

OPM IG ACT

NOVEMBER 15, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2860]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 2860) to amend title 5, United States Code, to provide that the Inspector General of the Office of Personnel Management may use amounts in the revolving fund of the Office to fund audits, investigations, and oversight activities, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Office of Personnel Management (OPM) provides various services to federal agencies on a reimbursable basis, including background investigations for individuals with access to classified information, leadership training, and human resource management. For these services, OPM enters into interagency agreements with customer agencies, deposits customer agency funds into its revolving fund, and accesses the fund to pay for delivery of such services as well as OPM's related administrative expenses. OPM serves as the regulator for rules affecting the management of federal workers, but through its revolving fund has also evolved into a fee-based service provider that provides approximately \$2 billion each year in services to the very same agencies governed by OPM's management rules.

H.R. 2860 will improve the OPM Inspector General's (IG) oversight of OPM's revolving fund activities by allowing the OPM IG to use a portion of revolving fund monies to pay for related audit and investigative work. H.R. 2860 limits the amount available to the OPM IG to one-third of one percent of the revolving fund budget, and requires the OPM IG to submit an annual budget request and report detailing its revolving fund oversight work.

BACKGROUND AND NEED FOR LEGISLATION

OPM's revolving fund was established in 1952 to enable the agency to finance reimbursable background investigations for federal agencies.¹ In 1969, Congress authorized use of the revolving fund to finance reimbursable training courses for federal agencies.² In 1996, Congress expanded revolving fund activities to cover personnel management services performed at the request of federal agencies.³

The two largest revolving fund programs are Federal Investigative Services (FIS) and Human Resources Systems (HRS). FIS conducts background investigations for more than 100 federal agencies to determine employees' or potential employees' suitability for federal civilian, military, and contract employment, as well as their eligibility to access certain classified national security information. Currently, FIS conducts more than 90 percent of the background investigations for government employees and contractors, including for the Department of Defense.⁴ HRS provides an array of human resources products, including human resource strategy and evaluation solutions, a federal staffing group and a vendor management branch.

Since its 1996 expansion to cover personnel management services, OPM has experienced significant growth in the scale of its revolving fund programs—from \$186 million in fiscal year 1996 to slightly more than \$2 billion today. The estimated revolving fund obligations for fiscal year 2014 will exceed \$2 billion, approximately

¹P.L. 82-375.

²P.L. 91-189.

³P.L. 104-208.

⁴<http://www.opm.gov/investigations/background-investigations>.

90 percent of OPM's total funding request for the year.⁵ Under current law, OPM is required to set the price for revolving fund programs at a level that allows the agency to recover the actual cost of administering the program.⁶ However, the OPM IG's oversight costs are not a permissible expenditure from the fund.

For more than 30 years, both GAO and the OPM IG have been concerned about the management of resources in the revolving fund. Each has issued a number of reports and audits examining various, and often recurring, problems.

In 2012, OPM IG Patrick McFarland informed the Committee of what he described as a "serious problem" inhibiting his ability to perform the duties and responsibilities of his office. McFarland explained his office was at a point where it could not meet its statutory obligation to effectively oversee revolving fund activities. McFarland noted that his office had been "inundated with requests from OPM to audit and/or investigate different parts of Revolving Fund programs," from technical audit work to the continuing flow of allegations involving falsification of background investigations and abuse of authority.⁷

The President's FY2014 budget request includes a legislative proposal to allow the OPM IG up to .33 percent of revolving fund budget authority ". . . for the cost of audits, investigations, and oversight activities of the fund and the functions financed by the fund, conducted by the Office's Office of Inspector General."⁸

In 2013, OPM IG McFarland testified before the Federal Workforce, U.S. Postal Service, and Census Subcommittee, stating that OPM's revolving fund programs "have been operating in the shadows for far too long," adding that "sunshine is the best disinfectant".⁹

H.R. 2860 provides resources for critical oversight that can be accomplished at relatively low cost, using existing funds.

LEGISLATIVE HISTORY

H.R. 2860 was introduced by Representative Blake Farenthold and Stephen F. Lynch on July 30, 2013.

Similar legislation, S. 1276, was introduced on July 10, 2013, by Senator John Tester, with Senators Claire McCaskill, Rob Portman, Tom Coburn, and Ron Johnson as cosponsors. On July 13, 2013, the bill was ordered favorably reported, as amended, by the Senate Committee on Homeland Security and Governmental Affairs. S. 1276 passed by the Senate by unanimous consent on October 10, 2013.

⁵U.S. House, Subcommittee on Federal Workforce, U.S. Postal Service and the Census. OPM's Revolving Fund: A Cycle of Government Waste, Hearing, June 5, 2013 (Serial No. 113-29), Washington: Government Printing Office, 2013.

⁶5 U.S.C. § 1304(e).

⁷Letter from Patrick E. McFarland, Inspector General, Office of Personnel Management, to Chairman Darrell Issa, and Ranking Member Elijah E. Cummings (10 September 2012).

⁸U.S. Office of Management and Budget, The Budget for Fiscal Year 2014, pp. 1162-1163, available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/opm.pdf>.

⁹U.S. House, Subcommittee on Federal Workforce, U.S. Postal Service and the Census. OPM's Revolving Fund: A Cycle of Government Waste, Hearing, June 5, 2013 (Serial No. 113-29), Washington: Government Printing Office, 2013.

SECTION-BY-SECTION

Section 1. Short title

The short title of the bill is the “OPM IG Act”.

Section 2. Use of Office of Personnel Management revolving fund for audits, investigations, and oversight activities

The Office of Personnel Management (OPM) Inspector General (IG) audits, investigations, and oversight activities relating to the revolving fund and the functions financed by the fund may be charged against the fund. The amount available to the OPM IG for revolving fund-related work would be limited to one-third of one percent (.33 percent) of the revolving fund budgetary authority. The OPM IG would be required to submit an annual budget request and report detailing its planned revolving fund work.

EXPLANATION OF AMENDMENTS

No amendments were offered to H.R. 2860.

COMMITTEE CONSIDERATION

On October 29, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 2860, by voice vote, a quorum being present.

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 allows the OPM IG to use a portion of revolving fund monies to pay for related audit and investigative work. 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 goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2860 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 H.R. 2860 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

H.R. 2860 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)(2) 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 H.R. 2860. However, clause 3(d)(3)(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.

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 H.R. 2860 from the Director of Congressional Budget Office:

NOVEMBER 4, 2013.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2860, the OPM IG Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2860—OPM IG Act

H.R. 2860 would permit the Office of Personnel Management's (OPM's) Office of the Inspector General (IG) to receive funding through the OPM Revolving Fund. The bill also would set a limit on the funds available. Under current law, the OPM Revolving Fund provides about \$2 billion a year for a variety of functions, including background investigations to determine an individual's suitability for a security clearance, but the IG is not permitted to use those funds to audit and provide oversight of the fund's finances.

Based on information from the OPM IG, CBO estimates that implementing this legislation would enable the IG to begin auditing the OPM Revolving Fund at a cost of \$13 million over the 2014–2018 period, assuming appropriation of the necessary funds. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2860 would impose 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.

On August 23, 2013, CBO transmitted a cost estimate for S. 1276, the Security Clearance Oversight and Reform Enhancement Act, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 31, 2013. Both bills contain similar provisions, and their estimated costs are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

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CHAPTER 13—SPECIAL AUTHORITY

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§ 1304. Loyalty investigations; reports; revolving fund

(a) * * *

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(e)(1) A revolving fund is available, to the Office without fiscal year limitation, for financing investigations, training, and such other functions as the Office is authorized or required to perform on a reimbursable basis, including personnel management services performed at the request of individual agencies (which would otherwise be the responsibility of such agencies), or at the request of nonappropriated fund instrumentalities, *and for the cost of audits, investigations, and oversight activities, conducted by the Inspector General of the Office, of the fund and the activities financed by the fund.* However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

* * * * *

(5) **【The Office】** (A) *The Office* shall prepare a business-type budget providing full disclosure of the results of operations for each of the functions performed by the Office and financed by the fund, and such budget shall be transmitted to the Congress and considered, in the manner prescribed by law for wholly owned Government corporations.

(B) *Such budget shall include an estimate from the Inspector General of the Office of the amount required to pay the expenses to audit, investigate, and provide other oversight activities with respect to the fund and the activities financed by the fund.*

(C) *The amount requested by the Inspector General under subparagraph (B) shall not exceed .33 percent of the total budgetary authority requested by the Office under subparagraph (A).*

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