
24 a conditional offer shall be considered to be an
25 offer of employment as a covered employee that

1 is conditioned upon the results of a criminal
2 history inquiry.

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

7 “(c) REMEDY.—

8 “(1) IN GENERAL.—The remedy for a violation
9 of subsection (b)(1) shall be such remedy as would
10 be appropriate if awarded under section 9204 of title
11 5, United States Code, if the violation had been
12 committed by an employee of an agency, consistent
13 with regulations issued under subsection (d), except
14 that the reference in that section to a suspension
15 shall be considered to be a suspension with the level
16 of compensation provided for a covered employee
17 who is taking unpaid leave under section 202.

18 “(2) PROCESS FOR OBTAINING RELIEF.—An
19 applicant for employment as a covered employee who
20 alleges a violation of subsection (b)(1) may rely on
21 the provisions of title IV (other than sections
22 404(2), 407, and 408), consistent with regulations
23 issued under subsection (d).

24 “(d) REGULATIONS TO IMPLEMENT SECTION.—

1 “(1) IN GENERAL.—Not later than 18 months
 2 after the date of enactment of the Fair Chance to
 3 Compete for Jobs Act of 2017, the Board shall, pur-
 4 suant to section 304, issue regulations to implement
 5 this section.

6 “(2) PARALLEL WITH AGENCY REGULATIONS.—
 7 The regulations issued under paragraph (1) shall be
 8 the same as substantive regulations issued by the
 9 Director of the Office of Personnel Management
 10 under section 2(b)(1) of the Fair Chance to Com-
 11 pete for Jobs Act of 2017 to implement the statu-
 12 tory provisions referred to in subsections (a) through
 13 (c) except to the extent that the Board may deter-
 14 mine, for good cause shown and stated together with
 15 the regulation, that a modification of such regula-
 16 tions would be more effective for the implementation
 17 of the rights and protections under this section.

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

22 ~~“(2) CLERICAL AMENDMENT.—The table of con-~~
 23 ~~tents of such Act is amended—~~

1 ~~(A) by redesignating the item relating to~~
 2 ~~section 207 as the item relating to section 208;~~
 3 ~~and~~

4 ~~(B) by inserting after the item relating to~~
 5 ~~section 206 the following new item:~~

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

6 (2) *CLERICAL AMENDMENTS.*—

7 (A) *The table of contents in section 1(b) of*
 8 *the Congressional Accountability Act of 1995*
 9 *(Public Law 104–1; 109 Stat. 3) is amended—*

10 *(i) by redesignating the item relating*
 11 *to section 207 as the item relating to section*
 12 *208; and*

13 *(ii) by inserting after the item relating*
 14 *to section 206 the following new item:*

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

15 (B) *Section 62(e)(2) of the Internal Revenue*
 16 *Code of 1986 is amended by striking “207” and*
 17 *inserting “208”.*

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

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

22 “(i) *RESTRICTIONS ON CRIMINAL HISTORY INQUIR-*
 23 *IES.*—

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

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

4 “(B) the term ‘covered employee’ means an
5 employee of the judicial branch of the United
6 States Government, other than—

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

9 “(ii) a United States magistrate
10 judge; or

11 “(iii) a bankruptcy judge; and

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

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

22 “(3) EMPLOYING OFFICE POLICIES; COMPLAINT
23 PROCEDURE.—The provisions of sections 9203 and
24 9206 of title 5 shall apply to employing offices and
25 to applicants for employment as covered employees,

1 consistent with regulations issued by the Director to
2 implement this subsection.

3 “(4) ADVERSE ACTION.—

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

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

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

21 “(5) REGULATIONS TO BE ISSUED.—

22 “(A) IN GENERAL.—Not later than 18
23 months after the date of enactment of the Fair
24 Chance to Compete for Jobs Act of 2017, the

1 Director shall issue regulations to implement
2 this subsection.

3 “(B) PARALLEL WITH AGENCY REGULA-
4 TIONS.—The regulations issued under subpara-
5 graph (A) shall be the same as substantive reg-
6 ulations promulgated by the Director of the Of-
7 fice of Personnel Management under section
8 2(b)(1) of the Fair Chance to Compete for Jobs
9 Act of 2017 except to the extent that the Direc-
10 tor of the Administrative Office of the United
11 States Courts may determine, for good cause
12 shown and stated together with the regulation,
13 that a modification of such regulations would be
14 more effective for the implementation of the
15 rights and protections under this subsection.

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

20 **SEC. 3. PROHIBITION ON CRIMINAL HISTORY INQUIRIES BY**
21 **CONTRACTORS PRIOR TO CONDITIONAL**
22 **OFFER.**

23 (a) CIVILIAN AGENCY CONTRACTS.—

1 (1) IN GENERAL.—Chapter 47 of title 41,
 2 United States Code, is amended by adding at the
 3 end the following new section:

4 **“§ 4713. Prohibition on criminal history inquiries by**
 5 **contractors prior to conditional offer**

6 “(a) LIMITATION ON CRIMINAL HISTORY INQUIR-
 7 IES.—

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

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

15 “(B) shall require, as a condition of receiv-
 16 ing a Federal contract and receiving payments
 17 under such contract that the contractor may
 18 not verbally, or through written form, request
 19 the disclosure of criminal history record infor-
 20 mation regarding an applicant for a position re-
 21 lated to work under such contract before the
 22 contractor extends a conditional offer to the ap-
 23 plicant.

24 “(2) OTHERWISE REQUIRED BY LAW.—The
 25 prohibition under paragraph (1) does not apply with

1 respect to a contract if consideration of criminal his-
2 tory record information prior to a conditional offer
3 with respect to the position is otherwise required by
4 law.

5 “(3) EXCEPTION FOR CERTAIN POSITIONS.—

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

8 “(i) a contract that requires an indi-
9 vidual hired under the contract to access
10 classified information or to have sensitive
11 law enforcement or national security du-
12 ties; or

13 “(ii) a position that the Administrator
14 of General Services identifies under the
15 regulations issued under subparagraph
16 (B).

17 “(B) REGULATIONS.—

18 “(i) ISSUANCE.—Not later than 16
19 months after the date of enactment of the
20 Fair Chance to Compete for Jobs Act of
21 2017, the Administrator of General Serv-
22 ices, in consultation with the Secretary of
23 Defense, shall issue regulations identifying
24 additional positions with respect to which
25 the prohibition under paragraph (1) shall

1 not apply, giving due consideration to posi-
2 tions that involve interaction with minors,
3 access to sensitive information, or man-
4 aging financial transactions.

5 “(ii) COMPLIANCE WITH CIVIL RIGHTS
6 LAWS.—The regulations issued under
7 clause (i) shall—

8 “(I) be consistent with, and in no
9 way supersede, restrict, or limit the
10 application of title VII of the Civil
11 Rights Act of 1964 (42 U.S.C. 2000e
12 et seq.) or other relevant Federal civil
13 rights laws; and

14 “(II) ensure that all hiring activi-
15 ties conducted pursuant to the regula-
16 tions are conducted in a manner con-
17 sistent with relevant Federal civil
18 rights laws.

19 “(b) COMPLAINT PROCEDURES.—The Administrator
20 of General Services shall establish and publish procedures
21 under which an applicant for a position with a Federal
22 contractor may submit to the Administrator a complaint,
23 or any other information, relating to compliance by the
24 contractor with subsection (a)(1)(B).

1 “(c) ACTION FOR VIOLATIONS OF PROHIBITION ON
2 CRIMINAL HISTORY INQUIRIES.—

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

6 “(A) notify the contractor;

7 “(B) provide 30 days after such notifica-
8 tion for the contractor to appeal the determina-
9 tion; and

10 “(C) issue a written warning to the con-
11 tractor that includes a description of the viola-
12 tion and the additional remedies that may apply
13 for subsequent violations.

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

1 “(A) providing written guidance to the
2 contractor that the contractor’s eligibility for
3 contracts requires compliance with this section;

4 “(B) requiring that the contractor respond
5 within 30 days affirming that the contractor is
6 taking steps to comply with this section; and

7 “(C) suspending payment under the con-
8 tract for which the applicant was being consid-
9 ered until the contractor demonstrates compli-
10 ance with this section.

11 “(d) DEFINITIONS.—In this section:

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

16 “(2) CRIMINAL HISTORY RECORD INFORMA-
17 TION.—The term ‘criminal history record informa-
18 tion’ has the meaning given that term in section
19 9201 of title 5.”.

20 “(2) CLERICAL AMENDMENT.—The table of sec-
21 tions for chapter 47 of title 41, United States Code,
22 is amended by inserting after the item relating to
23 section 4712 the following new item:

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

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

6 (b) DEFENSE CONTRACTS.—

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

10 **“§ 2339A. Prohibition on criminal history inquiries by**
 11 **contractors prior to conditional offer**

12 “(a) LIMITATION ON CRIMINAL HISTORY INQUIR-
 13 IES.—

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

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

21 “(B) shall require as a condition of receiv-
 22 ing a Federal contract and receiving payments
 23 under such contract that the contractor may
 24 not verbally or through written form request
 25 the disclosure of criminal history record infor-

1 mation regarding an applicant for a position re-
 2 lated to work under such contract before such
 3 contractor extends a conditional offer to the ap-
 4 plicant.

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

11 “(3) EXCEPTION FOR CERTAIN POSITIONS.—

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

14 “(i) a contract that requires an indi-
 15 vidual hired under the contract to access
 16 classified information or to have sensitive
 17 law enforcement or national security du-
 18 ties; or

19 “(ii) a position that the Secretary of
 20 Defense identifies under the regulations
 21 issued under subparagraph (B).

22 “(B) REGULATIONS.—

23 “(i) ISSUANCE.—Not later than 16
 24 months after the date of enactment of the
 25 Fair Chance to Compete for Jobs Act of

1 2017, the Secretary of Defense, in con-
2 sultation with the Administrator of Gen-
3 eral Services, shall issue regulations identi-
4 fying additional positions with respect to
5 which the prohibition under paragraph (1)
6 shall not apply, giving due consideration to
7 positions that involve interaction with mi-
8 nors, access to sensitive information, or
9 managing financial transactions.

10 “(ii) COMPLIANCE WITH CIVIL RIGHTS
11 LAWS.—The regulations issued under
12 clause (i) shall—

13 “(I) be consistent with, and in no
14 way supersede, restrict, or limit the
15 application of title VII of the Civil
16 Rights Act of 1964 (42 U.S.C. 2000e
17 et seq.) or other relevant Federal civil
18 rights laws; and

19 “(II) ensure that all hiring activi-
20 ties conducted pursuant to the regula-
21 tions are conducted in a manner con-
22 sistent with relevant Federal civil
23 rights laws.

24 “(b) COMPLAINT PROCEDURES.—The Secretary of
25 Defense shall establish and publish procedures under

1 which an applicant for a position with a Department of
2 Defense contractor may submit a complaint, or any other
3 information, relating to compliance by the contractor with
4 subsection (a)(1)(B).

5 “(c) ACTION FOR VIOLATIONS OF PROHIBITION ON
6 CRIMINAL HISTORY INQUIRIES.—

7 “(1) FIRST VIOLATION.—If the Secretary of
8 Defense determines that a contractor has violated
9 subsection (a)(1)(B), the Secretary shall—

10 “(A) notify the contractor;

11 “(B) provide 30 days after such notifica-
12 tion for the contractor to appeal the determina-
13 tion; and

14 “(C) issue a written warning to the con-
15 tractor that includes a description of the viola-
16 tion and the additional remedies that may apply
17 for subsequent violations.

18 “(2) SUBSEQUENT VIOLATIONS.—If the Sec-
19 retary of Defense determines that a contractor that
20 was subject to paragraph (1) has committed a sub-
21 sequent violation of subsection (a)(1)(B), the Sec-
22 retary shall notify the contractor, shall provide 30
23 days after such notification for the contractor to ap-
24 peal the determination, and, in consultation with the
25 relevant Federal agencies, may take actions, depend-

ing 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.”.

(2) EFFECTIVE DATE.—Section 2339A(a) of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts awarded

1 pursuant to solicitations issued after the effective
2 date described in section 2(b)(2) of this Act.

3 (3) CLERICAL AMENDMENT.—The table of sec-
4 tions for chapter 137 of title 10, United States
5 Code, is amended by inserting after the item relating
6 to section 2339 the following new item:

“2339A. Prohibition on criminal history inquiries by contractors prior to condi-
tional offer.”.

7 (c) REVISIONS TO FEDERAL ACQUISITION REGULA-
8 TION.—

9 (1) IN GENERAL.—Not later than 18 months
10 after the date of enactment of this Act, the Federal
11 Acquisition Regulatory Council shall revise the Fed-
12 eral Acquisition Regulation to implement section
13 4713 of title 41, United States Code, and section
14 2339A of title 10, United States Code, as added by
15 this section.

16 (2) CONSISTENCY WITH OFFICE OF PERSONNEL
17 MANAGEMENT REGULATIONS.—The Federal Acquisi-
18 tion Regulatory Council shall revise the Federal Ac-
19 quisition Regulation under paragraph (1) to be con-
20 sistent with the regulations issued by the Director of
21 the Office of Personnel Management under section
22 2(b)(1) to the maximum extent practicable. The
23 Council shall include together with such revision an
24 explanation of any substantive modification of the

1 Office of Personnel Management regulations, includ-
 2 ing an explanation of how such modification will
 3 more effectively implement the rights and protec-
 4 tions under this section.

5 **SEC. 4. REPORT ON EMPLOYMENT OF INDIVIDUALS FOR-**
 6 **MERLY INCARCERATED IN FEDERAL PRIS-**
 7 **ONS.**

8 (a) DEFINITION.—In this section, the term “covered
 9 individual”—

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

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

18 (b) STUDY AND REPORT REQUIRED.—The Director
 19 of the Bureau of Justice Statistics, in coordination with
 20 the Director of the Bureau of the Census, shall—

21 (1) not later than 6 months after the date of
 22 enactment of this Act, design and initiate a study on
 23 the employment of covered individuals after their re-
 24 lease from Federal prison, including by collecting—

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

3 (B) data on employment and earnings of
4 covered individuals who are denied employment,
5 including the reasons for the denials; and

6 (2) not later than 2 years after the date of en-
7 actment of this Act, and every 5 years thereafter,
8 submit a report that does not include any personally
9 identifiable information on the study conducted
10 under paragraph (1) to—

11 (A) the Committee on Homeland Security
12 and Governmental Affairs of the Senate;

13 (B) the Committee on Health, Education,
14 Labor, and Pensions of the Senate;

15 (C) the Committee on Oversight and Gov-
16 ernment Reform of the House of Representa-
17 tives; and

18 (D) the Committee on Education and the
19 Workforce of the House of Representatives.

Calendar No. 228

115TH CONGRESS
1ST Session

S. 842

[Report No. 115–162]

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.

SEPTEMBER 25, 2017

Reported with amendments