

“Social Credit Scores” For Federal Employees and Contractors?

🍃 Elizabeth K. Dorminey ⌚ Mar 1, 2023



In a Federal Register notice dated January 31, 2023, the Office of Personnel Management (OPM) has proposed an ongoing program of “suitability and fitness” vetting to establish “requirements and standards for agencies to properly vet individuals to assess risk to the integrity and efficiency of the service.”

What does this mean for federal employees and federal contractors? Potentially, something that looks very much like the social credit system as practiced in China.

According to the Federal Register notice:

Suitability and fitness refer to a decision by an agency that an individual does or does not have the required level of character and conduct necessary to perform work for a Federal agency. These determinations are based on whether a person's character or conduct may have an adverse impact on the integrity or efficiency of the service.

Unlike objective measures such as years of service or timely loan repayment, "character" and "conduct" are problematically subjective criteria. How does one judge or rate such qualities?

OPM proposes to evaluate the suitability and fitness of senior executive service (SES) personnel—typically, the highest-ranking civil service employees in management roles at the various federal departments and agencies. It will delegate the responsibility for "adjudicating"—their word—fitness and suitability of employees to the various agencies. The intelligence services are excepted, but these regulations would apply to federal contractors and their employees as well.

So what goes into the mix in assessing "suitability" and "fitness"? The proposal's circular, even maze-like language repeatedly references these terms, but hard criteria are elusive. Proposed § 731.202 lists minimum fitness standards. Many disqualifiers seem reasonable enough: misconduct or negligence in employment; criminal conduct; lying, dishonesty, illegal drug use. But "excessive" alcohol use without evidence of rehabilitation also makes the list. Who decides what's "excessive"? (No wonder the intelligence services exempted themselves from this rule. Winston Churchill, able statesman that he was, wouldn't survive this test.) "Knowing engagement in an act or activity with the purpose of overthrowing Federal, State, local, or tribal government" is included; also, "an act of force, violence, intimidation, or coercion with the purpose of denying another individual the free exercise of rights under the U.S. constitution or any state constitution."

Subjective criteria depend on the eye of the beholder. Your mother-in-law might think even one glass of wine excessive; your teenager, that taking away the cellphone is an act of violence. Still more troubling is the inclusion of things like "attempting to indoctrinate another or to incite another to action in furtherance of an illegal act" or "active membership or leadership in a group with knowledge of its unlawful aim, or participation in such a group with a specific intent to further its unlawful aim." There is at least the potential for serious conflict with constitutional free speech guarantees.

The proposed rule allows for consideration of mitigating factors such as “contributing societal conditions” and “the absence or presence of rehabilitation or efforts toward rehabilitation.” Is a history of low socioeconomic status an excuse? Is self-criticism required? At least there’s a provision for appeals to the Merit Systems Protection Board (SMPB).

The proposed rule calls for periodic investigations and continuous vetting of employees and contractors. Does this mean the departments and agencies will be reviewing Facebook posts and Twitter feeds on an ongoing basis to assess character and conduct?

Much as China's social credit system purports to rate citizens for "trustworthiness" (read: orthodoxy), with a poor score likely to have adverse professional and personal consequences, the Administration’s proposed system risks veering into a system for whitelisting the compliant and blacklisting dissenters for reasons that may be largely political. SES employees and federal contractors' speech should not be chilled by fears of being denied work or advancement that might displease unelected arbiters of "suitability and fitness."

This proposed rule is open for comments until April 3, 2023. Anyone may submit comments [here](#).

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