

AMENDING TITLE 5, UNITED STATES CODE, TO REQUIRE THAT THE OFFICE OF PERSONNEL MANAGEMENT SUBMIT AN ANNUAL REPORT TO CONGRESS RELATING TO THE USE OF OFFICIAL TIME BY FEDERAL EMPLOYEES

MAY 11, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 1293]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 1293) to amend title 5, United States Code, to require that the Office of Personnel Management submit an annual report to Congress relating to the use of official time by Federal employees, 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. REPORTING REQUIREMENT.

(a) IN GENERAL.—Section 7131 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1)(A) Not later than March 31 of each calendar year, the Office of Personnel Management, in consultation with the Office of Management and Budget, shall submit to each House of Congress a report on the operation of this section during the fiscal year last ending before the start of such calendar year.

“(B) Not later than December 31 of each calendar year, each agency (as defined by section 7103(a)(3)) shall furnish to the Office of Personnel Management the information which such Office requires, with respect to such agency, for purposes of the report which is next due under subparagraph (A).

“(2) Each report by the Office of Personnel Management under this subsection shall include, with respect to the fiscal year described in paragraph (1)(A), at least the following information:

“(A) The total amount of official time granted to employees.

“(B) The average amount of official time expended per bargaining unit employee.

“(C) The specific types of activities or purposes for which official time was granted, and the impact which the granting of such official time for such activities or purposes had on agency operations.

“(D) The total number of employees to whom official time was granted, and, of that total, the number who were not engaged in any activities or purposes except activities or purposes involving the use of official time.

“(E) The total amount of compensation (including fringe benefits) afforded to employees in connection with activities or purposes for which they were granted official time.

“(F) The total amount of official time spent by employees representing Federal employees who are not union members in matters authorized by this chapter.

“(G) A description of any room or space designated at the agency (or its subcomponent) where official time activities will be conducted, including the square footage of any such room or space.

“(3) All information included in a report by the Office of Personnel Management under this subsection with respect to a fiscal year—

“(A) shall be shown both agency-by-agency and for all agencies; and

“(B) shall be accompanied by the corresponding information (submitted by the Office in its report under this subsection) for the fiscal year before the fiscal year to which such report pertains, together with appropriate comparisons and analyses.

“(4) For purposes of this subsection, the term ‘official time’ means any period of time, regardless of agency nomenclature—

“(A) which may be granted to an employee under this chapter (including a collective bargaining agreement entered into under this chapter) to perform representational or consultative functions; and

“(B) during which the employee would otherwise be in a duty status.”

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective beginning with the report which, under the provisions of such amendment, is first required to be submitted by the Office of Personnel Management to each House of Congress by a date which occurs at least 6 months after the date of the enactment of this Act.

COMMITTEE STATEMENT AND VIEWS**PURPOSE AND SUMMARY**

H.R. 1293 amends title 5, United States Code, to require the Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), to submit an annual report to Congress relating to the use of “official time” by federal employees.

BACKGROUND AND NEED FOR LEGISLATION

Section 7131 of title 5, United States Code, authorizes federal employees who serve as union representatives to negotiate collective bargaining agreements, participate in proceedings before the Federal Labor Relations Authority, and perform certain representational activities in lieu of their regularly assigned duties, commonly

referred to as “official time.” Under current law, the use of official time must be reasonable, necessary, and in the public interest.

Under existing law, federal agencies are not required to report annually to Congress on the amount of time employees perform representational activities on official time. Without reporting requirements, it is difficult to determine with certainty how federal employees utilize official time or with what frequency.¹

However, the Office of Personnel Management (OPM) has requested information from federal agencies related to the amount of official time used by federal employees and federal agencies have provided such information for OPM’s reporting purposes. OPM issued its first report on official time usage in 1998, pursuant to a requirement in the House report accompanying H.R. 2378, the Treasury, Postal Service, and General Government Appropriations bill for fiscal year 1998. Although there are no current requirements for OPM to report on federal employees’ use of official time, as a matter of practice, OPM has continued to provide reports on the use of official time by federal workers since 2002. While OPM has provided guidance to federal agencies on the collection, recording, and calculation of official time data, there are currently no government-wide standards or procedures to ensure consistency of agency reporting.

In March 2017, OPM published information related to the hours spent on, and costs resulting from, official time for fiscal year 2014.² OPM found the use of official time was on the rise, with agencies reporting that bargaining unit employees spent a total of 3.468 million hours performing representational activities on official time.³ This represented a 0.84 percent increase compared to FY 2012.⁴ The FY 2014 report shows that taxpayers paid \$162 million for salary and benefit costs related to official time.⁵ Additionally, the number of official time hours used per bargaining unit employee increased from 2.81 hours in FY 2012 to 2.88 hours during FY 2014.⁶ This increase is similar to the last time OPM reported on official time, when the agency provided data for FY 2012.⁷ For FY 2012, OPM reported that federal employees performed 3.439 million total hours on official time, which represented a 1.3 percent increase compared to FY 2011.⁸ The FY 2012 report also shows taxpayers paid \$157 million for costs related to official time.⁹

Having the data contained in the OPM report for FY 2014 was progress, since until recently, the last official time data was from FY 2012; nonetheless, information related to official time could be improved. According to OPM’s FY 2014 report:

While there is no uniform requirement concerning the degree and specificity of records kept [by agencies to provide to OPM for the annual report], OPM provides guid-

¹ Office of Personnel Mgmt., *Official Time Usage in the Federal Government, Fiscal Year 2014*, available at <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/reports/2014-official-time-usage-in-the-federal-government.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Office of Personnel Mgmt., *Reports on Official Time*, available at <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/>.

⁸ *Id.*

⁹ *Id.*

ance to agencies to record official time by using the following categories: (1) Term Negotiations; (2) Mid-Term Negotiations; (3) Dispute Resolution; and (4) General Labor-Management Relations.¹⁰

H.R. 1293 requires agencies to provide OPM with the information it requires for the report. In addition, H.R. 1293 requires that OPM's report include "the specific types of activities or purposes for which official time was granted, and the impact which the granting of such official time for such activities or purposes had on agency operations." This requirement expands the current guidance provided by OPM to agencies and puts OPM's authority to require such information into statute. In response to Government Accountability Office recommendations regarding data collection on official time, OPM stated, "OPM has been given no authority to direct agency actions regarding official time, [. . .] including how official time data is collected and reported."¹¹ H.R. 1293 grants OPM statutory authority to require agencies to furnish specific data for purposes of OPM's annual report on official time.

Although some information that H.R. 1293 would require federal agencies and OPM to report is already captured in OPM's reporting, H.R. 1293 will provide a clearer picture of the impact of official time on agency operations. H.R. 1293 will also provide more reliable data for how many employees are granted official time, and of that total, how many employees spend all their time on official time. In addition, H.R. 1293 will provide more transparency related to compensation of employees on official time. Finally, H.R. 1293 will require a description of any room or space designated at agencies where official time takes place.

An amendment adopted during Committee consideration of the bill requires OPM to include in the annual report official time performed on behalf of non-union members. Given that 80 percent of the federal workforce is not unionized, this amendment will provide greater transparency on how much time federal employees on official time dedicate to their non-union counterparts.¹²

The overall objective of H.R. 1293 is to increase transparency and accountability regarding the use and costs of official time by providing Congress, and the American public, with accurate, timely information. The information required by H.R. 1293 is needed to ensure federal government employees are using official time in a manner that is "reasonable, necessary, and in the public interest."

LEGISLATIVE HISTORY

H.R. 1293 was introduced on March 1, 2017, by Representative Dennis Ross (R-FL) and referred to the Committee on Oversight and Government Reform. On March 8, 2017, the Committee on Oversight and Government Reform ordered H.R. 1293 favorably reported, as amended.

On February 16, 2017, the Subcommittee on Government Operations held a hearing examining the use of official time at the De-

¹⁰*Id.*

¹¹ Letter from Mark Reinhold, Assoc. Director, Office of Personnel Mgmt., to Seto J. Bagdoyan, Acting Director, Strategic Issues, Gov't Accountability Office (Oct. 10, 2014), available at <http://www.gao.gov/assets/670/666619.pdf>.

¹² Union Membership and Coverage Database, CPS (last updated Feb. 11, 2017), available at <http://unionstats.gsu.edu/>.

partment of Veterans Affairs (VA). At the hearing, the Committee heard testimony from the Government Accountability Office (GAO). GAO found the VA does not have a standardized way of recording and calculating official time, which results in unreliable data that inhibits VA's ability to monitor official time use.¹³

The bill is similar to legislation, H.R. 4392, introduced by Rep. Ross in the 114th Congress. During the 114th Congress, the Committee favorably reported the bill, as amended, by voice vote.

Rep. Ross introduced similar legislation, H.R. 568, during the 113th Congress. The Committee favorably reported H.R. 568, as amended, by voice vote. In the 112th Congress, Rep. Ross introduced similar legislation, H.R. 2066, and the Committee held a hearing on June 1, 2011 to review the use of official time by federal workers. That bill saw no further action.

SECTION-BY-SECTION

Section 1. Reporting requirement

Subsection (a) of section 1 amends 5 U.S.C. 7131 by adding a subsection (e).

Paragraph (1) of the new subsection 7131(e) requires the OPM to submit an annual report on official time.

Paragraphs (2)(A) through (F) of section 7131(e) requires OPM's report to include:

- the total amount of official time granted to employees;
- the average amount of official time expended per bargaining unit employee;
- the specific types of activities or purposes for which official time was granted and the impact that the granting of such official time for such activities or purposes had on agency operations;
- the total number of employees to whom official time was granted, and of that total, the number who were not engaged in any activities or purposes except activities or purposes involving the use of official time;
- the total amount of compensation afforded to employees in connection with activities or purposes for which they were granted official time; and
- a description of any room or space designated at an agency where official time activities are conducted.

Paragraph (3)(A) of section 7131(e) mandates that all the information in OPM's report on official time be shown on both an agency-by-agency basis and for all agencies.

Paragraph (3)(B) of section 7131(e) mandates that the report contain information for the fiscal year before the fiscal year of the latest report submitted by OPM.

Paragraph (4) of section 7131(e) defines "official time" as any period of time granted to an employee to perform representational or consultative functions, and during which the employee would otherwise be in a duty status.

Subsection (b) of section 1 requires OPM to submit the report at least six months after the date of enactment of the bill.

¹³*The Use of Official Time for Union Activities at the Department of Veterans Affairs: Hearing Before the H. Comm. On Oversight & Gov't Reform, 115th Cong. (Feb. 16, 2017) (statement of Mary Crenshaw, U.S. Gov't Accountability Office).*

EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Ranking Member Elijah Cummings (D–MD) offered an amendment adding a requirement to the list of reporting requirements on official time to include data showing the amount of official time used on behalf of non-union members. The amendment was adopted by voice vote.

COMMITTEE CONSIDERATION

On March 8, 2017, the Committee met in open session and ordered H.R. 1293, favorably reported, as amended, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 1293.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends title 5, United States Code, to require the Office of Personnel Management to submit an annual report to Congress relating to the use of official time by Federal Employees. As such, this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to amend title 5, United States Code, to require the Office of Personnel Management to submit an annual report to Congress relating to the use of official time by Federal Employees.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of section 551 or title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement, the Committee has included below a letter received from the Congressional Budget Office.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974, which the Committee has included below.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 17, 2017.

Hon. JASON CHAFFETZ,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1293, a bill to amend title 5, United States Code, to require that the Office of Personnel Management submit an annual report to Congress relating to the use of official time by federal employees.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1293—A bill to amend title 5, United States Code, to require that the Office of Personnel Management submit an annual report to Congress relating to the use of official time by federal employees

H.R. 1293 would require the Office of Personnel Management (OPM) to provide annual reports to the Congress on the use of official time by federal employees who also serve as union officers. Official time is paid time off from assigned government duties to represent a labor union. The bill would require the OPM report to include the purpose for the use of official time, the amount of compensation paid for official time, and the locations where the official time duty occurs.

OPM collects some information on the use of official time. CBO expects that information currently collected would be combined with other aggregate and estimated information to prepare the report for the Congress. Thus, CBO estimates that any additional costs would be less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 1293 could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 1293 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1293 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

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

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):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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**SUBPART E—LABOR-MANAGEMENT AND
EMPLOYEE RELATIONS**

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CHAPTER 71—LABOR-MANAGEMENT RELATIONS

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**SUBCHAPTER IV—ADMINISTRATIVE AND OTHER
PROVISIONS**

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

(e)(1)(A) *Not later than March 31 of each calendar year, the Office of Personnel Management, in consultation with the Office of Management and Budget, shall submit to each House of Congress a report on the operation of this section during the fiscal year last ending before the start of such calendar year.*

(B) Not later than December 31 of each calendar year, each agency (as defined by section 7103(a)(3)) shall furnish to the Office of Personnel Management the information which such Office requires, with respect to such agency, for purposes of the report which is next due under subparagraph (A).

(2) Each report by the Office of Personnel Management under this subsection shall include, with respect to the fiscal year described in paragraph (1)(A), at least the following information:

(A) The total amount of official time granted to employees.

(B) The average amount of official time expended per bargaining unit employee.

(C) The specific types of activities or purposes for which official time was granted, and the impact which the granting of such official time for such activities or purposes had on agency operations.

(D) The total number of employees to whom official time was granted, and, of that total, the number who were not engaged in any activities or purposes except activities or purposes involving the use of official time.

(E) The total amount of compensation (including fringe benefits) afforded to employees in connection with activities or purposes for which they were granted official time.

(F) The total amount of official time spent by employees representing Federal employees who are not union members in matters authorized by this chapter.

(G) A description of any room or space designated at the agency (or its subcomponent) where official time activities will be conducted, including the square footage of any such room or space.

(3) All information included in a report by the Office of Personnel Management under this subsection with respect to a fiscal year—

(A) shall be shown both agency-by-agency and for all agencies; and

(B) shall be accompanied by the corresponding information (submitted by the Office in its report under this subsection) for the fiscal year before the fiscal year to which such report pertains, together with appropriate comparisons and analyses.

(4) For purposes of this subsection, the term “official time” means any period of time, regardless of agency nomenclature—

(A) which may be granted to an employee under this chapter (including a collective bargaining agreement entered into under this chapter) to perform representational or consultative functions; and

(B) during which the employee would otherwise be in a duty status.

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