PEER
PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY
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December 30, 2025

Shirley A. Jones
Managing Associate General Counsel
Office of the General Counsel
Government Accountability Office
Via Email: AntideficiencyActRep@gao.gov

Re: 2025 agency expenditures in violation of the Administrative Leave Act, the Anti-Deficiency Act, and the Purpose Act

Dear Ms. Jones,

I am writing to seek a review by the Government Accountability Office (GAO) of Executive Branch expenditures in violation of the Administrative Leave Act, the Anti-Deficiency Act, and the Purpose Act. The Trump Administration put more than 154,000 federal employees, or roughly 7% of the civilian workforce, on paid administrative leave though its multi-phased Deferred Resignation Program (DRP), which cost taxpayers an estimated **ten billion dollars** in 2025, for no work done in return.[1] Ironically, this unreasonably costly mass idling of civil servants was done in the name of "government efficiency."

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[1] See, Kornfeld, M, et al. 2025, "The federal government is paying more than 154,000 people not to work," *Washington Post,* July 31, at: https://www.washingtonpost.com/politics/2025/07/31/federal-workers-doge-buyout-paid/. The Office of Personnel Management's (OPM) original DRP 1 started on 1/28/25 and paid administrative leave through 9/30/25, so a total of about 8 months (https://www.opm.gov/fork/original-email-toemployees/); DRP 2 was announced by several major agencies on 4/1/25 and provided paid leave until the same 9/30/25 end date, so about 6 months (https://federalnewsnetwork.com/workforce/2025/04/as-rifs-get-underway-several-agencies-renew-deferred-resignation-offers/#:~:text=%22HUD%20is%20launching%20a%20second,DoD%20employees%20expires%20April%2011); and smaller DRP 3s were separately announced by EPA and the U.S. Army on about 7/17/25 and paid for administrative leave until an end date of 11/30/25, so about 4 months (https://federalnewsnetwork.com/workforce/2025/07/epa-sends-third-deferred-resignation-offer-to-some-employees/#:~:text=Employees%20who%20received%20RIF%20notices,leave%20as%20soon%20as%20Aug). Six months of paid leave represents a conservative average per the typical employee who took a DRP in 2025. At an average 12-month salary and benefits of about $130,000 (https://federaljobs.net/benefits/), the 6-month average cost of the DRP payments was

This wanton use of paid leave was illegal under the Administrative Leave Act, 5 U.S.C. § 6329a(b), which prohibits the multi-month leave periods that the Trump Administration authorized. Further, it violated the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), which prohibits federal officials from obligating funds for a purpose not authorized by Congress, and the Purpose Act, 31 U.S.C. § 1301(a), because the DRP payments were not lawful salary expenditures.

The illegal nature of the DRP administrative leave and associated payments was exhaustively explained in this article by Madeline Materna, a Stanford University legal scholar, entitled: "Statutory Constraints on the Use of Appropriated Funds for Extended Administrative Leave." It is attached to this letter in full.[2] Summing up her analysis, Materna states:

> *In conclusion, the use of extended administrative leave, including but not limited to the DRP, likely violates the Purpose Statute. Salary payments to non-working employees are not authorized as "salaries" under appropriations acts and such payments fail the "necessary expense" test, lacking any logical nexus to agency operations. Moreover, they directly contravene statutory limitations on the use of administrative leave under the Administrative Leave Act of 2016 and payments implementing the DRP may also violate statutes governing VSIPs [Voluntary Separation Incentive Payments]. It is less clear that extended administrative leave violates the ADA. Whether payments pursuant to the DRP implicate § 1341(a)(1)(A) depends entirely on whether the Department of Justice's or GAO's interpretation prevails. Other uses of extended administrative leave, unconnected to the DRP, are unlikely to violate the ADA because they do not implicate any statutory caps.*

On Ms. Materna's point about the ADA violation, her article shows that adherence to GAO's prior interpretation results in finding a violation (see pp. 11-12).

Public Employees for Environmental Responsibility (PEER) undertook additional analysis of just the ALA violation. That analysis also is attached, entitled: "Legal Memorandum of Public Employees for Environmental Responsibility (PEER) on Excessive Administrative Leave," dated September 12, 2025. This Memorandum bolsters and complements the arguments by Ms. Materna.

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about $65,000/employee. Multiplying $65,000 times 154,000 employees equals $10,010,000,000. See also the even higher costs estimated in: U.S. Senate, Permanent Subcommittee on Investigations, Minority Staff. 2025, "The $21.7 Billion Blunder: Analyzing The Waste Generated By DOGE," July 31, at https://www.hsgac.senate.gov/wp-content/uploads/2025-07-31-Minority-Staff-Report-The-21.7-Billion-Blunder.pdf, at pp. 23-25.

[2] Dated June 27, 2025, available on the Reform for Results website, at: Statutory Constraints on the Use of Appropriated Funds for Extended Administrative Leave. See this *Government Executive* commentary of July 23, 2025, making the same points: "Why a federal program paying employees not to work may violate spending laws - Legal scholar Madeline Materna explains why agency officials could be risking more than just bad press, " at: https://www.govexec.com/pay-benefits/2025/07/why-federal-program-paying-employees-not-work-may-violate-spending-laws/406896/.

It serves to fully explain the ALA violation because of confusing rulemaking issued by OPM, which obscures the Administration-wide violation of the ALA.[3]

Members of Congress also have raised similar, but more targeted, spending questions. For example, Senators Heinrich, Klobuchar, Merkley, and Murray sent a letter on September 9 to the Chief of the U.S. Forest Service regarding conflicting prior statements from him about how the agency's DRP was paid for from appropriated funds. They stated: "significant discrepancies require clarification and accounting to Congress".[4] The Forest's Service's DRP, which paid 5,000 staffers to sit idly by on paid leave, rested on very doubtful funding.

In sum, GAO should review the plainly illegal and profoundly wasteful use of appropriated funds for paid administrative leave for the Trump Administration's DRPs and then take appropriate action. Please contact me if you have any questions.

Sincerely,

/s/
Timothy Whitehouse
Executive Director
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Attachments (2)

[3] Other analyses are in concurrence including by University of Minnesota Law School Professor Nicholas Bednar, who states: "OPM [in its Final Rule] tortured the plain text to arrive at its interpretation [of § 6329a(b)]" Bednar, N. 2025. "The Use and Abuse of Administrative Leave," *Lawfare*. Feb. 13, at: https://www.lawfaremedia.org/article/the-use-and-abuse-of-administrative-leave.

[4] See Senators' letter and further analysis in Newhouse, S.M. 2025. "Democrats want to know how the Forest Service is funding its deferred resignation program" *Government Executive,* at: https://www.govexec.com/oversight/2025/09/democrats-want-know-how-forest-service-funding-its-deferred-resignation-program/408026/.

Reform for Results

Project Phoenix

Legal Memorandum

Statutory Constraints on the Use of Appropriated Funds for Extended Administrative Leave

Author: Madeline Materna

CITATION

Madeline Materna, *Statutory Constraints on the Use of Appropriated Funds for Extended Administrative Leave*, Reform for Results (June 27, 2025), avilable at https://reformforresults.org/.

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Abstract: This memorandum analyzes whether the use of appropriated funds to place federal employees on extended administrative leave, particularly under the Deferred Resignation Program (DRP), complies with statutory constraints on executive spending. It argues that such payments violate the Purpose Statute (31 U.S.C. § 1301(a)) because they do not constitute lawful salary expenditures and fail the "necessary expense" test, lacking any logical nexus to agency functions. The practice also contravenes statutory limits in the Administrative Leave Act of 2016 and circumvents legal procedures governing Voluntary Separation Incentive Payments (VSIPs) under 5 U.S.C. §§ 3521–3525. Whether this conduct also violates the Antideficiency Act (31 U.S.C. §§ 1341, 1350) depends on whether GAO's broad or DOJ's narrow statutory cap interpretation prevails. The memo concludes that while the DRP likely violates the Purpose Statute, ADA liability is less certain and would ultimately hinge on whether DRP payments are construed as *de facto* VSIPs.

Keywords: Administrative Leave, Fork in the Road, Deferred Resignation Program (DRP), Voluntary Separation Incentive Payments (VSIPs), Appropriations Law, Purpose Statute, Antideficiency Act

1. Background

The Appropriations Clause of the U.S. Constitution, Article I, Section 9, Clause 7, establishes that "[n]o Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law." This foundational constraint ensures that executive branch expenditures are both authorized and limited by Congressional involvement.[1] Congress has operationalized its "power of the purse," conferred by this clause, through statutes that regulate the lawful use of public funds, including the Purpose Statute (31 U.S.C. § 1301(a)) and the Antideficiency Act (31 U.S.C. §§ 1341). Together, these statutes prohibit agencies from using appropriated funds for unauthorized purposes or from obligating funds in excess of what Congress has legally provided. Where agency expenditures are not affirmatively authorized by law, they are presumptively unlawful under both statutory and constitutional constraints. This memorandum evaluates whether agencies' use of appropriated funds to place employees on extended administrative leave complies with these statutory regimes.

2. Purpose Statute

The first statutory constraint on agency expenditures is in the Purpose Statute, codified at 31 U.S.C. § 1301(a). Originally enacted in 1809 and later simplified without substantive change,[2] the Purpose Statute

[1] For a comprehensive treatment of federal appropriations law, including its historical foundations, doctrinal development, and current interpretations, *see Principles of Federal Appropriations Law*, GAO-16-464SP (4th ed. 2016), available at https://www.gao.gov/legal/appropriations-law-decisions/red-book.

[2] The Purpose Statute traces back to a law passed in 1809, which provided that "the sums appropriated by law for each branch of expenditure in the several departments shall be solely applied to the objects for which they are respectively appropriated, and to no other." Law of Mar. 3, 1809, ch. 28, 2 Stat. 535, 535. The principle was reaffirmed in 1868, when Congress provided that "no money appropriated for one purpose shall hereafter be used for any other purpose than that for which it is appropriated." Law of Feb. 12, 1868, ch. 8, 15 Stat. 35, 36. The provision was then rephrased slightly, but maintaining the same substance, in the Revised Statutes of 1878: "all sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others." Rev. Stat. § 3678 (2d ed. 1878), 18 Stat. pt. 1, at 723. The modern version of the statute was enacted as part of the 1982 recodification of Title 31 and now appears at 31 U.S.C. § 1301(a), quoted above.

provides that "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." Thus, agency expenditure is lawful only if the purpose is affirmatively authorized by statute; "the mere absence of a prohibition is not sufficient." *United States Dep't of the Navy v. Fed. Labor Rels. Auth.*, 665 F.3d 1339, 1348 (D.C. Circ. 2012) (Kavanaugh, J.). Authorization may be explicit, where the statute identifies a specific object or expense, or implicit, where the expense is reasonably incident to an expressly authorized purpose. The use of appropriated funds to pay the salaries of employees placed on extended administrative leave—particularly when done to encourage separation or impede agency operations—is neither explicitly authorized under appropriations for salaries nor sufficiently related to any statutorily permitted object of expenditure. Such use therefore falls out of the lawful scope of the appropriation, in violation of the Purpose Statute.

A. Payments Not Authorized as Salaries

Though the specific agency appropriations vary too widely to comprehensively catalog here, many include appropriations for "salaries and expenses" or "necessary expenses." *See e.g.*, Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, 138 Stat. 25 (2024), as amended and extended by Pub. L. No. 118-83, 138 Stat. 1524 (2024), Pub. L. No. 118-158, 138 Stat. 1722 (2024), and Pub. L. No. 119-4, 139 Stat. 9 (2025). In some instances, the payment of employee salaries is expressly authorized by the appropriations language. In others, it is implicitly authorized as a "necessary expense" in support of the agency's statutory functions. Either way, the payment of employee salaries clearly falls within the scope of authorized agency expenditures.

However, the payment of salary to employees on extended administrative leave should not be understood to constitute a lawful "salary" expenditure under appropriations statutes. The term salary refers to compensation paid in exchange for services rendered, not

compensation provided in the absence of labor.[3] Adjudicatory bodies have similarly construed this limitation. For example, the Comptroller General has rejected salary payments where employees performed work for the federal government, but not for the agency from which the funds were appropriated. In one case, the Comptroller General concluded that such work was "essentially unrelated to the loaning agency's functions," and thus not a permissible expenditure under the Purpose Statute. 64 Comp. Gen. 370 (1985).[4] Accordingly, lawful salary payments must satisfy two conditions: (i) they must constitute compensation in exchange for services; and (ii) such services must be essentially related to the appropriating agency's functions. Here, neither requirement is met. Employees placed on extended administrative leave are barred from performing any duties. Because they are not rendering services to any federal agency—let alone their employing agency—there can be no reasonable nexus to the appropriating agency's functions. Thus, continued disbursement of wages under these circumstances cannot be justified as an authorized "salary" expenditure.

B. Payments Not Authorized as Other Necessary Expenses

Employee-related expenses beyond salaries may be permitted under the "necessary expense" doctrine developed by GAO. Under this doctrine, an expenditure not expressly authorized in appropriations statutes may nonetheless be lawful if it meets three conditions: (i) the expenditure bears a logical relationship to the authorized appropriation sought to be charged; (ii) it is not prohibited by law; and (iii) it is not otherwise provided for by some other appropriation.[5] Although GAO opinions are not binding precedent, courts have adopted the standards of the necessary expense doctrine. *See Dep't of the Navy*, 665 F.3d at 1349. Expenditures on

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[3] *See* Salary, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/salary (last visited May 29, 2025) ("fixed compensation paid regularly *for services*" (emphasis added)).

[4] B-211373, Mar. 20, 1985, *accessible at* https://www.gao.gov/products/b-211373.

[5] GAO, *Principles of Federal Appropriations Law* 3-16 to 3-17 (4th ed.) (2017).

employee wages for extended administrative leave violate both the first and second prong of this test.

(i) Administrative Leave Payments Bear No Logical Relationship to an Authorized Appropriation

Where Congress appropriates funds for the "necessary expenses" of an agency, the term has been interpreted to mean expenses "arising out of and directly related to the agency's work." 38 Comp. Gen. 758, 762 (1959).[6] Expenditures that primarily benefit employees, rather than the agency, are typically classified as personal expenses that do not qualify as necessary expenses. As a result, appropriated funds may not be used for personal expenses such as food, recreation, or commuting. *See e.g., Dep't of the Navy*, 665 F.3d at 1349 (bottled water deemed a personal expense where safe tap water was available); 65 Comp. Gen. 16 (1985) (funds unavailable for feeding employees not in travel status);[7] 18 Comp. Gen. 147 (1938) (funds unavailable for recreational facilities);[8] 27 Comp. Gen. 1 (1947) (funds unavailable for employee commuting).[9]

While most cases addressing improper personal expenses concern the purchase or reimbursement of tangible goods or services for employee benefit, the same logic applies to direct payments to employees that serve no agency function. Wages paid to employees on administrative leave—where the employee performs no duties and is actively barred from doing so—constitute compensation wholly unrelated to agency operations. Indeed, such payments are even more attenuated from agency function than the provision of food or transportation, which at least facilitate presence or performance at work. In contrast, wages paid during administrative leave lack any logical nexus to agency work and function exclusively as a personal benefit to the employee.

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[6] B-138598, May 13, 1959, *accessible at* https://www.gao.gov/products/b-138598-0.
[7] B-218672, October 17, 1985, *accessible at* https://www.gao.gov/products/b-218672.
[8] A-96933, August 10, 1938, *accessible at* https://www.gao.gov/products/96933.
[9] B-66287, July 1, 1947, *accessible at* https://www.gao.gov/products/b-66287.

Moreover, even without classifying such wages as inherently personal expenses, they nonetheless fail the first prong of the necessary expense test because they neither arise out of, nor are directly related to, the agency's work. It is difficult to conceive of any agency function that is furthered by compensating employees who are precluded from performing duties. The very purpose of placing an employee on administrative leave in these contexts is to remove their ability to contribute to agency operations, making it functionally incompatible with any claim that such payments support agency work. Consistent with this view, the Comptroller General has concluded that there is no plausible statutory basis for using appropriated funds to pay employees in a non-duty status for extended periods of time. B-190533, December 2, 1977.[10] These payments therefore lack the logical nexus to agency work required under the necessary expense doctrine.

(ii) Administrative Leave Payments Directly Contravene the Administrative Leave Act of 2016 and Statutory Requirements for Voluntary Separation Incentive Payments

Under the second prong of the necessary expense doctrine, an expenditure must not only bear a logical relationship to an authorized appropriation, but it also must not be prohibited by law. The use of extended administrative leave as currently implemented by many agencies violates this prong because it contravenes both the plain language and legislative purpose of the Administrative Leave Act of 2016, codified at 5 U.S.C. § 6329a. Subsection (b)(1) imposes a clear limitation: administrative leave may not exceed 10 workdays per calendar year. While OPM's implementing regulations interpret this 10-day limitation to apply only to leave used "for the purpose of conducting an investigation" (5 C.F.R. § 630.1404), this interpretation is inconsistent with the statutory text and structure, which separately authorizes investigative leave. 5 U.S.C. § 6329b. Moreover, the Senate report accompanying the statute made clear that Congress's intent

[10] B-190533, December 2, 1977, *accessible at* https://www.gao.gov/assets/b-190533.pdf.

was to foreclose agency discretion to place employees on administrative leave for periods of time exceeding this statutory maximum. [11] By redefining "place" to exclude most forms of administrative leave from the 10-day cap, OPM's implementing regulations effectively nullify a core statutory constraint and thereby exceed the agency's delegated authority to "prescribe regulations to carry out" the section, pursuant to 5 U.S.C. § 6329a(c).

The Administrative Leave Act and its implementing regulations require agencies to revise internal policies by September 13, 2025, but until that date, they are not under a binding obligation to conform their use of administrative leave to the Act's requirements. Nonetheless, the use of extended administrative leave was already impermissible under longstanding Comptroller General and MSPB precedent. The Comptroller General has repeatedly emphasized that agencies may only grant administrative leave for relatively brief periods, and that using appropriated funds to pay employees in non-duty status for extended durations requires specific statutory authorization. *See, e.g.,* B-190533, December 2, 1977;[12] B-179711, June 25, 1974;[13] and B-189439, August 8, 1977.[14] The MSPB similarly invalidated attempts to place employees on administrative leave for months pending retirement. *See Miller v. Department of Defense*, 45 M.S.P.R. 263 (1990); *McDavid v. Department of the Army*, 46 M.S.P.R. 108 (1990). Adjudicatory bodies have consistently rejected claims that general agency discretion pursuant to 5 U.S.C. §§ 301–302 authorize extended paid leave. Thus, whether before or after the compliance date for the Administrative Leave Act, agencies lack the authority to place employees on extended administrative leave, and thus lack the authority to expend appropriated funds for that prohibited purpose.

Additionally, the use of administrative leave to implement the Deferred Resignation Program (DRP) is unlawful because it functions as an unauthorized form of voluntary separation incentive payment

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[11] S. 2450, Introduced in senate (01/20/2016), *accessible at* https://www.congress.gov/bill/114th-congress/senate-bill/2450/text/is.

[12] B-190533, December 2, 1977, *accessible at* https://www.gao.gov/products/b-190533.

[13] B-179711, June 25, 1974, *accessible at* https://www.gao.gov/products/b-179711.

[14] B-189439, August 8, 1977, *accessible at* https://www.gao.gov/assets/b-189439.pdf.

(VSIP). VSIPs are explicitly governed by statute, codified at 5 U.S.C. §§ 3521–3525, and may only be offered pursuant to procedures established by Congress. The first government-wide authority to offer VSIPs was established in 1994 "to minimize the need for involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action." Pub. L. No. 103–226, § 3(b)(1), 108 Stat. 111, 113 (1994). To ensure accountability, Congress later required that agencies submit a "strategic plan" to Congress before obligating any funds and mandated that VSIPs be used solely to implement that plan. Pub L. No. 104–208, § 663, 110 Stat. 3009, 3009–383 (1996). Under current law, agencies must now submit detailed plans to OPM, rather than Congress, for approval, containing the following information:

> "(1) The specific positions and functions that will be reduced or eliminated;
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> (2) A description of which categories of employees will be offered incentives;
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> (3) The time period during which incentives may be paid;
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> (4) The number and amounts of voluntary separation incentive payments to be offered; and
>
> (5) A description of how the agency will operate without the eliminated positions and functions."

5 U.S.C. § 3522. Additionally, VSIPs must be paid in a lump sum and are capped at $25,000. 5 U.S.C. § 3523(b)(2)–(3).

The DRP disregards this statutory scheme. Agencies did not develop or submit tailored VSIP plans identifying targeted positions or functions. Nor were these offers initiated by agencies themselves; OPM extended them government-wide to nearly all employees. DRP payments are issued as ongoing salary rather than the statutorily required lump-sum, and critically, many such payments likely exceed the statutory cap. Under 5 U.S.C. § 3523(b)(3), VSIP payments may not

exceed $25,000.[15] The scale of statutory circumvention is potentially significant: any employee earning more than $37,500 annually who accepted a DRP offer in January and remained on administrative leave from February to September—the end of the DRP period—would exceed the $25,000 cap. This includes all General Schedule employees at Grade 6 or above and encompasses approximately 99% of the competitive service workforce as of September 2024.[16] In bypassing both the procedural requirements and the payment limits Congress established for VSIPs, the DRP constitutes an unauthorized expenditure of appropriated funds in contravention of a statute, thereby violating the Purpose Statute.

3. Antideficiency Act

The Antideficiency Act (ADA), first codified in 1870, provides a second constraint on agency spending. Unlike the Purpose Statute, which lacks penalties for violators, the ADA imposes both administrative discipline and, for knowing and willful violations, criminal liability, punishable by a fine of up to $5,000 and/or up to two years' imprisonment. 31 U.S. Code § 1341(a), 1350. The ADA contains two key prohibitions: (i) agencies may not "make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;" and (ii) they may not "involve either government in a contract or obligation for the payment of money *before* an appropriation is made unless authorized by law" (emphasis added). 31 U.S.C. § 1341(a)(1)(A)–(B).

At first glance, the DRP implicates the second prohibition in form, though likely not in effect. Section 3 of the Template Deferred Resignation Agreement circulated by OPM provides that employees will be placed on administrative leave beginning no later than March 1 and will remain in that status through September 30. These agreements were executed while congressional appropriations were

[15] An effort to increase this value to $40,000 was reported to the Senate but ultimately was never put up for a vote. S. 1888, Voluntary Separation Incentive Payment Adjustment Act of 2017.

[16] U.S. Office of Pers. Mgmt., *FedScope Employment Cube: September 2024* (Feb. 25, 2025), https://www.fedscope.opm.gov/.

scheduled to lapse on March 14. The agreement itself contemplates such a lapse, providing that employees will receive back pay if appropriations are not available.[17] Although this language appears to obligate agencies before appropriations were made, this obligation is superficial. The agreement includes a rescission clause granting the agency head sole discretion to unilaterally terminate the agreement, rendering it non-obligatory and therefore, unlikely a violation of 31 U.S.C. § 1341(a)(1)(B). Agencies retain the ability to terminate the agreement in the event of a funding lapse and as such, no absolute obligation exists to expend funds in violation of the ADA. *See* 55 Comp. Gen. 812 (1976) (finding no ADA violation where the Navy could unilaterally alter contract terms and thus retained control over obligation timing).

The more significant legal concern arising from the DRP implicates the first prohibition of the ADA, § 1341(a)(1)(A). This provision has been interpreted to prohibit two forms of expenditure: (i) expenditures that exceed the total amount appropriated to an agency and (ii) expenditures that exceed statutory caps on specific types of spending.[18] With respect to the first category, salary payments to DRP participants likely do not exceed *total* agency appropriations. Absent the DRP, agencies would have otherwise paid those same employees for their service. The use of administrative leave merely changes the legal basis for compensation, not its amount. So long as the total salary payments remain within each agency's allocated appropriations for such use, there is no violation of the ADA in this regard.

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[17] *See* Memorandum from Charles Ezell, Acting Director, U.S. Office of Personnel Management, to Heads and Acting Heads of Departments and Agencies, *Legality of Deferred Resignation Program* (Feb. 4, 2025), Appendix 1, Section 3 and 12. *Accessible at* https://chcoc.gov/sites/default/files/OPM%20Memo%20Legality%20of%20Deferred%20Resignation%20Program%202-4-2025%20FINAL.pdf.

[18] *See* Stiff, Sean. "Congress's Power Over Appropriations: Constitutional and Statutory Provisions." *Congressional Research Service*. June 16, 2020. *Accessible at* https://www.congress.gov/crs-product/R46417; *see also Applicability of the Antideficiency Act to a Violation of a Condition or Internal Cap Within an Appropriation*, 25 Op. O.L.C. 33 (2001).

The more complex issue concerns whether these payments exceed statutory caps governing the type of spending. On this question, interpretations of the Department of Justice and GAO diverge. The Department of Justice has taken a relatively narrow view, interpreting the ADA as prohibiting expenditures in excess of caps or conditions only when such caps or conditions are specifically included in the appropriations statute itself. The focus of the textual interpretation here relies on the "*in an appropriation*" language in § 1341(a)(1)(A).[19] Under this interpretation, violations of authorizing statutes or caps imposed in freestanding laws do not, on their own, constitute ADA violations.

In contrast, GAO has consistently adopted a broader interpretation of § 1341(a)(1)(A), reading the statute to mean that expenditures exceeding caps imposed in *any* statute, appropriations acts or otherwise, can violate the ADA. For example, in 64 Comp. Gen. 282, the Comptroller General determined that the SBA violated the ADA by obligating funds beyond the limits imposed in the Small Business Act, even though the agency had sufficient appropriated funds to cover expenditures. Under this interpretation, DRP-related payments could potentially violate the ADA if they exceed the $25,000 cap for VSIPs under 5 U.S.C. § 3523(b)(3). However, this would depend entirely on whether the administrative leave payments implementing the DRP are construed as *de facto* VSIPs rather than standard salary. Importantly, even GAO's broader interpretation would not extend to the other uses of extended administrative leave unrelated to the DRP, because these other uses do not implicate any statutory cap. Thus, it is only the DRP's resemblance to a voluntary separation incentive that potentially triggers the ADA.

Although no court has squarely resolved this interpretive conflict, the Supreme Court's reasoning in *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), supports GAO's position. In *Richmond*, the court held that equitable estoppel could not compel the government to pay funds not authorized by statute, emphasizing that

[19] *Applicability of the Antideficiency Act to a Violation of a Condition or Internal Cap Within an Appropriation*, 2001.

"if an executive officer on his own initiative had decided that, in fairness, respondent should receive benefits despite that the statutory bar, the official would risk prosecution," referring to the ADA. *Id.* at 430. Notably, however, the court in *Richmond* did not undertake a textual analysis of § 1341(a)(1)(A). Nevertheless, it provides some level of support for GAO's position that all statutory limits, not just those housed in appropriations acts, limit agency expenditures under the ADA.

Moreover, GAO has, in certain cases, gone even further, suggesting that *all* expenditures that violate statute, not just those subject to a budgetary cap, violate the ADA. In B-247348 (June 22, 1992), the Comptroller General concluded that the Government Printing Office violated the ADA when it obligated funds to pay an employee detailed to the Library of Congress because such detail was prohibited by statute.[20] Because Congress had not appropriated any funds for the purpose of compensating employees working outside the agency, and indeed, actively prohibited such details, the obligation was deemed to exceed the amount legally available for that purpose (*i.e.*, zero). On this theory, any violation of the Purpose Statute would automatically result in a violation of the ADA as well. This interpretation extends further than either the Department of Justice's or GAO's cap-based interpretations by attaching ADA liability to any statutorily unauthorized spending. As discussed above, the use of extended administrative leave, including but not limited to implementing the DRP, violates the Purpose Statute and, under this interpretation, would therefore also constitute a violation of the ADA.

However, this expansive interpretation effectively collapses the two statutory schemes, potentially exposing federal employees to ADA liability—including criminal penalties—for even minor misallocations that do not risk exceeding overall appropriations. Such a result seems unlikely to reflect Congressional intent.[21] If Congress had intended

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[20] B-247348, June 22, 1992, *accessible at* https://www.gao.gov/products/b-247348.

[21] For analysis of how the prospect of ADA criminal liability informs statutory interpretation, *see Applicability of the Antideficiency Act to a Violation of a Condition or Internal Cap Within an Appropriation*, 2001.

every violation of the Purpose Statute to carry the consequences of an ADA violation, it could have explicitly cross-referenced the Purpose Statute within the ADA or amended § 1301(a) to include such a linkage in the many decades since the ADA's enactment. The more persuasive reading limits the applicability of the ADA to circumstances in which agencies incur obligations that exceed either total appropriations or explicit statutory caps. On this view, only unauthorized spending that materially exceeds an explicit budgetary authority would constitute an ADA violation.

4. Conclusion

In conclusion, the use of extended administrative leave, including but not limited to the DRP, likely violates the Purpose Statute. Salary payments to non-working employees are not authorized as "salaries" under appropriations acts and such payments fail the "necessary expense" test, lacking any logical nexus to agency operations. Moreover, they directly contravene statutory limitations on the use of administrative leave under the Administrative Leave Act of 2016 and payments implementing the DRP may also violate statutes governing VSIPs. It is less clear that extended administrative leave violates the ADA. Whether payments pursuant to the DRP implicate § 1341(a)(1)(A) depends entirely on whether the Department of Justice's or GAO's interpretation prevails. Other uses of extended administrative leave, unconnected to the DRP, are unlikely to violate the ADA because they do not implicate any statutory caps.

Legal Memorandum of
Public Employees for Environmental Responsibility (PEER)
on Excessive Administrative Leave

September 12, 2025

1. Paid Administrative Leave is Strictly Limited by Law

The Administrative Leave Act of 2016 (ALA) succinctly provides, without exception (emphasis added):[1]

> **5 U.S. Code § 6329a**
>
> .....
>
> (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**.

At the expiration of 10 work days, then § 6329b applies, allowing for investigative or notice leave, but only in appropriate cases:

> (b)(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.

Investigative and notice leave are defined under subsection § 6329b; the former applies in cases of investigation of misconduct and the latter when there has already been a determination to take an adverse action against the employee. That ALA section tightly regulates the use of investigative leave as far as time limits, extensions of the leave, and notice requirements to the employee.

Further, federal agencies can employ neither investigative nor notice leave in order to restrict or bar any employee from their duty station unless the agency first determines they would

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[1] 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).

pose a threat to other employees or their presence would otherwise jeopardize the agency's functioning under § 6329b(b)(2), that is, the agency must find the employee likely will:

> (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;

No other provision in the ALA or other law allows a federal civil servant to be left in "limbo" and barred from their workplace on administrative leave for longer than the plain 10 work day limit in § 6329a(b).

2. The 2024 OPM Final Rule on Administrative Leave Violated the ALA

The ALA also directed the Office of Personnel Management (OPM) to prescribe implementing regulations; § 6329a(c)(1) and § 6329b(h)(1) required it to adopt regulations for paid leave within 270 days of the ALA's enactment.[2] In its Proposed Rule in 2017, OPM's interpretation of § 6329a(b), *supra*, on administrative leave simply and faithfully paraphrased the statute, providing:[3]

> **§ 630.1404 Calendar year limitation.** (a) General. Under 5 U.S.C. 6329a(b), during any calendar year, an agency may place an employee on administrative leave for no more than 10 work days.

82 Fed. Reg., 32,275 (July 13, 2017). The 10 work day maximum in both the ALA text and the Proposed Rule was unambiguous. However, when OPM issued its Final Rule on December 17, 2024, it purported to define away that 10 day limit for the vast bulk of administrative leave's use,

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[2] OPM did not complete this rulemaking task, which should have been finalized in 2017, until seven years later.

[3] OPM, Proposed Rule. Administrative Leave, Investigative Leave, Notice Leave, and Weather and Safety Leave. Federal Register 82:133, July 13, 2017, 32263-281.

thus severely narrowing the effect of § 6329a(b). The Final Rule text of the same key subsection now provides (second emphasis added):

> **§ 630.1404 Calendar year limitation.** (a) General. Under 5 U.S.C. 6329a(b), during any calendar year, an agency may place an employee on administrative leave for no more than 10 workdays. In this context, the term "place" refers to a management-initiated action to put an employee in administrative leave status, with or without the employee's consent, for the purpose of conducting an investigation (as defined in § 630.1502). **The 10-workday annual limit does not apply to administrative leave for other purposes**.

89 Fed. Reg., 102,290-2291 (Dec. 17, 2024).

Thus, OPM re-interpreted § 6329a(b) to mean what OPM wanted, not what Congress itself wrote, attempting to explain its choice in the Rule Preamble that the:

> 10-workday limitation in section 6329a of the Administrative Leave Act does not apply to general uses of administrative leave, but instead was meant to apply to management-initiated actions to "place" an employee on administrative leave, with or without the employee's consent, for the purpose of investigating an employee's conduct, performance, or other reasons prompting an investigation that could lead to an adverse personnel outcome.

89 Fed. Reg., 102,266 (Dec. 17, 2024).

In radically changing its prior interpretation, OPM vastly liberalized the allowable use of administrative leave. Its new interpretation is that Congress somehow implied that federal agencies can impose unlimited administrative leave, with the sole exception of when its use is preliminary to subsequent investigative leave. That surprise re-interpretation – seven years after its Proposed Rule – twisted the unambiguous language in § 6329a(b) to the converse of Congress's intent. Federal employees were intended by Congress to be protected from unlimited, unchallengeable,

administrative leave (not just from abuses of investigative leave).[4] The Sense of Congress, at the beginning of the 2016 ALA legislation, makes that very clear (emphasis added):[5]

> *(5) data show that there are too many examples of employees placed in **administrative leave** for 6 months or longer, leaving the employees without any available recourse to— (A) return to duty status; or (B) challenge the decision of the agency;*

Indeed, OPM's Final Rule correctly stated Congress's intent and then proceeded to contravene it via the agency's re-interpretation (emphasis added):

> In the sense of Congress provisions in section 11388(b) of the Administrative Leave Act, Congress expressed the need for legislation to address concerns that usage of administrative leave had sometimes exceeded reasonable amounts and resulted in significant costs to the Government. Congress wanted agencies to (1) **use administrative leave sparingly and reasonably….**

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[4] Paid administrative leave for no matter how long is not an "adverse action" that is challengeable by an employee in the Merit Systems Protection Board, 5 C.F.R. § 1201.3(a), or in any other civil service legal forum.

[5] See Sense of Congress when adopting the ALA, in section 1138(b) of the National Defense Authorization Act for FY 2017 (Pub. L. 114–328, 130 Stat. 2000, December 23, 2016). That carefully drawn bipartisan bill also aimed to rein in the documented excessive costs that the Federal government was paying in the way of salaries to non-working employees. See, the report of the Government Accountability Office (GAO) in 2014, for example, which found 263 employees had spent one-to-three years on paid administrative leave, at a cost to the Federal government of approximately $31 million. GAO. 2014. *Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data*, GAO-1579, available at: https://www.gao.gov/products/gao-15-79. 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; those extended leaves had cost taxpayers about $19.8 million. GAO. 2016. *Evaluation of DHS's New Policy Can Help Identify Progress toward Reducing Leave Use*, GAO-16342, available at https://www.gao.gov/products/gao-16-342. See also, PEER Press Release of March 27, 2025, "More than 100,000 Federal Employees Paid Not to Work," estimating the cost of the current excessive administrative leave applied to nearly 5% of the civilian workforce is "into the billions" of dollars; available at: https://peer.org/more-than-100000-federal-employees-paid-not-to-work/.

89 Fed. Reg., 102,257 (Dec. 17, 2024) (That preamble language is reiterated in the preliminary Final Rule text, at 102,290). And OPM stated right in its Final Rule (second emphasis added):

> **§ 630.1403 Principles and prohibitions.** (a) General principles. In granting administrative leave, an agency must adhere to the following general principles: ….. (3) Administrative leave is appropriately used for brief or short periods of time—**usually for not more than 1 workday**.

89 Fed. Reg., at 102,290.

Yet, OPM's re-interpretation that somehow the 10 day annual limit was only aimed at those employees upon whom agencies would later impose investigative leave is enabling this Administration to sweepingly use paid administrative leave for now more than 150,000 civil servants government-wide – both voluntarily and involuntarily.[6]

That practice grossly violates the "principles and prohibitions" provision, above. It also makes no sense in the statutory scheme that the use of involuntary administrative leave to completely bar employees from their workplaces would be left essentially unregulated, entirely at the agency's discretion, in view of the specific restrictions that apply when an agency bars an employee from the workplace when it places the employee on investigative leave, which is tightly regulated as to length and notice requirements under § 6329b(b)(2), quoted *supra*. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (statutory language is to be construed in harmony with related provisions and the statute as a whole).

OPM's 2024 re-interpretation gave vast importance to the word "place," indicating that Congress:

> meant [§ 6329a(b)] to apply to management-initiated actions to "place" an employee on administrative leave, with or without the employee's consent, for the purpose of investigating an employee's conduct.

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[6] See, Kornfeld, M., et al. 2025, "The federal government is paying more than 154,000 people not to work," *Washington Post,* July 31, available at: https://www.washingtonpost.com/politics/2025/07/31/federal-workers-doge-buyout-paid/ .

89 Fed. Reg., 102,266 (Dec. 17, 2024). The arbitrariness and inconsistency of OPM's use of administrative leave in practice is illustrated by the numerous documents generated by the Trump Administration in 2025 that also use the term "place" with respect to administrative leave. See OPM Memorandum of Jan. 20, 2025, to "Heads and Acting Heads of Departments and Agencies," Guidance on Probationary Periods, Administrative Leave and Details,[7] p. 2 ("**Placing** an employee on paid administrative leave may be an appropriate action where the agency component in which the employee works is being eliminated or restructured, or where the agency weighs changes to the individual's role at the agency as part of a workforce realignment."); and Memorandum of February 4, 2025, to "Heads and Acting Heads of Departments and Agencies," Legality of Deferred Resignation Program,[8] p. 2 ("May an Employee Be **Placed** on Administrative Leave During the Deferred Resignation Period? Yes.")(both emphases added).

Neither of those official OPM guidances give "place" the same limiting sense that OPM's Final Rule somehow determined that Congress actually meant in 2016 in § 6329a(b). That is, no other OPM document directs or implies that placing an employee on administrative leave means only when the purpose is to conduct a subsequent investigation of that person. More than 150,000 civil servants nationwide have been, and are continuing to be, "placed" on administrative leave under the ALA – for Deferred Resignation Programs (DRP), in preparation for Reductions in Force (RIF), and in a slew of other contexts - for much longer than 10 work days and they are not being investigated. Inconsistent interpretation by OPM of the key ALA terms is a clear indicator or

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[7] Available at: https://www.opm.gov/media/yh3bv2fs/guidance-on-probationary-periods-administrative-leave-and-details-1-20-2025-final.pdf .

[8] Available at: https://chcoc.gov/sites/default/files/OPM%20Memo%20Legality%20of%20Deferred%20Resignation%20Program%202-4-2025%20FINAL.pdf.

arbitrary and capricious action. An "[u]nexplained inconsistency" in agency policy is "a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (citations omitted).

Going back to the Trump Administration's OPM Memorandum of Jan. 20, 2025, to "Heads and Acting Heads of Departments and Agencies," Guidance on Probationary Periods, Administrative Leave and Details, *supra*, at p. 2, it makes clear that the current allowance of unlimited administrative leave is based on OPM's Final Rule and not on the ALA text or on pre-existing leave practice.

Federal Courts are not likely to condone OPM, based on a newly-conjured, inconsistently-applied, and semantically incoherent interpretation of "place," eviscerating the plain intent of Congress in drafting the ALA text in 2016. Independent judgment must be exercised in deciding whether OPM has acted beyond its statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024); *see Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 75 (2001) (Scalia, J., concurring) (The Supreme Court has "abandoned that power to invent 'implications' in the statutory field.")

The wanton use of administrative leave by the Administration over the last eight months dramatically illustrates why OPM's interpretation of 5 U.S. Code § 6329a(b) in its Final Rule is wrong. As a result of its re-interpretation, administrative leave is not being used "sparingly and reasonably" as Congress directed. The "principle" stated in OPM's own Final Rule, *supra,* that such leave is for "brief or short periods of time—usually for not more than 1 workday" is being grossly violated.

A canon of statutory interpretation is to not add language Congress did not insert. *Lamie v. United States Trustee*, 540 U.S. 526, 537 (2004) ("there is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically

enacted"); *Magwood v. Patterson*, 561 U.S. 320, 334 (2010) ("We cannot replace the actual text with speculation as to Congress' intent."). The OPM's Final Rule plainly violated that canon by re-writing the language of § 6329a(b) – and contrary to Congress's intent.

Here, OPM's interpretation in its Final Rule Preamble is not entitled to any judicial or other deference. Rather, courts must "fulfill their obligations under the [Administrative Procedure Act] to independently identify and respect [any] delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA." *Loper Bright Enters.*, 603 U.S. at 403-04. Courts are empowered to "set aside any [agency] action inconsistent with the law as they interpret it." *Id.* at 391-92.

3. Expert Legal Commentaries Concur with the Arguments Herein.

A recent commentary in *Government Executive* was written by attorney Madeleine Materna of the distinguished Stanford Center on Democracy, Development, and the Rule of Law.[9] Among her many points that agree with and expand on the points in this Memorandum, she asserts:

> The law is clear: administrative leave must be short, justified, and used sparingly. But federal agencies—and the Office of Personnel Management—are using it as a legally dubious and enormously expensive workaround to sidestep due process and override clear congressional intent. The scale is staggering. .... Longstanding precedent makes clear that extended leave has never been permitted. The absence of explicit prohibition does not confer authority. Agencies must always act within the bounds of statute. Since the 1970s, Comptroller General decisions have consistently held that prolonged paid leave exceeds agencies' authority, even finding two consecutive days unlawful when not in furtherance of an agency function.

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[9] Dated May 23, 2025. Available at: https://www.govexec.com/workforce/2025/05/agencies-areviolating-law-administrative-leave-and-taxpayers-are-paying-price/405486/?oref=ge-featuredriver-top and see this later expanded analysis of the same arguments: Materna, M. 2025. Permissibility of Agencies' Use of Paid Administrative Leave, *Reform for Results – Legal Memorandum*, June 6. Available at: https://drive.google.com/file/d/1MXzzYMwj1hRRTp832h4XSBxJXPcL3GAP/view .

Other analyses are in concurrence, including by a noted University of Minnesota Law School Professor, Nicholas Bednar, who wrote: "OPM [in its Final Rule] tortured the plain text to arrive at its interpretation [of § 6329a(b)]".[10]

4. Conclusion

Congress enacted the ALA in 2016 so that Federal civil servants would not continue to be subjected to excessive administrative leave at great expense to taxpayers. Yet, that is exactly what the current Administration has used for more than 150,000 civil servants to date based on OPM's re-interpretation of the ALA. OPM's re-interpretation of the ALA's 10 work day maximum in its Final Rule is incorrect and illegal. Federal agencies must stop using administrative leave – whether voluntary or involuntary - beyond the time allowed in the statute.

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[10] Bednar, N. 2025. The Use and Abuse of Administrative Leave, *Lawfare*. Feb. 13. Available at: https://www.lawfaremedia.org/article/the-use-and-abuse-of-administrative-leave .