

April 3, 2023

Hon. Kiran Ahuja  
Director  
U.S. Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415-1000

**Re: Comments on Proposed Rule *Suitability and Fitness Vetting*, 88 Federal Register 6192 (January 31, 2023)**

Dear Ms. Ahuja:

We the undersigned individuals, both in our personal capacity and representing organizations composed of millions of Americans, appreciate the opportunity to comment on the proposed *Suitability and Fitness Vetting* rule to amend the personnel vetting investigative and adjudicative processes for determining suitability and fitness for positions in the federal government.

We are deeply concerned that this rule will encourage discriminatory hiring practices that have nothing to do with an applicant's qualifications. In addition, this rule would add unnecessary confusion and restrictions to the ability of agencies to hire.

The proposed rule seeks to amend **5 CFR § 731.202(b)(7)** which already holds a clear standard against hiring applicants who knowingly and willfully engage in "acts or activities designed to overthrow the U.S. Government by force." This rule has been enforced by multiple administrations without controversy, and its legitimacy will be radically weakened with the intended changes, including the following ambiguous prohibitions:

1. "Knowing engagement in acts or activities with the purpose of overthrowing Federal, State, local, or tribal government."
2. "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."
3. "Attempting to indoctrinate others or to incite them to action in furtherance of illegal acts."
4. "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 not dissimilar to the current standard. However, the other three proposed standards are so broad and vague that they would allow hiring managers to reject candidates solely on the grounds of being lawfully critical of government policy. This openly subjective factor in evaluating the "character" and "fitness" of job applicants risks abuse in any administration.

For example, opinions on abortion, the Second Amendment, or climate change, or membership in an association that actively works to change the law on such issues, whatever side of the political aisle they are, could be used by a hiring manager to unfairly reject an otherwise well-qualified, excellent employee for any number of federal agencies, even when their duties have no relevance to those issues.

Likewise, agencies could reject anyone who questions the acts and behavior of government officials with no regard for individual competency. Should a strong critique of the Defense Secretary threaten the eligibility of someone who wishes to serve in the Securities and Exchange Commission? In any administration, this sort of ideological discrimination is unwarranted and dangerous, and the terms used in the proposed change, “intimidate” and “coerce,” have become synonymous – wrongly so – in the eyes of some, with vigorous, active speech that seeks to change opinions and federal and state laws.

The nebulous nature of the proposed rule’s new standards is counterintuitive to an agency’s objective to evaluate the character and conduct of those seeking to enter civil service. The Office of Personnel Management should do the hard work of holding its current workforce to appropriate standards instead of making it easier to unfairly discriminate in its hiring practices. Therefore, for the sake of preserving the integrity and efficiency of the federal government, we urge that the proposed rule be withdrawn.

Sincerely,

Kevin Roberts Ph.D.  
President  
The Heritage Foundation

Jessica Anderson  
Executive Director  
Heritage Action for America

Hon. Donald J. Devine  
Former Director (1981-1985)  
U.S. Office of Personnel Management

Hon. David Brat  
Former U.S. Congressman  
7th Virginia, U.S. Congress

Saulius Anuzis  
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60 Plus Association

James L. Martin  
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President and CEO  
ACLJ Action

Bob Carlstrom  
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AMAC Action

Hon. Ben Carson, M.D.  
Founder and Chairman  
American Cornerstone Institute

Sandy Rios  
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American Family Association

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American Main Street Initiative

Jon Schweppe  
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