

VET PROTECTION ACT OF 2017

MAY 23, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans’ Affairs,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1461]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 1461) to amend title 38, United States Code, to require the Secretary of Veterans Affairs to submit an annual report to Congress relating to the use of official time by employees of the Department of Veterans Affairs, to limit the instances in which official time may be granted for certain purposes to employees of the Department, 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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AMENDMENT

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 “Veterans, Employees, and Taxpayers Protection Act of 2017” or the “VET Protection Act of 2017”.

SEC. 2. LABOR MANAGEMENT IN DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by adding at the end the following new subchapter:

“SUBCHAPTER III—LABOR MANAGEMENT

“§ 741. Records on use of official time

“(a) TRACKING OF OFFICIAL TIME.—The Secretary shall track the use of official time by employees of the Department of Veterans Affairs in a manner that accounts for such time accurately and to a specific degree without the use of estimates or ranges of time.

“(b) ANNUAL REPORT.—(1) Not later than December 31 of each year, the Secretary shall submit to the Office of Personnel Management and the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on the use of official time by employees of the Department during the most recently ended fiscal year.

“(2) Each report under paragraph (1) shall include, with respect to the fiscal year covered by the report, the following information:

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

“(B) The total amount of official time expended and the amount of official time expended per employee for term negotiations, mid-term negotiations, general labor-management relations, and dispute resolution.

“(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 the operations of the Department.

“(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 annual salary, job title, and amount of official time afforded to any employee.

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

“(G) A list of any employee granted a waiver under section 742(d) and justification for each such waiver.

“(c) DEFINITION OF OFFICIAL TIME.—For purposes of this section, the term ‘official time’ means any period of time—

“(1) which may be granted to an employee under chapter 71 of title 5 (including a collective bargaining agreement entered into under such chapter) or chapter 74 of this title to perform representational or consultative functions; and

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

“§ 742. Limitations on use of official time for certain purposes and individuals

“(a) POLITICAL ACTIVITIES AND LOBBYING.—Notwithstanding section 7131 of title 5 or any other provision of law, any employee of the Department may not use official time to carry out political activities or activities relating to lobbying.

“(b) PROHIBITION ON USE OF OFFICIAL TIME BY CERTAIN EMPLOYEES.—The following employees of the Department may not use official time for any purpose:

“(1) Any employee appointed under section 7401(1).

“(2) Any employee with an annual rate of basic pay equal to or greater than \$100,000.

“(3) Any employee who is serving a probationary period.

“(c) LIMITATION ON ALL EMPLOYEES.—Any employee of the Department not covered by subsection (b) may spend no more than 25 percent of the time such employee would otherwise be in a duty status on official time.

“(d) WAIVER.—(1) The Secretary may waive the requirements of subsection (b) or (c) with respect to an employee of the Department if the Secretary certifies, in writing, that the waiver is reasonable, necessary, and in the best interests of veterans.

“(2) The authority provided to the Secretary under this subsection shall not be subject to bargaining under this title or chapter 71 of title 5, and the exercise of, or failure to exercise, such authority shall not be an unfair labor practice under this title or such chapter.

“(e) DEFINITION OF OFFICIAL TIME.—For purposes of this section, the term ‘official time’ has the meaning given that term in section 741(c).

“§ 743. Termination of collection of dues

“Notwithstanding section 7115 of title 5, any exclusive bargaining agreement entered into pursuant to chapter 71 of such title by the Department shall provide that an employee of the Department may terminate a voluntary allotment for the payment of dues at any time. Any deductions for dues made pursuant to such allotment shall cease beginning on the first pay period after the termination is made.”

(b) APPLICABILITY.—Sections 742 and 743 of title 38, United States Code, as added by subsection (a), shall apply with respect to any collective bargaining agreement entered into before, on, or after the date of enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

“SUBCHAPTER III—LABOR MANAGEMENT

“741. Records on use of official time.

“742. Limitations on use of official time for certain purposes and individuals.

“743. Termination of collection of dues.”

SEC. 3. REQUIRED PROBATIONARY PERIOD FOR NEW EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) PROBATIONARY PERIOD.—

(1) IN GENERAL.—Chapter 7 of title 38, United States Code, is further amended by inserting after section 717 the following new section:

“§ 719. Probationary period for employees

“(a) IN GENERAL.—Notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of 2 years.

“(b) COVERED EMPLOYEE.—In this section, the term ‘covered employee’—

“(1) means any individual—

“(A) appointed to a permanent position within the competitive service at the Department; or

“(B) appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department; and

“(2) does not include any individual with a probationary period prescribed by section 7403 of this title.

“(c) PERMANENT HIRES.—Not later than 90 days before the expiration of a covered employee’s probationary period under subsection (a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary.

“(d) APPLICATION.—With respect to any individual described in subsection (b)(1)(A) and to whom this section applies, sections 7501(1) and 7511(a)(1)(A)(ii) of title 5 shall be applied to such individual by substituting ‘completed 2 years’ for ‘completed 1 year’ in each instance it appears.”

(2) CLERICAL AND CONFORMING AMENDMENTS.—

(A) CLERICAL.—The table of sections at the beginning of such chapter, as amended by section 2, is further amended by inserting after the item relating to section 717 the following new item:

“719. Probationary period for employees.”

(B) CONFORMING.—Title 5, United States Code, is amended—

(i) in section 3321(c)—

(I) by striking “Service, or” and inserting “Service,”; and

(II) by inserting at the end before the period the following: “, or any individual covered by section 719 of title 38”;

- (ii) in section 3393(d), by inserting at the end before the period the following: “or section 719 of title 38”;
- (iii) in sections 7501(1) and 7511(a)(1)(A)(ii), by inserting “or section 719 of title 38” after “title 10” in each instance it appears; and
- (iv) in section 7541(1)(A)—
 - (I) by striking “title or” and inserting “title,”; and
 - (II) by inserting at the end before the semicolon the following: “, or section 719 of title 38”.

(b) APPLICATION.—Section 719 of title 38, United States Code, as added by subsection (a)(1), shall apply to any covered employee (as that term is defined in subsection (b) of such section 719, as so added) appointed after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 1461, the “Veterans, Employees and Taxpayers Protection Act of 2017” or the “VET Protection Act of 2017,” was introduced by Representative Jodey Arrington of Texas, Chairman of the Subcommittee on Economic Opportunity of the House Committee on Veterans’ Affairs, on March 9, 2017. H.R. 1461, as amended, would require the Secretary of the U.S. Department of Veterans Affairs (VA) to track VA employees’ use of official time on activities authorized by statute and by collective bargaining agreements and submit an annual report on its use to Congress. The bill would also prohibit doctors, registered nurses, physician assistants and other healthcare providers and high level VA employees from using any official time, and would restrict any other VA employee from spending more than 25% of their time on official time. The bill would also authorize VA employees to stop paying union dues at any time. Finally, the probationary period for all new VA employees would be expanded to two years.

BACKGROUND AND NEED FOR LEGISLATION

Section 1. Short title

This section provides the short title of the bill.

Section 2. Labor Management in Department of Veterans Affairs

The Federal Service Labor-Management Statute authorizes federal employees to join public sector unions and to collectively bargain with agency management. This statute also specifically authorizes the use of official time for unions, which allows an employee to work on approved union activities and bargaining while receiving their federal pay and benefits as if they are in a duty status. The statute authorizes the use of official time for the negotiation of collective bargaining agreements, attendance at impasse proceedings, and participation in other activities of the Federal Labor Relations Authority.¹ Unions and agencies can also negotiate the use of official time for other purposes under the condition that both parties agree it is “reasonable, necessary, and in the public interest.”² Title 5 of the United States Code (U.S.C.) restricts the use of official time for any internal union business including “the solicitation of membership, elections of labor organization officials, and collection of dues,”³ which must be performed while the employee is in a non-duty status.

¹Section 7131(a) and (c) of title 5 U.S.C.

²Section 7131 (d) of title 5 U.S.C.

³Section 7131 (b) of title 5 U.S.C.

VA currently has five national master collective bargaining agreements, which, among other items, set the parameters for use of official time by union officials; there are also hundreds of agreements at the local level that also dictate the use of official time. Most local agreements provide a bank of time that can be used for official time at each facility while also allowing a certain number of VA employees to spend 100% of their time on official time.

Since official time was first authorized in the Civil Service Reform Act of 1978 (P.L. 95-454), there have been multiple reports that have criticized the federal government for its inability to track the use of official time across federal agencies. In 1979, the U.S. Government Accountability Office (GAO) found that 18 of the 26 bargaining units at four agencies had no record of official time usage and recommended that annual reports on its use be issued by the U.S. Office of Personnel Management (OPM).⁴ In 1996, GAO completed a report on official time that found, “VA did not have a time-reporting system that would provide the total number of hours used for union activities, the cost of the hours, or the number of employees using time for union activities for the Department.”⁵

On February 16, 2017, the Subcommittee on Economic Opportunity conducted a joint oversight hearing with the Subcommittee on Government Operations of the House Committee on Oversight and Government Reform, entitled “The Use of Official Time for Union Activities at the Department of Veterans Affairs.” This hearing highlighted the most recent GAO report that was released in February of 2017 on official time, which echoed previous GAO reports finding VA’s record keeping as “inconsistent” and “not reliable.”⁶ GAO also found that VA does not require a standardized way of tracking official time and “. . . allows facilities to use written records, estimates, samples, or surveys of official time hours used, or any combination of these methods to determine the amount of official time used by employees at their facility.”⁷

The Committee believes that it is time for VA, to heed four decades’ worth of GAO recommendations and accurately track official time. It defies logic that VA would continue to allow the use of “estimates and samples” to track taxpayer-funded time that is being spent on union-centered activities. The Committee expects, and believes that the average taxpayer would also expect, more transparency about where tax dollars are going when it is funding activities that do not directly serve veterans. Therefore, section 2 of this bill would amend chapter 7 of title 38 U.S.C., and would create a new section 741, which would require the VA Secretary to accurately track the use of official time at VA and provide an annual report to the House and Senate Committees on Veterans’ Affairs on its use. The report would include the total amount of official time that VA authorized in the previous fiscal year, information on the

⁴ U.S. Government Accountability Office, “Inadequate Recordkeeping on Official Time Used for Representational Functions,” FPCD-79-77: Published: Sep 17, 1979. <http://www.gao.gov/products/GAO/FPCD-79-77>.

⁵ U.S. Government Accountability Office, “Federal Labor Relations: Official Time Used for Union Activities,” T-GGD-96-191: Published: Sep 11, 1996. <http://www.gao.gov/assets/110/106634.pdf>.

⁶ U.S. Government Accountability Office, “*UNION ACTIVITIES: VA Could Better Track the Amount of Official Time Used by Employees.*” GAO-17-105: Published January 24, 2017 <https://www.gao.gov/assets/690/682250.pdf>.

⁷ Ibid.

employees who are using official time, and a formal description of any room or space provided to the union by the Department.

During the aforementioned February 2017 joint oversight hearing on official time, the subcommittees unveiled information, which had been previously provided by VA, that indicated that in fiscal year (FY) 2015, VA had almost 2,000 employees who were on some amount of official time and that 344 of these employees spent 100% of their time on official time instead of performing the work they were hired to do. Of these 344 employees who were on 100% official time, over 50% were originally hired by VA to provide direct patient care or process veterans' disability benefits. The data also included numerous highly paid and highly skilled employees, including doctors, nurses and senior staff, making over \$100,000 a year in their base salary while spending part or all of their time on union activities as opposed to the occupation and duties they were hired for. The total cost to VA for these employees in salaries alone was \$22,135,112 in FY2015.

While the Committee understands that official time can be potentially valuable if used appropriately, we believe that allowing senior staff and healthcare clinicians to be on official time, at the expense of providing care to and serving veterans, is not "reasonable, necessary, and in the public interest." Employees are not hired by VA to conduct union business; they are hired to fulfill the mission of the Department by providing benefits and services to veterans. While the recent GAO report found that some managers saw some value in official time, they also cited difficulty providing benefits and services to veterans because they have to re-schedule or back-fill critical positions to cover those employees on official time.⁸

To address this issue, section two of the bill would place reasonable restrictions on the use of official time at the Department. Specifically, the legislation would supersede any authorities included in current collective bargaining agreements related to official time and would prohibit VA physicians, registered nurses, physician assistants, dentists, podiatrists, chiropractors, optometrists, probationary employees, or any other employee with a base salary of \$100,000 or greater, from using any official time for any purpose. Additionally, the bill would restrict every other VA employee to spending no more than 25% of their time on official time. This change to the law would result in no employee spending 100% of their time on official time. Both of these restrictions would be waivable by the Secretary if he or she certifies that such a waiver is reasonable, necessary, and in the best interest of veterans. The use of these waivers is at the sole discretion of management and would not be subject to collective bargaining or claims of unfair labor practices. The Secretary would be required to include a list and justification for each waiver in the official time report that would be annually sent to Congress as required by this section.

The Committee believes that these are reasonable restrictions, which put the mission of the Department and the needs of veterans first, while still not restricting the overall amount of official time that is negotiated between VA and its bargaining units. This section would also clarify that official time is not used to carry out political activities or lobbying. This would ensure that official time is

⁸ Ibid.

being use for its intended purpose of improving management-labor relations and not for political or partisan reasons. The language would not restrict employees' first amendment rights but would simply state that if they choose to lobby or their union then they must do so while in a non-duty status.

Finally, this section would also provide greater flexibility to employees for when they choose to join or leave a union at VA. Currently, VA's collective bargaining agreements allow for members to join the union at any point and require VA to take union dues out of an employee's paycheck each pay period and send the funds directly to the union. However, these agreements generally limit when an employee can elect to terminate this collection of union dues, therefore making it difficult for the employee to leave the union. For example, VA's current agreement with the American Federation of Government Employees (AFGE) requires that if an employee wants to terminate their dues collections then the form that is required to be filed must ". . . be submitted to the local union during the 10 calendar days ending on the anniversary date of his/her original allotment."⁹ Ultimately, this restrictive practice, results in VA employees being able to join the union at any point but severely limiting when they can actually leave the union.

The Committee believes that this practice should be changed to allow freedom of choice for all employees to join or leave any bargaining unit at any time. The current restrictions do not appear to benefit the employee but, instead, benefit the union and their financial viability by preventing employees from stopping the deduction of union dues from their paychecks. Therefore, this section would supersede any current collective bargaining agreements and would allow any eligible employee to join or leave any union at any point.

Section 3. Required probationary period for new employees of Department of Veteran Affairs

The federal hiring process is very complex and can take several months. The probationary period for federal employees is intended to be a final checkpoint in a new employee screening process. When an individual enters employment at VA, and across the federal government, he or she is put on a probationary period at the beginning of their employment for one year¹⁰ (except at certain agencies such as the Department of Defense, which requires a two-year probationary period). Physicians and other clinicians at VA, however, are considered to be part of the excepted service and are required to undergo a two-year probationary period. An employee's appeal rights are greatly diminished during their probationary period, as it is meant to be a period of time during which supervisors can fully assess the employee's capabilities and aptness for the position before that employee becomes a full-fledged civil servant with full civil service protections. According to a Merit Systems Protection Board report entitled, "*A Call to Action: Improving First-Level Supervision of Federal Employees*," individuals need to demonstrate

⁹U.S. Department of Veterans Affairs and American Federation of Government Employees Master Agreement, March 2011, Article 45 Section 6. [https://www.va.gov/LMR/docs/Agreements/AFGE/Master Agreement between DVA and AFGE-fin March 2011.pdf](https://www.va.gov/LMR/docs/Agreements/AFGE/Master%20Agreement%20between%20DVA%20and%20AFGE-fin%20March%202011.pdf).

¹⁰ Probationary periods are required by statute in section 3321(a)(1) of title 5 U.S.C. By regulation, OPM has provided for a one year probationary period in 5 C.F.R. § 315.801(a).

during their probationary period “why it is in the public interest for the government to finalize an appointment to the civil service.”¹¹ The Committee believes that this probationary period is vital to ensuring that VA is hiring only the most well-equipped employees. Many reports have illustrated this as an issue across the federal government, as supervisors do not use this time to thoroughly review an individual’s performance or assess an employee’s potential future success at the Department.

The Committee also believes that the current one-year probationary period is often not sufficient enough to accurately assess a new employee’s performance and conduct. According to a February 2015 GAO report, the supervisor often “. . . has not had enough time to observe the individual’s performance in all critical areas of the job.”¹² For example, training veterans claim examiners can take two to three years. Attempting to accurately measure an employee’s ability within one annual performance assessment cycle is nearly unobtainable. The Committee believes that such a small window to fully assess a new employee’s potential can lead to underperformance in the future, which can affect the services provided to veterans. The GAO report also found that many agencies have utilized extended probationary periods for their employees beyond the OPM-required year to address these issues and to enhance the quality of their workforce. Similarly, the Committee believes that VA needs to have a longer probationary period to ensure that only highly qualified and motivated employees continue employment at the Department.

In addition to the need for a longer probationary period, it is essential that VA supervisors are aware of when an employee’s probationary period is about to conclude, and when they will then be considered a full-time employee with expanded civil service protections and appeal rights. The GAO report discussed the need for, and some agencies have already instituted, an employee’s supervisor to make an affirmative decision to retain the employee beyond their probationary period. The Partnership for Public Service, a smart government, nonpartisan think-tank, articulated the need for a supervisor’s affirmative decision on an employee’s continued employment to the Committee in numerous meetings. Additionally, they provided support for this need in their testimony before the Senate Veterans’ Affairs Committee by stating, “As an employee’s probationary period is coming to a close, we believe managers should be required to make an affirmative decision as to whether the individual has demonstrated successful performance and should continue on past the probationary period.”¹³ Due to the fact that it is much more difficult to remove an underperforming employee once they have completed their probationary period, the Committee believes that it is important that a supervisor perform a final review at the end of this period, and make a decision on the

¹¹ U.S. Merit Systems Protection Board, “A Call to Action: Improving First-Level Supervision of Federal Employees” (Washington, D.C.: May 2010).

¹² U.S. Government Accountability Office “Federal Workforce: Improved Supervision and Better Use of Probationary Periods are Needed to Address Substandard Employee Performance,” <http://www.gao.gov/assets/670/668339.pdf>.

¹³ Testimony of Max Stier, President and CEO Partnership for Public Service, during a hearing entitled “Pending Healthcare and Benefits Legislation,” before the Senate Committee on Veterans’ Affairs, June 24, 2015. <http://www.veterans.senate.gov/imo/media/doc/PPS%20Stier%20Testimony%206.24.15.pdf>.

individual's performance and capability for continued employment within VA.

Section 3, therefore, would amend chapter 7 of title 38, U.S.C., to extend the probationary period for all new competitive service employees within VA to two years. This section would also require an employee's supervisor to make an affirmative decision 90 days prior to the end of the employee's probationary period as to whether the individual's appointment within VA should become permanent. The Committee believes this will further hold the Department's employees and supervisors accountable, as well as ensure a more qualified and highly performing workforce.

HEARINGS

On February 16, 2017, the Subcommittee on Economic Opportunity and the Subcommittee on Government Operations of the House Committee on Oversight and Government Reform conducted an oversight hearing, entitled "The Use of Official Time for Union Activities at the Department of Veterans Affairs." The following witnesses testified:

Ms. Cindy Brown Barnes, Director of Education, Workforce and Income Security, U.S. Government Accountability Office; Mr. J. David Cox, Sr., National President, American Federation of Government Employees, AFL-CIO; Mr. Trey Kovacs, Policy Analyst, Competitive Enterprise Institute; and Ms. Kimberly Perkins McLeod, Acting Executive Director for Labor Management Relations, U.S. Department of Veterans Affairs.

On March 21, 2017, the Subcommittee on Economic Opportunity conducted a legislative hearing on H.R. 1461. The following witnesses testified:

Ms. Kimberly Perkins McLeod, Acting Executive Director for Labor Management Relations, U.S. Department of Veterans Affairs who was accompanied by: Mr. Rondy Waye, Human Resources Policy Advisor for the Office of Human Resources and Management, U.S. Department of Veterans Affairs; Ms. Shirley Parker Blommel, President of Local 390, American Federation of Government Employees, AFL-CIO; and Mr. Derk A. Wilcox, Senior Attorney, Mackinac Center for Public Policy.

The following organizations submitted testimony for the record: American Federation of Government Employees, AFL-CIO, and National Nurses United.

SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 1461, as amended.

COMMITTEE CONSIDERATION

On May 17, 2017, the full Committee met in open markup session, a quorum being present, and ordered H.R. 1461, as amended, be reported favorably to the U.S. House of Representatives by voice vote. During consideration of the bill, the following amendments were considered:

An amendment in the nature of a substitute offered by Representative Jim Banks of Indiana, which struck all after the enacting clause and maintained the underlying bill but added

additional reporting requirements to the new section 741 of title 38, U.S.C., that would be created by section two of the bill. The amendment also made additional changes to section two of the bill by prohibiting any employee hired under section 7401(1) of title 38, U.S.C., or who makes \$100,000 or more a year from using official time. Finally, the amendment extended the probationary period required in section three of the bill from 18 months to 24 months. The amendment was adopted by a recorded vote of 13 to 11.

A substitute amendment to the amendment in the nature of a substitute offered by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans' Affairs. The substitute would only retain the reporting requirements in section two of the amendment in the nature of a substitute (with some additional requirements regarding official time that was used for whistleblower protection, reporting of fraud and abuse, implementation of new management directives, and information gathering to support claims of discrimination for a variety of reasons). Additionally, the substitute would completely strike out the limitations on official time and who can use official time and would remove the flexibility for the employee to terminate the deduction of union dues at any time as provided in section two of the underlying amendment in the nature of a substitute. The substitute was defeated by a recorded vote of 10–14.

An amendment to the amendment in the nature of a substitute offered by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans' Affairs. The amendment would require that any changes made by the underlying amendment in the nature of a substitute would only take effect on the date that is 180 days after the Secretary certifies to Congress that any employees who are hired under section 7401 of title 38, U.S.C., are appointed to positions that provide direct patient care to veterans. The amendment was defeated by a recorded vote of 10–14.

An amendment to the amendment in the nature of a substitute offered by Representative Beto O'Rourke of Texas. The amendment would strike the new sections 742 and 743 of title 38, U.S.C., as would be created by section two of the underlying amendment in the nature of the substitute. The amendment would also require that, no later than 180 days after the Secretary certifies that the VA Time and Attendance System has been fully implemented, the Comptroller General submit to Congress a report on the use of official time and its effectiveness. The amendment was defeated by a recorded vote of 10–14.

An amendment to the amendment in the nature of a substitute offered by Representative Mark Takano of California. The amendment would require that any changes made by the underlying amendment in the nature of a substitute would only take effect 180 days after the date in which the Secretary certifies to Congress that all 49,386 vacancies at the Department have been filled. The amendment was defeated by a recorded vote of 10–14.

An amendment to the amendment in the nature of substitute offered by Representative Mark Takano of California. The amendment would strike section 2(b) of the underlying amendment in the nature of a substitute which states that the new sections 742 and 743 created by the amendment in the nature of a substitute supersede any past, current or future collective bargaining agreements. The amendment would also require VA to report to Congress how the new sections 742 and 743 effect the Department's resources and identify any increase in resources needed to carry out these sections and would change the effective date for the sections 742 and 743 so that they would not take effect until VA certifies to Congress that all vacant human resources positions have been filled. The amendment was defeated by a recorded vote of 10–14.

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 the legislation and amendments thereto. At the full Committee markup of the bill on May 17, 2017 seven recorded votes were taken:

An Amendment in the Nature of a Substitute to H.R. 1461, offered by Representative Jim Banks of Indiana, was agreed to by a recorded vote of 13 yeas and 11 nays. The names of the Members who voted for and against are as follows:

Name	Yea	Nay	Present
Dr. Roe, TN, Chairman	X		
Mr. Bilirakis, FL	X		
Mr. Coffman, CO	X		
Dr. Wenstrup, OH	X		
Ms. Radewagen, AS	X		
Mr. Bost, IL		X	
Mr. Poliquin, ME	X		
Dr. Dunn, FL	X		
Mr. Arrington, TX	X		
Mr. Rutherford, FL	X		
Mr. Higgins, LA	X		
Mr. Bergman, MI	X		
Mr. Banks, IN	X		
Ms. Gonzalez-Colon, PR	X		
Mr. Walz, MN, Ranking Member		X	
Mr. Takano, CA		X	
Ms. Brownley, CA		X	
Ms. Kuster, NH		X	
Mr. O'Rourke, TX		X	
Miss Rice, NY		X	
Mr. Correa, CA		X	
Mr. Sablan, Northern Mariana Islands		X	
Ms. Esty, CT		X	
Mr. Peters, CA		X	
Total	13	11	

A Substitute to the Amendment in the Nature of a Substitute to H.R. 1461, offered by Ranking Member Tim Walz of Minnesota, was not agreed to by a recorded vote of 10 yeas and 14 nays. The names of the Members who voted for and against are as follows:

Name	Yea	Nay	Present
Dr. Roe, TN, Chairman		X	
Mr. Bilirakis, FL		X	
Mr. Coffman, CO		X	
Dr. Wenstrup, OH		X	
Ms. Radewagen, AS		X	
Mr. Bost, IL		X	
Mr. Poliquin, ME		X	
Dr. Dunn, FL		X	
Mr. Arrington, TX		X	
Mr. Rutherford, FL		X	
Mr. Higgins, LA		X	
Mr. Bergman, MI		X	
Mr. Banks, IN		X	
Ms. Gonzalez-Colon, PR		X	
Mr. Walz, MN, Ranking Member	X		
Mr. Takano, CA	X		
Ms. Brownley, CA	X		
Ms. Kuster, NH	X		
Mr. O'Rourke, TX	X		
Miss Rice, NY	X		
Mr. Correa, CA	X		
Mr. Sablan, Northern Mariana Islands	X		
Ms. Esty, CT	X		
Mr. Peters, CA	X		
Total	10	14	

An Amendment to the Amendment in the Nature of a Substitute to H.R. 1461, offered by Ranking Member Tim Walz of Minnesota, was not agreed to by a recorded vote of 10 yeas and 14 nays. The names of the Members who voted for and against are as follows:

Name	Yea	Nay	Present
Dr. Roe, TN, Chairman		X	
Mr. Bilirakis, FL		X	
Mr. Coffman, CO		X	
Dr. Wenstrup, OH		X	
Ms. Radewagen, AS		X	
Mr. Bost, IL		X	
Mr. Poliquin, ME		X	
Dr. Dunn, FL		X	
Mr. Arrington, TX		X	
Mr. Rutherford, FL		X	
Mr. Higgins, LA		X	
Mr. Bergman, MI		X	
Mr. Banks, IN		X	
Ms. Gonzalez-Colon, PR		X	
Mr. Walz, MN Ranking Member	X		
Mr. Takano, CA	X		
Ms. Brownley, CA	X		
Ms. Kuster, NH	X		
Mr. O'Rourke, TX	X		
Miss Rice, NY	X		
Mr. Correa, CA	X		
Mr. Sablan, Northern Mariana Islands	X		
Ms. Esty, CT	X		
Mr. Peters, CA	X		
Total	10	14	

An Amendment to the Amendment in the Nature of a Substitute to H.R. 1461, offered by Representative Beto O'Rourke of Texas, was not agreed to by a recorded vote of 10 yeas and 14 nays. The names of the Members who voted for and against are as follows:

Name	Yea	Nay	Present
Dr. Roe, TN, Chairman		X	
Mr. Bilirakis, FL		X	
Mr. Coffman, CO		X	
Dr. Wenstrup, OH		X	
Ms. Radewagen, AS		X	
Mr. Bost, IL		X	
Mr. Poliquin, ME		X	
Dr. Dunn, FL		X	
Mr. Arrington, TX		X	
Mr. Rutherford, FL		X	
Mr. Higgins, LA		X	
Mr. Bergman, MI		X	
Mr. Banks, IN		X	
Ms. Gonzalez-Colon, PR		X	
Mr. Walz, MN Ranking Member	X		
Mr. Takano, CA	X		
Ms. Brownley, CA	X		
Ms. Kuster, NH	X		
Mr. O'Rourke, TX	X		
Miss Rice, NY	X		
Mr. Correa, CA	X		
Mr. Sablan, Northern Mariana Islands	X		
Ms. Esty, CT	X		
Mr. Peters, CA	X		
Total	10	14	

An Amendment to the Amendment in the Nature of a Substitute to H.R. 1461, offered by Representative Mark Takano of California, was not agreed to by a recorded vote of 10 yeas and 14 nays. The names of the Members who voted for and against are as follows:

Name	Yea	Nay	Present
Dr. Roe, TN, Chairman		X	
Mr. Bilirakis, FL		X	
Mr. Coffman, CO		X	
Dr. Wenstrup, OH		X	
Ms. Radewagen, AS		X	
Mr. Bost, IL		X	
Mr. Poliquin, ME		X	
Dr. Dunn, FL		X	
Mr. Arrington, TX		X	
Mr. Rutherford, FL		X	
Mr. Higgins, LA		X	
Mr. Bergman, MI		X	
Mr. Banks, IN		X	
Ms. Gonzalez-Colon, PR		X	
Mr. Walz, MN Ranking Member	X		
Mr. Takano, CA	X		
Ms. Brownley, CA	X		
Ms. Kuster, NH	X		
Mr. O'Rourke, TX	X		
Miss Rice, NY	X		
Mr. Correa, CA	X		
Mr. Sablan, Northern Mariana Islands	X		
Ms. Esty, CT	X		
Mr. Peters, CA	X		
Total	10	14	

An Amendment to the Amendment in the Nature of a Substitute to H.R. 1461, offered by Representative Mark Takano of California, was not agreed to by a recorded vote of 10 yeas and 14 nays. The names of the Members who voted for and against are as follows:

Name	Yea	Nay	Present
Dr. Roe, TN, Chairman		X	
Mr. Bilirakis, FL		X	
Mr. Coffman, CO		X	
Dr. Wenstrup, OH		X	
Ms. Radewagen, AS		X	
Mr. Bost, IL		X	
Mr. Poliquin, ME		X	
Dr. Dunn, FL		X	
Mr. Arrington, TX		X	
Mr. Rutherford, FL		X	
Mr. Higgins, LA		X	
Mr. Bergman, MI		X	
Mr. Banks, IN		X	
Ms. Gonzalez-Colon, PR		X	
Mr. Walz, MN Ranking Member	X		
Mr. Takano, CA	X		
Ms. Brownley, CA	X		
Ms. Kuster, NH	X		
Mr. O'Rourke, TX	X		
Miss Rice, NY	X		
Mr. Correa, CA	X		
Mr. Sablan, Northern Mariana Islands	X		
Ms. Esty, CT	X		
Mr. Peters, CA	X		
Total	10	14	

H.R. 1461, as amended, was agreed to by a record vote of 13 yeas and 11 nays. The names of the Members who voted for and against are as follows:

Name	Yea	Nay	Present
Dr. Roe, TN, Chairman	X		
Mr. Bilirakis, FL	X		
Mr. Coffman, CO	X		
Dr. Wenstrup, OH	X		
Ms. Radewagen, AS	X		
Mr. Bost, IL		X	
Mr. Poliquin, ME	X		
Dr. Dunn, FL	X		
Mr. Arrington, TX	X		
Mr. Rutherford, FL	X		
Mr. Higgins, LA	X		
Mr. Bergman, MI	X		
Mr. Banks, IN	X		
Ms. Gonzalez-Colon, PR	X		
Mr. Walz, MN Ranking Member		X	
Mr. Takano, CA		X	
Ms. Brownley, CA		X	
Ms. Kuster, NH		X	
Mr. O'Rourke, TX		X	
Miss Rice, NY		X	
Mr. Correa, CA		X	
Mr. Sablan, Northern Mariana Islands		X	
Ms. Esty, CT		X	
Mr. Peters, CA		X	
Total	13	11	

A motion by Representative Jodey Arrington of Texas to report favorably H.R. 1461, as amended, to the House of Representatives was agreed to by voice vote.

COMMITTEE CORRESPONDENCE

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 JOHN RUTHERFORD, FLORIDA
 CLAY HIGGINS, LOUISIANA
 JACK REHRMAN, MICHIGAN
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U.S. House of Representatives
 COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED FIFTEENTH CONGRESS
 335 CANNON HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515
<http://veterans.house.gov>

DEMOCRATS
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 MARK TAKANO, CALIFORNIA
 JULIA BROWNLEY, CALIFORNIA
 ANN KUSTER, NEW HAMPSHIRE
 RETO O'DRISCOLL, TEXAS
 KATHLEEN RICE, NEW YORK
 J. LOUIS CORREA, CALIFORNIA
 KELLI SARBAN, NORTHERN MARIANA ISLANDS
 ELIZABETH ESTY, CONNECTICUT
 SCOTT PETERS, CALIFORNIA
 RAY KELLEY
 DEMOCRATIC STAFF DIRECTOR

May 19, 2017

The Honorable Jason Chaffetz
 Chairman
 House Committee on Oversight and Government Reform
 2157 Rayburn House Office Building
 Washington, D.C. 20515

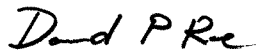
Dear Chairman Chaffetz:

In reference to your letter on May 19, 2017, I write to confirm our mutual understanding regarding H.R. 1461, as amended, the "Veterans, Employees and Taxpayers Protection Act of 2017."

I appreciate the House Committee on Oversight and Government Reform's waiver of consideration of provisions under its jurisdiction and its subject matter as specified in your letter. I acknowledge that the waiver was granted only to expedite floor consideration of H.R. 1461, as amended, and does not in any way waive or diminish the House Committee on Oversight and Government Reform's jurisdictional interests over this legislation or similar legislation. I will support a request from the House Committee on Oversight and Government Reform for appointment to any House-Senate conference on H.R. 1461, as amended. Finally, I will also support your request to include a copy of our exchange of letters on this matter in the *Congressional Record* during floor consideration.

Again, thank you for your assistance with these matters.

Sincerely,



David P. Roe M.D.
 Chairman

cc: The Honorable Paul Ryan, Speaker of the House
 The Honorable Elijah E. Cummings
 The Honorable Tim Walz
 Mr. Thomas J. Wickham Jr., Parliamentarian

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

May 19, 2017

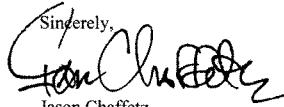
The Honorable David P. Roe, M.D.
Chairman
Committee on Veterans' Affairs
335 Cannon HOB
Washington, DC 20515

Dear Mr. Chairman:

I write concerning H.R. 1461, the Veterans, Employees, and Taxpayers (VET) Protection Act of 2017. As you know, the Committee on Veterans' Affairs received an original referral and the Committee on Oversight and Government Reform a secondary referral when the bill was introduced on March 9, 2017. I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee on Oversight and Government Reform will forego action on the bill.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 1461 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation. Further, I request your support for the appointment of conferees from the Committee on Oversight and Government Reform during any House-Senate conference convened on this or related legislation.

Finally, I would ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on Veterans' Affairs, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding

Sincerely,

Jason Chaffetz
Chairman

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Elijah E. Cummings
The Honorable Timothy J. Walz
The Honorable Thomas J. Wickham, Parliamentarian

COMMITTEE OVERSIGHT FINDINGS

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 goals and objectives are to provide reasonable changes to VA's use of official time and labor-management relations and to extend the probationary period for all new VA employees from 12 months to 24 months.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1461, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1461, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1461, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 19, 2017.

Hon. PHIL ROE, M.D.,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1461, the VET Protection Act of 2017.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1461—VET Protection Act of 2017

H.R. 1461 would limit the use of official time by employees of the Department of Veterans Affairs (VA) and would require the department to track the use of such time by its employees. Official time is paid time off from assigned government duties to represent a

labor union. As part of their, union contracts, VA employees can use part or all of their working day, up to a contractually agreed upon number of hours per year, to work in support of employee unions. Under section 2, no VA employee could dedicate more than 25 percent of their work time to such purposes, and some VA employees would be completely prohibited from using work hours for union related activities. Further, no VA employee would be allowed to use official time to engage in political activities or activities related to lobbying.

VA's agreements with employee unions specify the total number of hours that may be spent on official time rather than the number of people who are authorized to use official time. Thus, CBO expects that under the bill, the number of hours spent on official time would be spread over a larger number of people, but the total hours would not change significantly.

Section 2 also would require VA to track and provide detailed annual reports on the use of official time by department employees. VA is in the process of implementing a new time and attendance system to track the use of official time by VA employees that would meet most of the new requirements. In total, CBO estimates that implementing those provisions would cost less than \$500,000 to prepare new regulations and reports over the 2018–2022 period; that spending would be subject to the availability of appropriated funds.

Section 3 would extend the probationary period for certain VA employees, including those appointed to the senior executive service, from one year (or in some cases 18 months) to two years. CBO estimates that implementing section 3 would have no budgetary effect.

Enacting H.R. 1461 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1461 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1461 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 Dwayne M. Wright. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1461, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1461, as amended.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1461, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 1461, as amended, 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.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1461, as amended, 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 RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee estimates that section 3(a) of H.R. 1461, as amended, would require the VA Secretary to prescribe regulations to allow a supervisor to determine if an employee completing their probationary period shall have a final appointment at the Department.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 cites the short title of H.R. 1461 to be the "Veterans, Employees, and Taxpayers Protection Act of 2017" or the "VET Protection Act of 2017".

Section 2. Labor Management in Department of Veterans Affairs

Section 2(a) would amend chapter 7 of title 38, U.S.C., to create a new subchapter III entitled, "Labor Management" and would create the following new sections under the new subchapter III: section 741 entitled, "Records on use of official time"; section 742 entitled, "Limitations on use of official time for certain purposes and individuals"; and section 743 entitled, "Termination of collection of dues".

Sec. 741(a) would require the Secretary to track the use of official time by employees of the Department in a manner that accounts for such time accurately and to a specific degree without the use of estimates or ranges of times.

Sec. 741(b) would require the Secretary to submit a report about employees' use of official time to the House and Senate Committees on Veterans' Affairs and the Office of Personnel Management no later than December 31st of each year for the prior fiscal year. Sec. 741(b) would require the annual report from the Secretary to in-

clude the following information: the total amount of official time granted to employees; the total amount of official time expended per employee for term negotiations, mid-term negotiations, general labor-management relations, and dispute resolution; the specific types of activities or purposes for which official time was granted and the impact that it had on the operations of the Department; the total number of employees whom official time was granted and, of that total, the number of this total who were only involved in activities involving official time; the total annual salary, job title, and amount of official time afforded to any employees; a description of the room and space designated by the Department for the use of official time activities, including the square footage or any such room or space; and a list of any employee granted a waiver under the new section 742(d) of title 38, U.S.C.

Sec. 741(c) would define the term “official time” as any period of time which may be granted to an employee under chapter 71 of title 5, U.S.C. (including a collective bargaining agreement entered into under such chapter) or chapter 74 of title 38, U.S.C., to perform representational or consultative functions; and during which the employee would otherwise be in a duty status.

Sec. 742 (a) would stipulate that, notwithstanding section 7131 of title 5, U.S.C. or any other provision of law, no employee of the Department may use official time to carry out political activities or activities related to lobbying.

Sec. 742 (b) would prohibit any employee of the Department appointed under section 7401(1) of title 38, U.S.C., or with an annual rate of basic pay equal to or greater than \$100,000, from using official time for any purpose.

Sec. 742(c) would prohibit any employee of the Department who is not covered by subsection 742(b) from spending more than 25 percent of their time that they would otherwise spend in a duty status, on official time.

Sec. 742(d) would allow the Secretary to waive the requirements of the new subsections 742(b) and 742(c) of title 38, U.S.C., if the Secretary certifies, in writing, that the waiver is reasonable, necessary, and in the best interest of veterans. Sec. 742(d) would also provide that the authority granted in this new subsection, shall not be subject to collective bargaining under title 38, U.S.C., or chapter 71 of title 5, U.S.C., and that the exercise of, or failure to exercise, such authority shall not be an unfair labor practice under title 38, U.S.C., or title 5, U.S.C.

Sec. 742(e) would define the term “official time” as having the same meaning as given in the new subsection 741(c) of title 38, U.S.C.

Sec. 743 would provide that notwithstanding section 7115 of title 5, U.S.C., any exclusive bargaining agreement entered into pursuant to chapter 51 of title 5, U.S.C., by the Department shall provide that an employee may terminate a voluntary allotment for the payment of dues at any time. This new section would stipulate that any deductions for dues made pursuant to such allotment shall cease beginning on the first pay period after the termination is made.

Section 2(b) would provide that the new sections 742 and 743 of title 38, U.S.C., as added by section 2(a), shall apply with respect

to any collective bargaining agreement entered into before, on, or after the date of enactment of this Act.

Section 2(c) would make a clerical amendment.

Section 3. Required probationary period for new employees of Department of Veterans Affairs

Section 3(a)(1) would amend chapter 7 of title 38, U.S.C., to create a new section 719 entitled, “Probationary period for employees”.

Sec. 719(a) would stipulate that, notwithstanding sections 3321 and 3393(d) of title 5, U.S.C., any appointment of a covered employee shall only become final after the employee has served a probationary period of two years.

Sec. 719(b) would define a “covered employee” for the new section 719 of title 38, U.S.C., as meaning an individual who is appointed to a permanent position within the competitive service at the Department or who is appointed as a career appointee (as defined in section 3132(a)(4) of title 5, U.S.C.) within the Senior Executive Service at the Department. Subsection 719(b) would provide that a “covered employee” does not include any individual with a probationary period as prescribed by section 7403 of title 38, U.S.C.

Sec. 719(c) would provide that not later than 90 days prior to the expiration of a covered employee’s probationary period under the new subsection 719(a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed by the Secretary.

Sec. 719(d) would, with respect to any individual described in the new subsection 719(b)(1)(A) of title 38, U.S.C., and to whom the section applies, apply sections 7501(1) and 7511(a)(1)(A)(ii) of title 5, U.S.C., to such individual and would substitute “completed 2 years” for “completed 1 year” in each instance it appears.

Section 3(a)(2) would make clerical and conforming amendments.

Section 3(b) would provide that the new section 719 of title 38, U.S.C., shall apply to any covered employee appointed after the date of enactment of this Act.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART I—GENERAL PROVISIONS

* * * * *

CHAPTER 7—EMPLOYEES

SUBCHAPTER I —GENERAL EMPLOYEE MATTERS

Sec.

701. Placement of employees in military installations.

* * * * *

719. Probationary period for employees.

* * * * *

SUBCHAPTER III—LABOR MANAGEMENT

741. Records on use of official time.

742. Limitations on use of official time for certain purposes and individuals.

743. Termination of collection of dues.

* * * * *

SUBCHAPTER I—GENERAL EMPLOYEE MATTERS

* * * * *

§ 719. Probationary period for employees

(a) *IN GENERAL.*—Notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of 2 years.

(b) *COVERED EMPLOYEE.*—In this section, the term “covered employee”—

(1) means any individual—

(A) appointed to a permanent position within the competitive service at the Department; or

(B) appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department; and

(2) does not include any individual with a probationary period prescribed by section 7403 of this title.

(c) *PERMANENT HIRES.*—Not later than 90 days before the expiration of a covered employee’s probationary period under subsection (a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary.

(d) *APPLICATION.*—With respect to any individual described in subsection (b)(1)(A) and to whom this section applies, sections 7501(1) and 7511(a)(1)(A)(ii) of title 5 shall be applied to such individual by substituting “completed 2 years” for “completed 1 year” in each instance it appears.

* * * * *

SUBCHAPTER III—LABOR MANAGEMENT

§ 741. Records on use of official time

(a) *TRACKING OF OFFICIAL TIME.*—The Secretary shall track the use of official time by employees of the Department of Veterans Af-

fairs in a manner that accounts for such time accurately and to a specific degree without the use of estimates or ranges of time.

(b) ANNUAL REPORT.—(1) Not later than December 31 of each year, the Secretary shall submit to the Office of Personnel Management and the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on the use of official time by employees of the Department during the most recently ended fiscal year.

(2) Each report under paragraph (1) shall include, with respect to the fiscal year covered by the report, the following information:

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

(B) The total amount of official time expended and the amount of official time expended per employee for term negotiations, mid-term negotiations, general labor-management relations, and dispute resolution.

(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 the operations of the Department.

(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 annual salary, job title, and amount of official time afforded to any employee.

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

(G) A list of any employee granted a waiver under section 742(d) and justification for each such waiver.

(c) DEFINITION OF OFFICIAL TIME.—For purposes of this section, the term "official time" means any period of time—

(1) which may be granted to an employee under chapter 71 of title 5 (including a collective bargaining agreement entered into under such chapter) or chapter 74 of this title to perform representational or consultative functions; and

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

§ 742. Limitations on use of official time for certain purposes and individuals

(a) POLITICAL ACTIVITIES AND LOBBYING.—Notwithstanding section 7131 of title 5 or any other provision of law, any employee of the Department may not use official time to carry out political activities or activities relating to lobbying.

(b) PROHIBITION ON USE OF OFFICIAL TIME BY CERTAIN EMPLOYEES.—The following employees of the Department may not use official time for any purpose:

(1) Any employee appointed under section 7401(1).

(2) Any employee with an annual rate of basic pay equal to or greater than \$100,000.

(3) Any employee who is serving a probationary period.

(c) LIMITATION ON ALL EMPLOYEES.—Any employee of the Department not covered by subsection (b) may spend no more than 25 per-

cent of the time such employee would otherwise be in a duty status on official time.

(d) **WAIVER.**—(1) *The Secretary may waive the requirements of subsection (b) or (c) with respect to an employee of the Department if the Secretary certifies, in writing, that the waiver is reasonable, necessary, and in the best interests of veterans.*

(2) *The authority provided to the Secretary under this subsection shall not be subject to bargaining under this title or chapter 71 of title 5, and the exercise of, or failure to exercise, such authority shall not be an unfair labor practice under this title or such chapter.*

(e) **DEFINITION OF OFFICIAL TIME.**—*For purposes of this section, the term “official time” has the meaning given that term in section 741(c).*

§ 743. Termination of collection of dues

Notwithstanding section 7115 of title 5, any exclusive bargaining agreement entered into pursuant to chapter 71 of such title by the Department shall provide that an employee of the Department may terminate a voluntary allotment for the payment of dues at any time. Any deductions for dues made pursuant to such allotment shall cease beginning on the first pay period after the termination is made.

* * * * *

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

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SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

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§ 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

(1) before an appointment in the competitive service becomes final; and

(2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive [Service, or] *Service*, any individual covered by section 1599e of title 10, or any individual covered by section 719 of title 38.

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SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

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§ 3393. Career appointments

(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

(1) all groups of qualified individuals within the civil service;

or

(2) all groups of qualified individuals whether or not within the civil service.

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

(2) making written recommendations to the appropriate appointing authority concerning such candidates.

(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

(A) consideration of demonstrated executive experience;

(B) consideration of successful participation in a career executive development program which is approved by the Office; and

(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee. The preceding sentence shall not apply to any individual covered by section 1599e of title 10 *or section 719 of title 38*.

(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

(f) The title of each career reserved position shall be published in the Federal Register.

(g) A career appointee may not be removed from the Senior Executive Service or civil service except in accordance with the applicable provisions of sections 1215,, 3592, 3595, 7532, or 7543 of this title.

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SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

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CHAPTER 75—ADVERSE ACTIONS

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SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

§ 7501. Definitions

For the purpose of this subchapter—

(1) “employee” means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or, except as provided in section 1599e of title 10 *or section 719 of title 38*, who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) “suspension” means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

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§ 7511. Definitions; application

- (a) For the purpose of this subchapter—
 - (1) “employee” means—
 - (A) an individual in the competitive service—
 - (i) who is not serving a probationary or trial period under an initial appointment; or
 - (ii) except as provided in section 1599e of title 10 *or section 719 of title 38*, who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;
 - (B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—
 - (i) in an Executive agency; or
 - (ii) in the United States Postal Service or Postal Regulatory Commission; and
 - (C) an individual in the excepted service (other than a preference eligible)—
 - (i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or
 - (ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;
 - (2) “suspension” has the same meaning as set forth in section 7501(2) of this title;
 - (3) “grade” means a level of classification under a position classification system;
 - (4) “pay” means the rate of basic pay fixed by law or administrative action for the position held by an employee; and
 - (5) “furlough” means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.
- (b) This subchapter does not apply to an employee—
 - (1) whose appointment is made by and with the advice and consent of the Senate;
 - (2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—
 - (A) the President for a position that the President has excepted from the competitive service;
 - (B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or
 - (C) the President or the head of an agency for a position excepted from the competitive service by statute;
 - (3) whose appointment is made by the President;
 - (4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;
 - (6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;
 - (7) whose position is within the Central Intelligence Agency or the Government Accountability Office;

(8) whose position is within the United States Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability;

(9) who is described in section 5102(c)(11) of this title; or

(10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.

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SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

§ 7541. Definitions

For the purpose of this subchapter—

(1) “employee” means a career appointee in the Senior Executive Service who—

(A) has completed the probationary period prescribed under section 3393(d) of this **[title or] title**, section 1599e of title 10, *or section 719 of title 38*; or

(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

(2) “suspension” has the meaning set forth in section 7501(2) of this title.

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DISSENTING VIEWS

We have serious concerns over H.R. 1461, the Veterans, Employees, and Taxpayers Protection Act of 2017, particularly Subsections 742 and 743 of Section 2. Although this bill claims to address the shortage of Department of Veterans Affairs (VA) employees who are available to perform direct patient care, we believe that it is actually a thinly veiled union-busting bill. Subsections 742 and 743 of Section 2 would strip away much of the VA employees union's ability to improve the workplace for all VA employees and the veterans they serve. We believe that this bill would, at best, do nothing to alleviate long wait times and, at worst, exacerbate long wait times by getting rid of vital human resources functions performed by employees on official time and by making it harder for the VA to attract the qualified employees that it so desperately needs to fill current vacancies. In addition, we dissent over the failure of this Committee to consider this bill under regular order and the rush to bring this bill to a full Committee markup without going through the appropriate Subcommittee first.

We strongly agree with H.R. 1461's goal of examining the VA's workforce to find areas where data-backed improvements can be made to better serve veterans. The VA's current failure to sufficiently track how employees are spending official time and its current lack of understanding of the effects of official time are problems that need to be addressed. This is why we offered three amendments during the full-Committee markup that would have strengthened some of the reporting requirements in H.R. 1461 and required the VA to examine how much it would cost to implement H.R. 1461. One amendment would have required a Government Accountability Office study on the effects of official time at the VA. Another amendment added requirements that the VA look at how the use of official time changes from year to year and that its reports encompass a broader range of official time duties. The third amendment offered in markup would have required the VA to study and report on the cost of replacing the human resource roles of employees on official time if H.R. 1461 were to be passed and compare that cost with the current cost of employees on official time. Unfortunately, the Majority rejected these common-sense attempts at obtaining data on the use of official time at the VA.

Subsection 742 of Section 2 would place arbitrary prohibitions on the use of official time by the following employees:

1. Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries;
2. Employees with an annual rate of basic pay equal to or greater than \$100,000; and
3. Employees serving a probationary period.

It also limits the amount of time any employee at the VA may spend on official time to an arbitrary, 25 percent of their time. Given the Majority's acknowledgment that the VA is not sufficiently tracking official time, we believe it is irresponsible to propose sweeping personnel changes in the absence of any data or information about the effects of official time.

This is particularly troubling as official time is official agency business. Federal employees who volunteer as union representatives are already only allowed to use official time to perform representational activities. Such activities include setting procedures that protect employees from on-the-job injuries, enforcing protections from unlawful discrimination, providing workers with a voice in determining working conditions, assisting whistleblowers, and representing employees in grievances and disciplinary actions. These union representatives perform these activities for the benefit of all employees in a bargaining unit, not just for those bargaining unit employees who are members of the union. Additionally, these employees are already not allowed to use official time to conduct union-specific business such as organizing new members, holding internal union meetings, electing union officers, or engaging in partisan political activities. Therefore, H.R. 1461 would, in effect, simply decrease the valuable human resource service that these employees provide on official time. This would have unknown, and potentially disastrous, consequences for the ability of the VA to serve all veterans, particularly in the current environment in which it is vitally important for the VA to protect whistleblowers, strengthen its workforce, and attract more direct care providers.

By the Majority's own admission, only three physicians would be impacted by this legislation. This is in comparison to the 108 Medical Doctors and Doctors of Osteopathy serving in administrative positions throughout VHA, who do not serve in a direct patient care. Such a small number of physicians on official time would do little to address the shortage of physicians who are available to perform direct patient care and decrease wait times. If the Majority were truly interested in addressing wait times, there are far more effective ways to bring existing providers into patient care roles. This is why, in the spirit of the Majority's stated intent for this bill, we supported two amendments that would have been more effective in decreasing wait times for veterans than H.R. 1461. One amendment would have required the VA to move all providers who are capable of providing direct patient care into such roles instead of just focusing on the miniscule number of providers on official time. The other amendment would have required the VA to first fill each of its existing 49,386 vacancies, which include over 45,000 direct provider vacancies. Unfortunately, the Majority rejected each of these proposals as well and continued to only focus on the miniscule number of physicians on official time.

Subsection 743 of Section 2 would strip the VA employees union of the ability to have some certainty of how much support it would have from VA employees. This would in turn strip the union of any ability to plan and conduct the activities it needs to protect VA employees and protect the VA workplace. Given the valuable services that the union provides at the VA through working with employees and managers to resolve disputes, addressing issues of discrimina-

tion and retaliation, and effecting improvements in the workplace that benefit all employees, this would have devastating consequences for the VA's ability to perform its mission to serve all veterans.

Furthermore, this bill was not considered through regular order, and rushed to a full Committee markup. By doing so, the Majority missed a key opportunity to develop bipartisan legislation that could have brought more clarity on the impacts of official time at the VA. We find it unfortunate that the Majority rejected common-sense, pragmatic proposals to bring about such clarity and chose, in this instance, to attack unions rather than the systemic problems that actually contribute to the shortage of direct care providers. We remain committed to working together to ensure veterans come first.

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