

VETERANS AFFAIRS PURCHASE CARD MISUSE
MITIGATION ACT

MAY 21, 2018.—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

[To accompany H.R. 5215]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5215) to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to prohibit employees found to have knowingly misused Department of Veterans Affairs purchase cards from serving as purchase card holders or approving officials, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 5215, the “Veterans Affairs Purchase Card Misuse Mitigation Act,” would mitigate the potential for purchase card misuse by requiring the Secretary of Veterans Affairs to revoke the purchase card or purchase card approval authority from any employee who is found to have knowingly misused it. This is a safeguard designed to stop further misuse while existing penalties, ranging from suspension to demotion to removal, are considered. Representative Jack Bergman of Michigan introduced H.R. 5215 on March 8, 2018.

BACKGROUND AND NEED FOR LEGISLATION

The Government Purchase Card Program provides charge cards, linked to centrally billed accounts, to federal agencies in order to make small-dollar purchases efficiently by minimizing paperwork and administrative burden. Purchase cards are one element of the larger Government Charge Card Program, which also includes the travel and fleet card programs. The concept originated with Executive Order 12352, entitled, “Federal Procurement Reforms,” of March 17, 1982, and Government Purchase Cards came into widespread use by federal agencies in the late 1980s. The General Services Administration oversees the Government Charge Card Program. Today, purchase card spending by the Department of Veterans Affairs (VA) exceeds \$4 billion annually.

In March 2008, the Government Accountability Office (GAO) released a report entitled, “Governmentwide Purchase Cards: Actions Needed to Strengthen Internal Controls to Reduce Fraudulent, Improper, and Abusive Purchases.” The GAO tested purchase card transaction data from a range of federal agencies and found over 40 percent of purchases failed to meet basic internal control standards, as well as incidents of wanton abuse and embezzlement. The Government Charge Card Abuse Prevention Act of 2012 (P.L. 112–194), which was informed in part by the March 2008 GAO report, required agency heads to attest to the adequacy of internal controls and policies to prevent charge card misuse, instituted penalties for employees committing misuse, directed inspectors general to conduct annual risk assessments of misuse, and instituted other safeguards.

The most recent risk assessment by the VA Office of Inspector General (OIG), published March 6, 2017 regarding fiscal year 2016, found the VA Government Purchase Card Program to pose medium risk, while VA’s travel and fleet card programs pose low risk. Additionally, the OIG found 13 percent of VA’s purchase card transactions to be unauthorized commitments and noted that the office continues to identify misuse of purchase cards. An earlier report by the OIG, entitled, “Review of Alleged Unauthorized Commitments,” which was published May 21, 2014, estimated about 15,600 potential unauthorized commitments valued at approximately \$85.6 million. A similar OIG report entitled, “Veterans Health Administration: Audit of Purchase Card Use to Procure Prosthetics,” which was published September 29, 2017, specifically examined the buying of prosthetics using purchase cards. In this report, the OIG found that of 87,100 purchase card transactions for prosthetics in fiscal year 2015, 53,400 or 61 percent, representing \$520.7 million, were improper payments and unauthorized commitments.

While improper payments and unauthorized commitments do not necessarily indicate purchase card misuse, they are indicators of risk for potential misuse. VA and its OIG continue to identify incidents of intentional misuse. The Committee is concerned that, although internal controls over the purchase card program have been strengthened in recent years, there are still organizational components of the Department where managerial attention and policy adherence lapse, creating an environment in which employees begin misusing purchase cards, and this conduct may continue unfettered. While VA policy prescribes penalties for purchase card misuse ranging from admonishment to removal, and the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115–41), among other purposes, expedited the removal of VA employees for misconduct, including purchase card misuse, there is nonetheless a substantial period of time, typically months, from when an employee is found to have misused a purchase card to the time when that employee is actually removed. Alternately, the employee may not be removed at all. The Committee is concerned that there is currently no certainty that, after an employee begins to willfully misuse a purchase card, the employee's purchase card will be revoked to eliminate the propensity for further misuse, pending other disciplinary procedures.

Further, in light of the increase of the Micro-Purchase Threshold, from the prevailing \$3,500 to \$10,000, enacted in section 806 the Fiscal Year 2018 National Defense Authorization Act (P.L. 115–91), the volume and dollar value of purchase card spending is expected to increase significantly, throughout federal agencies including VA. This may stress internal controls and exacerbate the potential for or magnitude of misuse. A proactive approach to stop any intentional purchase card misuse when it begins is necessary.

HEARINGS

On March 7, 2018, the Subcommittee on Oversight and Investigations held a legislative hearing that included a discussion of a draft bill regarding purchase card misuse, which would later be introduced as H.R. 5215.

The following witnesses testified:

The Honorable Cathy McMorris Rodgers, U.S. House of Representatives, 5th District, Washington; Fred Mingo, Director of Program Control, Program Executive Office, Electronic Health Record Modernization Program, U.S. Department of Veterans Affairs, accompanied by Ricky Lemmon, Acting Deputy Chief Procurement Officer, Veterans Health Administration, U.S. Department of Veterans Affairs, John Adams, Director of Corporate Travel, Office of Management, U.S. Department of Veterans Affairs, and Katrina Tuisamatatele, Health Portfolio Director, Office of Information and Technology, U.S. Department of Veterans Affairs; Louis Celli, Jr., Director, Veterans Affairs & Rehabilitation Division, The American Legion; and Scott Denniston, Executive Director National Veterans Small Business Coalition.

Statements for the record were provided by:

The Honorable Cathy McMorris Rodgers, U.S. House of Representatives, 5th District, Washington; and Veterans of Foreign Wars.

SUBCOMMITTEE CONSIDERATION

There was no Subcommittee markup of H.R. 5215.

COMMITTEE CONSIDERATION

On May 8, 2018, the full Committee met in open markup session, a quorum being present, and ordered H.R. 5215 favorably reported to the House of Representatives by voice vote. A motion by Representative Tim Walz of Minnesota to report H.R. 5215 favorably to the House of Representatives was adopted by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 5215 reported to the House. A motion by Representative Tim Walz of Minnesota to report H.R. 5215 favorably to the House of Representatives was adopted by voice vote.

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 ensure VA takes necessary steps to ensure those employees found to have knowingly misused purchase cards cannot continue to do so while appropriate accountability actions are being taken.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5215 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. 5215 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

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. 5215 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 9, 2018.

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. 5215, the Veterans Affairs Purchase Card Misuse Mitigation Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5215—Veterans Affairs Purchase Card Misuse Mitigation Act

H.R. 5215 would prohibit any employee of the Department of Veterans Affairs (VA) who is found to have knowingly misused a purchase card from serving as a purchase card holder or approving official. The bill would define actions considered to be misuse of a purchase card. Purchase cards are VA-issued charge cards used to procure authorized supplies and services for the agency.

Existing VA policies limit purchase card access for employees found to have knowingly misused such cards. VA's Inspector General also monitors and reports on purchase card misuse. In addition, other federal policies and practices are designed to prevent purchase card misuse. Because of those ongoing activities, CBO estimates the bill would have no budgetary effect.

Enacting H.R. 5215 would not affect direct spending or revenues, therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5215 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5215 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Smith. The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5215 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. 5215.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 5215 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. 5215 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. 5215 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 H.R. 5215 contains no directed rulemaking that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill would establish its short title as the Veterans Affairs Purchase Card Misuse Mitigation Act.

Section 2. Misuse of Department of Veterans Affairs purchase cards by department employees

Section 2(a) of the bill would amend chapter 7 of title 38, U.S.C., by adding a new subsection 727 entitled, Misuse of Department purchase cards."

Subsection 727(a) would state that, in addition to any other applicable penalty, the Secretary shall prohibit any VA employee from serving as a purchase card holder or approving official if the Inspector General or Secretary find that employee has knowingly misused a purchase card.

Subsection 727(b) would define "misuse" for purposes of this section as: (1) splitting purchases; (2) exceeding applicable purchase card limits or purchase thresholds; (3) purchasing any unauthorized item; (4) using a purchase card without being an authorized purchase card holder; or (5) violating ethics standards.

Section 2(b) of the bill would provide for a clerical amendment.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART I—GENERAL PROVISIONS

* * * * *

CHAPTER 7—EMPLOYEES

SUBCHAPTER I—GENERAL EMPLOYEE MATTERS

Sec.

701. Placement of employees in military installations.

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727. *Misuse of Department purchase cards.*

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§ 727. Misuse of Department purchase cards

(a) *IN GENERAL.*—The Secretary shall prohibit any employee of the Department who the Secretary or the Inspector General of the Department determines has knowingly misused a purchase card from serving as a purchase card holder or approving official. Such a prohibition shall be in addition to any other applicable penalty.

(b) *MISUSE.*—For purposes of this section, the term “misuse” means—

- (1) *splitting purchases;*
- (2) *exceeding applicable purchase card limits or purchase thresholds;*
- (3) *purchasing any unauthorized item;*
- (4) *using a purchase card without being an authorized purchase card holder; or*
- (5) *violating ethics standards.*

* * * * *