



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Wednesday, February 15, 2017

MEMORANDUM FOR: CHIEF HUMAN CAPITAL OFFICERS

FROM: KATHLEEN M. McGETTIGAN, ACTING DIRECTOR

Subject: Guidance on Requests for Exceptions to Timing of Suitability Inquiries Rule

On December 1, 2016, the U.S. Office of Personnel Management (OPM) issued a final regulation at Title 5, Code of Federal Regulations, parts 330 and 731 “Recruitment, Selection, and Placement (General)” and “Suitability,” respectively. This rule generally prohibits a hiring agency from making specific inquiries into an applicant’s criminal and/or adverse credit background of the sort asked on [Optional Form \(OF\) 306, “Declaration for Federal Employment,”](#) or other forms used to conduct background investigations for Federal employment, until the hiring agency has made a conditional offer of employment to the applicant.

In accordance with 5 CFR 330.1300, however, agencies may request an exception from this prohibition when necessary to make inquiries into an applicant’s criminal and/or adverse credit history earlier in the hiring process. Although the final rule was effective January 3, 2017, agencies have until March 31, 2017, to be in compliance with this rule. This allows agencies time to request exceptions where appropriate. OPM is issuing this memorandum to describe the process, whereby an agency may request an exception and provides a template for agency use in making such requests.

OPM may permit exceptions to this rule in cases where there may be legitimate, job/position-related reasons why a hiring agency may need to determine earlier in the hiring process if applicants with criminal or financial issues meet the qualification requirements or are suitable for the particular types of positions they are seeking to fill. OPM will grant exceptions only when the agency provides sufficient information for an OPM conclusion that there is a business need for the exception. For example, OPM might grant an exception for certain positions where the ability to testify as a witness is a requirement of the position, and thus a clean criminal history record would be essential to the ability to perform one of the duties of the position effectively. In these cases, the agency will need to demonstrate the validity of its conclusion that the presence of certain background information would be disqualifying. Another example of a possible exception could include positions, where the expense of completing the examination makes it appropriate to adjudicate suitability at the outset of the process (e.g., a position that requires that an applicant complete a rigorous training regimen and pass an examination based upon the training before he or she may be selected).

An agency's request for an exception under the provisions of 5 CFR part 330, subpart M must be submitted by the Chief Human Capital Officer (or equivalent) at the agency headquarters level. The request for exception should:

1. Identify the position(s) (title, series, and grade level);
2. Provide a thorough explanation as to why the agency needs this exception (i.e., describe the specific job-related reasons why your agency needs to evaluate an applicant's criminal and/or adverse credit history earlier in the process or consider the disqualification of candidates with criminal backgrounds and/or adverse credit history issues);
3. Indicate at what part of the hiring process the agency currently collects the background information from applicants for these positions; and
4. Indicate at what part of the hiring process the agency proposes to collect background information from applicants for these positions.

Additionally for an agency's initial request and to the extent practical, please address the following information in order to ensure the requested exception will be used fairly and is consistent with the intent of the rule to provide applicants from all segments of society a fair opportunity to compete for Federal employment:

- A. Describe any processes the agency uses, or intends to use, to ensure the information obtained through criminal and/or financial inquiries is accurate, relevant, timely, and complete (e.g., dispositions of criminal offenses are obtained; the individual is given an opportunity to respond when issues are identified, etc.).
- B. Indicate the volume of vacancies and approximate number of applicants who will be affected by this change. {Provide data to quantify the number of individuals who will be affected by this exception.}

OPM will carefully consider the basis for each exception request. If needed, OPM may require the agency to provide additional explanation or data in support of its exception request.

If an agency receives an exception from OPM to collect background information from applicants for a particular position or group of positions earlier in the hiring process, the agency will not be required to request an exception subsequently, or each time the position is being filled thereafter. OPM reserves the right to rescind any exception it grants when it deems necessary. After the compliance date of March 31, 2017, agencies may not make inquiries into an applicant's criminal or adverse credit unless OPM has granted an exception.

To better assist you in preparing your requests for exception, OPM has created the attached template for agencies to use. We strongly encourage you to use the template when submitting your requests, as doing so will help expedite our review and consideration of your request.

If you have questions or need additional information, please contact Michael Gilmore at Michael.Gilmore@opm.gov or (202) 606-2429.

Attachment (see 508-compliant PDF below); you may request a Word version of the template from Michael.Gilmore@opm.gov

cc: Human Resources Directors