

May 24, 2018

**MEMORANDUM**

**TO:** Chairman Meadows  
**FROM:** Majority Staff  
**SUBJECT:** Federal Labor Union Use of Official Time in Fiscal Year 2017

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The House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Government Affairs jointly obtained data from 23 agencies related to the use of official time. The data show nearly one thousand employees of the federal government spend at least half of their working hours as union representatives. Hundreds of these employees receive compensation in excess of \$100,000 per year. Dentists at the Department of Veterans Affairs, air traffic controllers at the Department of Transportation, and tax examiners at the Department of the Treasury are being paid for work they were not hired to do without doing the work they were hired to do.

**Background**

On January 9, 2018, the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs sent letters to 24 agencies requesting information on the use of federal labor union “official time” in fiscal years 2016 and 2017.<sup>1</sup> Official time is paid time off for federal employees to represent a union or its bargaining unit employees during work hours in lieu of regular duties. Official time is permitted under the Civil Service Reform Act of 1978.<sup>2</sup>

While on official time, labor union employees may participate in a host of activities, including collective bargaining negotiations, union business meetings, communications with members, contracting for goods and services, and business before the Federal Labor Relations Authority.<sup>3</sup> Labor union employees may also be granted additional official time that is “reasonable, necessary, and in the public interest.”<sup>4</sup> The federal government compensates employees on official time at their regular salaries and benefits.<sup>5</sup>

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<sup>1</sup> See e.g. Letter from Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs; Trey Gowdy, Chairman, H. Comm. on Oversight & Gov’t Reform; Rand Paul, Chairman, Subcomm. on Fed. Spending Oversight Ops., S. Comm. on Homeland Sec. & Governmental Affairs; Mark Meadows, Chairman, Subcomm. on Gov. Ops., H. Comm. on Oversight & Gov’t Reform; Dennis Ross, Member, H. Comm. on Oversight & Gov’t Reform; and Jody Hice, Member, H. Comm. on Oversight & Gov’t Reform, to R. Alexander Acosta, Sec’y, Dep’t of Labor (Jan. 9, 2018).

<sup>2</sup> Pub. L. No. 95-454 (1978).

<sup>3</sup> 5 U.S.C. § 7131(a), (b), and (c). See also 38 FLRA 1366 (Jan. 8, 1991).

<sup>4</sup> 5 U.S.C. § 7131(d).

<sup>5</sup> OFFICE OF PERSONNEL MGMT., OFFICIAL TIME USAGE IN THE FED. GOV’T FISCAL YEAR 2016 1 (April 2018) [hereinafter “OPM FY 2016 Official Time Report”].

The amount of official time available at each agency and the number of employees who may use it are subject to collective bargaining between the agency and the union, meaning both data points vary from agency to agency. Some collective bargaining agreements allow certain labor union employees to spend 100 percent of their time on official time.<sup>6</sup> These employees are subsidized by American taxpayer dollars, but do not have to do their regularly assigned work.

Some scholars have documented problems with official time in the past, such as costs associated with loss of employee services.<sup>7</sup> They also argue official time amounts to a significant and inappropriate government subsidy for union internal activity such as labor relations training for union representatives, and a government subsidy for union political activities.<sup>8</sup> Official time can also incentivize unions to file frivolous grievances.<sup>9</sup> Official time undoubtedly contributes to the steady increase in frivolous appeals before administrative tribunals, including the Merit Systems Protection Board (MSPB).<sup>10</sup> For example, in fiscal year 2013, MSPB received more than 33,500 furlough appeals, resulting in a workload five times the normal. Despite this effort, MSPB found merit in fewer than 100 of these filings.<sup>11</sup>

The Administration has advocated for changes in labor relationships, including official time. The President's Fiscal Year 2019 budget states federal labor union activities consume considerable management time and taxpayer resources, reducing efficiency, effectiveness, cost of operations, and employee accountability and performance.<sup>12</sup> In testimony before the Committee, Director of the Office of Personnel Management (OPM) Dr. Jeff Pon argued official time is a problem at certain agencies and needs to be reexamined.<sup>13</sup>

### **Official Time Oversight Request – Key Findings**

The January 9, 2018 letter requested the names, positions, salaries, and bonuses for each federal employee who used official time in fiscal years 2016 and 2017.<sup>14</sup> The Committees also asked for information on the extent to which each employee served in an official time capacity. Due to the lack of consistency in data provided by the agencies, it is difficult to draw specific

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<sup>6</sup> See e.g. Letter from Katherine B. McGuire, Assistant Sec'y of Labor, Dep't of Labor, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 17, 2018).

<sup>7</sup> *Official Time: Good Value for the Taxpayer?: Hearing Before the Subcomm. on Fed. Workforce, U.S. Postal Serv. & Labor Policy, H. Comm. on Oversight & Gov't Reform* 112<sup>th</sup> Cong. (June 1, 2011) (written statement of F. Vincent Vernuccio, Labor Policy Counsel, Competitive Enterprise Institute).

<sup>8</sup> *Id.* See also THE HERITAGE FOUNDATION, WEBMEMO NO. 3447, WHO PAYS FOR "OFFICIAL TIME" & WHY AMERICANS SHOULD BE CONCERNED (Jan. 12, 2012) [hereinafter "The Heritage Foundation WebMemo"].

<sup>9</sup> The Heritage Foundation WebMemo *supra* note 8.

<sup>10</sup> Lisa Rein, *Unions rally federal employees to appeal furloughs*, WASH. POST (July 22, 2013), [https://www.washingtonpost.com/politics/unions-rally-federal-employees-to-appeal-furlough/2013/07/22/fd72097e-f079-11e2-9008-61e94a7ea20d\\_story.html?noredirect=on&utm\\_term=.d1cc1867b0d7](https://www.washingtonpost.com/politics/unions-rally-federal-employees-to-appeal-furlough/2013/07/22/fd72097e-f079-11e2-9008-61e94a7ea20d_story.html?noredirect=on&utm_term=.d1cc1867b0d7).

<sup>11</sup> Letter from Mark A. Robbins, Vice Chairman, Merit Systems Protection Board, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 26, 2018).

<sup>12</sup> AN AMERICAN BUDGET: BUDGET OF THE U.S. GOV'T FY 2019, ANALYTICAL PERSPECTIVES, STRENGTHENING THE FED. WORKFORCE 73-74 (2018).

<sup>13</sup> *Workforce for the 21<sup>st</sup> Century: Examining the President's Management Agenda: Hearing Before the H. Comm. on Oversight & Gov't Reform* 115<sup>th</sup> Cong. (May 16, 2018) (testimony of Dr. Jeff Pon, Dir., Office of Personnel Mgmt.).

<sup>14</sup> In February 2016, the Committees requested official time data for fiscal years 2014 and 2015.

conclusions. However, the data reveals trends with respect to official time use across government. Government-wide and agency-specific findings follow.

## **Government-wide Trends**

### ***1. Agencies lack a simple, consistent system for recording official time.***

Only one of the 24 agencies produced the information requested by the January 22 deadline. Most agencies did not provide responses until weeks or months after the deadline. The latest agency submission was received on May 11, 2018, more than three months past the deadline.<sup>15</sup> The inability to collect and provide this information to the Committee in a timely manner demonstrates the fact that agencies are not tracking or consistently collecting official time data.

Agencies submitted inconsistent data sets. Some agency submissions were missing data on awards and bonuses, while others had conflicting definitions of “full-time” official time. Due to the lack of data consistency, majority staff extrapolated full-time figures to allow for comparisons between agencies.

In cases where data was lacking, for example, majority staff estimated salaries based on average grade and step, converted hourly wages to full salaries, and converted time-off awards to monetary awards. Majority staff also relied on agencies to define “full-time.” Some agencies interpreted an employee as being on “full-time” official time when the employee spent greater than 50 percent of his or her time in such status, while other agencies interpreted it to mean 100 percent of time spent on official time status.

### ***2. The Committee received responses on Fiscal Year 2017 Official Time use from 24 agencies representing 840,174 bargaining unit employees.***

For fiscal year 2017, twenty three agencies reported 12,508 employees used official time in some capacity. Of those, 981 spent between half and all of their workday on official time.<sup>16</sup>

The agency with the greatest number of employees on any amount of official time was the Department of Transportation (2,606).

The agency with the greatest number of employees on 50 percent or greater official time was the Department of Veterans Affairs (472).

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<sup>15</sup> See e.g. Letter from Stephen E. Boyd, Assistant Attorney Gen., Dep’t of Justice, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov’t Reform (May 11, 2018).

<sup>16</sup> The information received from the Department of Justice has not been incorporated into this memorandum. The information was received on May 11, but it did not come in a format conducive to analysis. In addition, the Department of Defense submitted only a partial response on April 30. The Department indicates it will continue providing productions on a rolling basis.

There were 221 employees across the government spending at least half of their time on official time while getting paid over \$100,000 by the federal government. The agency with the greatest number of such employees was the Department of Veterans Affairs (61).

**3. *The official time data for Fiscal Year 2017 shows the total compensation of all federal employees using any official time was \$1 billion.*<sup>17</sup>**

Total compensation for Department of Transportation employees on any amount of official time was \$292 million. The Department of Veterans Affairs had the highest total compensation of employees on 50 percent or more official time, these employees earned a combined \$32 million.

**4. *Union officials on 100 percent official time may qualify for honorary, informal, and non-performance-based awards.***

Further, some older collective bargaining agreements have historically allowed union officials on 100 percent official time to receive performance-based awards.<sup>18</sup>

There were 102 employees on 50 percent or more official time who received an award in fiscal year 2017. The largest bonus was given to an employee at the Department of Homeland Security, who received \$11,000.

### **Agency-Specific Findings**

#### ***Department of Veterans Affairs*<sup>19</sup>**

The Department of Veterans Affairs reported 472 employees were on 100 percent official time, which means these employees did not perform the job for which they were hired. This includes a social worker and a pharmacist making nearly \$150,000 each and a nurse anesthetist and dentist making over \$190,000 each in fiscal year 2017.

#### ***Department of Transportation*<sup>20</sup>**

All 21 employees working exclusively on official time at the Department of Transportation made over \$100,000 in fiscal year 2017, topping out at \$187,000. This includes nine air traffic controllers, five transportation specialists, two general engineers, and an employee hired for aviation safety.

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<sup>17</sup> This does not mean the total compensation cost to the federal government was \$1 billion for official time. This figure includes all employees using any official time.

<sup>18</sup> Email from staff at Dep't of Agric., to majority staff, H. Comm. on Oversight & Gov't Reform (May 16, 2018, 11:11 a.m.) (on file with the Committee). *See e.g.* 48 FLRA 357 (Aug. 20, 1993).

<sup>19</sup> Letter from Robert L. Wilkie, Acting Sec'y, Dep't of Veterans Affairs, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 13, 2018).

<sup>20</sup> Letter from Keith Nelson, Assistant Sec'y for Admin., Dep't of Transp., to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 17, 2018).

### ***Department of the Treasury***<sup>21</sup>

At the Department of the Treasury, “full-time” is defined differently depending on the Bureau, which highlights the challenges of accurately reporting official time statistics. Treasury identified 58 contract representatives, 33 revenue agents, 28 revenue officers, and 23 tax examiners as being on full-time official time. In fiscal year 2017, 1,471 Internal Revenue Service employees were on official time (185 of which conducted union work full time). Average, annualized salary costs (non-benefit) of these employees totaled \$61.1 million (\$13.9 million for full time; \$47.2 million for part time).<sup>22</sup>

### **Analysis of the Office of Personnel Management Official Time Report**

OPM releases a periodic estimate of official time usage. On May 17, 2018 OPM released the official time data for fiscal year 2016.<sup>23</sup> The OPM report provides data on the *amount of official time hours used* at each agency, in contrast to the data the Committee received looking at the *number of employees on official time* at each agency. The OPM report also looks at total salary costs for employees on official time, in addition to the ways in which employees on official time use that time.

The OPM report found federal employees “spent a total of 3,633,290 hours performing representational duties on official time [in fiscal year 2016], an increase of 4.76 percent compared to [fiscal year] 2014.”<sup>24</sup> In comparison, the number of bargaining unit employees increased just 1.7 percent.<sup>25</sup> “Government-wide, the number of official time hours used per bargaining unit employee on representational matters increased from 2.88 hours in [fiscal year] 2014 to 2.97 hours during [fiscal year] 2016.”<sup>26</sup> From 2010 to 2016, the rate of official time usage increased 13 percent.<sup>27</sup>

According to the OPM report, there are four main activities employees perform on behalf of the union. For fiscal year 2016, staff have calculated and included the percent of total official time for each of these main activity areas.<sup>28</sup>

- Term Negotiations (6 percent) — preparing and negotiating collective bargaining agreements
- Mid-Term Negotiations (3 percent) — bargaining over issues raised during the term of the agreement
- Dispute Resolution (15 percent) — processing grievances and processing appeals of bargaining unit employees to administrative agencies<sup>29</sup>

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<sup>21</sup> Letter from Drew Maloney, Assistant Sec’y for Legis. Affairs, Dep’t of the Treasury, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov’t Reform (Feb. 13, 2018).

<sup>22</sup> *Id.*

<sup>23</sup> OPM FY 2016 Official Time Report *supra* note 5.

<sup>24</sup> *Id.*, at 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 17.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at Appendix A, 1, 8.

<sup>29</sup> *E.g.* appearing before the Merit Systems Protection Board, the Federal Labor Relations Authority, Equal Employment Opportunity Commission, and, as necessary, to the courts.

- General Labor-Management Relations (75 percent) — everything else, including meetings between labor and management officials to discuss general conditions of employment and union participation in formal meetings and investigative interviews

### **General Issues with Reliability of Current Official Time Data**

Reporting mechanisms on the use of official time are not consistent between agencies and, at some agencies, do not exist. The lack of good data makes it difficult to compile complete data sets and evaluate and compare agencies' use of official time.<sup>30</sup>

The Government Accountability Office found the Department of Veterans Affairs “cannot accurately track the amount of work time employees spend on union representational activities, referred to as official time, agency-wide because it does not have a standardized way for its facilities to record and calculate official time.”<sup>31</sup>

In addition, GAO said the amount, type, accuracy, and timeliness of available official time data makes it challenging to ensure appropriate congressional oversight.<sup>32</sup> Further, other experts have said there is a lack of management oversight and the need for better recording hamper efforts to track the use of official time.<sup>33</sup>

Because of the reporting issues and lack of good data the true costs associated with official time are unknown. The OPM estimates that total payroll costs for fiscal year 2016 were \$177.2 million.<sup>34</sup> This estimate does not include other costs such as use of government property and travel for those using official time. Bob Gilson, an expert who has spent years negotiating collective bargaining agreements on behalf of federal agencies, has posited that official time is “laughably” under-reported in the federal government.<sup>35</sup>

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<sup>30</sup> For a summary of some of the problems, see: COMPETITIVE ENTERPRISE INSTITUTE, ONPOINT REPORT NO. 226, IT IS TIME TO END OFFICIAL TIME 2-5 (April 19, 2017) [hereinafter “Competitive Enterprise Institute Report”].

<sup>31</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-17-105, VA COULD BETTER TRACK THE AMOUNT OF OFFICIAL TIME USED BY EMPLOYEES 1 (Jan. 24, 2017)

<sup>32</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-15-9, LABOR RELATIONS ACTIVITIES: ACTIONS NEEDED TO IMPROVE TRACKING & REPORTING OF THE USE & COST OF OFFICIAL TIME 30 (Oct. 2014).

<sup>33</sup> Competitive Enterprise Institute Report *supra* note 30.

<sup>34</sup> OPM FY 2016 Official Time Report *supra* note 5, at 13.

<sup>35</sup> Bob Gilson, *OPM's Official Time Report: Some Wonderfully Amazing Numbers*, FEDSMITH (April 2, 2017), <https://www.fedsmith.com/2017/04/02/opms-official-time-report-wonderfully-amazing-numbers/>.

## Agency Responses - Official Time in Fiscal Year 2017

Agency	Agency Wide		Any Official Time				50 percent or Higher Official Time			
	Employees	Bargaining Unit Employees	Employees	Top Compensation	Top Bonus	# paid more than \$100,000	Employees	Top Compensation	Top Bonus	# paid more than \$100,000
Department Of Agriculture	89,878	34,761	824	\$164,900	\$4,779	43	18	\$164,900	\$3,000	5
Department Of Commerce	47,493	20,121	290	\$119,285	*	116	20	\$119,285	*	9
Department Of Defense**	110,051	65,895	317	\$113,934	\$4,015	5	19	\$97,863	\$1,500	0
Department Of Education	4,059	2,560	43	\$141,894	\$1,941	24	3	\$120,858	\$0	3
Department Of Energy	14,716	6,957	63	\$159,808	\$4,565	36	2	\$159,808	\$357	2
Department Of Health And Human Services	84,814	33,701	275	\$224,194	\$3,785	121	9	\$153,464	\$963	6
Department Of Homeland Security	199,965	112,216	1,863	\$132,047	\$11,045	26	93	\$116,134	\$11,045	5
Department Of Housing And Urban Development	7,812	5,506	113	\$163,455	\$2,501	60	15	\$161,900	\$1,500	8
Department Of Labor	14,930	10,547	333	\$133,492	\$4,681	59	15	\$116,901	\$1,405	3
Department Of State	12,234	6,868	71	\$179,183	*	2	4	\$179,183	*	2
Department Of The Interior	65,322	17,896	172	\$156,356	*	22	3	\$96,221	*	0
Department Of The Treasury	87,079	63,305	1,666	\$215,768	\$10,919	448	194	\$149,843	\$2,450	53
Department Of Transportation	54,782	38,328	2,606	\$188,100	*	1,555	21	\$187,000	*	21
Department Of Veterans Affairs	382,073	305,022	1,988	\$474,671	*	226	472	\$194,622	*	61
Environmental Protection Agency	15,025	10,783	211	\$164,350	\$5,000	150	14	\$162,725	\$1,375	13
General Services Administration	11,398	6,151	33	\$138,160	\$1,997	15	17	\$138,160	\$587	10
National Aeronautics And Space Administration	17,186	9,228	57	\$163,939	*	43	0	n/a	n/a	n/a
National Science Foundation	1,480	960	9	\$175,228	\$1,880	2	0	n/a	n/a	n/a
Nuclear Regulatory Commission	3,223	2,159	54	\$165,174	\$3,274	51	2	\$161,900	\$0	2
Office Of Personnel Management	5,512	1,302	47	\$135,379	\$2,396	12	3	\$123,234	\$1,344	2
Small Business Administration	6,649	1,092	43	\$124,849	\$2,125	6	1	\$100,981	\$0	1
Social Security Administration	62,883	48,997	1,426	\$172,100	\$2,490	128	53	\$172,100	\$1,300	12
U.S. Agency For International Development	3,643	2,680	4	\$161,900	*	3	3	\$161,900	*	3
<b>Total</b>	<b>1,302,207</b>	<b>807,035</b>	<b>12,508</b>	<b>n/a</b>	<b>n/a</b>	<b>3,153</b>	<b>981</b>	<b>n/a</b>	<b>n/a</b>	<b>221</b>

Note: A number of assumptions and estimations were made in compiling the data for this chart, including estimating salaries based on grade and step, converting hourly wages to yearly salaries, and converting time-off awards to monetary awards.

Agencies had inconsistent reporting definitions of "full-time", bonuses, and time-off awards.

Agency wide employment and bargaining employment from October, 2017 provided by OPM.

\*Not provided by agency

\*\*Incomplete data