

STATEMENT OF
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before the

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE
DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

FEDERAL EMPLOYMENT POLICIES AND PRACTICES
REGARDING EX-OFFENDERS

JUNE 10, 2008

Chairman Davis, Representative Marchant, and Members of the Subcommittee:

Thank you for inviting me here today to discuss employment of ex-offenders in the Federal Government.

It is the policy of the Federal Government to employ rehabilitated offenders who have the knowledge, skills, and abilities needed to accomplish the work of the Government. We recognize that, in addition to helping the Federal Government meet its staffing needs, employing rehabilitated offenders can contribute to the national effort to prevent crime and enable these individuals to become productive citizens. Under the merit system principles, agencies must consider applications from rehabilitated ex-offenders to see if they are the best candidate for the position and can comply with the requirements for the job.

At the same time, we need to carefully balance providing employment opportunities for ex-offenders with our responsibilities to the public, including our fiduciary obligations to taxpayers. Not all jobs will be open to individuals with the kinds of backgrounds some ex-offenders have. It may be inappropriate to place certain ex-offenders in positions related to national security or in positions involving access to financial data or personally identifiable information.

Consequently, the principal issue for agencies, as they consider hiring ex-offenders, involves making suitability determinations and determinations of eligibility for security clearances. Applicants for employment in the executive branch, including ex-offenders, must undergo a background investigation and determination as to whether they are suitable for Federal employment, based on their character and conduct relative to Governmentwide standards. While there is no general bar against ex-offenders, Congress has determined that some types of criminal conduct would render an individual ineligible for Federal employment generally, or for work in certain types of positions. Most of these provisions are in title 18 of the U.S. Code. For example, an individual convicted of a misdemeanor crime of domestic abuse is barred from being hired for a position requiring the incumbent to possess firearms. An individual convicted of willful and unlawful concealment, removal, mutilation, or destruction of public records and materials is barred from all Federal employment. Anyone who is convicted of theft or unlawful concealment of money, or other property of value, from a bank or safe in a bank that is a Federal Reserve member or is insured by the Federal Deposit Insurance Corporation

(FDIC) is statutorily barred from employment as a national bank examiner or FDIC examiner. Title 18 also requires the removal of anyone currently working in the Federal Government as a collection or disbursement officer and who is convicted of carrying on any trade or business in the funds or debts of, or in any public property of, the Federal Government or any State government. The individual would also be permanently barred from any Federal employment. Finally, Congress has specifically barred anyone convicted of crimes of violence, sexual assault, molestation, exploitation, and certain similar offenses, from employment in a position involving regular contact with or control over Indian children.

In other cases involving criminal conduct, agencies would consider each applicant on a case-by-case basis. Among other things, agencies may consider how recently the criminal conduct occurred, the age of the individual at the time the conduct occurred, the relationship of the conduct to the position in question, and the evidence – or lack of evidence – of rehabilitation, including the individual's own efforts at rehabilitation. It is important to keep in mind that the fact that an individual is considered unsuitable for a particular job does not generally mean he or she is unsuitable for all Federal employment.

Federal agencies must consider qualified, rehabilitated ex-offenders to fill appropriate vacancies that are not otherwise restricted. Therefore, we believe current human capital practices provide adequate opportunities for employment and that no special appointing authorities for hiring ex-offenders in the Federal Government are needed. Our current array of appointing authorities and flexibilities provides all the tools we need to bring

qualified ex-offenders into Government. In addition, there has long been an excepted (Schedule A) appointing authority available to agencies for employing individuals who are in work-release programs. These are individuals who have not yet been released from custody but who have an opportunity to gain work experience to prepare them for employment upon completion of their sentences. This authority allows agencies, with prior approval from OPM, to employ inmates of Federal and State correctional institutions when a local recruiting shortage exists for the position being filled. These appointments are limited to one year.

Thank you again for inviting me to discuss this issue with you. I would be happy to answer any questions you may have.