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115TH CONGRESS
2^D SESSION

H. R. 6374

[Report No. 115-]

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

SEPTEMBER --, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 13, 2018]

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 this*
10 *Act, the Secretary of Homeland Security, acting through*
11 *the Chief Security Officer of the Department of Homeland*
12 *Security, shall—*

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

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

24 *(3) publish such uniform fitness standards that*
25 *correspond to each such position risk level on the pub-*

1 *lic website of the Department and cause the same to*
2 *be printed in the Federal Register.*

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

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

14 *(A) a determination that such uniform fit-*
15 *ness standards are not sufficient to protect infor-*
16 *mation, systems, or facilities of the Department*
17 *the unauthorized disclosure of which or unau-*
18 *thorized access to which could reasonably be ex-*
19 *pected to cause substantial damage to the integ-*
20 *egrity and efficiency of the Department; and*

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

24 *(2) exigent circumstances created by a presi-*
25 *dential declaration of a major disaster issued pursu-*

1 *ant to section 401 of the Robert T. Stafford Disaster*
2 *Relief and Emergency Assistance Act (42 U.S.C.*
3 *5170) require such deviation to mitigate staffing*
4 *shortages for the duration of such declaration.*

5 *(c) RECIPROCITY.—*

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

11 *(2) SUFFICIENCY.—The Secretary of Homeland*
12 *Security, acting through the Chief Security Officer of*
13 *the Department of Homeland Security, may, as ap-*
14 *propriate, deem a favorably adjudicated personnel se-*
15 *curity investigation sufficient to satisfy a requirement*
16 *to complete a contractor fitness determination under*
17 *this section.*

18 *(d) FITNESS ADJUDICATION STATUS UPDATES.—Not*
19 *later than one year after the date of the enactment of this*
20 *Act, the Secretary of Homeland Security, acting through*
21 *the Chief Security Officer of the Department of Homeland*
22 *Security and in coordination with heads of the components*
23 *of the Department, shall implement a uniform 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 sta-*
2 *tus 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, ad-*
8 *judication, 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 the*
13 *uniform process described in subsection (d), the Secretary*
14 *of Homeland Security, acting through the Chief Security*
15 *Officer of the Department of Homeland Security, shall—*

16 *(1) certify that each contractor representative re-*
17 *ceiving information from such process has received in-*
18 *formation regarding practices relating to the adequate*
19 *protection of personally identifiable information and*
20 *has acknowledged in writing to adhere to such prac-*
21 *tices; and*

22 *(2) consult with the Director of the Office of Per-*
23 *sonnel Management to ensure that such process is*
24 *consistent with current best practices across the Fed-*
25 *eral Government.*

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

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

15 (1) *the number of deviation requests under sub-*
16 *section (b) made to the Chief Security Officer of the*
17 *Department of Homeland Security, including—*

18 (A) *the number of deviation requests ap-*
19 *proved and the corresponding justification for*
20 *each such deviation from such fitness standards;*
21 *and*

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

1 (2) *information regarding the number and aver-*
2 *age duration of Federal contractor fitness determina-*
3 *tions for each component of the Department;*

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

7 (4) *to the extent practicable, the number of indi-*
8 *viduals who, during the preceding calendar year, re-*
9 *ceived an unfavorable fitness determination from the*
10 *Department by reason of an affiliation with or mem-*
11 *bership in an organization dedicated to terrorism;*

12 (5) *to the extent practicable, the number of indi-*
13 *viduals who, during the preceding calendar year, re-*
14 *ceived a favorable fitness determination from the De-*
15 *partment despite an affiliation with or membership*
16 *in an organization dedicated to terrorism;*

17 (6) *information regarding the degree to which*
18 *fitness determinations made by the Department and*
19 *its components or other Federal agencies are recog-*
20 *nized on a reciprocal basis by the Department and its*
21 *components pursuant to subsection (c)(1);*

22 (7) *information regarding the degree to which*
23 *suitability and fitness determinations for Federal ap-*
24 *plicants and appointees made by the Department and*
25 *its components or other Federal agencies are recog-*

1 *nized on a reciprocal basis by the Department and its*
2 *components; and*

3 *(8) information regarding the degree to which*
4 *the Secretary, acting through the Chief Security Offi-*
5 *cer of the Department, uses the authority under sub-*
6 *section (c)(2).*

7 *(h) SUITABILITY STATUS UPDATES.—Not later than*
8 *one year after the date of the enactment of this Act, the*
9 *Chief Security Officer of the Department of Homeland Se-*
10 *curity, in consultation with the Chief Human Capital Offi-*
11 *cer of the Department, shall develop a plan to provide Fed-*
12 *eral applicants and appointees with suitability and fitness*
13 *determination status updates similar to updates provided*
14 *to contractor representatives under subsection (d).*

15 *(i) EXIGENT CIRCUMSTANCES FITNESS DETERMINA-*
16 *TION REVIEW.—The Chief Security Officer of the Depart-*
17 *ment of Homeland Security may conduct an immediate re-*
18 *view of a contractor employee’s fitness determination when*
19 *a contractor employee has engaged in violent acts against*
20 *individuals, property, or public spaces based on the con-*
21 *tractor employee’s association with persons or organizations*
22 *that advocate, threaten, or use force or violence, or any other*
23 *illegal or unconstitutional means, in an effort to prevent*
24 *others from exercising their rights under the Constitution*
25 *or laws of the United States or of any State, based on fac-*

1 *tors including, at a minimum, race, religion, national ori-*
2 *gin, or disability.*

3 *(j) NO ADDITIONAL FUNDS AUTHORIZED.—No addi-*
4 *tional funds are authorized to be appropriated to carry out*
5 *this Act. This Act shall be carried out using amounts other-*
6 *wise appropriated.*

7 *(k) DEFINITIONS.—In this section:*

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

11 *(2) CONTRACTOR EMPLOYEE.—The term “con-*
12 *tractor employee” means an individual who performs*
13 *work for or on behalf of any Federal agency under a*
14 *contract and who, in order to perform the work speci-*
15 *fied under such contract, will require access to facili-*
16 *ties, information, information technology systems,*
17 *staff, or other assets of the Department of Homeland*
18 *Security, and who could, by the nature of the access*
19 *or duties of such individual, adversely affect the in-*
20 *tegrity or efficiency of the Department. Such con-*
21 *tracts include the following:*

22 *(A) Personal services contracts.*

23 *(B) Contracts between any non-Federal en-*
24 *tity and the Department.*

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

5 (3) *CONTRACTOR REPRESENTATIVE.*—*The term*
6 *“contractor representative” means a person employed*
7 *by a contractor who is designated in writing by an*
8 *authorized official of a contractor as responsible for*
9 *managing and communicating with the Department*
10 *of Homeland Security or its components on behalf of*
11 *such contractor on matters relating to fitness deter-*
12 *minations, and is certified pursuant to subsection*
13 *(e)(1) regarding the adequate protection of personally*
14 *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 in*
4 *the excepted service, other than a position subject to*
5 *a suitability determination, as a contractor employee,*
6 *or as a nonappropriated fund instrumentality em-*
7 *ployee.*

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

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

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

21 (10) *SUITABILITY DETERMINATION.—The term*
22 *“suitability determination” has the meaning given*
23 *such term in section 731.101 of title 5, Code of Fed-*
24 *eral Regulations.*

1 (11) *TERRORISM.*—*The term “terrorism” means*
2 *any criminal acts that involve violence or are dan-*
3 *gerous to human life and appear to be intended to in-*
4 *timidate or coerce a civilian population to influence*
5 *the policy of a government by intimidation or coer-*
6 *cion, or to affect the conduct of a government by mass*
7 *destruction, assassination, or kidnapping.*