



## U.S. Department of Justice

Washington, D.C. 20530

Dear State and Local Law Enforcement Agencies and Courts:

Throughout the last decade, the Federal Government has experienced a number of insider threat events, including instances where classified national security information was released to the public. More alarmingly, individuals employed by the Federal Government have been wounded or killed while at federal facilities due to criminal acts by individuals previously vetted for employment with the Federal Government.

I am writing to you today to emphasize the importance of compliance with Title 5, United States Code Section 9101 – the federal law that requires the sharing of Criminal History Record Information (CHRI) with Federal Government Agencies for background investigation purposes.

After fatal incidents at places like Fort Hood, TX and the Washington Navy Yard, reviews commissioned by the President and Congress were conducted to identify vulnerabilities in policies and processes involving federal background investigations for civilians, military, and contractor personnel. A significant finding of these reviews showed there needs to be higher degree of compliance nationwide with 5 U.S.C. § 9101.

We're asking for your help. It is critical that federal, state, and local criminal justice agencies collaborate on CHRI sharing. We must reduce gaps in our current processes to ensure that we have the most complete and accurate background vetting program possible. This will guarantee that only the most trustworthy candidates are employed to protect our vital national security information, our people and this nation.

Some reasons cited for non-compliance were lack of funding and resources, the absence of up-to-date automated data systems, and policy barriers. If technical or budgetary barriers impede your ability to achieve full compliance with 5 U.S.C. § 9101, the National Criminal History Improvement Program and the Federal Emergency Management Agency Grant Program may be available to assist. Additional information providing background for this request and the statutory requirements discussed can be found in the Enclosure.

We appreciate all your efforts and your full cooperation in tackling this critical issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Theophani Stamos".

Theophani Stamos

Law Enforcement Liaison, State and Local Law Enforcement Coordination Section

Enclosure

## **BACKGROUND**

In September 2013, following the Washington Navy Yard shootings, the President directed the Office of Management and Budget to conduct a comprehensive review of the Federal Government's employee suitability, contractor fitness, credentialing, and security clearance procedures.

At about the same time, Congress directed (in Section 907(f) of the National Defense Authorization Act for FY 2014) the Security, Suitability, and Credentialing (SSC) Performance Accountability Council (PAC)—the senior interagency group responsible to the President for SSC reform—to convene a Task Force on Records Access to examine the policies and procedures that determine the level of access to public records provided by State and local authorities in response to investigative requests by the Federal Government. Section 907(f)(4) directed the task force to provide recommendations to improve the degree of cooperation and records-sharing between State and local authorities and the Federal Government.

On February 28, 2014, the Suitability and Security Processes Review *Report to the President* was issued, and its recommendations were approved by the President on March 3, 2014.<sup>1</sup> One of the findings was that there needs to be a higher degree of compliance nationwide with the criminal history record information (CHRI) sharing requirements of 5 U.S.C. § 9101. Specifically, the Report noted that a relatively large percentage of State and local law enforcement entities had failed to fully comply with this law and recommended the PAC review relevant statutes to determine if changes were necessary. The Report also recommended Federal funding mechanisms be identified to encourage cooperation and compliance with existing statutes.

On May 9, 2014, the Records Access Task Force *Report to Congress* was issued, outlining its findings and recommendations, including the recommendation to amend 5 U.S.C. § 9101 and to establish a Federal Background Investigations Liaison Office.

## **ACTIONS TAKEN TO IMPROVE CHRI SHARING**

Revisions to 5 U.S.C. § 9101, as recommended by the task force, were signed into law by the President on November 25, 2015. The revised law requires sharing CHRI with key Federal Government agencies for background investigations conducted for national security, public trust, employment and suitability/fitness purposes on behalf of the Executive branch. (*The revised requirements are provided on Page 2.*)

On October 1<sup>st</sup>, 2019, the Office of Personnel Management's National Background Investigations Bureau (NBIB) merged with the Department of Defense's Defense Security Services forming the Defense Counterintelligence and Security Agency (DCSA). The DCSA established the Federal Law Enforcement Liaison Office (LELO) to oversee education initiatives, resolve issues that may develop between Federal investigative service providers and State and local criminal justice agencies, and promote CHRI sharing.

## **IMPORTANCE OF SHARING CHRI**

When State or local criminal justice agencies are unable to fully comply with 5 U.S.C. § 9101, it poses substantial challenges for Federal Government decision makers. Missing or incomplete CHRI in Federal background investigations could result in someone being approved for a public trust or sensitive position with the Federal Government, or gain access to classified national security information, in error, which poses an unacceptable risk to the national security and to the protection of people, property, and information.

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<sup>1</sup> The Security and Suitability Processes Review *Report to the President*, dated February 2014, can be found at <https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/suitability-and-security-process-review-report.pdf>

## 5 U.S.C. § 9101, CHRI SHARING REQUIREMENTS

5 U.S.C. § 9101, as amended, mandates that:

Upon request by a covered agency, criminal justice agencies shall make available all criminal history record information regarding individuals under investigation by that covered agency, in accordance with Federal Investigative Standards jointly promulgated by the Suitability Executive Agent and Security Executive Agent, for the purpose of-

- (A) determining eligibility for-
  - (i) access to classified information;
  - (ii) assignment to or retention in sensitive national security duties or positions;
  - (iii) acceptance or retention in the armed forces; or
  - (iv) appointment, retention, or assignment to a position of public trust while either employed by the Government or performing a Government contract; or
- (B) conducting a basic suitability or fitness assessment for Federal or contractor employees, using Federal Investigative Standards jointly promulgated by the Security Executive Agent and the Suitability Executive Agent in accordance with-
  - (i) Executive Order 13467 (73 Federal Register 38103), or any successor thereto; and
  - (ii) the Office of Management and Budget memorandum "Assignment of Functions Relating to Coverage of Contractor Employee Fitness in the Federal Investigative Standards", dated December 6, 2012;
- (C) credentialing under the Homeland Security Presidential Directive 12 (dated August 27, 2004); and
- (D) Federal Aviation Administration checks required under-
  - (i) the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (subtitle E of title VII of Public Law 100-690; 102 Stat. 4424) and the amendments made by that Act; or
  - (ii) section 44710 of title 49.

## FEDERAL PROGRAMS THAT CAN HELP

The National Criminal History Improvement Program (NCHIP) provides financial assistance to improve the quality, timeliness, and immediate accessibility of criminal history records and related information to enhance information sharing. This program is managed by the Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS). The NCHIP accepts applications for financial assistance on an annual basis; information about this program is available at [https://www.bjs.gov/content/pub/pdf/nchip20\\_sol.pdf](https://www.bjs.gov/content/pub/pdf/nchip20_sol.pdf). Agencies with open NCHIP awards can reach out directly to BJS to discuss how current awarded funds may be used to comply with this law.

The Department of Homeland Security has also identified the Federal Emergency Management Agency Grant Program as another source of financial assistance to help your agencies automate their CHRI to share with the Federal Government. Information regarding this grant program may be found at <https://www.fema.gov/non-disaster-grants-management-system>.