

115TH CONGRESS
2D SESSION

H. R. 6374

To require the Department of Homeland Security to streamline Federal contractor fitness determinations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2018

Mr. PERRY (for himself and Mr. McCAUL) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To require the Department of Homeland Security to streamline Federal contractor fitness determinations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fitness Information
5 Transparency Act of 2018” or the “FIT Act”.

6 **SEC. 2. REQUIREMENT TO STREAMLINE FITNESS DETER-**
7 **MINATIONS.**

8 (a) CONSOLIDATION OF FITNESS STANDARDS.—Not
9 later than 180 days after the date of the enactment of
10 this Act, the Secretary of Homeland Security, acting

1 through the Chief Security Officer of the Department of
2 Homeland Security, shall—

3 (1) coordinate with the heads of components of
4 the Department to review and consolidate all Fed-
5 eral contractor fitness standards used by the De-
6 partment and its components in order to issue a uni-
7 form set of fitness standards that reflect public trust
8 concerns which correspond to each position risk
9 level;

10 (2) require the Department and the heads of its
11 components to use such uniform fitness standards
12 that correspond to the relevant position risk level as
13 the basis for fitness determinations for a contractor
14 employee; and

15 (3) publish such uniform fitness standards that
16 correspond to each such position risk level on the
17 public website of the Department and cause the
18 same to be printed in the Federal Register.

19 (b) DEVIATION FROM UNIFORM FITNESS STAND-
20 ARDS.—The Secretary of Homeland Security, acting
21 through the Chief Security Officer of the Department of
22 Homeland Security, may authorize the Department or a
23 component of the Department to deviate from the uniform
24 fitness standards issued pursuant to subsection (a) on a
25 position-by-position basis if—

1 (1) the Secretary publishes in writing on the
2 public website of the Department and causes the
3 same to be printed in the Federal Register a certifi-
4 cation that contains—

5 (A) a determination that such uniform fit-
6 ness standards are not sufficient to protect in-
7 formation, systems, or facilities of the Depart-
8 ment the unauthorized disclosure of which or
9 unauthorized access to which could reasonably
10 be expected to cause substantial damage to the
11 integrity and efficiency of the Department; and

12 (B) a description of approved additional
13 fitness standards and a list to which positions
14 such deviation applies; or

15 (2) exigent circumstances created by a presi-
16 dential declaration of a major disaster issued pursu-
17 ant to section 401 of the Robert T. Stafford Dis-
18 aster Relief and Emergency Assistance Act (42
19 U.S.C. 5170) require such deviation to mitigate
20 staffing shortages for the duration of such declara-
21 tion.

22 (c) RECIPROCITY.—

23 (1) IN GENERAL.—The Chief Security Officer
24 of the Department of Homeland Security shall im-
25 plement a process to ensure fitness determinations

1 made by the Department are uniformly accepted
2 throughout the Department and its components.

3 (2) SUFFICIENCY.—The Secretary of Homeland
4 Security, acting through the Chief Security Officer
5 of the Department of Homeland Security, may, as
6 appropriate, deem a favorably adjudicated personnel
7 security investigation sufficient to satisfy a require-
8 ment to complete a contractor fitness determination
9 under this section.

10 (d) FITNESS ADJUDICATION STATUS UPDATES.—
11 Not later than one year after the date of the enactment
12 of this Act, the Secretary of Homeland Security, acting
13 through the Chief Security Officer of the Department of
14 Homeland Security and in coordination with heads of the
15 components of the Department, shall implement a uniform
16 process to—

17 (1) provide, not less frequently than monthly,
18 contractor representatives certified pursuant to sub-
19 section (e)(1) access to information regarding the
20 status of fitness determinations for Department con-
21 tractor employees relevant to such contractor rep-
22 resentatives; and

23 (2) collect each fiscal quarter data to allow the
24 Department and its components and contractor rep-
25 resentatives to assess average fitness investigation,

1 adjudication, and determination processing times for
2 each component of the Department, including infor-
3 mation regarding the parameters used to calculate
4 each such average.

5 (e) CERTIFICATION.—Before the implementation of
6 the uniform process described in subsection (d), the Sec-
7 retary of Homeland Security, acting through the Chief Se-
8 curity Officer of the Department of Homeland Security,
9 shall—

10 (1) certify that each contractor representative
11 receiving information from such process has received
12 information regarding practices relating to the ade-
13 quate protection of personally identifiable informa-
14 tion and has acknowledged in writing to adhere to
15 such practices; and

16 (2) consult with the Director of the Office of
17 Personnel Management to ensure that such process
18 is consistent with current best practices across the
19 Federal Government.

20 (f) APPLICABILITY OF SECTION 44936 OF TITLE 49,
21 UNITED STATES CODE.—No authority or policy created
22 by or issued pursuant to this section shall apply to employ-
23 ees or contractors of an air carrier, foreign air carrier,
24 or airport operator subject to employment investigations
25 pursuant to section 44936 of title 49, United States Code.

1 (g) REPORTS TO CONGRESS.—Not later than 180
2 days after the publication of uniform fitness standards de-
3 scribed in subsection (a) and annually thereafter for four
4 years, the Secretary of Homeland Security shall submit
5 to the Committee on Homeland Security and the Com-
6 mittee on Oversight and Government Reform of the House
7 of Representatives and the Committee on Homeland Secu-
8 rity and Governmental Affairs of the Senate a report con-
9 taining—

10 (1) the number of deviation requests under sub-
11 section (b) made to the Chief Security Officer of the
12 Department of Homeland Security, including—

13 (A) the number of deviation requests ap-
14 proved and the corresponding justification for
15 each such deviation from such fitness stand-
16 ards; and

17 (B) the number of deviation requests de-
18 nied and the corresponding justification for
19 each such denial;

20 (2) information regarding the number and aver-
21 age duration of Federal contractor fitness deter-
22 minations for each component of the Department;
23 and

1 (3) information regarding the use of programs
2 or policies that allow contractors to begin work prior
3 to the completion of a fitness determination.

4 (h) NO ADDITIONAL FUNDS AUTHORIZED.—No ad-
5 ditional funds are authorized to be appropriated to carry
6 out this Act. This Act shall be carried out using amounts
7 otherwise appropriated.

8 (i) DEFINITIONS.—In this section:

9 (1) CONTRACTOR.—The term “contractor” has
10 the meaning given such term in section 7101 of title
11 41, United States Code.

12 (2) CONTRACTOR EMPLOYEE.—The term “con-
13 tractor employee” means an individual who performs
14 work for or on behalf of any Federal agency under
15 a contract and who, in order to perform the work
16 specified under such contract, will require access to
17 facilities, information, information technology sys-
18 tems, staff, or other assets of the Department of
19 Homeland Security, and who could, by the nature of
20 the access or duties of such individual, adversely af-
21 fect the integrity or efficiency of the Department.

22 Such contracts include the following:

23 (A) Personal services contracts.

24 (B) Contracts between any non-Federal
25 entity and the Department.

1 (C) Sub-contracts between any non-Fed-
2 eral entity and another non-Federal entity to
3 perform work related to the primary contract
4 with the Department.

5 (3) CONTRACTOR REPRESENTATIVE.—The term
6 “contractor representative” means a person em-
7 ployed by a contractor who is designated in writing
8 by an authorized official of a contractor as respon-
9 sible for managing and communicating with the De-
10 partment of Homeland Security or its components
11 on behalf of such contractor on matters relating to
12 fitness determinations, and is certified pursuant to
13 subsection (e)(1) regarding the adequate protection
14 of personally identifiable information.

15 (4) EXCEPTED SERVICE.—The term “excepted
16 service” has the meaning given such term in section
17 2103 of title 5, United States Code.

18 (5) FITNESS.—The term “fitness” means the
19 level of character and conduct necessary for an indi-
20 vidual to perform work for or on behalf of a Federal
21 agency in the excepted service, other than a position
22 subject to a suitability determination or as a non-
23 appropriated fund instrumentality employee.

24 (6) FITNESS DETERMINATION.—The term “fit-
25 ness determination” means a decision by a Federal

1 agency that an individual does or does not have the
2 required level of character and conduct necessary to
3 perform work for or on behalf of a Federal agency
4 in the excepted service, other than a position subject
5 to a suitability determination, as a contractor em-
6 ployee, or as a nonappropriated fund instrumentality
7 employee.

8 (7) INFORMATION TECHNOLOGY.—The term
9 “information technology” has the meaning given
10 such term in section 11101 of title 40, United
11 States Code.

12 (8) NONAPPROPRIATED FUND INSTRUMEN-
13 TILITY EMPLOYEE.—The term “nonappropriated
14 fund instrumentality employee” has the meaning
15 given such term in section 1587(a)(1) of title 10,
16 United States Code.

17 (9) PERSONNEL SECURITY INVESTIGATION.—
18 The term “personnel security investigation” has the
19 meaning given such term in subsection (a) of section
20 3001 of the Intelligence Reform and Terrorism Pre-
21 vention Act of 2004 (50 U.S.C. 3341).

22 (10) SUITABILITY DETERMINATION.—The term
23 “suitability determination” has the meaning given

1 such term in section 731.101 of title 5, Code of Fed-
2 eral Regulations.

○