

FITNESS INFORMATION TRANSPARENCY ACT OF 2018

SEPTEMBER 4, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 6374]

The Committee on Homeland Security, to whom was referred the bill (H.R. 6374) to require the Department of Homeland Security to streamline Federal contractor fitness determinations, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. REQUIREMENT TO STREAMLINE FITNESS DETERMINATIONS.

(a) **CONSOLIDATION OF FITNESS STANDARDS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the Chief Security Officer of the Department of Homeland Security, shall—

(1) coordinate with the heads of components of the Department to review and consolidate all Federal contractor fitness standards used by the Department and its components in order to issue a uniform set of fitness standards that reflect public trust concerns which correspond to each position risk level;

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

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

(b) **DEVIATION FROM UNIFORM FITNESS STANDARDS.**—The Secretary of Homeland Security, acting through the Chief Security Officer of the Department of Homeland Security, may authorize the Department or a component of the Department to deviate from the uniform fitness standards issued pursuant to subsection (a) on a position-by-position basis if—

(1) the Secretary publishes in writing on the public website of the Department and causes the same to be printed in the Federal Register a certification that contains—

(A) a determination that such uniform fitness standards are not sufficient to protect information, systems, or facilities of the Department the unauthorized disclosure of which or unauthorized access to which could reasonably be expected to cause substantial damage to the integrity and efficiency of the Department; and

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

(2) exigent circumstances created by a presidential declaration of a major disaster issued pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) require such deviation to mitigate staffing shortages for the duration of such declaration.

(c) **RECIPROCITY.**—

(1) **IN GENERAL.**—The Chief Security Officer of the Department of Homeland Security shall implement a process to ensure fitness determinations made by the Department are uniformly accepted throughout the Department and its components.

(2) **SUFFICIENCY.**—The Secretary of Homeland Security, acting through the Chief Security Officer of the Department of Homeland Security, may, as appropriate, deem a favorably adjudicated personnel security investigation sufficient to satisfy a requirement to complete a contractor fitness determination under this section.

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

(1) provide, not less frequently than monthly, contractor representatives certified pursuant to subsection (e)(1) access to information regarding the status of fitness determinations for Department contractor employees relevant to such contractor representatives; and

(2) collect each fiscal quarter data to allow the Department and its components and contractor representatives to assess average fitness investigation, adjudication, and determination processing times for each component of the Department, including information regarding the parameters used to calculate each such average.

(e) **CERTIFICATION.**—Before the implementation of the uniform process described in subsection (d), the Secretary of Homeland Security, acting through the Chief Security Officer of the Department of Homeland Security, shall—

(1) certify that each contractor representative receiving information from such process has received information regarding practices relating to the adequate protection of personally identifiable information and has acknowledged in writing to adhere to such practices; and

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

(f) **APPLICABILITY OF SECTION 44936 OF TITLE 49, UNITED STATES CODE.**—No authority or policy created by or issued pursuant to this section shall apply to employees or contractors of an air carrier, foreign air carrier, or airport operator subject to employment investigations pursuant to section 44936 of title 49, United States Code.

(g) **REPORTS TO CONGRESS.**—Not later than 180 days after the publication of uniform fitness standards described in subsection (a) and annually thereafter for four years, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report containing—

(1) the number of deviation requests under subsection (b) made to the Chief Security Officer of the Department of Homeland Security, including—

(A) the number of deviation requests approved and the corresponding justification for each such deviation from such fitness standards; and

(B) the number of deviation requests denied and the corresponding justification for each such denial;

(2) information regarding the number and average duration of Federal contractor fitness determinations for each component of the Department;

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

(4) to the extent practicable, the number of individuals who, during the preceding calendar year, received an unfavorable fitness determination from the Department by reason of an affiliation with or membership in an organization dedicated to terrorism;

(5) to the extent practicable, the number of individuals who, during the preceding calendar year, received a favorable fitness determination from the Department despite an affiliation with or membership in an organization dedicated to terrorism;

(6) information regarding the degree to which fitness determinations made by the Department and its components or other Federal agencies are recognized on a reciprocal basis by the Department and its components pursuant to subsection (c)(1);

(7) information regarding the degree to which suitability and fitness determinations for Federal applicants and appointees made by the Department and its components or other Federal agencies are recognized on a reciprocal basis by the Department and its components; and

(8) information regarding the degree to which the Secretary, acting through the Chief Security Officer of the Department, uses the authority under subsection (c)(2).

(h) **SUITABILITY STATUS UPDATES.**—Not later than one year after the date of the enactment of this Act, the Chief Security Officer of the Department of Homeland Security, in consultation with the Chief Human Capital Officer of the Department, shall develop a plan to provide Federal applicants and appointees with suitability and fitness determination status updates similar to updates provided to contractor representatives under subsection (d).

(i) **EXIGENT CIRCUMSTANCES FITNESS DETERMINATION REVIEW.**—The Chief Security Officer of the Department of Homeland Security may conduct an immediate review of a contractor employee's fitness determination when a contractor employee has engaged in violent acts against individuals, property, or public spaces based on the contractor employee's association with persons or organizations that advocate, threaten, or use force or violence, or any other illegal or unconstitutional means, in an effort to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, based on factors including, at a minimum, race, religion, national origin, or disability.

(j) **NO ADDITIONAL FUNDS AUTHORIZED.**—No additional funds are authorized to be appropriated to carry out this Act. This Act shall be carried out using amounts otherwise appropriated.

(k) **DEFINITIONS.**—In this section:

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

(2) **CONTRACTOR EMPLOYEE.**—The term “contractor employee” means an individual who performs work for or on behalf of any Federal agency under a contract and who, in order to perform the work specified under such contract, will require access to facilities, information, information technology systems, staff, or other assets of the Department of Homeland Security, and who could, by the

nature of the access or duties of such individual, adversely affect the integrity or efficiency of the Department. Such contracts include the following:

- (A) Personal services contracts.
 - (B) Contracts between any non-Federal entity and the Department.
 - (C) Sub-contracts between any non-Federal entity and another non-Federal entity to perform work related to the primary contract with the Department.
- (3) **CONTRACTOR REPRESENTATIVE.**—The term “contractor representative” means a person employed by a contractor who is designated in writing by an authorized official of a contractor as responsible for managing and communicating with the Department of Homeland Security or its components on behalf of such contractor on matters relating to fitness determinations, and is certified pursuant to subsection (e)(1) regarding the adequate protection of personally identifiable information.
- (4) **EXCEPTED SERVICE.**—The term “excepted service” has the meaning given such term in section 2103 of title 5, United States Code.
- (5) **FITNESS.**—The term “fitness” means the level of character and conduct necessary for an individual to perform work for or on behalf of a Federal agency in the excepted service, other than a position subject to a suitability determination or as a nonappropriated fund instrumentality employee.
- (6) **FITNESS DETERMINATION.**—The term “fitness determination” means a decision by a Federal agency that an individual does or does not have the required level of character and conduct necessary to perform work for or on behalf of a Federal agency in the excepted service, other than a position subject to a suitability determination, as a contractor employee, or as a nonappropriated fund instrumentality employee.
- (7) **INFORMATION TECHNOLOGY.**—The term “information technology” has the meaning given such term in section 11101 of title 40, United States Code.
- (8) **NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEE.**—The term “non-appropriated fund instrumentality employee” has the meaning given such term in section 1587(a)(1) of title 10, United States Code.
- (9) **PERSONNEL SECURITY INVESTIGATION.**—The term “personnel security investigation” has the meaning given such term in subsection (a) of section 3001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341).
- (10) **SUITABILITY DETERMINATION.**—The term “suitability determination” has the meaning given such term in section 731.101 of title 5, Code of Federal Regulations.
- (11) **TERRORISM.**—The term “terrorism” means any criminal acts that involve violence or are dangerous to human life and appear to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping.

PURPOSE AND SUMMARY

The purpose of H.R. 6374 is to require the Department of Homeland Security to consolidate, streamline, and publish the standards by which a contractor employee may be deemed fit to work for the Department and provide status updates regarding fitness determinations. H.R. 6374 enables DHS to provide greater transparency to the contractor workforce, which will, in turn, increase efficiency.

BACKGROUND AND NEED FOR LEGISLATION

The Department of Homeland Security (DHS) relies on thousands of contractor employees every day to achieve its mission. From IT services to construction and janitorial services, DHS and contractor employees work hand-in-hand to secure our nation. Prior to employment, DHS vets each contractor employee by assessing the character and conduct of contractor employees in order to make a fitness determination—a decision that a person either does or does not have the level of character and conduct necessary to uphold the integrity and efficiency of the Department.

Currently, the Office of Personnel Management (OPM) sets minimum fitness standards for Federal contractors. However, DHS

components vary in how they apply those standards. Inconsistent fitness standards across DHS hinder the ability of components to reciprocally accept another component's fitness determination. Additionally, the current process for a contractor employee to receive a status update regarding their fitness determination is convoluted and inefficient.

H.R. 6374 requires DHS to consolidate its varying fitness standards by creating uniform fitness requirements for each position risk level. By doing so, DHS will achieve Department-wide uniformity and reciprocity of fitness standards, thereby eliminating the need for one contractor to undergo multiple fitness investigations. The FIT Act also reduces bureaucratic redundancies by allowing, when appropriate, the Secretary of DHS to deem someone who possesses a security clearance to also be considered fit to work for DHS. Moreover, H.R. 6374 increases transparency into the fitness determination process by requiring DHS to provide monthly status updates to contractor representatives. The FIT Act provides DHS the flexibility it needs to vet contract workers for its diverse missions, while also making the process to do so more efficient and transparent.

Since the same problems contractors experience exist within the Federal applicant pool, H.R. 6374 also requires DHS to take steps to improve the suitability determination process for Federal applicants and appointees. In this effort, the Department is required to report to Congress on the degree to which reciprocity is occurring for Federal applicants and appointees, and to develop a plan to communicate investigation updates to applicants and appointees.

HEARINGS

No hearings were specifically held on H.R. 6374. However, on February 27, 2018, the Subcommittee on Oversight and Management Efficiency held a hearing entitled "Doing Business with DHS: Industry Recommendations to Improve Contractor Employee Vetting." The Subcommittee received testimony from The Honorable Charles L. Allen, Senior Intelligence Advisor, Intelligence and National Security Alliance; Mr. Marc Pearl, President and CEO, Homeland Security and Defense Business Council; The Honorable David J. Berteau, President and CEO, Professional Services Council; and Mr. Brandon LaBonte, President and CEO, Ardent Management Consulting Inc.

COMMITTEE CONSIDERATION

The Committee met on July 24, 2018, to consider H.R. 6374, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by unanimous consent. The Committee took the following actions:

The Committee adopted H.R. 6374, as amended, by unanimous consent.

The following amendments were offered:

An amendment offered by MS. JACKSON LEE (#1); Page 7, beginning line 4, insert a new subsection entitled "(h) Exigent Circumstances Fitness Determination Review."; was AGREED TO, by unanimous consent.

An amendment offered by MRS. WATSON COLEMAN (#2); Page 6, line 23, strike “and”.

Page 7, line 3, strike the period and insert a semicolon.

Page 7, beginning line 4, insert the following:

(4) to the extent practicable, the number of individuals who, during the preceding calendar year, received an unfavorable fitness determination from the Department by reason of an affiliation with or membership in an organization dedicated to terrorism; and

(5) to the extent practicable, the number of individuals who, during the preceding calendar year, received a favorable fitness determination from the Department despite an affiliation with or membership in an organization dedicated to terrorism.

Page 10, after line 2, add a new paragraph entitled “(11) Terrorism.” AGREED TO, by unanimous consent.

An amendment offered by MR. CORREA (#1); Page 6, line 23, strike “and”.

Page 7, line 3, strike the period and insert a semicolon.

Page 7, beginning line 4, insert the following:

(4) information regarding the degree to which fitness determinations made by the Department and its components or other Federal agencies are recognized on a reciprocal basis by the Department and its components pursuant to subsection (c)(1);

(5) information regarding the degree to which suitability and fitness determinations for Federal applicants and appointees made by the Department and its components or other Federal agencies are recognized on a reciprocal basis by the Department and its components; and

(6) information regarding the degree to which the Secretary, acting through the Chief Security Officer of the Department, uses the authority under subsection (c)(2).

“(h) SUITABILITY STATUS UPDATES.—”; was AGREED TO, by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. No recorded votes were requested during consideration of H.R. 6374.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 6374, the Fitness Information Transparency Act of 2018, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 6374 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The goal of H.R. 6374 is for the Department of Homeland Security to review and consolidate all Federal contractor fitness standards used and publish such standards to provide greater transparency; to implement a uniform process to provide fitness determination status updates to contractor representatives and to develop a plan to provide the same information to Federal applicants and appointees.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 6374 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 6374 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 6374 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Fitness Information Transparency Act of 2018” or the “FIT Act”.

Sec. 2. Requirement to streamline fitness determinations

Section 2(a) requires the Secretary of Homeland Security, acting through the Chief Security Officer of the Department, to: coordinate with components of the Department to issue a uniform set of fitness standards that correspond to each position risk; use such uniform fitness standards coordinating with the relevant risk level in order make a fitness determination; and, publish the uniform fitness standards on the Department’s website and in the Federal Register.

Section 2(b) allows the Secretary, acting through the Chief Security Officer, to authorize a component to deviate from the uniform fitness standards on a position-by-position basis if the Secretary publishes a certificate that the uniform fitness standards are not sufficient to protect the integrity and efficiency of the Department and provides a description of the positions to which the deviation applies.

Section 2(c) requires the Chief Security Officer to implement a process to ensure fitness determinations are uniformly accepted throughout the Department and allows, when appropriate, the Secretary to deem someone who has a security clearance to also be deemed fit to work for DHS.

Section 2(d) requires the Secretary to implement a process to provide contractor representatives monthly status updates regarding fitness determinations. Additionally, Section 2(e) requires the contractor representatives to certify in writing they adhere to certain practices regarding protection of personally identifiable information.

Section 2(f) clarifies that the provisions in this legislation do not apply to employees or contract employees of an air carrier, foreign air carrier, or airport operator.

Section 2(g) requires the Secretary to report to Congress information regarding: the number of deviation requests from the uniform fitness standards; the number and average duration of fitness determinations for each component; the use of programs that allow

a contractor employee to begin work prior to the completion of a fitness determination; the degree to which fitness determinations are reciprocally recognized; the degree to which suitability determinations are reciprocally recognized; the degree to which the Secretary uses the authority granted in subsection (c)(2); the number of individuals who received an unfavorable fitness determination due to associations with terrorism organizations; and, the number of individuals who received a favorable fitness determination despite associations with terrorism organizations.

Section (2)(h) requires the Chief Security Officer of the Department of Homeland Security to develop a plan to provide similar status updates to certain Federal employees.

Section (2)(i) also authorizes the Secretary to conduct an immediate review of a contractor employee's fitness determination if the contractor employee has engaged in certain violent acts.

Section 2(j) specifies that no additional funds are authorized to carry out this Act.

Finally, section 2(k) provides definitions for terms in the legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 6374 makes no changes to existing law.