

115TH CONGRESS
2D SESSION

H. R. 6374

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 5, 2018

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To require the Department of Homeland Security to stream-
line 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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. REQUIREMENT TO STREAMLINE FITNESS DETER-**
5 **MINATIONS.**

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

11 (1) coordinate with the heads of components of
12 the Department to review and consolidate all Fed-
13 eral contractor fitness standards used by the De-
14 partment and its components in order to issue a uni-
15 form set of fitness standards that reflect public trust
16 concerns which correspond to each position risk
17 level;

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

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

1 (b) DEVIATION FROM UNIFORM FITNESS STAND-
2 ARDS.—The Secretary of Homeland Security, acting
3 through the Chief Security Officer of the Department of
4 Homeland Security, may authorize the Department or a
5 component of the Department to deviate from the uniform
6 fitness standards issued pursuant to subsection (a) on a
7 position-by-position basis if—

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

12 (A) a determination that such uniform fit-
13 ness standards are not sufficient to protect in-
14 formation, systems, or facilities of the Depart-
15 ment the unauthorized disclosure of which or
16 unauthorized access to which could reasonably
17 be expected to cause substantial damage to the
18 integrity and efficiency of the Department; and

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

22 (2) exigent circumstances created by a presi-
23 dential declaration of a major disaster issued pursu-
24 ant to section 401 of the Robert T. Stafford Dis-
25 aster Relief and Emergency Assistance Act (42

1 U.S.C. 5170) require such deviation to mitigate
2 staffing shortages for the duration of such declara-
3 tion.

4 (c) RECIPROCITY.—

5 (1) IN GENERAL.—The Chief Security Officer
6 of the Department of Homeland Security shall im-
7 plement a process to ensure fitness determinations
8 made by the Department are uniformly accepted
9 throughout the Department and its components.

10 (2) SUFFICIENCY.—The Secretary of Homeland
11 Security, acting through the Chief Security Officer
12 of the Department of Homeland Security, may, as
13 appropriate, deem a favorably adjudicated personnel
14 security investigation sufficient to satisfy a require-
15 ment to complete a contractor fitness determination
16 under this section.

17 (d) FITNESS ADJUDICATION STATUS UPDATES.—
18 Not later than 1 year after the date of the enactment of
19 this Act, the Secretary of Homeland Security, acting
20 through the Chief Security Officer of the Department of
21 Homeland Security and in coordination with heads of the
22 components of the Department, shall implement a uniform
23 process to—

24 (1) provide, not less frequently than monthly,
25 contractor representatives certified pursuant to sub-

1 section (e)(1) access to information regarding the
2 status of fitness determinations for Department con-
3 tractor employees relevant to such contractor rep-
4 resentatives; and

5 (2) collect each fiscal quarter data to allow the
6 Department and its components and contractor rep-
7 resentatives to assess average fitness investigation,
8 adjudication, and determination processing times for
9 each component of the Department, including infor-
10 mation regarding the parameters used to calculate
11 each such average.

12 (e) CERTIFICATION.—Before the implementation of
13 the uniform process described in subsection (d), the Sec-
14 retary of Homeland Security, acting through the Chief Se-
15 curity Officer of the Department of Homeland Security,
16 shall—

17 (1) certify that each contractor representative
18 receiving information from such process has received
19 information regarding practices relating to the ade-
20 quate protection of personally identifiable informa-
21 tion and has acknowledged in writing to adhere to
22 such practices; and

23 (2) consult with the Director of the Office of
24 Personnel Management to ensure that such process

1 is consistent with current best practices across the
2 Federal Government.

3 (f) APPLICABILITY OF SECTION 44936 OF TITLE 49,
4 UNITED STATES CODE.—No authority or policy created
5 by or issued pursuant to this section shall apply to employ-
6 ees or contractors of an air carrier, foreign air carrier,
7 or airport operator subject to employment investigations
8 pursuant to section 44936 of title 49, United States Code.

9 (g) REPORTS TO CONGRESS.—Not later than 180
10 days after the publication of uniform fitness standards de-
11 scribed in subsection (a) and annually thereafter for four
12 years, the Secretary of Homeland Security shall submit
13 to the Committee on Homeland Security and the Com-
14 mittee on Oversight and Government Reform of the House
15 of Representatives and the Committee on Homeland Secu-
16 rity and Governmental Affairs of the Senate a report con-
17 taining—

18 (1) the number of deviation requests under sub-
19 section (b) made to the Chief Security Officer of the
20 Department of Homeland Security, including—

21 (A) the number of deviation requests ap-
22 proved and the corresponding justification for
23 each such deviation from such fitness stand-
24 ards; and

1 (B) the number of deviation requests de-
2 nied and the corresponding justification for
3 each such denial;

4 (2) information regarding the number and aver-
5 age duration of Federal contractor fitness deter-
6 minations for each component of the Department;

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

10 (4) to the extent practicable, the number of in-
11 dividuals who, during the preceding calendar year,
12 received an unfavorable fitness determination from
13 the Department by reason of an affiliation with or
14 membership in an organization dedicated to ter-
15 rorism;

16 (5) to the extent practicable, the number of in-
17 dividuals who, during the preceding calendar year,
18 received a favorable fitness determination from the
19 Department despite an affiliation with or member-
20 ship in an organization dedicated to terrorism;

21 (6) information regarding the degree to which
22 fitness determinations made by the Department and
23 its components or other Federal agencies are recog-
24 nized on a reciprocal basis by the Department and
25 its components pursuant to subsection (c)(1);

1 (7) information regarding the degree to which
2 suitability and fitness determinations for Federal ap-
3 plicants and appointees made by the Department
4 and its components or other Federal agencies are
5 recognized on a reciprocal basis by the Department
6 and its components; and

7 (8) information regarding the degree to which
8 the Secretary, acting through the Chief Security Of-
9 ficer of the Department, uses the authority under
10 subsection (c)(2).

11 (h) SUITABILITY STATUS UPDATES.—Not later than
12 1 year after the date of the enactment of this Act, the
13 Chief Security Officer of the Department of Homeland Se-
14 curity, in consultation with the Chief Human Capital Offi-
15 cer of the Department, shall develop a plan to provide
16 Federal applicants and appointees with suitability and fit-
17 ness determination status updates similar to updates pro-
18 vided to contractor representatives under subsection (d).

19 (i) EXIGENT CIRCUMSTANCES FITNESS DETERMINA-
20 TION REVIEW.—The Chief Security Officer of the Depart-
21 ment of Homeland Security may conduct an immediate
22 review of a contractor employee’s fitness determination
23 when a contractor employee has engaged in violent acts
24 against individuals, property, or public spaces based on
25 the contractor employee’s association with persons or or-

1 ganizations that advocate, threaten, or use force or vio-
2 lence, or any other illegal or unconstitutional means, in
3 an effort to prevent others from exercising their rights
4 under the Constitution or laws of the United States or
5 of any State, based on factors including, at a minimum,
6 race, religion, national origin, or disability.

7 (j) NO ADDITIONAL FUNDS AUTHORIZED.—No addi-
8 tional funds are authorized to be appropriated to carry
9 out this Act. This Act shall be carried out using amounts
10 otherwise appropriated.

11 (k) DEFINITIONS.—In this section:

12 (1) CONTRACTOR.—The term “contractor” has
13 the meaning given such term in section 7101 of title
14 41, United States Code.

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

1 (A) Personal services contracts.

2 (B) Contracts between any non-Federal
3 entity and the Department.

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

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

18 (4) EXCEPTED SERVICE.—The term “excepted
19 service” has the meaning given such term in section
20 2103 of title 5, United States Code.

21 (5) FITNESS.—The term “fitness” means the
22 level of character and conduct necessary for an indi-
23 vidual to perform work for or on behalf of a Federal
24 agency in the excepted service, other than a position

1 subject to a suitability determination or as a non-
2 appropriated fund instrumentality employee.

3 (6) FITNESS DETERMINATION.—The term “fit-
4 ness determination” means a decision by a Federal
5 agency that an individual does or does not have the
6 required level of character and conduct necessary to
7 perform work for or on behalf of a Federal agency
8 in the excepted service, other than a position subject
9 to a suitability determination, as a contractor em-
10 ployee, or as a nonappropriated fund instrumentality
11 employee.

12 (7) INFORMATION TECHNOLOGY.—The term
13 “information technology” has the meaning given
14 such term in section 11101 of title 40, United
15 States Code.

16 (8) NONAPPROPRIATED FUND INSTRUMEN-
17 TALITY EMPLOYEE.—The term “nonappropriated
18 fund instrumentality employee” has the meaning
19 given such term in section 1587(a)(1) of title 10,
20 United States Code.

21 (9) PERSONNEL SECURITY INVESTIGATION.—
22 The term “personnel security investigation” has the
23 meaning given such term in subsection (a) of section
24 3001 of the Intelligence Reform and Terrorism Pre-
25 vention Act of 2004 (50 U.S.C. 3341).

1 (10) SUITABILITY DETERMINATION.—The term
2 “suitability determination” has the meaning given
3 such term in section 731.101 of title 5, Code of Fed-
4 eral Regulations.

5 (11) TERRORISM.—The term “terrorism”
6 means any criminal acts that involve violence or are
7 dangerous to human life and appear to be intended
8 to intimidate or coerce a civilian population to influ-
9 ence the policy of a government by intimidation or
10 coercion, or to affect the conduct of a government by
11 mass destruction, assassination, or kidnapping.

Passed the House of Representatives September 4,
2018.

Attest:

KAREN L. HAAS,
Clerk.