



Billing Code 6326-53

U.S. OFFICE OF PERSONNEL MANAGEMENT

Notice of Submission for Approval: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The National Background Investigation Bureau (NBIB), U.S. Office of Personnel Management (OPM) is notifying the general public and other Federal agencies that OPM is seeking Office of Management and Budget (OMB) approval of a revised information collection, Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S).

DATES: Comments are encouraged and will be accepted until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting NBIB, U.S. Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Donna McLeod or by electronic mail at FISFormsComments@opm.gov.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1), OPM is providing an additional 30 days for public comments. OPM previously solicited comments for this collection, with a 60-day public comment period, at 81 FR 16224 (March 25, 2016).

This notice announces that OPM has submitted to OMB a request for review and clearance of a revised information collection (OMB No. 3206-0258) Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S). The public has an additional 30-day opportunity to comment.

The SF 85P and SF 85P-S are completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract. For applicants to Federal positions, the SF 85P and SF 85P-S are to be used only after a conditional offer of employment has been made. The SF 85P-S is supplemental to the SF 85P and is used only as approved by OPM, for certain positions such as those requiring carrying of a firearm. Electronic Questionnaires for Investigations Processing (e-QIP) is a web-based system application that houses the SF 85P and SF 85P-S. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection

relates to the respondent's personal history.

The 60-day Federal Register Notice was published on March 25, 2016 (81 FR 16224). Comments were received from the U.S. Postal Inspection Service (USPIS), Alcohol, Tobacco and Firearms (ATF HQ-DoJ), an individual from VHA Servicing HR Office (VSHO), the National Treasury Employees Union (NTEU), and the Electronic Privacy Information Center (EPIC).

A commenter from VSHO provided that initiating background investigations after conditional offer of employment led to significant delays with onboarding new employees and executing the agency's mission. According to the commenter, mandating limits on an agency's ability to collect investigative documents within its own timeframes can negatively impact the speed of hiring. OPM did not accept the recommendation. An agency's internal hiring procedures are established by policies for the agency and do not fall under the intended purpose of this information collection. Also, the agency should note that in accordance with recent changes found in 5 CFR 731.103, a hiring agency may not make specific inquiries concerning an applicant's criminal or credit background of the sort asked on the OF-306 or other forms used to conduct suitability investigations for employment unless the hiring agency has made a conditional offer of employment to the applicant. Requests for an exception to this requirement must be submitted to the Office of Personnel Management, in accordance with the provision of 5 CFR part 330 subpart M.

A commenter from USPIS recommended that another authorization paragraph be added to the release form to accommodate the IRS tax-payer consent requirement needed to search tax-payer records. OPM did not accept this comment. IRS has indicated that a

separate distinct release apart from an authorization form is needed to conduct such record searches when necessary and appropriate.

A commenter from ATF HQ-DoJ submitted a recommendation that the Alien Registration Number should be mandatory if applicant indicates being a naturalized United States Citizen, a legal permanent resident, or a person applying for legal status. OPM did not accept this comment. While use of the alien registration number may yield better results for confirming citizenship status, it is possible for a person born outside of the United States not to have an alien registration number. For this reason providing the alien registration number cannot be mandatory. Another recommendation from a commenter with ATF HQ-DoJ indicated that section 13a (Employment Activities- Employment & Unemployment Record) should have more detailed instructions when listing employment with the same employer but at different locations. OPM acknowledged the need for this change as part of the proposed changes identified in the 60 day Federal Register notice publication for this collection.

Comments were received from NTEU and EPIC regarding recent activities surrounding the data breach experienced at the U.S. Office of Personnel Management. Concerns were expressed regarding OPM's ability to secure the information collected from the standard forms. No action is taken in reference to the comments because they are outside the purpose of this information collection request. OPM notes that information has been communicated through many forums regarding work underway at OPM and across the government to safeguard personnel records and enhance the security and effectiveness of federal background investigations. OPM also notes that information regarding the cybersecurity incidents is available at www.opm.gov/cybersecurity.

EPIC commented that OPM's proposal to collect information from social media activity as part of the employment background investigation raises significant privacy and civil liberty concerns and that this information should not be collected as part of the employment background investigation. OPM did not accept this comment as it is outside the purpose of the information collection request. OPM has already determined that background investigations may appropriately collect publicly available electronic information, including public posts on social media. The change to the information collection request is to more explicitly convey to the individual whose consent is required in order for OPM to conduct the investigation that the investigation may include collection of publicly available electronic information.

EPIC commented on OPM's proposal to revise instructions in section 21 (Illegal Use of Drugs and Drug Activity) to include the advisement that "the following questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity not in accordance with Federal laws, even though permissible under state laws." EPIC claims that 20 states have legalized medical marijuana and that requiring individuals to disclose their use of medical marijuana implicates significant privacy interests in medical information and treatment confidentiality. OPM did not accept this comment because knowing or intentional possession of marijuana, even for personal use, is illegal under Federal law. Unlawful possession of marijuana, or marijuana abuse without evidence of substantial rehabilitation, can raise questions about an applicant's or employee's reliability, judgment, and trustworthiness or ability or willingness to comply with laws, rules, and regulations, thus indicating his or her employment might not promote the efficiency or protect the integrity of the service. Further, from a

credentialing perspective, an agency must evaluate whether an applicant's or employee's abuse of drugs may put people, property, or information systems at risk.

However, in response to EPIC's concerns, OPM notes that it recently issued government-wide guidance that an individual's marijuana-related conduct must be evaluated on a case-by-case basis, and explaining that a suitability determination based on unlawful marijuana possession must include consideration of the nature and seriousness of the conduct, the circumstances surrounding the conduct, and contributing societal conditions. In the same guidance OPM reminded Federal agencies of responsibilities for appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with drug problems. See <https://www.chcoc.gov/content/federal-laws-and-policies-prohibiting-marijuana-use>.

EPIC also commented that OPM's proposal to revise "defendant in" to "party to" any public record civil court action(s) in section 26 (Involvement in Non-Criminal Court Actions) could encompass child custody disputes and divorce proceedings, and require domestic abuse survivors to provide details about restraining orders they have obtained and could reveal highly personal and sensitive information that is unrelated to employment eligibility. OPM did not accept this comment as the collection of information regarding civil and criminal records is required for OPM to meet federal investigative standards designed to provide relevant information to support adjudication of the background investigation.

The Privacy Act Routine Uses provided on the form were updated to conform to the most recent publication of routine uses by OPM.

Changes were made to the authorization release pages to maintain consistency, as

applicable, with authorization forms used for conducting background investigations.

OPM added clarifying language to the “Authorization for Release of Information” to specify that information collected during the background investigation may include publicly available social media information. OPM also added an explanation that publicly available social media information includes any electronic social media information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line to the public, is available to the public by subscription or purchase, or is otherwise lawfully accessible to the public. The respondent is further advised that consent provided through the authorization does not require the respondent to provide passwords; log into a private account; or take any action that would disclose non-publicly available social media information.

OPM amended the “Authorization for Release of Information” to include the addition of other entities (Department of Homeland Security and the Office of the Director of National Intelligence) that are authorized to request criminal record information from criminal justice agencies for the purpose of determining the respondent’s eligibility for assignment to, or retention in, a public trust position. This change is in accordance with the recent amendment to 5 U.S.C. 9101.

OPM added language to the “Authorization for Release of Medical Information Pursuant to the Health Insurance Portability and Accountability Act” to provide explanatory information as to the need for information about respondents’ mental health conditions, in certain circumstances, to assist in assessing suitability for positions of public trust with the Federal government. The release was also amended to inform the respondent that 1) should the respondent seek to revoke the authorization, the respondent

should write to the respondent's health care provider or entity, and 2) revocation of the authorization would not be effective until received by the respondent's health care provider or entity.

OPM amended the "Fair Credit Reporting Disclosure and Authorization" to provide additional information regarding the impact of a security freeze on the respondent's consumer or credit report file on the investigation process. Information regarding the need for the respondent's Social Security number was removed as the information was duplicative of information already provided in the SF 85P instructions.

OPM proposes changes to the SF 85P-S, Question 5, "Your Medical Record" to include re-titling to "Psychological and Emotional Health." The new section will clarify support for mental health treatment and encourage pro-active management of mental health conditions to support wellness and recovery.

The proposed revision to the SF 85P-S, Question 5 will inquire as to whether a court or administrative agency has ever issued an order declaring the respondent mentally incompetent; whether a court or administrative agency has ever ordered the respondent to consult with a mental health professional; and whether the respondent has ever been diagnosed by a physician or other health professional with psychotic disorder, schizophrenia, schizoaffective disorder, delusional disorder, bipolar mood disorder, borderline personality disorder, or antisocial personality disorder. A respondent who answers affirmatively to the latter question is asked whether, in the last five years, there have been any occasions when the respondent did not consult with a medical professional before altering or discontinuing, or failing to start a prescribed course of treatment for any of the listed diagnoses. A respondent who answers "no" to each of the previous

questions is asked whether the respondent has a mental health or other health condition that substantially adversely affects his or her judgment, reliability, or trustworthiness even if he or she is not experiencing such symptoms today. These questions are necessary to satisfy adjudicative decision-making regarding suitability or fitness determinations for the population of individuals required to complete the SF 85PS. As noted, the SF 85PS form, and this question, is only used for certain public trust positions that pose special risks, such as law enforcement positions in which the incumbents are required to carry firearms.

ANALYSIS:

Agency: NBIB, U.S. Office of Personnel Management

Title: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S).

OMB Number: 3206-0258

Affected Public: Completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract.

Number of Respondents: 112,894 (SF 85P); 11,717 (SF 85P-S)

Estimated Time Per Respondent: 155 minutes (SF 85P); 10 minutes (SF 85P-S)

Total Burden Hours: 291,643 (SF 85P); 1,953 (SF 85P-S)

U.S. Office of Personnel Management

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