

STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
HOUSE COMMITTEE ON VETERANS' AFFAIRS
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Good afternoon, Mr. Chairman, Ranking Member O'Rourke, and other Members of the Subcommittee. Thank you for the opportunity to discuss H.R. 1461, entitled the "Veterans, Employees, and Taxpayers Protection Act of 2017," which pertains, in significant part, to the use of official time and probationary employees. I am accompanied today by Rondy Waye, Human Resources Policy Advisor in VA's Office of Human Resources and Management.

VA generally supports H.R. 1461, but we do have a few concerns with the legislation which we have noted below. We note that H.R. 1293, a bill with Government-wide applicability, includes similar requirements – but, under different tracking and reporting deadlines, which will likely be problematic from an implementation perspective.

With regard to section 2 of the legislation, which would insert a new section 741 in Title 38 of the United States Code (U.S.C.), the inclusion of this recordkeeping requirement will result in increased administrative responsibilities and obligations for VA. In addition, an October 1st deadline for a report covering the most recently ended fiscal year will present insurmountable challenges, especially in light of the Department's current system for tracking the information. The Department recommends a reporting date of March 1 following the period covering the most recently ended fiscal year. The Department currently has the ability to electronically track union official time for employees in the VA Time and Attendance System (VATAS), and is in the process of fully implementing this system, with a projected completion date of July 2018. Using VATAS, the Department can now track the categories of official time in accordance with the Office of Personnel Management's (OPM) four categories: 1) term negotiations; 2) mid-term negotiations; 3) general labor-management relations; and 4) dispute resolution, similar to the way all other agencies track official time across the Federal Government. However, section 741 would require the capture of additional information regarding official time, which would require a revision to VATAS, as well as the use of a secondary system, HR Smart, to capture the monetary aspects of the bill. Section 741 also calls for the collection and analysis of subjective data, requiring VA to determine the impact that granted official time has on its operations. Overall, to maintain the tracking and reporting of this administrative data to the level of granularity required in this bill, VA would be required to add additional FTE in administrative support. To reduce administrative and cost burden, we ask that the Committee reconsider some of the granular reporting requirements in the bill, and would like to

work with the Committee to alleviate these concerns while achieving the important objective of increased transparency.

With respect to section 742, which would be inserted in Title 38 under the legislation, VA does not oppose the time limitations established in the legislation. VA finds certain union lobbying efforts on behalf of VA beneficial to VA's stakeholders – the Veterans. Indeed, Veterans have benefitted from union lobbying efforts in areas such as expansion of scopes of practice for nurses and pay and hiring flexibilities to provide expedited patient care.

The Department is also generally in favor of the types of limitations on the use of official time for certain individuals set out in section 742. We would prefer that doctors spend all their work time caring for Veterans. In addition, we think it is important for every employee to spend at least half of their work time performing management-directed tasks. Currently, however, the Federal Service Labor-Management Relations Statute does not allow us to limit official time to particular employees or classes of employees. Although we can negotiate overall use of official time, we cannot prohibit doctors from using official time or restrict registered nurses to no more than 25 percent official time. If this bill passes Congress and becomes law, VA will have that capability.

VA also notes that, unless otherwise superseded by section 742, the provisions in 5 U.S.C. § 7131(a) continue to apply to certain mandatory official time. To the extent the intent is to supersede that provision, VA recommends clarifying language in section 742. VA will be happy to work with the Committee on this language.

VA does not have a position with regard to section 743, which would be inserted in Title 38 under the legislation. However, VA proposes that the bill include clarifying

language regarding what “termination” means in the context of the bill. VA recommends that the term “termination” be clarified to mean the submission of an employee’s SF-1188 to his or her servicing HR or payroll office.

With regard to section 3 of the legislation, which would insert a new section 719 in Title 38, VA does not oppose this provision. However, we note that expanding the probationary period for all covered employees may have the unintended effect of dissuading candidates, including Veterans, from seeking employment with VA. In addition there would be three different probationary periods depending on the type of appointment for VA employees (12 months, 18 months and 24 months) which will likely lead to misapplication and confusion on the part of employees and managers. Moreover, under 5 U.S.C. § 7511, certain VA probationary employees are already entitled to appeal a separation action to the Merit Systems Protection Board if they have worked for the Federal Government for more than 12 months. The 18 month probationary period prescribed by this bill will not change this right. Consequently, to the extent that the intent is to curtail appeal rights during the probationary period, relevant changes should also be made to 5 U.S.C. § 7511. VA will be happy to work with the Committee on this language.

Mr. Chairman, this concludes my statement. VA looks forward to working with the Committee to provide technical guidance on those elements that we have noted may be of concern. I am happy to answer your questions.