

# United States Senate

WASHINGTON, DC 20510

April 23, 2019

Margaret Weichert  
Acting Director  
U.S. Office of Personnel Management  
1900 E. Street, NW  
Washington, D.C. 20415

Re: Submission for Revision of a Previously Information Collection: Declaration for Federal Employment, Optional Form (OF) 306 (OMB Number: 3206-0182)

Dear Acting Director Weichert:

We write to oppose the Office of Personnel Management's (OPM) proposal to require applicants for federal jobs and contracting work to divulge their participation in criminal diversion programs.<sup>1</sup>

An estimated 70 million people in the United States—nearly one in three adults—have a prior arrest or conviction record.<sup>2</sup> Research has shown that a conviction record reduces the likelihood of a job callback or offer by nearly 50 percent<sup>3</sup> with such consequences felt more acutely by people of color.<sup>4</sup> There is bipartisan acknowledgment that such consequences are disproportionate, unduly punitive, and counterproductive.

The proposed rule would require individuals to disclose their participation in diversion programs. These could include drug courts, veterans courts, or deferred prosecution agreements. Diversion programs directly address the unjust and illogical consequences of a criminal conviction. These programs help individuals, families, and communities, often by requiring participants to complete sorely needed evidence-based drug and mental health treatment programs. There is strong, bipartisan, support for these types of interventions, as shown by the First Step Act of

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<sup>1</sup> See 84 Fed. Reg. 5744 (Feb. 22, 2019) (proposing to amend Question 9 of Optional Form 306 to ask: "During the last 7 years, have you . . . been subject to judge or court specified conditions requiring satisfactory completion before a criminal charge has been or will be dismissed.")

<sup>2</sup> National Employment Law Project. *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licenses Professions*, 31 (Nov. 2018).

<sup>3</sup> See Cherrie Bucknor & Adam Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, Center for Economic and Policy Research, at 3 (June 2016) (available at <http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5>).

<sup>4</sup> Devah Pager, *The Mark of a Criminal Record*, 108 *American Journal of Sociology* 5, 937-975 (2003). ([http://scholar.harvard.edu/files/pager/files/pager\\_ajs.pdf](http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf)).

2018’s emphasis on helping individuals with criminal convictions successfully reenter their communities. The administration shares this goal, and recently noted the importance of “breaking th[e] cycle of recidivism by . . . mitigating the collateral consequences of incarceration.”<sup>5</sup> OPM’s proposed change—which will no doubt exclude deserving applicants from valued federal employment opportunities—is flatly at odds with these objectives. Nor will this change forward any legitimate agency objective, as this information is unduly prejudicial to job candidates. If prosecutors have determined that participation in a diversion program is sufficient, the federal government should not craft rules that undermine that judgment.

Our nation’s legal and moral underpinnings provide that anyone who makes a mistake and learns from it deserves a second chance. However, a brush with the law can trigger a cascade of collateral consequences that often severely hamper an individual’s ability to become a productive member of the community. People with criminal records face significant barriers to employment, housing and education. Diversion programs are a key tool to avoid these barriers and to deliver needed interventions to participants eager for help. Thousands of jurisdictions across the United States use these programs to help low-level and non-violent offenders, reduce recidivism, and increase employment.<sup>6</sup> But by treating diversions like convictions, OPM’s proposed change will undermine the benefits of diversion, and subvert the bipartisan consensus that it is time to prioritize rehabilitation and reintegration.

Those who have accepted the consequences of their actions, and who in many cases have worked hard to complete court-mandated programming, should have the opportunity to reenter the workplace. We should be working to eliminate—not erect—such barriers.

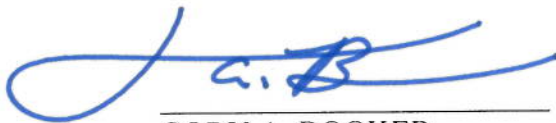
Sincerely,



RICHARD J. DURBIN  
United States Senator



CHARLES E. GRASSLEY  
United States Senator



CORY A. BOOKER  
United States Senator



MICHAEL S. LEE  
United States Senator

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<sup>5</sup> See The White House, *A Budget for a Better America: Promises Kept, Taxpayers First* at 62 (Fiscal Year 2020) (available at <https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>).

<sup>6</sup> Center for Health and Justice, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (2013). (available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=268871>)