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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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

(h) 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.

(i) 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 non-appropriated 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 em-
ployee, 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 INSTRUMEN-
TALITY EMPLOYEE.—The term “nonappropriated
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 Pre-

(10) SUITABILITY DETERMINATION.—The term
“suitability determination” has the meaning given
such term in section 731.101 of title 5, Code of Federal Regulations.