

April 23, 2019



National Bureau of Background Investigations
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415
Attn: Donna McLeod

Re: Comments to OPM's Declaration for Federal Employment Form (OF306)

Dear Ms. McLeod:

On behalf of The Leadership Conference Education Fund, an organization that builds public will for federal policies that promote and protect the civil and human rights of all persons in the United States, we write in response to the Office of Personnel Management's (OPM) request for comments (84 Fed. Reg. 5733, dated February 22, 2019) to the form completed by applicants for federal and federal contract employment. We urge the OPM to clarify certain proposed changes to OF306 to ensure that they do not impose unnecessary barriers to employment of people with arrest and conviction records; to eliminate the proposed mandate to report records related to diversion programs (Question 9); and to abandon the proposed requirement to report aliases (Question 5) because of its potential to negatively impact the transgender community and domestic violence survivors.

We strongly oppose the proposed changes to the "Declaration for Federal Employment" (OF306) because they undermine the ability of people with an arrest or conviction record to compete fairly for employment, while also discriminating against people of color, transgender people, people with a history of substance use and/or mental health disorders, and other communities who should be affirmatively valued and respected in the hiring process. Currently, an estimated 70 million adults – almost one in three adults – have arrests or convictions that will show up on routine background checks.¹ Securing and holding employment is imperative to successful re-entry, but qualified job-seeking people with arrest or conviction histories struggle against immense odds to secure employment. The federal government should not be creating additional barriers to employment by implementing the proposed changes to OF306.

Our major concern with the proposed changes to OF306 relates to Question 9, which OPM is proposing to vastly expand by "add[ing] a requirement to admit charges for which one has been placed into a pretrial intervention or diversionary program or the like." 84 Fed. Reg. at 5733. Pre-trial diversion participation is not a conviction, and therefore is not relevant information needed by a potential employer. Pre-trial diversion programs serve as an alternative to prosecution and divert individuals away from incarceration and into community-based programs. Individuals who successfully complete these programs, including

¹ National Employment Law Project. Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions. Nov. 2018, at page 31. <https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-v3-2018.pdf>

many people who have been arrested for the first time, are then able to move forward with their lives and seek gainful employment without the stigma of an arrest or conviction record.

The example of C.L. is instructive. Ten years ago, C.L. was charged with nearly a dozen crimes relating to theft and forgery. She had never been charged with any crimes before, and navigating the legal system was overwhelming for her. While the majority of the charges were withdrawn and dismissed, she decided to participate in a diversion program with the understanding that the remaining charges against her would then be eligible for expungement. She was able to complete 16 hours of community service and other program requirements, and now works in traffic planning. C.L. has not been charged with so much as a speeding ticket since then.

The proposed changes undermine bipartisan criminal justice reform initiatives, like the federal First Step Act, which seek to promote and reward rehabilitation and limit the debilitating impact of an arrest or conviction record on the individual, their families and communities. OPM's proposed policy would also have a particularly harmful and disproportionate impact on people with histories of substance use and mental health disorders who have participated in such diversion programs. These proposed changes are completely at odds with President Trump's recently released 2019 Office of National Drug Control Strategy, which urges the federal government to increase employment opportunities for people in recovery.

Further, OPM should clarify proposed changes to Question 9 to ensure they do not impose unnecessary barriers to employment. The proposed expanded language of "any crime" does not make clear whether infractions like common traffic offenses are to be included or excluded in reporting requirements. OPM should clarify that the requirement to report "any crime" does not include infractions. It has been proven all across the country that African Americans are much more likely than white people to be arrested for low-level offenses. Many of these individuals may have been quick to plead guilty in order to exit the process as quickly as possible. Because of this disproportionate impact, infractions, violations, and summary offenses should not be considered in employment decisions. Accordingly, we urge OPM to clarify that OF306 does not require the collection of information on infractions.

Finally, we object to the proposed requirement to report aliases on OF306 (Question 5) because it can cause severe unintended consequences to members of the transgender community and domestic violence survivors. Many transgender people change their name to better align with their gender, and some domestic violence survivors do so in order to protect their identities from their abusers. However, in many states, the process associated with a legal name change can be time consuming, cumbersome and costly, often exceeding \$400 in court fees and other expenses. These legal and financial barriers often prevent these individuals from formalizing their name change through the necessary court process. Thus, we urge OPM to completely abandon Question 5.

The federal government should do everything in its power to be a model employer by creating more opportunities for individuals to experience upward mobility through employment and diversifying the workforce. Instead, by creating these and other new reporting requirements, OPM is not only undermining the employment prospects of people with records and others who are directly impacted by

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the reforms, but it is also discouraging well-qualified workers from both seeking and accepting employment with the federal government and federal contractors in today's tight labor market.

If you have any questions or need additional information, please feel free to contact Sakira Cook, Director, Justice Reform Program at (202) 263-2894 or cook@civilrights.org. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta". The signature is fluid and cursive, with a long, sweeping tail that loops back under the name.

Vanita Gupta
President & CEO
The Leadership Conference Education Fund