



*a New Day for Federal Service*

**Fostering Fair Employment  
Opportunities for Applicants  
Who Are Unemployed or Facing  
Financial Difficulty Through No  
Fault of Their Own**

*What hiring officials need to know*

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## The Unemployed and Persons with Financial Difficulties

### Presidential Memorandum – January 31, 2014

- Agencies shall not make unfavorable decisions related to hiring based on whether:
  - An applicant is or was unemployed; or
  - An applicant or employee has experienced or is experiencing financial difficulties through no fault of his/her own and is making good-faith efforts to resolve them.

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On January 31, 2014, President Obama issued a memorandum titled, [Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own](#).

While the unemployed are not a protected group, the practice of excluding unemployed persons from the job applicant pool could have a disparate impact on protected groups...

<http://www.shrm.org/publications/hrnews/pages/discriminationunemployed.aspx#sthash.lnjZl30c.dpuf>; the EEOC also examined these issues in a 2011 Meeting:

<http://www.eeoc.gov/eeoc/meetings/2-16-11/index.cfm>; see also

[http://www.eeoc.gov/laws/practices/inquiries\\_credit.cfm](http://www.eeoc.gov/laws/practices/inquiries_credit.cfm)

Agencies shall not make an unfavorable determination with respect to the suitability, fitness, or qualifications of an applicant for Federal employment because that applicant:

- (i) is or was unemployed; or

(ii) has experienced or is experiencing financial difficulty through no fault of the applicant, if the applicant has undertaken a good-faith effort to meet his or her financial obligations.

(b) Consistent with existing law, agencies shall not remove, suspend, or demote a current Federal employee if the basis of the action is that the employee has experienced, or is experiencing, financial difficulty through no fault of the employee, and the employee has undertaken a good-faith effort to meet his or her financial obligations.

<http://www.whitehouse.gov/the-press-office/2014/01/31/prevent-undue-denial-federal-employment-opportunities-unemployed-and-tho>



## What does this mean?

- Agencies may consider an applicant's employment history in order to help determine whether the applicant is qualified, and the level of knowledge, skills, and abilities the applicant possesses;
- Agencies may consider misconduct which may have prompted periods of unemployment, but not unemployment in general; and
- Agencies may consider the reasons for a period of unemployment, if the reasons are related to neglect of duties or misconduct; but

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"Decisions related to the potential hiring of a particular applicant should not be based upon periods of unemployment per se. Similarly, they should not be based upon the mere existence of financial difficulties that were not the fault of the applicant. However: (i) An agency may consider an applicant's employment history, in order to help determine whether the applicant is qualified, and, if so, the level of knowledge, skills, and abilities the applicant has attained. (ii) An agency may consider factors that may have led to a period of unemployment, if, for example, the cause of a period of unemployment was neglect of duty or misconduct. A suitability or fitness investigation will normally encompass questions that ask whether an applicant has been fired or has resigned after being told that a firing was imminent. (iii) Some positions may have affirmative credit rating requirements, in which case the applicant's rating may be considered, in determining qualifications, but not the fact of any financial difficulties per se."





## What does this mean? (Cont'd)

- Unemployment per se is not relevant to the determinations an agency needs to make relating to hiring.
- When reviewing candidates' applications and making selection decisions, do not focus upon periods of unemployment per se. Instead, consider each candidate's complete application and what it tells you about his or her competencies.
- Financial difficulties through no fault of the applicant, where good faith efforts are made to meet obligations, typically should not be relevant in selection decisions.

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Here are a few examples of situations involving periods of unemployment or financial indebtedness and how they would be considered in the selection or suitability processes:

- An individual is laid off from his previous job in a rapidly changing field, e.g., scientific or professional, and has been unemployed for 53 weeks. He is seeking a Federal position in the same field, which requires continuing education. The agency may consider his experience and whether he has participated in continuing education during his period of unemployment, but should also consider whether his skills can be made current with continuing education once on the job.
- An individual who was laid off from a previous job falls behind on her student loans and utility bills, while making a good faith effort to obtain new employment and make arrangements to pay bills. She would not be unsuitable for Federal employment just because of her unemployed status and her financial difficulties.
- An individual suffers a serious workplace injury that leaves him unable to work for a period of time, and he loses his job. He qualifies for workers' compensation, but those benefits are not sufficient for him to meet all of his expenses, and he falls behind on his mortgage. His period of unemployment, standing alone, would not be a relevant consideration for selection. In addition, his financial difficulty would not make him unsuitable

for Federal employment.

- An individual incurred significant credit card debt as a college student while attempting to support herself and work her way through college. When she was laid off from her job due to downsizing, she fell behind in her payments. Upon graduation, she gained employment in her field and has established a realistic payment plan for satisfying her debt. She would not be unsuitable for Federal employment just because she has significant credit card debt. Her establishment of a realistic payment plan would be considered a relevant factor.



## How can hiring officials help?

Hiring managers can help by:

- Designing recruitment strategies that cast a broad net and do not inadvertently exclude the unemployed; and
- Designing assessment strategies that assess competencies through a variety of measures.

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As the guidance memo to agency CHCOs explained, some strategies help to ensure fair treatment by not screening out unemployed workers or those with financial difficulties, particularly at early stages of the hiring process. For example, job announcements generally should not include a requirement that applicants be currently or recently employed, which discourages unemployed workers. In addition, rating criteria for job announcements should generally not address recency of employment experience. Also, as a best practice, agencies should delay use of the OF 306, which asks about delinquency on Federal debt, and should delay any credit investigation as part of a suitability determination, until after the candidate's experience and qualifications have been considered and the individual is either a final candidate or has already received a conditional job offer.

Examples of recruitment strategies that cast a broad net include:

- Share USAJOBS Job Opportunity Announcements (JOA) through niche job boards (e.g., [American Job Center Network](#)), social media outlets, and other networks.
- Establish and develop relationships with state employment offices (e.g., [American Job Center Network](#)), local [Workforce Investment Boards](#), and non-governmental organizations that provide employment and workforce development services to the unemployed and/or disadvantaged job seekers. According to a White House survey of businesses that signed onto the [White House Best Practices on Recruiting and Hiring the Unemployed](#), the most effective best practice in generating such new



hires is engaging with such local and regional entities that can connect employers with workers that have relevant skills and experience.

- Where feasible, visit and develop relationships with community organizations serving the long-term unemployed, such as networking groups and job clubs. A recent report by the Department of Labor Chief Evaluation Office found job clubs based at public libraries, religious organizations, and American Job Centers engage a large proportion of long-term unemployed dislocated workers. The Department of Labor maintains a directory of these groups at [www.dol.gov/jobclubs](http://www.dol.gov/jobclubs).





## Conducting Interviews

- You CAN ask candidates about their:
  - Specific roles and responsibilities at past jobs
  - Likes and dislikes pertaining to their work
  - Job knowledge and other job-related experiences
- Additional topics on which an interviewer might wish to focus:
  - What are the aspects of the position in question that interest the candidate?

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## Conducting Interviews (cont'd)

- How has the candidate's background – whatever it is – prepared the candidate to perform the duties of the job?
- What skills can the candidate bring to bear on the problems that will be encountered in the job?
- How have the candidate's educational or life experiences helped shape his or her competencies?

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