

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

APRIL 12, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4392]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4392) to amend title 5, United States Code, to require that the Office of Personnel Management submit an annual report to Congress relating to the use of official time by Federal employees, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. REPORTING REQUIREMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 4392 amends title 5 to require the Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), to submit an annual report to Congress relating to the use of “official time” by federal employees.

BACKGROUND AND NEED FOR LEGISLATION

Section 7131 of title 5, United States Code, defines and authorizes official time for unions representing federal employees. Official

time, broadly defined, is paid time off from assigned government duties to represent a union or its bargaining unit employees, and in lieu of the employee's regularly assigned work. Federal employees on official time are treated as if they are in duty status when they are engaging in representational activities. While current law permits the use of official time for union representational activities of the federal government, there are no requirements for agencies to report use of official time by federal employees. The Office of Personnel Management (OPM) has provided limited reporting on this topic, and this reporting is often untimely and intermittent.

In one example, OPM only released official time data for fiscal year (FY) 2011 in February 2013, but only after pressure in a January 14, 2013 letter from the Committee to OPM. Moreover, the most recent report from OPM was issued in October 2014 and only provides official time data for FY2012. The FY2012 data reveals that unions at 62 agencies represented more than 1.2 million non-postal bargaining unit employees. This represented an increase of approximately 1.65 percent or 19,804 bargaining unit employees when compared to the data from FY2011. The most recent report also shows that bargaining unit employees spent 3.4 million total official time hours during FY2012, a 1.3 percent increase when compared to FY2011. Finally, the most recent report shows that the federal government charged the taxpayer \$157 million for official time hours in salaries and benefits FY 2012.

To provide more transparent information to the taxpayer on how money is spent on official time, H.R. 4392 requires an annual reporting of official time use by federal agencies. Under the bill, agencies will be required to report official time use to OPM by the end of each calendar year. In turn, OPM will report to Congress such use on an annual basis (by March 31 of each year).

In the report, OPM will be required to provide the total amount of official time granted, the average amount of official time expended per bargaining unit employee, the specific types of activities for which official time was used (such as mid-term negotiations, dispute resolution, or general labor-management-relations), and the impact of official time on agency operations. OPM must also report the number of federal employees who are on 100 percent official time, that is, are exclusively in official time capacity, and the total amount of compensation (including fringe benefits) afforded to employees in connection with official time activities.

An amendment in the nature of a substitute adopted during Full Committee consideration of the bill also requires OPM to include in the annual report to Congress a description of any room or space (including the square footage) designated at the agency where official time activities are conducted. In response to a letter sent from the Committee in February 2016 to federal agencies requesting information on space designated for conducting official time activities, the Consumer Financial Protection Bureau (CFPB) was able to promptly respond and reported that the agency has one room (approximately 70 square feet) designated for official time activities. The CFPB response shows that this additional reporting requirement should not be burdensome for agencies and will provide helpful information in the annual reports.

Ultimately, H.R. 4392 is designed to ensure Congress, and the American public, receives specific and timely information on official

time use and that such use is reasonable, necessary, and in the public interest. The continued and timely release of official time information is necessary for the Committee to assess the extent to which such time contributes to the productivity and effectiveness of the federal government.

LEGISLATIVE HISTORY

H.R. 4392 was introduced on January 13, 2016, by Congressman Dennis Ross (R-FL) and referred to the Committee on Oversight and Government Reform. On March 1, 2016, the Committee on Oversight and Government Reform ordered H.R. 4392 favorably reported, as amended.

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

SECTION-BY-SECTION

Section 1. Reporting requirement

Requires the Office of Personnel Management (OPM), in consultation with the Office of Management and Budget, to annually report to each House of Congress on the use of official time by federal employees. Official time is time spent by federal employees performing representational work for a bargaining unit in lieu of their regularly assigned work.

The report must include information on the total amount of official time granted, the average amount of official time expended per bargaining unit employee, and the specific types of activities for which official time was used (such as mid-term negotiations, dispute resolution, or general labor-management-relations) including the impact of official time on agency operations. OPM must also report on the number of agency employees who are on 100 percent official time, the total amount of compensation (including fringe benefits) afforded to employees in connection with official time activities, and a description of any room or space (including the square footage) designated at the agency where official time activities are conducted.

Reports are due March 31 following the reportable fiscal year.

EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Congressman Jody Hice (R-GA) offered an amendment in the nature of a substitute that would insert an additional provision requiring OPM to include in the annual report to Congress a description of any room or space (including the square footage) designated at the agency where official time activities are conducted. The amendment was adopted by voice vote.

COMMITTEE CONSIDERATION

On March 1, 2016, the Committee met in open session and ordered reported favorably, as amended, the bill, H.R. 4392, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 4392.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill requires an annual reporting to Congress on the use of official time. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

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

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

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

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

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

EARMARK IDENTIFICATION

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

COMMITTEE ESTIMATE

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

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

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

H.R. 4392—A bill to amend title 5, United States Code, to require that the Office of Personnel Management submit an annual report to Congress relating to the use of official time by federal employees

H.R. 4392 would require the Office of Personnel Management (OPM) to provide annual reports to the Congress on the use of official time by federal employees who also serve as union officers. Official time is paid time off from assigned government duties to represent a labor union.

CBO estimates that implementing the legislation would have no significant effect on the federal budget because most of the information needed for the reports required under the bill is currently collected. Because the legislation could affect direct spending by agencies not funded through annual appropriations, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 4392 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4392 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 Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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

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CHAPTER 71—LABOR-MANAGEMENT RELATIONS

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**SUBCHAPTER IV—ADMINISTRATIVE AND OTHER
PROVISIONS**

§ 7131. Official time

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

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

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

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

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ADDITIONAL VIEWS

H.R. 4392, A BILL TO REQUIRE THE OFFICE OF PERSONNEL MANAGEMENT TO SUBMIT AN ANNUAL REPORT TO CONGRESS ON OFFICIAL TIME

Committee Democrats submit the following additional views on H.R. 4392, as amended during Committee consideration.

The legislation would require the Office of Personnel Management (OPM) to submit an annual report to Congress on the use of “official time.” Federal employees who are union representatives use official time to represent employees in grievances, participate in labor-management meetings, and negotiate collective bargaining agreements. Official time also has been used to enable labor-management collaboration on training and implementation of new agency programs as well as to improve workplace safety and to address workplace conflicts.

The legislation would require agencies and OPM to report on some additional information *not* already captured in reports on official time that OPM currently publishes, such as the impact of official time on agency operations, the total number of employees who used official time, and the number and percentage of federal employees who spent 100% of their work hours on official time.

Reporting on some of the additional data may be difficult, costly, and burdensome for federal agencies since they currently do not track this information. For example, it is unclear whether a determination of agency impact would involve assessments of productivity, efficiency, costs, employee performance, employee engagement, working conditions, work environment, labor-management relations, workplace disputes and litigation, and quality of products and services.

In addition, OPM’s current reporting system does not track the number of employees who use official time, and that information may require manual reporting by agencies.

Lastly, the Amendment in the Nature of a Substitute offered by Rep. Hice during Committee consideration added back into the bill a requirement, which was removed during the last Congress, to provide a description of the space used for conducting official time activities, including square footage. The Committee Majority has already issued letters to certain agencies asking for this information, and we believe it could be burdensome for some agencies to gather this information.

We hope to work with the Committee Majority prior to House consideration to make additional refinements to the legislation to reduce the burden of the reporting requirements mandated by the bill.

ELIJAH E. CUMMINGS,
Ranking Member.

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