

Clean Record Settlement Agreements and the Law

Research
Highlights



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A clean record agreement (CRA) is a negotiated settlement agreement under which an agency is obligated to change, remove, or protect potentially negative information about an individual in exchange for resolution of that individual's employment-related claims against the agency.

Why Study CRAs?

A majority of the adverse action cases filed with the U.S. Merit Systems Protection Board for which MSPB finds it has jurisdiction are resolved by a negotiated settlement agreement (NSA).

Ninety-five percent of surveyed agency representatives reported that they had entered into an NSA in the preceding three years.

Eighty-nine percent of agency representatives who used NSAs were involved in one or more NSAs with a clean record provision.

Seventy-five percent of agency representatives who used CRAs agreed that CRAs "are often the only way to get an appellant/employee to agree to settle."

When an agency fails to meet its obligation to clean the record, or to support the cleaned record in communications with others, material breach may result. In the event of a material breach by the agency, the appellant will have the option of rescinding the agreement. This means the parties may find themselves litigating what they thought they had resolved years ago. Additionally, there may be the possibility of back pay with interest if a term of the agreement was that the individual would not return to his or her employment with the agency.

Lessons from Case Law:

The obligation to clean the record and to support that record in communications with others could be read broadly unless the CRA contains language that narrows an obligation and that narrowing language applies to the facts of the particular case.

An agency is responsible for the records and actions of those under its authority and control - including contractors - unless the agreement narrows that responsibility.

The ability of an agency to discuss an individual with other Government officials is very case specific. The outcome of litigation over an alleged breach of an agreement may depend on the language in the CRA, the extent to which the alleged offenses qualify as criminal in nature, the role of the official making an inquiry, and/or the specificity of any waiver forms.

A CRA between the agency and the individual cannot bind the behavior of those who are not a party to the CRA, such as the Office of Personnel Management, local law enforcement, etc.

Even if the parties agree not to disclose that the individual left employment by mutual agreement, the CRA cannot authorize an individual to withhold that information from others when asked, and a failure to disclose such information when asked by a Federal agency or its contractor may be grounds for removal and debarment from Federal employment.

For the full report discussing in greater detail the CRAs and facts from specific cases please visit www.mspb.gov/studies.