



'Conservatives Need Not Apply' Under Biden Administration's Proposed Hiring Rules

Hans von Spakovsky / February 12, 2023

In a move that has gotten little notice in the press, the Biden administration is proposing federal hiring rules that easily could be abused to deny employment to anyone who questions liberal, woke policies, criticizes the government, or belongs to a politically incorrect organization.

The vague, nebulous language of the proposed changes in existing government hiring regulations could be exploited and allow biased government managers to put up a virtual "Conservatives Need Not Apply" sign when it comes to the federal civil service, leaving rejected applicants with little recourse.

The Office of Personnel Management, the human resources department of the federal government, proposed amendments Jan. 31 in the Federal Register to the "personnel vetting investigative and adjudicative processes for determining suitability and fitness" for government employment (88 FR 6192).

The public now has until April 3 to file comments on the proposed "Suitability and Fitness Vetting" amendments.

As the proposal explains, the term "suitability and fitness" refers to "a decision by an agency that an individual does or does not have the required level of character and conduct necessary" to work in a federal agency. This assessment has nothing to do with someone's qualifications for a job and everything to do with a subjective assessment of a prospective employee.

Under the current regulation, 731.202(b)(7), an applicant is disqualified from employment by the federal government for "knowing and willful engagement in acts or activities designed to overthrow the U.S. Government."

Certainly, no one disagrees with that standard, since no one should be a federal employee who has engaged in such behavior. It's a standard question that background investigators ask a prospective employee's listed references.

The Biden administration, however, is proposing to replace that straightforward standard with four enigmatic standards:

Knowing engagement in acts or activities with the purpose of overthrowing Federal, State, local, or tribal government.

Acts of force, violence, intimidation, or coercion with the purpose of denying others the free exercise of their rights under the U.S. Constitution or any state constitution.

Attempting to indoctrinate others or to incite them to action in furtherance of illegal acts.

Active membership or leadership in a group with knowledge of its unlawful aims, or participation in such a group with specific intent to further its unlawful aims.

The first standard above is similar to the current standard. It is not controversial. But the problem with the other three proposed standards is that they are so broad and so vague—"nuanced," in the words of OPM's proposal—that they will give ideologues who predominate the civil service's ranks the ability to reject almost anyone who is critical of government policies.

Managers also could reject anyone who questions the acts and behavior of government officials or who voices opinions that don't fit with the accepted political orthodoxy of the times, such as viewing racial preferences in hiring or college admissions as unacceptable, immoral discrimination.

Do you doubt that? Members of the progressive Left long have claimed that words and free speech are a literal form of violence, that they amount to intimidation and coercion.

Rep. Alexandria Ocasio-Cortez, D-N.Y., notably claims that criticism of her is "not tone, it's violence," and in 2018, former Vice President Joe Biden linked the rhetoric of then-President Donald Trump to mass shootings and terror bombings.

After all, if words are "venom and violence," the Left never needs to engage in a real debate.

These are the same people who canceled "Harry Potter" novelist J.K. Rowling by arguing that her opinions on Twitter represent a violent threat to the trans community. The Left is pushing to classify as criminal hate speech any opinions with which it disagrees on issues such as illegal immigration, racial preferences, and abortion, claiming such speech "marginalizes" certain social groups.

Is expressing the opinion that there is no constitutional right to abortion an act of "intimidation" or "coercion" that denies others "the free exercise of their rights under the U.S. Constitution" under the second new character and fitness standard that the Office of Personnel Management wants to apply?

That's probably the view of those, including the current president of the United States, who have harshly condemned the Supreme Court's decision in the Dobbs case and claiming the high court is absolutely wrong when it says there is no right to abortion in the U.S. Constitution.

Ask yourself this: Can you imagine a government bureaucrat in charge of hiring ever claiming that opposition to liberal state abortion laws is an attempt "to indoctrinate others or to incite them to

action in furtherance of illegal acts,” thereby allowing the applicant to be rejected under OPM’s third proposed standard?

It’s not hard to imagine, is it? If you’re a member or leader of a pro-life group trying to change the law in a state such as California that legalizes abortion up through birth, is that “active membership or leadership in a group” with “unlawful aims” under the fourth proposed OPM standard?

And the same is true if you express an opinion adverse to illegal immigration and illegal aliens in a sanctuary state, or object in a state that has legalized racial discrimination in admissions to state colleges and universities. You could be considered to be attempting to deny such illegal aliens or beneficiaries of discriminatory admissions policies “their rights” under state law.

If the Office of Personnel Management wants to do something to help protect “the free exercise of rights” by the public under the Constitution, it could start by investigating every federal employee within the FBI, the Justice Department, the Department of Homeland Security, and other agencies that have been involved in directing social media companies to censor the opinions and views of American citizens.

Or, if OPM leaders don’t have the backbone to do that, how about investigating every federal government employee who labeled as domestic terrorists the parents who showed up at local school board meetings to complain about the racist propaganda being fed to their children? Or every government employee who targeted Catholics for their traditional views on marriage, abortion, and other issues? Or every government employee who contributed to the political persecutions of pro-life advocates through abuse of the FACE Act?

Don’t count on that happening.

So, rather than do the hard work of holding its current workforce to appropriate standards, the Office of Personnel Management wants to make it even easier on the front end for the federal government to unfairly discriminate in its hiring practices.

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