

Witness Testimony: Congressman Phil Gingrey, M.D.  
The Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy  
“Official Time: Good Value for the Taxpayer?”  
June 1, 2011

Mr. Chairman, I would first like to thank you and the Members of the Subcommittee for inviting me to testify today on an important issue facing the federal workforce. Throughout my tenure in Congress, I have been a strong proponent of a federal government that serves its citizens efficiently and cost effectively, and I believe this hearing on official time is another avenue through which we can evaluate the use of taxpayer dollars and ensure the integrity in which they are utilized.

Official time was initially granted to federal employees through the Civil Service Reform Act of 1978 (P.L. 95-454)—signed into law by President Jimmy Carter on October 13, 1978—and its use was to be governed by the Federal Labor Relations Authority (FLRA). According to 5 USC 7131, official time is authorized for three categories of representative functions of a labor union on behalf of represented employees. Subsection (a) of the chapter affords official time to “any employee representing an exclusive representative in the negotiation of a collective bargaining agreement... including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status” Subsection (c) allows the FLRA to “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.” Finally, Subsection (d), in broad terms, requires that any employee acting on behalf of an exclusive representative and any employee that is 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.”

Although Chapter 7131 is primarily concerned with the rights afforded to employees represented by an exclusive representative—or labor union—one section actually outlines the prohibition of certain activities on official time. Subsection (b) states “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.” Even though internal business of a union is not permitted on official time, there is strong evidence supporting the claim that this activity is indeed included under official time and thus during the time in which a participating employee is required to be in a “duty status” performing work on behalf of the federal government and its citizens.

Over its 33 year history, the Office of Personnel Management (OPM) has documented the use of official time throughout government agencies that maintain an exclusive representative for its employees just nine times and with little consistency until Fiscal Year 2002. In fact, the first time OPM produced a report on official time since its use became a right afforded by federal law was in November of 1998, as directed by House of Representatives Report 105-240 to accompany H.R. 2378, the Treasury, Postal Service, and General Government Appropriations

Bill for FY 1998.<sup>1</sup> These nine reports serve as the basis for which Congress can and should evaluate the use of official time throughout the federal government, and they serve an important purpose to guarantee transparency and integrity in the dissemination of tax revenue. I hope that by examining each of these reports as a collective source of information the Subcommittee will find that the use of official time has expanded past its original intent, costing the federal government—and therefore the American taxpayers—millions of dollars annually for representative functions that should not be the responsibility of government, but rather the responsibility of the exclusive representative who petitioned for the right to represent the bargaining unit.

The FY 1998 report promulgated by OPM evaluated the use of official time for the first six months of 1998. Like its successor reports, it included the hours used and costs incurred by each agency for its employees while on official time. However, for FY 1998, OPM also included the number of employees on 100%, 75%, and 50% or more of official time and the dollar amount of federally funded office space, equipment, telephone use, and supplies to unions. OPM found that during FY 1998, 946 employees spent 100% of their work day in a representational capacity on behalf of the union instead of the federal government, while 912 employees spent between 75% and 99.9% on official time, and 1,152 employees spent between 50% and 74.9% on official time. The cost to the federal government for space, equipment, and supplies to unions was \$8,782,769. Finally, the total amount of hours spent on official time government-wide was 4,332,608 and the total cost to the federal government (excluding office space, equipment, and supplies) was \$108,297,000.<sup>2</sup>

In the absence of a mandate from Congress requiring OPM to produce a report on official time, the agency did not produce another survey until FY 2002. However, on June 20, 2002, OPM Director Kay Coles James issued a memorandum to executive agencies and departments to aggregate and document the amount of official time each used for FY 2002 and submit the data to OPM on an annual basis. In doing so, the Director cited President Bush's goal to improve the performance of government in order to deliver better results for its citizens and made clear OPM's directive for "management and labor to develop sensible arrangements for official time that meet the needs and expectations of agencies, employees, and the ultimate customers—the American people."<sup>3</sup> OPM then produced the *Summary Report: Official Time for Representational Activities, FY 2002* which found that the total hours granted to federal employees for representational activities on behalf of a union increased by 10% to 4,765,848 hours and the cost incurred by the federal government totaled \$114,280,000—signifying a 5.52% increase over the FY 1998 numbers.<sup>4</sup>

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<sup>1</sup> Office of Personnel Management, *Official Time and Services Used by Unions Representing Federal Employees* (Washington: GPO, November 1998).

<sup>2</sup> OPM, 1998.

<sup>3</sup> Office of Personnel Management, *Summary Report: Official Time for Representational Activities Fiscal Year 2002* (Washington: GPO, 2003).

<sup>4</sup> OPM, 2003. Note: Numbers were revised in FY 2003 report to reflect the actual hours and costs of official time in FY2002 to be 4,954,704 & \$126,570,125 (an increase of \$12 million) respectively.

In her directive for the FY 2003 report, James stated “the right to official time carries with it a responsibility on the part of both labor and management to see that the time is used appropriately and efficiently.” Although the total hours used on official time during FY 2003 decreased by approximately 4% to 4,758,147 hours, the total costs incurred by the federal government increased by 1.6% to \$128,637,162.<sup>5</sup> However, the report cited that the cause for the increase in costs was due to an increase in federal pay during FY 2003.

The FY 2003 report also included a further directive for subsequent reporting years requiring agencies and departments to categorize the use of official time in four distinct, yet broad, categories: Term Negotiations, Mid-term Negotiations, Dispute Resolution, and General Labor-Management Relations. Term Negotiations are defined as “official time used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor.” Mid-term Negotiations represent “official time used to bargain over issues raised during the life of a term agreement.” Dispute Resolution means “official time to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies such as the MSPB, FLRA and EEOC and, as necessary, to the courts.” Finally, General Labor-Management Relations represents the broadest definition by including “official time used for: meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, and union participation in formal meetings and investigative interviews.” Upon instituting this new requirement, James stated that these “new measures are needed to ensure the level of accountability that the Administration and Congress insist upon and that the American people expect when it comes to taxpayer dollars.”<sup>6</sup>

*The Official Time Usage in the Federal Government: Survey Report, Fiscal Year 2004 Response Surveys* found an 18% government-wide decline in the amount of official time hours used by federal employees totaling 3,870,460 hours.<sup>7</sup> The largest category reported for official time within the federal government was “General Labor-Management Relations” which accrued a staggering 2,535,372 hours, 65.5% of the total hours used. Unfortunately, the FY 2004 report did not present the costs incurred to the federal government during the year, but the FY 2005 report did include the previous year’s totals signifying another decrease to \$108,122,004.<sup>8</sup>

While the large decline in hours utilized on official time is encouraging on the surface, Director James highlighted concerns about data reliability given the new requirements to categorize hours

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<sup>5</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Fiscal Year 2003* (Washington: GPO, December 2004). Note: FY 2004 report denoted that FY 2003 hours used were 4,772,347. FY 2005 report included revised FY 2003 cost to be a slight decrease: \$127,877,794.

<sup>6</sup> OPM, 2004.

<sup>7</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2004 Survey Responses* (Washington: GPO, February 2006).

<sup>8</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2005 Survey Responses* (Washington: GPO, June 2006).

used and therefore admitted that there was actually no substantial change from FY 2003 to FY 2004. She states “...several (agencies and departments) expressed concerns about data reliability relating to tracking system redesign to meet the new categorical reporting requirement. Our review of data reported by agencies not expressing reliability concerns indicates relative stability in the government-wide use of official time from FY03 through FY04.”<sup>9</sup>

In June of 2006, OPM produced *Official Time Usage in the Federal Government: Fiscal Year 2005 Survey Responses* which recognized that the total official time hours used were 3,359,057, a 13.2% decline from FY 2004.<sup>10</sup> The “General Labor-Management Relations” category once again accounted for the largest segment of official time with 2,272,453 hours, 67.7% of all reported hours. In FY 2004, OPM began implementing its e-Payroll Initiative so that “official time hours could be captured electronically through time and attendance records on a pay-period basis” thereby “allowing them to collect and examine data on government-wide official time usage on a near real-time basis.”<sup>11</sup> This initiative was promoted to ensure the integrity and reliability of the reporting process and was planned for full implementation for the FY 2007 reporting period with an ongoing transition before that time.

The FY 2005 report also included a variation of the method in which the total costs of official time were to be documented, and this new method would be repeated in successor reports. Until FY 2005, the costs incurred by the federal government were assumed to be solely the hourly wages for which an employee would otherwise be in a duty status, in essence performing his or her official duties on behalf of the government. For the first time, the FY 2005 report included fringe benefits in its calculation of “total costs.” OPM described the inclusion: “The full fringe benefit factor is 32.85% of the position’s basic pay. The 32.85% civilian position full fringe benefit cost factor is the sum of the standard civilian position retirement benefit cost factor (24.0%), insurance and health benefit cost factor (5.7%), Medicare benefit cost factor (1.45%), and miscellaneous fringe benefit cost factor (1.7%).” The FY 2005 report reflected this change in costs incurred by the federal government for FY 2004 and 2005. Adding the full fringe benefit factor, the actual costs of official time in FY 2004 were \$143,640,082, as opposed to wages alone, which were \$108,122,004. For FY 2005, the total costs including the full fringe benefit factor were \$124,952,985, while accounting for wages alone equals \$94,055,691. After two consecutive fiscal years of decreased costs to the federal government for the use of official time, OPM stated that “the reduction in hours used has been significant enough to result in reduced costs *despite* (emphasis added) general increases in employee wages.”<sup>12</sup>

The FY 2006 report submitted in September 2007 marked the fourth consecutive decrease in the total hours consumed on official time totaling 2,718,119 hours, which represents a 19.1% change from FY 2005. However, the “General Labor-Management Relations” category once again

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<sup>9</sup> OPM, June 2006.

<sup>10</sup> OPM, June 2006. Note: FY 2006 report indicates slight decrease in hours consumed during FY 2005 to 3,353,983; however, the FY 2008 report revised its FY 2005 hours consumed to equal the FY 2005 report. The FY 2006 report indicates a slight decrease in FY 2005 costs to \$124,540,459.

<sup>11</sup> OPM, June 2006.

<sup>12</sup> OPM, June 2006.

consumed a higher percentage (73.9%) of the total hours reaching 1,989,351 hours. Interestingly, the report cited that the rising percentage consumed in this category “is often used to report hours for activities not specifically identified by union officials. This is particularly prevalent when the union official is on 100% official time” which begs the question exactly what activities are permitted on official time that are not claimed by union officials yet allowed within agencies and departments for use outside of an employee’s official duties on behalf of the federal government? For FY 2006, the costs incurred by the government for employees’ use of official time also decreased again to \$102,157,337, while wages alone accounted for \$76,896,753. The decline was attributed “to improved reporting and improved labor-management relations and less mid-term bargaining.”<sup>13</sup>

The production of *Official Time Usage in the Federal Government: Fiscal Year 2007 Survey Responses* marked the end of declining hours used and costs incurred for official time. The total hours expended on official time for FY 2007 was 2,800,747, representing a 3.04% government-wide increase and a 2.78% increase from agencies and departments reporting for both FY 2006 and FY 2007. Once again, the “General Labor-Management Relations” category increased and accounted for the greatest percentage (76.6%) used on official time, totaling 2,145,398 hours. Due to the significant annual gains in this category, OPM cited that “the high percentages reported in this category by many agencies, when viewed within the context of total hours reported, indicates an opportunity for some agencies to strengthen the integrity of their data and, perhaps, the *management of official time*” (emphasis added). The cost of official time rose to \$113,038,094, constituting a 12.7% increase over FY 2006, while wages alone accounted for \$82,818,110.<sup>14</sup>

The reverse in trend and increase in both hours and costs on official time is particularly troubling during the FY 2007 year given that agencies and departments had transitioned to the e-Payroll system hailed by OPM as a method that “will further enhance the accuracy of reported official time data while reducing the administrative burden of collecting that data.”<sup>15</sup> FY 2007 marked the beginning to successive increases in official time hours and costs during FY 2008 and 2009 illustrating an even clearer picture of its use—attributed to e-Payroll—on a government-wide basis.

*The Official Time Usage in the Federal Government: Fiscal Year 2008 Surveys* report signified the first time that OPM received a 100% response rate from Executive agencies and departments that have employees represented by a labor union in its call to report on the use of official time. Up until this point, OPM had received varying response rates from agencies, yet the caveat included in each previous report was that the unresponsive agencies and departments represented a negligible amount of federal employees that would have a small impact on hours consumed

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<sup>13</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2006 Survey Responses* (Washington: GPO, September 2007). Note: The total hours in FY 2006 were revised in the FY 2007 to be slightly higher totaling 2,718,142 hours.

<sup>14</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2007 Survey Responses* (Washington: GPO, June 2008).

<sup>15</sup> OPM, 2008.

and costs incurred. Even so, it is disconcerting that when OPM mandates a report to document the use of federal tax dollars—albeit for one specific use—in the name of transparency and efficiency that not all agencies and departments would participate, thus giving Congress and the American people no known record of their use of official time for the corresponding fiscal year.

The FY 2008 report realized another rise in hours accumulated on official time which totaled 2,893,922 hours, representing a 3.3% government-wide increase and a 2.9% increase from agencies and departments reporting in FY 2007 and FY 2008. Even with the warning from OPM within the FY 2007 report that “General Labor-Management Relations” may need further evaluation in “the management of official time” given its consistent increase in use over the previous fiscal year, the hours consumed in this category was 2,151,366 hours or 74.3% of the total hours spent on official time. In turn, the cost of official time rose in FY 2008 to \$120,730,471, a 5.97% increase from FY 2007, and wages alone accounted for \$88,609,520.<sup>16</sup>

OPM’s FY 2008 report has been a point of controversy since 2009 due to an extreme reversal in transparency and lack of enthusiasm by OPM to hold agencies and departments accountable for a continued uptick in the use of official time and the costs associated with such use since FY 2007. Upon reading the FY 2008 report and examining the trends and history of official time within the federal government, I introduced H.R. 3251, the Federal Employee Accountability Act of 2009, on July 17, 2009 to prohibit the authorization of official time for term bargaining and dispute resolution. I first gained access to the FY 2008 report on OPM’s official government website, but following the introduction of my bill and numerous public references to its cited figures, it had been removed from the site. Several previous reports documenting the government-wide use of official time, including the latest FY 2009 report, are currently located on OPM’s website for public viewing. However, despite numerous requests from my office and other Members of Congress, the FY 2008 report has not been restored to OPM’s website as of the time of this testimony.

Further disturbing has been the lack of zeal for which OPM has put forth in producing the FY 2009 and FY 2010 reports on the use of official time. While OPM has generally produced each of the reports discussed previously within or shortly after the fiscal year being reported has ended, the FY 2009 report was produced very recently in May 2011 and the FY 2010 report is purportedly being compiled currently for public dissemination later this calendar year. Again, despite requests from my office, the FY 2009 report was delayed until the third quarter of FY 2011 and was only released after a letter—authored by Chairmen Darrell Issa and Dennis Ross—requesting the report be fully compiled and released. The report was then forwarded to my office by OPM on May 20, 2011.

*The Official Time Usage in the Federal Government: Fiscal Year 2009 Survey Responses* report, for the first time in the history of these reports, makes painstaking efforts to defend the right for labor union representatives to use official time while representing its bargaining unit employees. It references Executive Order 13522, “Creating Labor-Management Forums to Improve Delivery of Government Services” signed by President Obama which recognized that “federal employees and their union representatives are an essential source of front-line ideas and information about

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<sup>16</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2008 Survey Responses* (Washington: GPO, March 2009).

the realities of delivering government services to the American people.” The Executive Order went on to state “a non-adversarial forum for managers, employees, and employees’ union representatives to discuss Government operations will...improve the *productivity and effectiveness of the Federal Government*” (emphasis added).<sup>17</sup>

The introduction to the report follows by outlining the differences between labor unions in the federal sector versus the private sector. Some of them cited include the prohibition of federal employees to strike, the prohibition to bargain over pay, and the fact that public unions must represent dues paying and non-dues paying members alike. The report correctly denotes that there are fewer incentives for federal employees to join a union and pay union dues, yet the very next sentence states that “this *voluntary* membership in federal sector unions results in considerable reliance on unions on the *volunteer* work of bargaining unit employees, rather than paid union business agents, to represent the union in representation matters such as collective bargaining and grievances” (emphasis added). The report continues with the definition of official time as “time spent by federal employees performing representational work for a bargaining unit in lieu of their regularly assigned work” and includes a list of activities permitted—and some not permitted—by federal employees using official time, which will be discussed in detail below. Finally, in an attempt to seemingly extricate itself from any discussion on the delay in producing the FY 2009 report and remove any semblance of a requirement to produce such future reports, OPM stated that “there are no legal or regulatory requirements to publish any official time data...or this report.”<sup>18</sup>

Never before has OPM made such a broad and sweeping defense of the use of official time in such dedicated terms directed at those who oppose its use. Nevertheless, OPM did report higher hours used and costs incurred by the federal government for such use during FY 2009. Once again, all agencies represented by a labor union reported to OPM on their respective official time data rendering a 3.37% increase in hours used totaling 2,991,378 hours. The “General Labor-Management Relations” category again increased to 2,309,371 hours, representing 77.2% of all official time hours. However, the FY 2009 report did not include any mention of mismanagement of these hours, indicating a contrast to previous reports even when there was an over 150,000 hour increase within the category from the previous fiscal year. The cost of official time to the federal government for FY 2009 rose to \$129,100,798, representing a 6.93% increase over FY 2008, while wages alone accounted for \$94,757,501. For the first time when costs increased over the previously reported fiscal year, OPM did not cite general wage increases as a reason for increased costs, yet it stated “this increase reflects, in part, the increased number of bargaining unit employees (3.91% over FY 2007) and the corresponding increase in official time usage government-wide.”<sup>19</sup>

While the bulk of this testimony has been dedicated to the review of official time since its original documentation in FY 1998, it is equally important to examine the activities included on

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<sup>17</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2009 Survey Responses* (Washington: GPO, May 2011).

<sup>18</sup> OPM, 2011.

<sup>19</sup> OPM, 2011.

official time as referenced by the OPM reports discussed. Four of the reports explicitly highlight individual representational activities performed on official time outside of referencing the specific subsections of 5 USC 7131, which is broad in its definition under subsection (d). The FY 1998 report includes 28 such activities, some of which include “training on labor relations topics, meeting with employees concerning problems or *potential* problems in the workplace, reviewing employee personnel records, performing health and safety reviews, ‘*walkarounds*,’ and similar activities, representing employees in adverse actions based on unacceptable performance, auditing promotion packages, visiting, phoning, and writing to elected representatives in support of or opposition to pending or desired legislation that would affect working conditions, and orienting new employees” (emphasis added).<sup>20</sup> The FY 2002<sup>21</sup> and 2003<sup>22</sup> reports were far less sweeping in nature and described “time spent meeting with employees to discuss problems in the workplace, handling employee grievances or former administrative appeals, attending meetings called by the agency, and receiving training on labor relations topics.”

The FY 2009 report was the only other report to offer specific activities included on official time outside of what is provided under 5 USC 7131 in its introduction and stated official time was not permitted “for conducting internal union business (such as union elections or conventions), to lobby Congress or the President, to pursue lawsuits against the Federal Government, or for any other purpose not tied directly to representation of bargaining unit employees in matters concerning conditions of employment.” The report stated official time could be used to “participate in labor-management workgroups, to represent bargaining unit employees in meetings, to facilitate implementation of new workplace initiatives, and to assist the agency in communicating important information about workplace matters to employees.”<sup>23</sup>

The FY 1998 report offers a generous amount of information as to what was included on official time at the beginning of OPM’s reporting process, but it includes broad and undefined categories like “training on labor relations topics and orienting new employees” which may very well violate subsection (b) of 5 USC 7131 that prohibits employees from conducting official union business on official time. The first report also seems to encompass activities that are outside what constitutes “reasonable, necessary, and in the public interest” as outlined by subsection (d) of 7131 when it includes such activities as “auditing promotion packages,” “meeting with employees concerning potential problems” and performing “*walkarounds*,” making one seriously question if the federal employee representing a labor union—and the labor union itself—are seeking out problems that do not exist.

There is a stark contrast between the FY 1998 report and the latest FY 2009 report regarding lobbying Congress and the President. The FY 1998 report explicitly states that lobbying is covered while using official time, but the FY 2009 report explicitly states otherwise, stating that official time is not available for such lobbying. The contradiction is of utmost importance when

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<sup>20</sup> OPM, 1998.

<sup>21</sup> OPM, 2003.

<sup>22</sup> OPM, 2004.

<sup>23</sup> OPM, 2011.

considering that since the enactment of the Civil Service Reform Act of 1978, which granted legal use of official time, the law has not been amended. Therefore, the Executive Branch and independent agencies not only are receiving and sending conflicting reports regarding official time in this capacity, but since such lobbying is permitted on official time, they—and the labor unions involved—are in direct violation of what is covered under 5 USC 7131. Further, the lobbying of Congress and the President over pending legislation may have even more serious implications due to potentially violating the Hatch Act by participating in political activity while employed by the federal government.<sup>24</sup>

An example of lobbying on official time came at the beginning of the 112<sup>th</sup> Congress during the debate of H.R. 1. I proposed an amendment that would have prohibited the use of official time for representational purposes by a labor union representative. A federal worker employed by the Environmental Protection Agency sent my Congressional office an email at 2:47 PM on Friday, February 18, 2011, from an official government email account with an attached letter from the National Council of EPA Locals #238 that opposed the amendment.<sup>25</sup> During the normal working hours on a Monday-Friday schedule, this employee would most certainly have been in a “duty status” as defined by 5 USC 7131 unless he was otherwise using official time to present such a case on behalf of a labor union regarding pending legislation that would have affected the representative union and the agency. Whether or not the employee was on duty—requiring that he be directly working on his official government responsibilities—or on official time, his email sent to my office, and received by many other Congressional offices, does not in any way constitute a representational activity authorized for official time by 5 USC 7131 and, therefore, is illegal.

While there is a significant gap of information from 1978 to 1998 and then from 1999 to 2001 regarding the authorization of official time in the federal workforce, one can see an important trend in its use over the previous eight fiscal years. Accountability, transparency, and efficient management of official time was highly stressed by OPM during FY 2002-2006 leading to a decline in hours used and costs incurred during the majority of that time. However, during FY 2007, the increase in time and costs reversed what seemed to be improved management of official time by employees and their employers. FY 2008 and 2009 signify a new trend in higher costs and more hours consumed for official time, degrading the successful progress made in the previous fiscal years.

Further troubling is the exponential growth of the time consumed in the “General Labor-Management Relations” category between FY 2007-2009. Throughout every reporting year for which categories were included, this broad and vague category consumed the vast majority of the total official time hours per fiscal year. The ambiguity of the particular activities that are to be counted under this subgroup has been a point of concern for OPM and led them to question the management of official time within “General Labor-Management Relations.” Even with the 150,000 hour increase in this category from FY 2008 to FY 2009, there was no explanation

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<sup>24</sup> Office of Special Counsel, *Less Restricted Employees* (<http://www.osc.gov/haFederalLessRestrictionandActivities.htm>, January 18, 2010).

<sup>25</sup> Orzechoskie, Charles, *Official Time*. Email to Rep. Phil Gingrey, February 18, 2011.

offered as to why such a large change occurred between the two fiscal years, as there had been in previous reports when an increase happened.

Costs continue to rise due to the growth in hours used on official time. The FY 2009 costs to the federal government are higher than the FY 2005 costs representing a serious setback from the progress made during the consecutive fiscal year declines in costs and hours consumed. Furthermore, the number of bargaining unit employees continues to rise throughout the federal government (3.91% from FY 2008 to FY 2009)<sup>26</sup> representing more employees that are more than likely utilizing activities in the “General Labor-Management Relations” category rather than the activities that are clearly defined in 5 USC 7131, such as collective bargaining and dispute resolution.

The explanation of the uptick in official time and the costs associated with its use is paramount in examining a way forward to maintain an environment for which OPM requires “management and labor to develop sensible arrangements for official time that meet the needs and expectations of agencies, employees, and the ultimate customers—the American people.”<sup>27</sup> The prioritization of efficiency and effective management of official time seems to have been lost over the last three reported fiscal years, and the percentage growth in the hours and costs signify a drastic impediment to control costs in the future. This trend gives rise to the question whether official time is “reasonable, necessary, and in the public interest” as required by 5 USC 7131 and if its use should be discarded altogether.

Over the last 75 years, Congress has dedicated a substantial amount of effort to protect federal workers by passing at least twelve pieces of legislation that ensure employee rights in the workplace such as health and safety criteria, labor standards, discrimination protection, medical leave, and employment retraining and assistance.<sup>28</sup> Yet, by granting the authority to use official time to negotiate, arbitrate, and file grievances related to further federal worker perks and benefits, executive departments and agencies and labor unions are signaling to employees that Congress’ work on these safeguards is not enough. However, as discussed earlier, labor unions use official time to lobby Congress and the President over pending or desired legislation that would affect their place of business, so the federal government is therefore paying the opposing party in a disagreement to negotiate against itself and lobby against itself.

Official time also produces an inherent lack of accountability on behalf of the union given that a union uses none of its own money and time to exercise its negotiating, dispute resolution, and general privileges under 5 USC 7131 to bring grievances forward and to perform other administrative functions related to union representation. Federal *official* time—in lieu of performing an employee’s *official* duties—and taxpayer dollars are used for these activities rendering zero resources expended for the opposing party in a grievance or dispute with management. Although the union was the initial entity to petition for the right to become an exclusive representative for a bargaining unit, or workgroup of federal employees, they disburse

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<sup>26</sup> OPM, 2011.

<sup>27</sup> OPM, 2003.

<sup>28</sup> Congressional Research Service, *Federal Employment Statutes* (Washington: CRS, March 21, 2011).

little, if any, resources in performing the representational functions they were granted the right to perform. This scheme presents a serious flaw in that the union that bargains or brings forth a dispute against its employing agency or department has no incentive whatsoever to ensure efficiency within the acts of bargaining or dispute resolution and creates a limitless amount of time for which such activities can continue, thus raising the costs incurred by the federal government. The lack of accountability and incentive within the system created in 1978 is hardly in the public interest and certainly serves no purpose to create efficiency in government or ensure the integrity of the expenditure of taxpayer dollars.

To correct this flaw, I have reintroduced the Federal Employee Accountability Act of 2011—now numbered H.R. 122—to prohibit the authorization of official time for subsections (a) and (c) of 5 USC 7131. Upon further review, and due to the explosion of time consumed under the “General Labor-Management Relations” category of official time, I hope that if the Committee on Oversight and Government Reform decides to mark-up H.R. 122, it will further prohibit the authorization of official time for subsection (d) of 5 USC 7131, precluding an undefined and sweeping provision of official time from being employed that has accounted for a tremendous amount of hours lost at a high cost to the federal government and, by virtue, American taxpayers.

I also drafted an amendment to H.R. 1540, the National Defense Authorization Act, FY 2012 that would have prohibited the authorization of official time for subsections (a), (c), and (d) under the jurisdiction of the authorizing bill.<sup>29</sup> In response to critics’ concerns that the draft amendment and H.R. 122 would prevent federal employees from raising personnel concerns with their supervisor(s) or manager(s) and resolving such concerns in an effective manner, I directed the Congressional Research Service (CRS) to analyze the draft amendment language and clarify that this right would remain unharmed. The report first states that the Civil Service Reform Act of 1978 “does not prevent an employee, regardless of union membership, from bringing matters of concern to the attention of management.”<sup>30</sup> Regarding the draft amendment to H.R. 1540, CRS states:

*Since the proposed amendment deals only with official time, other sections of the FSLMRS (Civil Service Reform Act of 1978) would not be affected. DOD employees would still be able to organize and bargaining collectively. Employees would continue to have the right not to join a union or pay dues. DOD would be required to bargain with employees chosen by a majority of employees. A collective bargaining agreement would be required to include grievance procedures. Employees could still bring matters of concern to the attention of management.<sup>31</sup>*

Mr. Chairman, while the use of official time and the costs accompanied by its use declined during several of the nine fiscal years reported by OPM, the three previous fiscal years have documented a rise in its consumption, causing a reversal to FY 2005 costs. Even though the FY

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<sup>29</sup> See draft “Amendment to H.R. 1540, As Reported, Offered by Mr. Gingrey of Georgia”

<sup>30</sup> Congressional Research Service, *Proposed Amendment to H.R. 1540 Restricting the Use of Official Time by Employees at the U.S. Department of Defense* (Washington: CRS, May 25, 2011).

<sup>31</sup> CRS, May 2011.

2009 OPM report showed a nearly 400,000 hour decrease from FY 2005 in hours consumed, the costs in FY 2009 to the federal government were \$5 million higher. There is no incentive to reverse this increased use of official time and, thus, increased costs given that labor unions enjoy immunity from expending any of their own resources to perform the very representational functions they petitioned for the right to perform.

While labor unions and advocates of official time will cite the requirement to represent dues paying and non-dues paying employees in a bargaining unit as a reason for the authorization of official time, federal employee unions have witnessed a decline in dues paying members causing one to question if the product being offered to employees is worth the cost to the individual any longer. Further, the reference to “voluntary” work needed for representational purposes on behalf of a union—as referenced in the FY 2009 report—is not voluntary at all given that official time is funded by the federal government. For over 75 years, Congress has spent countless hours working diligently to ensure that federal employees’ rights are ensured in their place of business, yet we continue to subsidize unions to collectively bargain, participate in arbitration and dispute resolution processes, and general union management in their effort to oppose the safeguards we have provided through statute.

Official time has been mismanaged and abused since 1978, costing taxpayers millions of dollars annually. What began as a noble goal to ensure healthy labor-management relations has been twisted into a one-sided scheme to perform union representational functions in lieu of performing one’s official duties as a federal employee. Official time is not fair to the government or the taxpayer and works solely to the benefit of labor unions and employees who serve as its representative or steward. With an extraordinary amount of federal employees authorized to use 100% official time on behalf of their union, the federal government loses the immensely valuable civil service for which he or she was originally hired to perform.

Additionally, taxpayers pay for absolutely no official productivity on their own behalf while federal employees use official time. The time and federal funds expended for official time has finally been exposed, and it is my hope that this Subcommittee will work with me to correct this abuse of taxpayer dollars and enable a more efficient government that is accountable to its ultimate customers—the American people.