

Office of the Secretary of Defense

§ 97.2

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