

DHS PAID ADMINISTRATIVE LEAVE ACCOUNTABILITY
 ACT OF 2015

JUNE 17 2015.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
 submitted the following

R E P O R T

[To accompany H.R. 1633]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1633) to provide for certain improvements relating to the tracking and reporting of employees of the Department of Homeland Security placed on administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “DHS Paid Administrative Leave Accountability Act of 2015”.

SEC. 2. DEPARTMENT OF HOMELAND SECURITY IMPROVED INTERNAL TRACKING AND REPORTING OF ADMINISTRATIVE LEAVE FOR PERSONNEL MATTERS.

(a) IN GENERAL.—Title I of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101 et seq.) is amended by adding at the end the following new section:

“SEC. 104. INTERNAL TRACKING AND REPORTING OF ADMINISTRATIVE LEAVE FOR PERSONNEL MATTERS.

“(a) INTERNAL REPORTING.—Not later than 90 days after the date of the enactment of the DHS Paid Administrative Leave Accountability Act of 2015, and quarterly thereafter, the head of each component of the Department shall submit to the Chief Human Capital Officer of the Department—

“(1) the number of employees of the component who had been on administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters for a period of six consecutive months or longer as of the last day of the period covered by the report;

“(2) the total cost to the component associated with such administrative leave and such paid non-duty status (including salary and benefits) for the period covered by the report; and

“(3) the average duration that employees are placed on administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters for a period of six consecutive months or longer, as of the last day of the period covered by the report for the component.

“(b) CHCO TRACKING.—The Chief Human Capital Officer shall—

“(1) maintain records of the number of employees of the Department who are placed on administrative leave or paid non-duty status without charge to leave for personnel matters and the costs (including salary and benefits) associated with such leave or non-duty status; and

“(2) in consultation with the head of each of the components of the Department, determine any appropriate actions to be taken by the Department to resolve any personnel matter objectively, appropriately, and expeditiously or to reduce the use of administrative leave and paid non-duty status without charge to leave in addressing any personnel matter.

“(c) PERSONNEL MATTERS DEFINED.—In this section, the term ‘personnel matters’ means, with respect to an employee, any personnel investigation (including any investigation into misconduct and any national security or suitability investigation), any criminal matter, or any adverse action proposed or taken by the Department, including any action under chapter 75 of title 5, United States Code.

“(d) LEVERAGE OF EXISTING SYSTEMS.—In carrying out this section, the Secretary is encouraged to leverage systems and operations in use on the date of enactment of the DHS Paid Administrative Leave Accountability Act of 2015 to implement the requirements of this section.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 103 the following new item:

“Sec. 104. Internal tracking and reporting of administrative leave for personnel matters.”.

SEC. 3. DEPARTMENT OF HOMELAND SECURITY POLICY RELATING TO EMPLOYEES ON ADMINISTRATIVE LEAVE.

By not later than 90 days after the date of the enactment of this Act, the Chief Human Capital Officer of the Department of Homeland Security shall develop and implement a Department-wide policy in accordance with existing Federal guidance specifically related to the use of administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters. Such policy shall include the responsibilities of the components of the Department for reporting information relating to such administrative leave and such paid non-duty status to the Chief Human Capital Officer, as required under section 104(a) of the Homeland Security Act of 2002 (Public Law 107–296), as added by section 2. Such policy shall provide guidance on expediting the resolution of a personnel matter for which an employee has been on administrative leave or any other type of paid non-duty status without charge to leave for a period of six consecutive months or longer in an objective and appropriate manner.

SEC. 4. REPORTS TO CONGRESS ON DEPARTMENT OF HOMELAND SECURITY EMPLOYEES ON ADMINISTRATIVE LEAVE FOR PERSONNEL MATTERS.

(a) **QUARTERLY REPORTS.**—Not later than 30 days after the last day of each calendar quarter of 2016, 2017, and 2018, the Chief Human Capital Officer of the Department of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the number of Department employees on administrative leave, and any other type of paid non-duty status without charge to leave, for personnel matters for a period of six consecutive months or longer as of the last day of the quarter covered by the report. Each such report shall include—

(1) the costs to the Department associated with the placement of such employees on administrative leave or such paid non-duty status (including salary and benefits) for the period covered by the report; and

(2) a description of any actions taken by the Department to resolve any personnel matter for which an employee has been placed on administrative leave or paid non-duty status without charge to leave.

(b) **PERSONNEL MATTERS.**—In this section, the term “personnel matters” has the meaning given such term in section 104(c) of the Homeland Security Act of 2002 (Public Law 107–296), as added by section 2.

PURPOSE AND SUMMARY

The purpose of H.R. 1633 is to provide for certain improvements relating to the tracking and reporting of employees of the Department of Homeland Security placed on administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Federal agencies have the discretion to authorize paid administrative leave, which is an excused absence without loss of pay or charge to leave. However, if it is used for extended periods of time, such as when an employee is placed on paid administrative leave for several months pending a conduct-related investigation, the cost to taxpayers could be substantial.

Existing guidance from the Office of Personnel Management (OPM) sets forth that, in rare circumstances, an employee may be placed in a paid, non-duty status for a period when a Federal agency determines that the employee’s continued presence on the job during the period may: (1) pose a threat to the employee or others; (2) result in a loss or damage to Government property; or (3) jeopardize legitimate Government interests. According to the Government Accountability Office (GAO), Federal agencies expended \$3.1 billion between Fiscal Year 2011 and Fiscal Year 2014 on salaries for employees on administrative leave, including for employees who were awaiting the resolution of a conduct-related investigation. (*Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data*, [GAO–15–79], Oct. 20, 2014). GAO found that during this three-year period, within the Department of Homeland Security (DHS), over \$380 million was expended on 1.5 million days of paid administrative leave for excused absences, a subset of which are attributable to conduct-related investigations. In part, DHS’ paid leave expenditure is attributable to about 200 DHS employees who had been placed on paid administrative leave, pending a conduct-related investigation, for periods totaling six or more months.

Given the cost to taxpayers, the Department should have policies and procedures in place to ensure proper management of paid ad-

ministrative leave, particularly administrative leave provided when an employee undergoes investigation for misconduct or criminal matters. However, DHS does not have such a policy and, consequently, does not have assurance of consistent administration of this category of leave throughout the Department.

The Department should track the number of employees placed on paid administrative leave for personnel matters for six months or longer and the costs associated with such periods of leave to ensure that it is providing effective oversight of both DHS' employees and taxpayer dollars. Additionally, the Department's Chief Human Capital Officer should provide sufficient oversight to better safeguard taxpayer resources. Such action is in line with the memorandum issued by OPM on May 29, 2015 that announced a Government-wide effort to improve the quality and accuracy of data maintained by Federal agencies pertaining to administrative leave. The Committee would emphasize that the focus of this legislation is oversight of employees paid salaries and benefits for long periods of time when under investigation for personnel matters, such as misconduct issues and criminal matters. This measure does not seek to address the Department's use of paid administrative leave for other purposes, such as for civic-related duties (e.g. voting and blood donation) or severe weather events that prohibit safe operations.

HEARINGS

No hearings were held on H.R. 1633.

COMMITTEE CONSIDERATION

The Committee met on May 20, 2015, to consider H.R. 1633, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MR. LOUDERMILK (#1); was AGREED TO, as amended, by voice vote.

An Amendment by MRS. TORRES to the Amendment in the Nature of a Substitute (#1A); was AGREED TO by voice vote.

Page 2, line 8, strike "and".

Page 2, line 12, strike the period and insert "; and".

Page 2, after line 12, insert the following: "(3) the average duration that employees are placed on administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters for a period of six consecutive months or longer, as of the last day of the period covered by the report for the component."

An Amendment by MRS. WATSON COLEMAN to the Amendment in the Nature of a Substitute (#1B); was AGREED TO by voice vote.

Page 3, after line 11, insert a new subsection entitled "(d) Leverage of Existing Systems".

An Amendment by MRS. WATSON COLEMAN to the Amendment in the Nature of a Substitute (#1C); was WITHDRAWN by unanimous consent.

Page 5, after line 17, insert a new section entitled "Sec. 5. Additional Resources."

The Subcommittee on Oversight and Management Efficiency met on May 13, 2015, to consider H.R. 1633, and ordered the measure

forwarded to the Full Committee with a favorable recommendation, amended, by voice vote. The Subcommittee took the following actions:

The following amendment was offered:

An amendment offered by MRS. WATSON COLEMAN (#1); was AGREED TO by voice vote.

Page 3, line 3, strike "monitor" and insert "maintain records of".

Page 3, line 12, insert "objectively, appropriately, and" before "expeditiously".

Page 3, line 13, strike "eliminate or".

Page 4, line 19, after the period insert the following:

"Such policy shall provide guidance on expediting the resolution of a personnel matter for which an employee has been on administrative leave or any other type of paid non-duty status without charge to leave for a period of six consecutive months or longer in an objective and appropriate manner."

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 1633.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1633, the DHS Paid Administrative Leave Accountability Act of 2015, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 15, 2015.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1633, the DHS Paid Administrative Leave Accountability Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1633—DHS Paid Administrative Leave Accountability Act of 2015

H.R. 1633 would require the Department of Homeland Security (DHS) to develop and implement a policy for the use of certain types of administrative leave and paid non-duty status for instances where DHS employees are paid and not charged for such leave; the department would also have to maintain records on the use of such leave or non-duty status. Finally, the bill would require the department to submit quarterly reports over the 2016–2018 period on the number of DHS employees who have spent at least six consecutive months on certain types of paid non-duty status.

Based on information from DHS, CBO estimates that implementing H.R. 1633 would cost less than \$500,000 annually over the 2016–2018 period; any spending would be subject to the availability of appropriated funds. Much of the data needed for the required reports and records is currently collected by the department. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

H.R. 1633 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1633 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The performance goals and objectives of H.R. 1633 include the development and implementation of a Department-wide policy regarding paid administrative leave for personnel matters. The Department shall also improve the internal tracking and reporting of the number of employees placed on administrative leave for personnel matters for longer than a period of six months and the total costs associated with such leave. The Department shall report to Congress on these issues to increase transparency and accountability.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 1633 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1633 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 1633 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that bill may be cited as the “DHS Paid Administrative Leave Accountability Act of 2015”.

Section 2. Improved internal tracking and reporting

This section amends the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101 *et seq.*) to require heads of DHS components to provide the Department’s Chief Human Capital Officer data related to paid administrative leave within 90 days of the Act’s enactment. DHS components are required to provide each quarter the (1) number of employees placed on administrative leave for personnel matters for longer than a period of 6 months; (2) total cost to the component associated with paying administrative leave for such employees, including salaries and benefits; and (3) the average length of time that employees (those placed on paid administrative leave for personnel matters for longer than 6 months) have been on such leave. To determine the actual costs associated with these employees, DHS should include the cost of both employees’ salaries and the benefits provided while on paid administrative leave for longer than six months to the extent that the information is available. In the event that calculating the cost of benefits provided to these employees is prohibitively burdensome, the Department may use generally accepted estimates, provided that there is a sufficient, detailed explanation of the methodology used. If this

approach is taken, the Committee encourages the Department to receive prior input from the Government Accountability Office on the methodology. Section 2 also requires the Department's Chief Human Capital Officer to maintain records on this data and work with components to determine the appropriate actions to take to resolve these personnel matters objectively, appropriately, and expeditiously. Section 2 defines personnel matters as relating to "any personnel investigation (including any investigation into misconduct and any national security or suitability investigation), any criminal matter, or any adverse action proposed or taken by the Department." Section 2 encourages the Secretary to leverage existing systems and operations to fulfill the requirements of this section of the Act.

The Committee notes that the Department's Office of the Chief Human Capital Officer received almost \$22 million in fiscal year 2014 to carry out its duties for providing overall management and administration for the human capital policies, programs, and practices for its workforce. The Committee did not authorize additional appropriations for the Chief Human Capital Officer to provide greater Departmental oversight of the approximately 200 employees within the Department's workforce of 240,000 employees that have been placed on administrative leave pending resolution of personnel matters for six or more months. The Committee expects the Department to integrate this activity into what the Department identified in its fiscal year 2016 budget justification as one of its key human capital priority areas-developing human capital policies and guidance in order to ensure alignment of priorities with compliance with laws and regulations. This section directs the Department to use existing systems and resources to better track and monitor costs associated with administrative leave for personnel matters extending longer than six months.

In the event that, after enactment of this Act, the Secretary determines that implementation of this law will require reallocation of existing resources or new resources, the Committee expects the Secretary or designee, to provide timely notification and a detailed explanation for such a determination to the Committee.

Section 3. Development and implementation of policy

This section requires DHS's Chief Human Capital Officer to develop and implement a Department-wide policy specifically related to the use of paid administrative leave for personnel matters, completing implementation within 90 days of the Act's enactment. The policy should include the responsibilities of components for reporting information on paid administrative leave to the Chief Human Capital Officer. Section 3 requires that the policy provide guidance on how to expedite the resolution of matters involving employees on paid administrative leave for personnel matters for a period of six consecutive months or longer.

Section 4. Reports to Congress on Department of Homeland Security employees on administrative leave for personnel matters

This section requires DHS's Chief Human Capital Officer to submit to the House and Senate Homeland Security Committees a report each quarter on the number of employees placed on administrative leave for personnel matters for a period of six consecutive

months or longer. The reports should include (1) the costs associated with employees placed on administrative leave and (2) actions taken by DHS to resolve personnel matters for such employees.

Section 4 requires that the policy should provide guidance on how to objectively and appropriately expedite the resolution of personnel matters resulting in the placement of an employee on paid administrative leave for a period longer than 6 months.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

*	*	*	*	*	*	*
TITLE I—DEPARTMENT OF HOMELAND SECURITY						
*	*	*	*	*	*	*
<i>Sec. 104. Internal tracking and reporting of administrative leave for personnel matters.</i>						
*	*	*	*	*	*	*

TITLE I—DEPARTMENT OF HOMELAND SECURITY

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SEC. 104. INTERNAL TRACKING AND REPORTING OF ADMINISTRATIVE LEAVE FOR PERSONNEL MATTERS.

(a) **INTERNAL REPORTING.**—*Not later than 90 days after the date of the enactment of the DHS Paid Administrative Leave Accountability Act of 2015, and quarterly thereafter, the head of each component of the Department shall submit to the Chief Human Capital Officer of the Department—*

(1) *the number of employees of the component who had been on administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters for a period of six consecutive months or longer as of the last day of the period covered by the report;*

(2) *the total cost to the component associated with such administrative leave and such paid non-duty status (including salary and benefits) for the period covered by the report; and*

(3) *the average duration that employees are placed on administrative leave, or any other type of paid non-duty status without charge to leave, for personnel matters for a period of six consecutive months or longer, as of the last day of the period covered by the report for the component.*

(b) **CHCO TRACKING.**—*The Chief Human Capital Officer shall—*

(1) *maintain records of the number of employees of the Department who are placed on administrative leave or paid non-duty status without charge to leave for personnel matters and the costs (including salary and benefits) associated with such leave or non-duty status; and*

(2) *in consultation with the head of each of the components of the Department, determine any appropriate actions to be taken by the Department to resolve any personnel matter objectively, appropriately, and expeditiously or to reduce the use of administrative leave and paid non-duty status without charge to leave in addressing any personnel matter.*

(c) *PERSONNEL MATTERS DEFINED.—In this section, the term “personnel matters” means, with respect to an employee, any personnel investigation (including any investigation into misconduct and any national security or suitability investigation), any criminal matter, or any adverse action proposed or taken by the Department, including any action under chapter 75 of title 5, United States Code.*

(d) *LEVERAGE OF EXISTING SYSTEMS.—In carrying out this section, the Secretary is encouraged to leverage systems and operations in use on the date of enactment of the DHS Paid Administrative Leave Accountability Act of 2015 to implement the requirements of this section.*

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