

**CITIZEN PETITION
TO THE OFFICE OF PERSONNEL MANAGEMENT**

Public Employees for)
Environmental Responsibility (PEER))
962 Wayne Ave., Suite 610)
Silver Spring, MD 20910)
Petitioner,)
)
Filed with:)
)
Kiran Ahuja, Director)
U.S. Office of Personnel Management)
1900 E Street, NW)
Washington, DC 20415-1000)
_____)

Docket Number _____
September 22, 2023

**PROPOSED RULEMAKING TO REMEDY OPM’S FAILURE TO
COMPLY WITH THE ADMINISTRATIVE LEAVE ACT OF 2016**

Introduction

Public Employees for Environmental Responsibility (PEER) submits this **Petition for Rulemaking** to the Office of Personnel Management (OPM) pursuant to the Right to Petition Government Clause contained in the First Amendment of the United States Constitution¹ and the Administrative Procedure Act.² In the event this Petition is not granted within 60 days, this also serves as PEER’s **Alternative Notice of Intent to Sue**.

PEER is a nonprofit organization headquartered in Silver Spring, Maryland. PEER’s mission includes educating the public and speaking out, as well as providing legal defense to those who speak out, about environmental ethics and compliance with environmental laws. PEER works nationwide with government scientists, land managers, environmental law enforcement agents, field specialists, and other resource professionals committed to responsible management of America’s public resources. Several of PEER’s clients in proposed personnel actions have been subjected to excess administrative and investigative leave, in one case as long as three years.

¹ U.S. CONST. amend. I.

² 5 U.S.C. § 553(e).

Preamble

Congress enacted the Administrative Leave Act (ALA) on December 23, 2016, in order to end agency abuse of administrative leave which “exceeded reasonable use,” citing cases where employees had been paid to stay home and not work for many months and, in some cases, years.³ The ALA’s provisions at issue in this Petition are at 5 U.S.C. § 6329a (Administrative Leave) and § 6329b (Investigative and Notice Leave), which are reproduced in full in the Appendices hereto.

Both § 6329a(c)(1) and § 6329b(h)(1) required OPM to prescribe implementing regulations within 270 days of the ALA’s enactment. Thus, the regulations should have been completed by **September 19, 2017**. Both § 6329a(c)(2) and § 6329b(h)(2) also required agencies to implement “internal policies” to meet the requirements of the Act within 270 days of the issuance of the OPM’s new regulations. *Id.* Thus, agency implementation should have been completed by approximately June 16, 2018. It is now **six years** after the Congressionally-directed compliance date with no final OPM regulations – and well more than five years after agencies’ implementation of the regulations was to have been formalized.⁴ That is unreasonable delay.⁵

The abusive practice of exiling Federal employees from work by placing them on excessive, costly, and unnecessary leave has continued unabated despite the ALA’s direction to agencies to stop. Congress’s goal was to give Federal employees the due process rights they deserve, but also to limit excessive paid time off for those who had potentially committed misconduct or some other offense. Such paid time off has regularly occurred, both prior to and since the ALA’s adoption, at great cost to the Federal government:

- The Government Accountability Office (GAO) in 2014, for example, said 263 employees had spent one-to-three years on paid administrative leave, at a cost to the Federal government of approximately \$31 million.⁶
- The GAO also reported that during a five-year period from 2011-2015 the Department of Homeland Security had placed 116 employees on administrative leave for one year or more. The report estimated the extended leaves had cost about \$19.8 million.⁷
- Other agencies, such as the National Park Service (NPS), have used large amounts of leave. According to a Freedom of Information Act (FOIA) response to PEER, the NPS used more than 530,000 hours of paid leave from FY 2018 through 2020, or more than 260 person-

³ 5 U.S.C. §§ 6329a, 6329b and 6329c, enacted under section 1138 of the National Defense Authorization Act for FY 2017 (Pub. L. 114–328, 130 Stat. 2000, December 23, 2016).

⁴ See Friedman, D. 2023. “OPM sent a signal”: Still no final regulations on 2017 administrative leave law. *Federal News Network* Feb. 10. At: <https://federalnewsnetwork.com/agency-oversight/2023/02/opm-sent-a-signal-still-no-final-regulations-on-2017-administrative-leave-law/> .

⁵ Notably, both in its final 2018 regulation on weather and safety leave and its follow-up internal Memorandum for Chief Human Capital Officers, dated April 10, 2018, the agency announced it “will be issuing separate final regulations on the other provisions of the Administrative Leave Act (dealing with administrative leave, notice leave, and investigative leave) at a later date.” At: <https://chcoc.gov/content/issuance-weather-and-safety-leave-regulations>. But OPM has not.

⁶ GAO. 2014. *Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data*, GAO-15-79, at: <https://www.gao.gov/products/gao-15-79> .

⁷ GAO. 2016. *Evaluation of DHS’s New Policy Can Help Identify Progress toward Reducing Leave Use*, GAO-16-342, at <https://www.gao.gov/products/gao-16-342> .

years, at an estimated cost to taxpayers in excess of \$10 million.⁸ The amount of leave used annually increased over those three years.

- By contrast, the Environmental Protection Agency has been unable to supply accurate leave (or taxpayer cost) figures in response to a PEER FOIA request.⁹ This fact undermines the ALA requirement of accurate record-keeping and reporting of leave by agencies.

Even after passage of the ALA many civil servants have been left dangling on paid suspension for months and, in several cases, for years. For example, an agency managing director represented by PEER was put on paid administrative leave for more than three years before his agency acted on his case. Two other senior PEER clients faced periods of more than six and 13 months of indeterminate administrative and investigative leave. Other civil servants have been left in lengthy limbos because agency management found them inconvenient or a political threat but lacked grounds to remove them. Imposing indefinite leave of whatever label allows agencies to “disappear” employees without due process.

In the case of investigative and notice leave, the ALA directs agencies to perform personnel investigations more quickly — or search for other ways to put employees under investigation back to work in other offices. The evidence is that the opposite outcome frequently has occurred since Congress adopted the ALA. In short, ignoring the ALA’s mandate to regulate, OPM has failed to comply with it and harmed employees as a result. OPM published a Proposed Rule in the Federal Register in July of 2017 that was defective, leaving many unacceptable gaps.¹⁰ PEER submitted detail comments dated August 2 of that year critiquing the OPM proposal.¹¹

More than six year later, OPM has never finalized a Rule. The current Administration should promptly do so and not put it off to the next Administration as the last Administration did.

Thus, PEER hereby petitions OPM for adoption of the regulations called for in the statute, tracking the basic thrust of the ALA’s language, as the rulemaking must, but also with the additional provisions proposed herein. The additional provisions would:

- A. describe a prohibited personnel practice for the abuse of administrative leave;
- B. expand on the existing prohibited personnel practice described in the ALA for the abuse of investigative leave; and

⁸ NPS response to PEER FOIA number DOI-NPS-2021-003479.

⁹ EPA response to PEER FOIA number EPA-2021-003541.

¹⁰ OPM’s “Administrative Leave, Investigative Leave, Notice Leave, and Weather and Safety Leave Proposed Rule.” Docket ID: OPM-2017-0005-0001, Federal Register 32263, Vol. 82, No. 133, Thursday, July 13, 2017, at: <https://www.govinfo.gov/content/pkg/FR-2017-07-13/pdf/2017-14712.pdf> . See PEER press release of Aug 1, 2017, at: <https://www.peer.org/administrative-leave-leash-too-weak-to-check-abuse/>.

¹¹ Comment at: https://peer.org/wp-content/uploads/attachments/8_2_17_PEER_admin_leave_comments.pdf . The gist of the 2017 Proposed Rule’s defects were that it: 1) Expanded on a new category of open-ended “notice leave” which could start as soon as an agency proposed a disciplinary action, such as termination, and continue until the agency finally took that action or formally declared that it would take no action. Thus, employees could languish on notice leave for years. 2) Lacked an enforcement mechanism: an employee exiled from work beyond OPM’s proposed leave limits had no ability to appeal or other recourse to force a return to work. 3) Let abusive managers go unpunished: OPM’s proposal did not propose any consequences for managers who ordered improper or excessive administrative or notice leave.

- C. create a robust system of recordkeeping and public reporting on the use of those forms of leave.

The need for the inclusion of the proposed “prohibited personnel practice” language, paragraphs A. and B. below, is to make the restriction in the regulations enforceable by linking to the statute that allows for Office of Special Counsel (OSC) enforcement in the event that those forms of leave are improperly imposed on employees by agency managers. It accords with the language already in 5 U.S.C. § 6329b(g), “Recourse to the Office of Special Counsel” on investigative leave, clarifies it, and applies it to abuse of administrative leave also. Without the prospect of OSC enforcement, PEER’s experience indicates there would be a strong tendency within agencies to overlook abuse of those forms of leave by managers.

The proposed recordkeeping and public reporting provision in paragraph C. below is to clarify and define the agencies’ and OPM’s duties. It accords with Congress’s intent to make this data more widely available.

PROPOSED RULEMAKING

A. Administrative Leave.

OPM should adopt regulations that track the provisions in 5 U.S.C. § 6329a, as set forth in the first Appendix hereto, and are consistent with § 6329a(c), which provides:

(c) REGULATIONS.—

(1) OPM REGULATIONS.—Not later than 270 calendar days after the date of enactment of this section, the Director of the Office of Personnel Management shall—

(A) prescribe regulations to carry out this section; and

(B) prescribe regulations that provide guidance to agencies regarding—

(i) acceptable agency uses of administrative leave; and

(ii) the proper recording of—

(I) administrative leave; and

(II) other leave authorized by law.

Further, OPM should add this provision:

Prohibited personnel practice.

For purposes of 5 U.S.C. chapter 12, subchapter II, and section 1221, placement on administrative leave for more than the 10 workdays allowed under 5 U.S.C. § 6329a(b) shall be considered a personnel action for purposes of the Office of Special Counsel in applying the prohibited personnel practices provisions at 5 U.S.C. § 2302(b)(8) or (9).

B. Investigative and Notice Leave.

OPM should adopt regulations that track the provisions in 5 U.S.C. § 6329b, as set forth in the second Appendix hereto, and are consistent with § 6329b(h), which provides:

(h) REGULATIONS.—

(1) OPM ACTION.—Not later than 270 calendar days after the date of enactment of this section, the Director shall prescribe regulations to carry out this section, including guidance to agencies regarding—

(A) acceptable purposes for the use of—

(i) investigative leave; and

(ii) notice leave;

(B) the proper recording of—

(i) the leave categories described in subparagraph (A); and

(ii) other leave authorized by law;

(C) baseline factors that an agency shall consider when making a determination that the continued presence of an employee in the workplace may—

(i) pose a threat to the employee or others;

(ii) result in the destruction of evidence relevant to an investigation;

(iii) result in loss or damage to Government property; or

(iv) otherwise jeopardize legitimate Government interests; and

(D) procedures and criteria for the approval of an extension of a period of investigative leave under subsection (c) or (d).

OPM also should add this provision, which expands on the provision regarding the OSC in § 6329b(g):

Prohibited personnel practice.

For purposes of 5 U.S.C. § 6329b(g) and 5 U.S.C. chapter 12, subchapter II, and section 1221, placement on investigative leave under 5 U.S.C. § 6329b for a period of 70 or more work days shall be considered a personnel action for purposes of the Office of Special Counsel in applying the prohibited personnel practices provisions at 5 U.S.C. 2302(b)(8) or (9).

C. Records and reporting.

OPM also should adopt the following provision, which expands on and strengthens the ALA provisions on leave recordkeeping in § 6329a(b)(2) and § 6329b(f):

Pursuant to 5 U.S.C. § 6329a(b)(2) and § 6329b(f) agencies must maintain accurate records of the placement of employees on administrative, investigative

and notice leave. No later than 1 year after the date of issuance of this regulation as a Final Rule, all agencies shall, beginning at the end of the first fiscal year after the date of the Final Rule issuance, summarize and report on their use of administrative and investigative leave for each fiscal year and provide those reports to OPM, which then shall make them available annually, by agency, on a publicly-accessible OPM webpage.

Alternative Notice of Intent to Sue

Failure by OPM to either grant this Petition or to adopt an alternative regulation would be a continuing violation of the ALA that now has stretched for six years. Federal courts have made clear that agencies ignore direct orders from Congress at their jeopardy. *Public Citizen v. Nuclear Regulatory Commission*, 901 F.2d 147 (D.C. Cir. 1990), cert. denied, 498 U.S. 992 (1990)(Congressional direction to NRC to issue regulatory guidance was improperly ignored for five years); *Ethyl Corp. v. Environmental Protection Agency*, 306 F.3d 1144 (D.C. Cir. 2002)(Congressional direction to EPA to promulgate and adhere to regulations on auto emissions was improperly sidetracked for seven years); *In re Bluewater Network*, 234 F.3d 1305, 1315 (D.C. Cir. 2000)(Congressional direction to Coast Guard to adopt oil spill regulations was improperly ignored for eight years). See also Consent Decree in settlement of *Center for Food Safety et al. v. Alex M. Azar et al.*, Case No. 3:18-cv-06299, USDC N.D.Cal. (Congressional direction to FDA to adopt food safety modernization regulations was improperly ignored for six years).¹² PEER hereby gives OPM notice of its intent to sue after 60 days, if necessary.

Conclusion

Based on the foregoing, the OPM Director should promptly grant this Petition and issue the Proposed Rulemaking herein within 120 days after the date that she grants the Petition. If the OPM Director does not either grant this Petition or promulgate an alternative regulation that complies with the ALA within 60 days of the date of filing of this Petition, the Petitioners may withdraw the Petition and sue OPM in Federal court based on its unreasonable failure to comply with the mandates of the ALA for more than six years.

DATED this 22nd day of September, 2023.

¹² Consent Decree at www.centerforfoodsafety.org/files/2019-06-07--doc-33-1--consent-decree_35775.pdf .

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APPENDICES

APPENDICES

5 U.S.C. § 6329a - Administrative leave

(a) DEFINITIONS.—In this section—

(1) the term “[administrative leave](#)” means leave—

(A) without loss of or reduction in—

(i) pay;

(ii) leave to which an [employee](#) is otherwise entitled under law; or

(iii) credit for time or service; and

(B) that is not authorized under any other provision of law;

(2) the term “[agency](#)”—

(A) means an Executive [agency](#) (as defined in [section 105 of this title](#));

(B) includes the Department of Veterans Affairs; and

(C) does not include the Government Accountability Office; and

(3) the term “[employee](#)”—

(A) has the meaning given the term in section 2105; and

(B) does not include an intermittent [employee](#) who does not have an established regular tour of duty during the administrative workweek.

(b) ADMINISTRATIVE LEAVE.—

(1) IN GENERAL.—

During any calendar year, an [agency](#) may place an [employee](#) in [administrative leave](#) for a period of not more than a total of 10 work days.

(2) RECORDS.—

An [agency](#) shall record [administrative leave](#) separately from leave authorized under any other provision of law.

(c) REGULATIONS.—

(1) OPM REGULATIONS.—Not later than 270 calendar days after the date of enactment of this section, the Director of the Office of Personnel Management shall—

(A) prescribe regulations to carry out this section; and

(B) prescribe regulations that provide guidance to agencies regarding—

(i) acceptable [agency](#) uses of [administrative leave](#); and

- (ii) the proper recording of—
- (I) [administrative leave](#); and
- (II) other leave authorized by law.

(2) AGENCY ACTION.—

Not later than 270 calendar days after the date on which the Director of the Office of Personnel Management prescribes regulations under paragraph (1), each [agency](#) shall revise and implement the internal policies of the [agency](#) to meet the requirements of this section.

(d) RELATION TO OTHER LAWS.—

Notwithstanding subsection (a) of [section 7421 of title 38](#), this section shall apply to an [employee](#) described in subsection (b) of that section.

5 U.S.C. § 6329b - Investigative leave and notice leave

(a) DEFINITIONS.—In this section—

(1) the term “[agency](#)”—

(A) means an Executive [agency](#) (as defined in [section 105 of this title](#));

(B) includes the Department of Veterans Affairs; and

(C) does not include the Government Accountability Office;

(2) the term “[Chief Human Capital Officer](#)” means—

(A) the [Chief Human Capital Officer](#) of an [agency](#) designated or appointed under [section 1401](#); or

(B) the equivalent;

(3) the term “[committees of jurisdiction](#)”, with respect to an [agency](#), means each committee of the Senate or House of Representatives with jurisdiction over the [agency](#);

(4) the term “[Director](#)” means the [Director](#) of the Office of Personnel Management;

(5) the term “[employee](#)”—

(A) has the meaning given the term in [section 2105](#); and

(B) does not include—

(i) an intermittent [employee](#) who does not have an established regular tour of duty during the administrative workweek; or

(ii) the [Inspector General](#) of an [agency](#);

- (6) the term “investigative entity” means—
- (A) an internal investigative unit of an agency granting investigative leave under this section;
 - (B) the Office of Inspector General of an agency granting investigative leave under this section;
 - (C) the Attorney General; and
 - (D) the Office of Special Counsel;
- (7) the term “investigative leave” means leave—
- (A) without loss of or reduction in—
 - (i) pay;
 - (ii) leave to which an employee is otherwise entitled under law; or
 - (iii) credit for time or service;
 - (B) that is not authorized under any other provision of law; and
 - (C) in which an employee who is the subject of an investigation is placed;
- (8) the term “notice leave” means leave—
- (A) without loss of or reduction in—
 - (i) pay;
 - (ii) leave to which an employee is otherwise entitled under law; or
 - (iii) credit for time or service;
 - (B) that is not authorized under any other provision of law; and
 - (C) in which an employee who is in a notice period is placed; and
- (9) the term “notice period” means a period beginning on the date on which an employee is provided notice required under law of a proposed adverse action against the employee and ending on the date on which an agency may take the adverse action.

(b) LEAVE FOR EMPLOYEES UNDER INVESTIGATION OR IN A NOTICE PERIOD.—

- (1) **AUTHORITY.**—An agency may, in accordance with paragraph (2), place an employee in—
- (A) investigative leave if the employee is the subject of an investigation;
 - (B) notice leave if the employee is in a notice period; or
 - (C) notice leave following a placement in investigative leave if, not later than the day after the last day of the period of investigative leave—
 - (i) the agency proposes or initiates an adverse action against the employee; and
 - (ii) the agency determines that the employee continues to meet 1 or more of the criteria described in paragraph (2)(A).
- (2) **REQUIREMENTS.**—An agency may place an employee in leave under paragraph (1) only if the agency has—

(A)made a determination with respect to the **employee** that the continued presence of the **employee** in the workplace during an investigation of the **employee** or while the **employee** is in a **notice period**, as applicable, may—

- (i)** pose a threat to the **employee** or others;
 - (ii)** result in the destruction of evidence relevant to an investigation;
 - (iii)** result in loss of or damage to Government property; or
 - (iv)** otherwise jeopardize legitimate Government interests;
- (B)**considered—

- (i)** assigning the **employee** to duties in which the **employee** no longer poses a threat described in clauses (i) through (iv) of subparagraph (A);
 - (ii)** allowing the **employee** to take leave for which the **employee** is eligible;
 - (iii)** if the **employee** is absent from duty without approved leave, carrying the **employee** in absence without leave status; and
 - (iv)** for an **employee** subject to a **notice period**, curtailing the **notice period** if there is reasonable cause to believe the **employee** has committed a crime for which a sentence of imprisonment may be imposed; and
- (C)** determined that none of the available options under clauses (i) through (iv) of subparagraph (B) is appropriate.

(3) DURATION OF LEAVE.—

(A)Investigative leave.—

Upon the expiration of the 10 work day period described in section 6329a(b)(1) with respect to an **employee**, and if an **agency** determines that an extended investigation of the **employee** is necessary, the **agency** may place the **employee** in **investigative leave** for a period of not more than 30 work days.

(B)Notice leave.— Placement of an **employee** in **notice leave** shall be for a period not longer than the duration of the **notice period**.

(4) EXPLANATION OF LEAVE.—

(A)In general.—

If an **agency** places an **employee** in leave under this subsection, the **agency** shall provide the **employee** a written explanation of whether the **employee** was placed in **investigative leave** or **notice leave**.

(B)Explanation.—The written notice under subparagraph (A) shall describe the limitations of the leave placement, including—

- (i)** the applicable limitations under paragraph (3); and
- (ii)** in the case of a placement in **investigative leave**, an explanation that, at the conclusion of the period of leave, the **agency** shall take an action under paragraph (5).

(5) AGENCY ACTION.—Not later than the day after the last day of a period of **investigative leave** for an **employee** under paragraph (1), an **agency** shall—

- (A) return the [employee](#) to regular duty status;
 - (B) take 1 or more of the actions under clauses (i) through (iv) of paragraph (2)(B);
 - (C) propose or initiate an adverse action against the [employee](#) as provided under law; or
 - (D) extend the period of [investigative leave](#) under subsections (c) and (d).
- (6) RULE OF CONSTRUCTION.**—Nothing in paragraph (5) shall be construed to prevent the continued investigation of an [employee](#), except that the placement of an [employee](#) in [investigative leave](#) may not be extended for that purpose except as provided in subsections (c) and (d).

(c) INITIAL EXTENSION OF INVESTIGATIVE LEAVE.—

(1) IN GENERAL.—

Subject to paragraph (4), if the [Chief Human Capital Officer](#) of an [agency](#), or the designee of the [Chief Human Capital Officer](#), approves such an extension after consulting with the investigator responsible for conducting the investigation to which an [employee](#) is subject, the [agency](#) may extend the period of [investigative leave](#) for the [employee](#) under subsection (b) for not more than 30 work days.

(2) MAXIMUM NUMBER OF EXTENSIONS.—

The total period of additional [investigative leave](#) for an [employee](#) under paragraph (1) may not exceed 90 work days.

(3) DESIGNATION GUIDANCE.—

Not later than 270 days after the date of enactment of this section, the [Chief Human Capital Officers Council](#) shall issue guidance to ensure that if the [Chief Human Capital Officer](#) of an [agency](#) delegates the authority to approve an extension under paragraph (1) to a designee, the designee is at a sufficiently high level within the [agency](#) to make an impartial and independent determination regarding the extension.

(4) EXTENSIONS FOR OIG EMPLOYEES.—

(A) Approval.—In the case of an [employee](#) of an Office of Inspector General—

(i) the Inspector General or the designee of the Inspector General, rather than the [Chief Human Capital Officer](#) or the designee of the [Chief Human Capital Officer](#), shall approve an extension of a period of [investigative leave](#) for the [employee](#) under paragraph (1); or

(ii) at the request of the Inspector General, the head of the [agency](#) within which the Office of Inspector General is located shall designate an official of the [agency](#) to approve an extension of a period of [investigative leave](#) for the [employee](#) under paragraph (1).

(B) Guidance.—

Not later than 270 calendar days after the date of enactment of this section, the Council of the Inspectors General on Integrity and Efficiency shall issue guidance to ensure that if the Inspector General or the head of an [agency](#), at the request of the Inspector General, delegates the authority to approve an extension under subparagraph (A) to a designee, the designee is at a sufficiently high level within the Office of Inspector General or the [agency](#), as applicable, to make an impartial and independent determination regarding the extension.

(d) FURTHER EXTENSION OF INVESTIGATIVE LEAVE.—

(1) REPORT.—After reaching the limit under subsection (c)(2) and if an [investigative entity](#) submits a certification under paragraph (2) of this subsection, an [agency](#) may further extend a period of [investigative leave](#) for an [employee](#) for periods of not more than 30 work days each if, not later than 5 business days after granting each further extension, the [agency](#) submits to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives, along with any other [committees of jurisdiction](#), a report containing—

(A) the title, position, office or [agency](#) subcomponent, job series, pay grade, and salary of the [employee](#);

(B) a description of the duties of the [employee](#);

(C) the reason the [employee](#) was placed in [investigative leave](#);

(D) an explanation as to why—

(i) the [employee](#) poses a threat described in clauses (i) through (iv) of subsection (b)(2)(A); and

(ii) the [agency](#) is not able to reassign the [employee](#) to another position within the [agency](#);

(E) in the case of an [employee](#) required to telework under section 6502(c) during the investigation of the [employee](#)—

(i) the reasons that the [agency](#) required the [employee](#) to telework under that section; and

(ii) the duration of the teleworking requirement;

(F) the status of the investigation of the [employee](#);

(G) the certification described in paragraph (2); and

(H) in the case of a completed investigation of the [employee](#)—

(i) the results of the investigation; and

(ii) the reason that the [employee](#) remains in [investigative leave](#).

(2) CERTIFICATION.—If, after an [employee](#) has reached the limit under subsection (c)(2), an [investigative entity](#) determines that additional time is needed to complete the investigation of the [employee](#), the [investigative entity](#) shall—

(A) certify to the appropriate **agency** that additional time is needed to complete the investigation of the **employee**; and

(B) include in the certification an estimate of the amount of time that is necessary to complete the investigation of the **employee**.

(3) NO EXTENSIONS AFTER COMPLETION OF INVESTIGATION.—

An **agency** may not further extend a period of **investigative leave** of an **employee** under paragraph (1) on or after the date that is 30 calendar days after the completion of the investigation of the **employee** by an **investigative entity**.

(e) CONSULTATION GUIDANCE.—Not later than 270 calendar days after the date of enactment of this section, the Council of the Inspectors General on Integrity and Efficiency, in consultation with the Attorney General and the Special Counsel, shall issue guidance on best practices for consultation between an investigator and an **agency** on the need to place an **employee** in **investigative leave** during an investigation of the **employee**, including during a criminal investigation, because the continued presence of the **employee** in the workplace during the investigation may—

(1) pose a threat to the **employee** or others;

(2) result in the destruction of evidence relevant to an investigation;

(3) result in loss of or damage to Government property; or

(4) otherwise jeopardize legitimate Government interests.

(f) REPORTING AND RECORDS.—

(1) IN GENERAL.—An **agency** shall keep a record of the placement of an **employee** in **investigative leave** or **notice leave** by the **agency**, including—

(A) the basis for the determination made under subsection (b)(2)(A);

(B) an explanation of why an action under clauses (i) through (iv) of subsection (b)(2)(B) was not appropriate;

(C) the length of the period of leave;

(D) the amount of salary paid to the **employee** during the period of leave;

(E) the reasons for authorizing the leave, including, if applicable, the recommendation made by an investigator under subsection (c)(1);

(F) whether the **employee** is required to telework under **section 6502(c)** during the investigation, including the reasons for requiring the **employee** to telework; and

(G) the action taken by the **agency** at the end of the period of leave, including, if applicable, the granting of any extension of a period of **investigative leave** under subsection (c) or (d).

(2) AVAILABILITY OF RECORDS.—An **agency** shall make a record kept under paragraph (1) available—

(A) to any committee of jurisdiction, upon request;

(B) to the Office of Personnel Management; and
(C) as otherwise required by law, including for the purposes of the Administrative Leave Act of 2016 and the amendments made by that Act.

(g) RECOURSE TO THE OFFICE OF SPECIAL COUNSEL.—

For purposes of subchapter II of chapter 12 and section 1221, placement on [investigative leave](#) under subsection (b) of this section for a period of not less than 70 work days shall be considered a personnel action under paragraph (8) or (9) of section 2302(b).

(h) REGULATIONS.—

(1) OPM ACTION.—Not later than 270 calendar days after the date of enactment of this section, the [Director](#) shall prescribe regulations to carry out this section, including guidance to agencies regarding—

(A) acceptable purposes for the use of—

(i) [investigative leave](#); and

(ii) [notice leave](#);

(B) the proper recording of—

(i) the leave categories described in subparagraph (A); and

(ii) other leave authorized by law;

(C) baseline factors that an [agency](#) shall consider when making a determination that the continued presence of an [employee](#) in the workplace may—

(i) pose a threat to the [employee](#) or others;

(ii) result in the destruction of evidence relevant to an investigation;

(iii) result in loss or damage to Government property; or

(iv) otherwise jeopardize legitimate Government interests; and

(D) procedures and criteria for the approval of an extension of a period of [investigative leave](#) under subsection (c) or (d).

(2) AGENCY ACTION.—Not later than 270 calendar days after the date on which the [Director](#) prescribes regulations under paragraph (1), each [agency](#) shall revise and implement the internal policies of the [agency](#) to meet the requirements of this section.