

## Office of the Secretary of Defense

## § 96.6

### § 96.1 Purpose.

Under title 10 U.S. Code, sections 503, 504, 505 and 520a, this part establishes policy guidance concerning the acquisition of criminal history record information for use in determining an enlistment applicant's suitability for entry and for participation in special programs that require a determination of trustworthiness (part 156 of this title), assigns responsibilities, and prescribes procedures.

### § 96.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, and the Defense Investigative Service (DIS). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

### § 96.3 Definitions.

(a) *Criminal history record information* (with respect to any juvenile or adult arrest, citation, or conviction). The offense involved; age of the person involved; dates of arrest, citation, or conviction, if any; place of the alleged offense; place of arrest and assigned court; and disposition of the case.

(b) *Criminal justice system*. State, county, and local government law enforcement agencies; courts and clerks of courts; and other government agencies authorized to collect, maintain, and disseminate criminal history record information.

(c) *Special programs*. Military Services' programs that, because of their sensitivity or access to classified information, require the DIS to perform the investigations specified in chapter III of DoD 5200.2-R.

### § 96.4 Policy.

Section 503 of title 10 U.S. Code requires the Secretaries of the Military Departments to conduct intensive recruiting campaigns to obtain enlistments. It is the policy of the Department of Defense that the Military Services review the background of applicants for enlistment and for participation in special programs to identify:

(a) Those whose backgrounds pose serious questions as to fitness for service (10 U.S.C. 504 and 505) or suitability for

participation in special programs (part 156 of this title).

(b) Those who may not be enlisted in the Military Services unless a waiver is granted (section 504 of title 10, United States Code).

(c) Those who may try to enlist fraudulently.

### § 96.5 Responsibilities.

(a) *The Assistant Secretary of Defense (Manpower, Installations, and Logistics)* shall submit the implementing Military Service regulations to the Senate and House Committees on Armed Services, in accordance with section 520a of title 10 U.S. Code.

(b) *The Secretaries of the Military Departments* shall develop and prepare uniform implementing regulations concerning acquisition, review, and safeguarding of criminal history record information by recruiting elements to conform with section 520a of title 10 U.S. Code, policies stated herein and shall include in the regulations procedures on obtaining and reviewing criminal history record information for recruitment purposes and for assignment of personnel to special programs.

(c) *The Director, Defense Investigative Service*, shall ensure that the acquisition of all available criminal history record information, or criminal history record information provided to the DIS by other government agencies, is safeguarded in accordance with existing laws or DoD regulatory documents to ensure protection of the privacy of the enlistment applicant on whom the record exists.

### § 96.6 Procedures.

(a) Under section 520a of title 10 U.S. Code, recruiters are authorized to request and receive criminal history record information from the criminal justice system.

(b) The Military Services shall obtain criminal history record information on enlistment applicants from the criminal justice system and from the DIS and shall review this information to determine whether applicants are acceptable for enlistment and for assignment to special programs. Recruiters shall request such information in each instance by addressing their requests to the criminal justice system not

later than 90 days after each application for enlistment is made.

(c) The Military Services shall ensure the confidentiality of criminal history record information obtained for recruiting purposes. Personnel who have access to this information may not disclose it except for the purposes for which obtained (10 U.S.C. 520a).

(d) The DIS shall provide additional background information to the Military Services as needed to determine the suitability of applicants for enlistment and for participation in special programs. This additional background information shall be provided by Entrance National Agency Checks (ENTNACs) and other investigations as directed by DoD 5200.2-R.

#### **PART 97—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DoD PERSONNEL AS WITNESSES**

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 133.

SOURCE: 50 FR 32056, Aug. 8, 1985, unless otherwise noted.

##### **§ 97.1 Purpose.**

This directive establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

##### **§ 97.2 Applicability and scope.**

(a) This directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as “DoD Components”), and to all personnel of such DoD Components.

(b) This directive does not apply to the release of official information or testimony by DoD personnel in the following situations:

(1) Before courts-martial convened by the authority of the Military Departments or in administrative proceedings conducted by or on behalf of a DoD Component;

(2) Pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), or pursuant to a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

(3) In response to requests by Federal Government counsel in litigation conducted on behalf of the United States;

(4) As part of the assistance required pursuant to DoD Directive 5220.6, “Industrial Personnel Security Clearance Program,” December 20 1976; or,

(5) Pursuant to disclosure of information to Federal, State, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

(c) This Directive does not supersede or modify existing laws or DoD program governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a, nor does this Directive preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

(d) This Directive is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases.

(e) This Directive does not preclude official comment on matters in litigation in appropriate cases.

(f) This Directive is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural,