

**SUPPORTING STATEMENT FOR THE
QUESTIONNAIRE FOR PUBLIC TRUST POSITIONS (SF 85P) AND
SUPPLEMENTAL QUESTIONNAIRE FOR SELECTED POSITIONS (SF85P-S)
OMB #3206-0258**

Justification:

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The information collected on this form is used to determine acceptability for Federal employment and employment by a Government contractor. The U.S. Office of Personnel Management (OPM) is authorized to request this information under Executive Orders 10577, 13467, and 13488, as amended, 13741, and 13764; sections 3301, 3302, and 9101 of title 5, United States Code (U.S.C.); and parts 2, 5, 731 and 736 of title 5, Code of Federal Regulations (CFR), and Federal information processing standards. Section 1104 of title 5 allows OPM to delegate personnel management functions to other Federal agencies.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The Questionnaire for Public Trust Positions, SF 85P and Supplemental Questionnaire for Selected Positions, SF 85P-S are housed in a system named e-QIP (Electronic Questionnaires for Investigative Processing) and are information collections completed by applicants for, or incumbents of, Federal Civilian Government positions, or positions in private entities performing work for the Government under contract. The collections are used as the basis of information for background investigations to establish that such persons are: suitable for appointment to or retention in Federal employment in a public trust position; fit for appointment to or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position; fit to perform work on behalf of the Federal Government pursuant to a Government contract when the duties to be performed are equivalent in degree of trust reposed in the individual to a public trust position, or eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a public trust position.

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.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The SF 85P, and SF 85P-S are standard forms used for collecting subject data to be used in official background investigations conducted by the U.S. Government. e-QIP (Electronic Questionnaires for Investigations Processing) is a web-based system application that houses the SF 85P, and SF 85P-S. This electronic data collection tool provides data validation to support the accuracy of the respondent's personal information.

e-QIP automates the data collection process from the respondent, applies all required data editing rules to the respondent-supplied information, enforces data integrity, and provides sponsoring agencies an automated capability to review and approve each respondent's submission before releasing the data to an investigative services provider (ISP). e-QIP serves as a feeder system to other governmental systems, including ISPs and sponsoring agency personnel or security systems such as that at the State Department.

A respondent's complete and certified investigative data will remain secured in the e-QIP system until the next time the respondent is sponsored by an agency to complete a new investigative form. Upon initiation, the respondent's previously entered data (except 'yes/no' questions) will populate a new investigative request and the respondent will be allowed to update their information and certify the data. In this instance, time to complete the form is reduced significantly.

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 a 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 upon how the information collected relates to the respondent's personal history.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Information collected on the SF 85P and SF 85P-S is specific to the individual and thus not readily available from other sources, thus minimizing duplication.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

Not applicable. This collection of information does not affect small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The SF 85P and SF 85P-S are used to initiate background investigations required by E.O. 10577, 13467, and 13488, as amended, 13741, and 13764; sections 3301, 3302, and 9101 of title 5, U.S.C.; parts 2, 5, 731, and 736 of title 5, CFR, and Federal information processing standards. The collections are used as the basis of information for background investigations to establish that such persons are: suitable for appointment to or retention in Federal employment in a public trust position; fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position; fit to perform work on behalf of the Federal Government pursuant to a Government contract when the duties to be performed are equivalent in degree of trust reposed in the individual to a public trust position, or eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a public trust position. All public trust positions are subject to this level of investigation. If this information is not collected, agencies cannot comply with E.O. 10577, 13467, 13488, 13741, and 13764. This collection of information cannot be made less frequently as it is the basis for initial background investigations and for reinvestigations whose periodicity is established by federal investigative standards.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

Not applicable. This information collection is in compliance with 5 CFR 1320.6.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information

is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

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 offers 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 their own timeframes can negatively impact the speed of hiring. OPM did not accept the recommendation. An agency's internal hiring procedures are established by statute, Executive Order, OPM regulation and guidance, and 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 to 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 provisions 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 the subject is 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 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 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 laws, regardless of the legality of the use recognized by local jurisdictions. 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 noted 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 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 found with the standard form 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. These are public trust positions that pose special risks, such as law enforcement positions in which the incumbents are required to carry firearms.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The SF 85P and SF 85P-S include a Privacy Act Information statement. The statement indicates that the forms are in full compliance with 5 U.S.C. 552a (the Privacy Act of 1974) and other laws protecting the rights of the respondent. Further,

the forms note that the information provided by the respondent, including the identity of the respondent, may be disclosed to the respondent upon request.

A person completing the forms is granted partial confidentiality under 5 U.S.C. 552a and 5 CFR 736. The forms contain an *Authorization for Release of Information* and *Fair Credit Reporting Disclosure and Authorization*, signed by the person completing the form and, if applicable, *the Authorization for Release of Medical Information Pursuant to the Health Insurance Portability and Accountability Act (HIPAA)*. The authorization forms request that record custodians and sources of information contacted during the investigation provide requested data concerning the person being investigated. Individuals completing the forms are informed that information obtained from record custodians and other sources is for “official use by the Federal Government” and can be disclosed only as authorized by law. Data reported on these forms is not released to the public under the Freedom of Information Act.

For additional information regarding Electronic Questionnaires for Investigating Processing Privacy Impact Assessment and notification of OPMs’ revised system of records, please access the links provided below.

<https://www.opm.gov/information-management/privacy-policy/privacy-policy/eqip.pdf>

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-11/html/2016-24507.htm>

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The SF 85P and SF 85P-S are investigative tools. The forms are designed to collect information appropriate for determining suitability for employment or retention in Federal employment in a public trust position; fitness for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position; and fitness based on character and conduct for contract employment on behalf of the Federal Government, or eligibility for physical and logical access to federally controlled facilities or information systems as a contract employee, when the duties to be performed are equivalent to the duties performed by an employee in a public trust position.

The forms obtain data from individuals with which to initiate an investigation to meet the adjudicative requirements established in 5 CFR part 731. The questions represent

an effort to obtain as much relevant and required information as possible directly from the person to be investigated, in accordance with provisions of the Privacy Act.

Questions on the SF 85P that may be considered sensitive in nature are listed and explained below:

- Section 20 (Police Record): Inquiry into criminal history, including details regarding criminal conduct, arrests, and convictions is appropriate for public trust positions so that an adjudicative decision regarding suitability or fitness for the position may be made. This information is also necessary to make accurate and complete checks of investigative files.

- Section 21 (Illegal Use of Drugs or Drug Activity): Inquiry into illegal drug use is appropriate for public trust positions so that an adjudicative decision regarding suitability or fitness for the position may be made.

- Section 22 (Use of Alcohol): Inquiries into use of alcohol is appropriate for public trust positions so that an adjudicative decision regarding suitability or fitness for the position may be made.

- Section 24 (Financial Record): Inquiry into personal finances provides information used to determine trustworthiness, reliability, and honesty, and is especially relevant for positions entailing fiduciary responsibilities.

- Section 27 (Association Record): Inquiry into detailed information pertinent to a respondent's involvement in terrorist organizations, association with persons involved in activities to further terrorism and/or to overthrow the U.S. Government by force or violence is appropriate for public trust positions so that an adjudicative decision regarding suitability or fitness for the position may be made.

Questions on the SF 85P-S that may be considered sensitive in nature are listed and explained below:

- Section 3 (Illegal Use of Drugs or Drug Activity): Inquiry into illegal drug use is appropriate for public trust positions so that an adjudicative decision regarding suitability or fitness for the position may be made.

- Section 5 (Psychological and Emotional Health): Inquiry 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; whether the respondent has ever been hospitalized for a mental health condition; 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 decisionmaking regarding suitability or fitness determinations.

The instructions on the SF 85P and SF 85P-S inform the respondent of the reason that the information is requested, the authority for requesting it, how it will be used, and to whom it may be disclosed. They describe the investigative process and inform the respondent that OPM or the Federal agency requesting the investigation will make the final determination.

12. Provide estimates of the hour burden of the collection of information.

It is estimated that the total number of respondents for the SF 85P is 112,894 annually. 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 will vary depending on whether the information collection relates to the respondent’s personal history. OPM employed the Department of Defense Personnel Security Research Center to conduct a study of the estimated burden of the SF 85P based on empirical data gathered in a simulated background investigation context. A sample of 33 participants successfully completed the study. Time burden estimates ranged greatly, from 70 to 435 minutes. The average of participant time spent completing the form was 183 minutes and the median was 155 minutes. In calculating the burden estimate for the SF 85P, the median number is used, due to the variance expected from the tailored collection. Accordingly, the estimated annual burden is 282,235 hours.

It is estimated that the total number of respondents for the SF 85P-S is 11,717 annually. Each SF 85P-S form takes an estimated 10 minutes to complete. Accordingly, the estimated annual burden is 1,953 hours. The number of forms completed varies depending on the number of investigations requested/completed each year. Estimates are provided below:

	<u>Number of Respondents</u>	<u>Burden Hours</u>
SF 85P	112,894	291,643
SF 85P-S	11,717	1,953

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.

There is no cost to individual respondents.

- 14. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff) and any other expenses that would not have been incurred without the paperwork burden.**

e-QIP is an established web-based system which will house the revised SF 85P and SF 85P-S. Since e-QIP is used to collect this information from both federal and non-federal respondents, there is no additional cost associated with revisions to these collections based solely on non-federal respondents.

- 15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

No changes were made.

- 16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Not applicable. Information collected on the forms will not be published.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

Not applicable.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

Not applicable.