

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1076  
OFFERED BY MR. CUMMINGS OF MARYLAND**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Chance to Com-  
3 pete for Jobs Act of 2019” 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; complaint procedures.

“9204. Adverse action.

“9205. Procedures.

“9206. Rules of construction.

**13 “§ 9201. Definitions**

14 “In this chapter—

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

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

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

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

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

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

17                   “(A) except as provided in subparagraphs  
18                   (B) and (C), has the meaning given the term in  
19                   section 9101(a);

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

23                   “(C) includes information collected by a  
24                   criminal justice agency, relating to an act or al-  
25                   leged act of juvenile delinquency, that is analo-

1           gous to criminal history record information (in-  
2           cluding such information that has been sealed  
3           or expunged pursuant to law); and

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

6   **“§ 9202. Limitations on requests for criminal history**  
7                           **record information**

8           “(a) INQUIRIES PRIOR TO CONDITIONAL OFFER.—  
9   Except as provided in subsections (b) and (c), an employee  
10 of an agency may not request, in oral or written form (in-  
11 cluding through the Declaration for Federal Employment  
12 (Office of Personnel Management Optional Form 306) or  
13 any similar successor form, the USAJOBS internet  
14 website, or any other electronic means) that an applicant  
15 for an appointment to a position in the civil service dis-  
16 close criminal history record information regarding the ap-  
17 plicant before the appointing authority extends a condi-  
18 tional offer to the applicant.

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

25           “(c) EXCEPTION FOR CERTAIN POSITIONS.—

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

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

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

9                   “(C) identified by the Director of the Of-  
10                  fice of Personnel Management in the regula-  
11                  tions issued under paragraph (2).

12           “(2) REGULATIONS.—

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

21                   “(B) COMPLIANCE WITH CIVIL RIGHTS  
22                   LAWS.—The regulations issued under subpara-  
23                   graph (A) shall—

24                           “(i) be consistent with, and in no way  
25                           supersede, restrict, or limit the application

1 of title VII of the Civil Rights Act of 1964  
2 (42 U.S.C. 2000e et seq.) or other relevant  
3 Federal civil rights laws; and

4 “(ii) ensure that all hiring activities  
5 conducted pursuant to the regulations are  
6 conducted in a manner consistent with rel-  
7 evant Federal civil rights laws.

8 **“§ 9203. Agency policies; complaint procedures**

9 “The Director of the Office of Personnel Manage-  
10 ment shall—

11 “(1) develop, implement, and publish a policy to  
12 assist employees of agencies in complying with sec-  
13 tion 9202 and the regulations issued pursuant to  
14 such section; and

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

20 **“§ 9204. Adverse action**

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

1           “(1) issue to the employee a written warning  
2           that includes a description of the violation and the  
3           additional penalties that may apply for subsequent  
4           violations; and

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

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

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

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

17           “(3) For a fourth violation—

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

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

22           “(4) For a fifth violation—

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

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

3           “(5) For any subsequent violation—

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

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

8   **“§ 9205. Procedures**

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

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

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

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

21   **“§ 9206. Rules of construction**

22          “Nothing in this chapter may be construed to—

23                 “(1) authorize any officer or employee of an  
24          agency to request the disclosure of information de-

1 scribed under subparagraphs (B) and (C) of section  
2 9201(4); or

3 “(2) create a private right of action for any  
4 person.”.

5 (b) REGULATIONS; EFFECTIVE DATE.—

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

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

16 (c) TECHNICAL AND CONFORMING AMENDMENT.—

17 The table of chapters for part III of title 5, United States  
18 Code, is amended by inserting after the item relating to  
19 chapter 91 the following:

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

20 (d) APPLICATION TO LEGISLATIVE BRANCH.—

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



1 (A) in section 102(a) (2 U.S.C. 1302(a)),  
2 by 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  
8 U.S.C. 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 ‘agen-  
12 cy’, ‘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  
15 this 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 crimi-  
23 nal history record information if the request  
24 would be prohibited under section 9202 of title

1           5, United States Code, if made by an employee  
2           of 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  
6           a 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  
9           history inquiry.

10          “(2) RULES OF CONSTRUCTION.—The provi-  
11          sions of section 9206 of title 5, United States Code,  
12          shall apply to employing offices, consistent with reg-  
13          ulations 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  
17          be appropriate if awarded under section 9204 of title  
18          5, United States Code, if the violation had been  
19          committed by an employee of an agency, consistent  
20          with regulations issued under subsection (d), except  
21          that the reference in that section to a suspension  
22          shall be considered to be a suspension with the level  
23          of compensation provided for a covered employee  
24          who is taking unpaid leave under section 202.

1           “(2) PROCESS FOR OBTAINING RELIEF.—An  
2           applicant for employment as a covered employee who  
3           alleges a violation of subsection (b)(1) may rely on  
4           the provisions of title IV (other than section 407 or  
5           408, or a provision of this title that permits a per-  
6           son to obtain a civil action or judicial review), con-  
7           sistent with regulations issued under subsection (d).

8           “(d) REGULATIONS TO IMPLEMENT SECTION.—

9           “(1) IN GENERAL.—Not later than 18 months  
10          after the date of enactment of the Fair Chance to  
11          Compete for Jobs Act of 2019, the Board shall, pur-  
12          suant to section 304, issue regulations to implement  
13          this section.

14          “(2) PARALLEL WITH AGENCY REGULATIONS.—  
15          The regulations issued under paragraph (1) shall be  
16          the same as substantive regulations issued by the  
17          Director of the Office of Personnel Management  
18          under section 2(b)(1) of the Fair Chance to Com-  
19          pete for Jobs Act of 2019 to implement the statu-  
20          tory provisions referred to in subsections (a) through  
21          (c) except to the extent that the Board may deter-  
22          mine, for good cause shown and stated together with  
23          the regulation, that a modification of such regula-  
24          tions would be more effective for the implementation  
25          of the rights and protections under this section.

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

5           (2) CLERICAL AMENDMENTS.—

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

9           (i) by redesignating the item relating  
10 to section 207 as the item relating to sec-  
11 tion 208; and

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

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

14           (B) Section 62(e)(2) of the Internal Rev-  
15 enue Code of 1986 is amended by striking “or  
16 207” and inserting “207, or 208”.

17       (e) APPLICATION TO JUDICIAL BRANCH.—

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

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

23           “(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 2019, 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 2019 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   **“§ 4714. 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       2019, 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 adding at the end the following new  
23 item:

“4714. Prohibition on criminal history inquiries by contractors prior to condi-  
tional offer.”.

1           (3) EFFECTIVE DATE.—Section 4714 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 inserting after  
9           section 2338 the following new section:

10   **“§ 2339. 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           2019, 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-



1       ing on the severity of the infraction and the contrac-  
2       tor’s history of violations, including—

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

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

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

13       “(d) DEFINITIONS.—In this section:

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

18              “(2) CRIMINAL HISTORY RECORD INFORMA-  
19              TION.—The term ‘criminal history record informa-  
20              tion’ has the meaning given that term in section  
21              9201 of title 5.”.

22              “(2) EFFECTIVE DATE.—Section 2339(a) of title  
23              10, United States Code, as added by paragraph (1),  
24              shall apply with respect to contracts awarded pursu-

1 ant to solicitations issued after the effective date de-  
2 scribed 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 2338 the following new item:

“2339. 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 4714 of title 41, United States Code, and section  
14 2339 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 180 days 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 Re-  
16 form of the House of Representatives; and

17 (D) the Committee on Education and  
18 Labor of the House of Representatives.

19 **SEC. 5. DETERMINATION OF BUDGETARY EFFECTS.**

20 The budgetary effects of this Act, for the purpose of  
21 complying with the Statutory Pay-As-You-Go Act of 2010,  
22 shall be determined by reference to the latest statement  
23 titled “Budgetary Effects of PAYGO Legislation” for this  
24 Act, submitted for printing in the Congressional Record  
25 by the Chairman of the House Budget Committee, pro-

- 1 vided that such statement has been submitted prior to the
- 2 vote on passage.

