

Calendar No. 545

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-292 }

ADMINISTRATIVE LEAVE ACT OF 2016

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2450

TO AMEND TITLE 5, UNITED STATES CODE, TO ADDRESS
ADMINISTRATIVE LEAVE FOR FEDERAL EMPLOYEES, AND FOR
OTHER PURPOSES



JULY 6, 2016.—Ordered to be printed

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JULY 6, 2016.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2450]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2450), to amend title 5, United States Code, to address administrative leave for Federal employees, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2450, the Administrative Leave Act of 2016, defines “administrative leave” for the first time in Federal statute, limits the broad variation of its use by Federal agencies, and encourages Federal agencies to use administrative leave only as a last resort by utilizing tools like temporary reassignment or telework arrangements where possible. Given the lack of uniformity of the use of administrative leave across the Federal Government and the cost to the taxpayers of its abuse by some agencies, this bill also requires agencies to keep better accounting of when they use administrative leave and other forms of non-duty paid leave.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Current law

Administrative leave is the term used to describe a Federal employee's excused absence from work that is typically without loss of pay, and without charge to other types of leave the employee is statutorily granted.¹ There is no specific statutory authority for an agency to grant administrative leave; however, the Office of Personnel Management (OPM) has issued multiple forms of guidance on its use.² In addition, in some cases, Congress has legislatively authorized certain types of non-duty paid leave.³

Federal regulations issued by OPM provide that paid leave may be permissible in situations where another type of leave, such as sick or annual leave, would be inappropriate like an absence for just an hour, as opposed to half a day;⁴ where employees are granted excused absence from the agency;⁵ and where an employee's presence in the workplace is considered threatening to individuals or government property, or could otherwise jeopardize a legitimate government interest and an action—a removal or suspension—has been proposed against the employee.⁶

Additionally, OPM has issued guidance to agencies through memoranda and media that discuss appropriate circumstances for the use of administrative leave in broad terms. As summarized by the Government Accountability Office (GAO),

OPM provides that the use of administrative leave should be limited to those circumstances in which the employee's absence is not specifically prohibited by law and satisfies one or more of the following criteria: (1) it is directly related to the agency's mission, (2) it is officially sponsored or sanctioned by the head of the agency, (3) it will clearly enhance professional development or skills of the employee in his or her current position, or (4) it is brief and determined to be in the interest of the agency.⁷

Some situations have been explicitly discussed and green-lighted by OPM in guidance. For example, OPM says agencies may count voting, donating blood, taking work-required examinations, or attending conventions as administrative leave.⁸ More recently, OPM issued guidance to agencies on the use of administrative leave that addressed administrative leave related to unacceptable perform-

¹ GOV'T ACCOUNTABILITY OFFICE, GAO-15-79, FEDERAL PAID ADMINISTRATIVE LEAVE: ADDITIONAL GUIDANCE NEEDED TO IMPROVE OPM DATA 3 (OCT. 2014), available at <http://www.gao.gov/assets/670/666566.pdf> [hereinafter FEDERAL PAID ADMINISTRATIVE LEAVE].

² *Id.* at 3-8. OPM has also claimed that authority to grant an excused absence derives from the inherent authority for heads of agencies to prescribe regulations for the government of their organizations under 5 U.S.C. §§ 301-302. See *Pay & Leave, Fact Sheet: Administrative Leave*, OPM.GOV, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/administrative-leave/> (last visited June 29, 2016).

³ FEDERAL PAID ADMINISTRATIVE LEAVE at 13-14 (citing 5 U.S.C. §§ 6326, 6328, 6321 (military, law enforcement and firefighter funerals); 5 U.S.C. § 6327 (bone-marrow donors and organ donors); 5 U.S.C. § 6325 (employees injured by hostile action while serving abroad)).

⁴ 5 C.F.R. § 630.206.

⁵ 5 C.F.R. § 610.301 *et seq.*

⁶ 5 U.S.C. §§ 7513(a) and 7514; 5 C.F.R. §§ 752.404(b)(3) and 752.604(b)(2).

⁷ FEDERAL PAID ADMINISTRATIVE LEAVE at 5; See *Pay & Leave, Fact Sheet: Administrative Leave*, OPM.GOV, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/administrative-leave/> (last visited June 29, 2016).

⁸ See *Pay & Leave, Fact Sheet: Administrative Leave*, OPM.GOV, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/administrative-leave/> (last visited June 29, 2016).

ance and misconduct. Like its regulation on administrative leave after an adverse action has been proposed, the guidance provides that an agency may place an employee in paid, non-duty status during an investigation “when the agency believes the employee poses a threat to his own safety or the safety of others, the agency mission, or Government systems or property while the investigation is pending,” and that “[w]here absences are for longer than brief periods, administrative leave is generally inappropriate.”⁹

The Merit Systems Protection Board and the Federal Labor Relations Authority have similarly found that agency use of administrative leave should be a “short-term,”¹⁰ brief, or occasional¹¹ solution. OPM has also provided guidance that, in the case of workplace violence, administrative leave may be necessary but should be “an immediate, temporary solution” and the agency should seek a “longer-term” action.¹² The GAO has concluded that “administrative leave for lengthy periods of time is inappropriate unless it is in connection with furthering a function of the agency.”¹³

Missing from current law, however, is detailed statutory direction on appropriate purposes for the use of administrative leave. Nor is there a statutory limit on the amount of time a Federal employee may be placed on administrative leave. In the absence of this congressional direction, these decisions have always been left to the discretion of the agency, are subject to abuse and wide variations in agency practice.

Committee oversight

Agency use of administrative leave is rarely public. However, in 2012, the Inspector General for the National Archives, Paul Brachfeld, was placed on administrative leave by the Archivist in response to allegations of wrongdoing against him.¹⁴ Mr. Brachfeld remained on administrative leave for two years, stirring a conversation about the proper use of such leave.¹⁵ His prolonged paid leave cost taxpayers \$300,000 in salary and several hundred thousand dollars in legal fees.¹⁶

This Committee, along with the Committee on Oversight and Government Reform in the House of Representatives and then-Ranking Member of the Senate Committee on the Judiciary Charles Grassley wrote a letter to the Archivist in February 2014 questioning the Archivist’s decision and raising concerns that the extended administrative leave threatened the inspector general’s

⁹*Id.*

¹⁰*Brown v. United States Postal Service*, 64 M.S.P.R. 425, 431 (1994); *Miller v. Dep’t of Defense*, 45 M.S.P.R. 263, 266 (1990); To the Chairman, U.S. Civil Service Commission, 38 Comp. Gen. 203 (1958).

¹¹*United States Dep’t of the Air Force & Sport Air Traffic Controllers Organization*, 65 F.L.R.A 387 (2010).

¹²OPM, *Dealing with Workplace Violence: A Guide for Agency Planners* 106 (1998), available at <https://www.opm.gov/policy-data-oversight/worklife/reference-materials/workplaceviolence.pdf>.

¹³FEDERAL PAID ADMINISTRATIVE LEAVE at 7.

¹⁴Report of Administrative Investigation for the Council of the Inspectors General on Integrity and Efficiency (Mar. 28, 2014), available at <http://www.govexec.com/media/gbc/docs/pdfs/edit/080514cc1.pdf>.

¹⁵Lisa Rein, *Embattled National Archives IG to retire after probe finds misconduct*, WASH. POST (Aug. 4, 2014), <https://www.washingtonpost.com/news/federal-eye/wp/2014/08/04/embattled-national-archives-ig-to-retire-after-probe-finds-misconduct/>.

¹⁶Report of Administrative Investigation for the Council of the Inspectors General on Integrity and Efficiency (Mar. 28, 2014), available at <http://www.govexec.com/media/gbc/docs/pdfs/edit/080514cc1.pdf>; Letter from Charles E. Grassley, Darrell Issa, and Tom A. Coburn to The Honorable David S. Ferriero, Feb. 21, 2014.

independence from the agency.¹⁷ This work resulted in legislation in 2015, led by Senators Charles Grassley, Claire McCaskill, and Ron Johnson, to address the use of administrative leave as it relates to inspectors general.¹⁸

In 2013, then-Ranking Member of the Committee Tom Coburn, Senator Grassley, and then-Chairman of the Committee on Oversight and Government Reform, Darrell Issa, asked the GAO to examine how agencies use paid administrative leave.¹⁹ As a result of that request, the GAO issued a public report on the use of administrative leave in October 2014.²⁰ The GAO issued another report, this time focused just on the use of administrative leave at the Department of Homeland Security (DHS), in March 2016.²¹ In addition to the GAO's reviews of administrative leave, Senator Grassley solicited responses from eighteen agencies with detailed information on their use of administrative leave, and issued a memorandum of his staff's findings from those responses in November 2015.²² The remainder of this Committee Report summarizes the findings of these reports and the responses from agencies and explains how S. 2450 addresses the issues raised therein.

Lack of Documentation and Consistency The 2013 GAO report found that “agencies” policies on paid administrative leave differ,” including the way agencies record paid administrative leave.²³ The inconsistent policies and varying data across agencies resulted in GAO concluding that the Federal Government’s use of administrative leave is inadequately documented, data on its use is “inaccurate and inconsistent,” and that “[a]s a result, OPM does not have an accurate measure on the use of paid administrative leave across federal agencies that can be used to inform decision makers on the use of paid administrative leave.”²⁴

Additionally, Senator Grassley’s staff report found that the lack of clear statutory limits and guidelines on the use of administrative leave has led to inconsistent practices at different agencies.

For example, the VA permits employees to use administrative leave for labor organization and educational activities, while Interior uses it to enable teachers and educational support staff to be paid a prorated, consistent amount during school breaks. Some agencies, such as HUD and NASA, do not even use the term “administrative leave.” Instead, HUD issues “excused absence” and NASA grants employees “excused leave.” HUD’s policy notes that

¹⁷ Letter from Charles E. Grassley, Darrell Issa, and Tom A. Coburn to The Honorable David S. Ferriero, Feb. 21, 2014 (on file with Comm. staff).

¹⁸ S. 579, the Inspector General Empowerment Act of 2015 (114th Cong.).

¹⁹ FEDERAL PAID ADMINISTRATIVE LEAVE.

²⁰ *Id.*

²¹ GOV’T ACCOUNTABILITY OFFICE, GAO-16-342, ADMINISTRATIVE LEAVE: EVALUATION OF DHS’S NEW POLICY CAN HELP IDENTIFY PROGRESS TOWARD REDUCING LEAVE USE (MAR. 2016), available at <http://www.gao.gov/assets/680/676011.pdf> [hereinafter ADMINISTRATIVE LEAVE: EVALUATION OF DHS].

²² Memorandum from Senate Judiciary Committee, Oversight and Investigations Staff for Senator Charles E. Grassley to the Committee on the Judiciary, United States Senate, *et. al* 4–5 (Nov. 30, 2015), available at <http://www.grassley.senate.gov/sites/default/files/news/upload/Use%20of%20Admin%20leave.pdf> [hereinafter Senator Grassley Staff Administrative Leave Memorandum]. Inquiries to seventeen agencies were sent by Senators Grassley and Issa; two inquiries were sent by Senator Grassley. One agency, the Department of Defense, failed to respond and three additional agencies—the Departments of Agriculture, Commerce, and Energy—provided incomplete responses to our requests.

²³ FEDERAL PAID ADMINISTRATIVE LEAVE at 15.

²⁴ *Id.* at 31.

“excused absence” is absence from duty that is administratively authorized, without loss of pay and without charge to leave. At NASA, “Center Directors or their designees may determine administratively other situations in which employees may be excused from duty without charge to leave.” These “other situations” include “plac[ing] employees on excused leave prior to affecting an adverse action to avoid workplace disruption during the interim period.” Although NASA and HUD do not use the term administrative leave, the function is the same.

In addition, individual agencies’ policies on the appropriate length of time for administrative leave vary widely. Indeed, the vast majority of the agencies within our sample placed no specific time limit on the use of paid administrative leave pending an investigation or personnel action. Rather, those agencies that addressed such a circumstance noted that employees may be placed on administrative leave for whatever time is necessary to effect a personnel action or pending completion of an investigation.²⁵

These inconsistent policies are troubling not just because it is difficult to conduct proper oversight over the use of paid administrative leave without accurate data, but because some agencies currently record leave that is otherwise authorized in statute by Congress—certain union activities, certain military activities, serving as an organ donor, and jury duty—as administrative leave.²⁶ When agencies improperly record these types of leave as administrative leave, it is difficult for agency watchdogs—including Congress—to determine how much administrative leave is actually being used and to hold agencies accountable for its use.

Senator Grassley’s staff report also found that agencies placed employees on paid administrative leave without providing adequate justification.²⁷ The report stated that many agencies that used administrative leave did not articulate how the employees posed threats to themselves, other employees, or government resources.²⁸ This was unsurprising given the report’s finding that few agencies had approval requirements for administrative leave greater than a certain time period.²⁹ The Department of Justice, which had implemented guidance in 2002 requiring managers to explain the basis for placing an employee on administrative leave and to obtain authorization from the Department’s Chief Human Capital Officer for an extension beyond ten days, was relatively more successful in limiting extended administrative leave—i.e., leave for more than one year.³⁰

In contrast, other agencies that had placed employees on administrative leave for extended periods of time could not justify the length of such leave nor why investigations or other actions took

²⁵ Senator Grassley Staff Administrative Leave Memorandum at 6–7 (internal citations omitted).

²⁶ FEDERAL PAID ADMINISTRATIVE LEAVE at 13–16.

²⁷ Senator Grassley Staff Administrative Leave Memorandum at 10–16.

²⁸ *Id.* at 11.

²⁹ *Id.* at 7.

³⁰ *Id.* at 13.

so long.³¹ In some cases, agencies reported that while misconduct investigations and disciplinary actions remain pending, their hands are tied; yet, it was not clear why such lengthy periods of time were required to investigate alleged misconduct or the extent to which alternatives—such as reassignment or indefinite suspension—had been considered in conjunction with investigators.³² The lack of documentation inhibits proper oversight.

Cost to the Taxpayers and the Employee of Extended Leave As noted by the Senior Executives Association, “[t]he manner in which administrative leave has sometimes been abused by federal agencies has been unfair to employees, agencies, and American taxpayers.”³³

Although GAO’s data were incomplete, the 2013 report concluded that between fiscal years (FY) 2011 and 2013, at least 263 employees were on administrative leave for one to three years, costing the American taxpayer—paying both salaries and benefits for the employees who were forbidden to work—approximately \$31 million.³⁴

Employees placed on leave due to ongoing investigations for alleged misconduct have—in some cases—stayed on the Federal Government payroll for years. In FY2014, DHS and the Department of Veterans Affairs alone spent more than \$40 million in estimated salaries for employees on administrative leave for one month or more.³⁵

GAO’s recent review of DHS’s uses of administrative leave concluded that from FY 2011 to FY 2015, 116 DHS employees were on administrative leave for at least one year, costing American taxpayers \$19.8 million.³⁶ The vast majority of these individuals were eventually separated from the agency.³⁷ One example highlighted in the report is that of a law enforcement agent who had been on administrative leave for over three years while under investigation.³⁸ This individual alone cost taxpayers \$455,000 in salary and benefits.³⁹

Unlike an agency decision to remove or suspend an employee, however, an agency decision to place an employee on administrative leave is not an appealable action.⁴⁰ Accordingly, employees such as the law enforcement agent on leave for more than three years at DHS, have no way to contest a decision to place them on indefinite administrative leave. This is especially problematic as there is reason to believe that administrative leave could be abused by an agency to retaliate against a whistleblower. While the employee receives pay, he or she faces significant uncertainty about the future of their career. Employees may wait years while their career languishes because their agencies have not proposed or determined whether to take an adverse personnel action. According to the Professional Managers Association, administrative leave

³¹*Id.* at 16–18.

³²*Id.* at 16.

³³ Letter from Jason Briefel, Interim President of the Senior Executives Association, to the Honorable Ron Johnson, Chairman, and the Honorable Tom Carper, Ranking Member of the Committee on Homeland Security and Governmental Affairs (Feb. 9, 2016) (on file with Comm. staff).

³⁴ FEDERAL PAID ADMINISTRATIVE LEAVE at 26.

³⁵ Senator Grassley Staff Administrative Leave Memorandum at 9, Fig. 1.

³⁶ ADMINISTRATIVE LEAVE: EVALUATION OF DHS at 8.

³⁷*Id.* at 11.

³⁸*Id.* at 8.

³⁹*Id.*

⁴⁰ See *Dixon v. United States Postal Service*, 69 M.S.P.R. 171 (1995).

“has been used by agencies to drag out investigations, leaving workers in limbo for unreasonable periods of time.”⁴¹

S. 2450 Provisions—Administrative leave reform

S. 2450 establishes in statute for the first time a definition of administrative leave that is separate from other forms of paid leave or excused absence already authorized and limits the use of administrative leave to five consecutive days at a time. This will reduce the wide variation as to what is categorized as administrative leave throughout the Federal Government and reduce its potential for abuse.

It also provides a separate authorization for leave that becomes necessary as a result of weather or safety issues. As has been agency practice, the bill allows agencies to use excused absences for an employee or group of employees who cannot safely travel to or from work. This covers circumstances such as inclement weather, communicable disease exposure, and chemical spills, among others. Consistent with OPM guidance and the Telework Enhancement Act of 2010, the use of telework is encouraged to support continuity of operations and continued productivity even when Federal offices are closed.

Separate from the maximum five-day administrative leave, the bill establishes two new forms of leave for excused absences due to personnel matters: investigative and notice leave. Before using investigative leave or notice leave, however, agencies must first determine whether the continued presence of the employee may pose a threat to the employee or others, result in the destruction of evidence relevant to an investigation, result in loss of or damage to government property, or otherwise jeopardize legitimate government interests. These criteria codify existing OPM regulations, as discussed above. This “threat determination” is a personnel action under section 2302, which means that employees can challenge it if made for retaliatory, discriminatory, or other enumerated improper purposes. Otherwise, consistent with current case law, the placement on investigative leave or notice leave is not an adverse action.

If the agency determines that the employee poses such a threat, the agency must consider other options before using investigative or notice leave, including: assigning the employee to duties in which the employee is no longer a threat, requiring the employee to telework, allowing the employee to voluntarily take another type of leave, and curtailing the notice period. No authority is established to permit agencies to require employees to take accrued leave, which would amount to a constructive suspension.⁴²

If an agency determines it must use investigative leave after conducting the aforementioned determinations, it may place an employee on investigative leave for up to ten days (i.e., two weeks of time) while the agency or other investigative entity investigates the matter. If an agency needs to use more than ten days, it must go through a more rigorous approval process to ensure fairness, trans-

⁴¹ Letter from Thomas R. Burger, Executive Director, to the Honorable Ron Johnson, Chairman, and the Honorable Tom Carper, Ranking Member of the Committee on Homeland Security and Governmental Affairs (Feb. 9, 2016) (on file with Comm. staff).

⁴² *Information Sheet No. 11, Enforced Leave*, U.S. Merit Systems Protection Board, available at <http://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=367904&version=368537&application=HTML>.

parency, and accountability. To that end, the agency's Chief Human Capital Officer (or his or her designee), with input from the investigator conducting the relevant investigation, may grant extensions of up to 30 days each beyond the first ten days for a total of no more than 120 days of investigative leave, or approximately six months. In most cases, an agency should be able to conduct an efficient investigation within this time and it is important that an individual be returned to work or have their case resolved as soon as possible.

Further extensions of investigative leave are permitted in 60-day increments and for an unlimited total amount of time, but only for the first six years after enactment of the bill, and only with review by OPM and notice to Congress. The sponsors of the bill chose to use a six-year sunset on extensions beyond the first 120 days of investigative leave to: (1) give agencies sufficient time to develop more efficient policies for conducting investigations; (2) to give GAO time to conduct a study on the extent to which further extensions beyond 120 days are necessary and make recommendations to Congress; and (3) to give Congress sufficient time to legislate any adjustments to these policies, if necessary.

At the conclusion of authorized use of investigative leave an agency must either return the employee to working status in some capacity or, if warranted, take an adverse action to keep an employee out of the workplace. While agencies may continue to investigate, agencies are not permitted to keep employees in an extended indeterminate status—they must make a decision to return the employee to work status or take an adverse action, thus providing a forum with due process protections where an employee can challenge the agency.

Agencies may use notice leave to effectuate a removal or suspension action if such an action has been proposed.

Finally, the bill improves the way that agencies record and keep track of administrative leave to ensure improved accountability and ability for the agency, Congress, GAO, and others to conduct oversight.⁴³ First, it requires agencies to record other forms of legislatively authorized excused absence separately from administrative leave. Agencies will have two years from enactment to prepare for any necessary changes to recording practices. The legislation directs OPM to conduct an initial study to identify existing agency practices to grant administrative leave for more than five days where such leave is not already authorized in law. This will ensure that Congress is aware of circumstances in which administrative leave has been granted in excess of five days to legislatively authorize such leave, if warranted.

III. LEGISLATIVE HISTORY

Senator Jon Tester (D-MT) introduced S. 2450 on February 10, 2016 with Senators Chuck Grassley (R-IA), Ron Johnson (R-WI), and Tom Carper (D-DE). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senators James Lankford (R-OK) and Claire McCaskill (D-MO) joined as cosponsors on February 8, 2016, and February 9, 2016, respectively.

⁴³ Provisions of this bill are to be read consistent with the Privacy Act, 5 U.S.C. § 552a.

The Committee considered S. 2450 at a business meeting on February 10, 2016. During the business meeting, a substitute amendment was offered by Senators Tester, Johnson, and Carper, that made improvements to the bill. The bill, as amended by the substitute amendment, was ordered reported favorably by voice vote *en bloc*. Senators Johnson, McCain, Portman, Paul, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Tester, Baldwin, Heitkamp, Booker, and Peters were present for the vote.

III. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section supplies the short title of the bill, the Administrative Leave Act of 2016.

Section 2. Sense of Congress

This section states Congress’s views that agencies have excessively used administrative leave—oftentimes recording paid time off as administrative leave when in fact there is another more appropriate leave that should be used—and declares its intent that administrative leave be used sparingly, as a last resort, and while expeditiously working to resolve any related investigation so that the employee can either return to duty or the agency can initiate a personnel action.

Section 3. Administrative leave

This section amends subchapter II of chapter 63 of Title 5, United States Code, by adding a new section 6330 and defining the terms “administrative leave”, “agency”, and “employee.” This section limits an agency from placing an employee on administrative leave for a period of more than five consecutive days. This definition and authority to use administrative leave is intended to codify the excused absence that agencies had previously been granting as an exercise of agency discretion and that agencies justified as pursuant to historical practice or authority granted by 5 U.S.C. §§ 301–302. This period of five days is not a cap on the amount of total excused absence an agency may grant to employees, as longer periods may be used in the case of investigative and notice leave, detailed below, or other forms of statutorily authorized paid leave. However, agencies will not be permitted to provide for excused absence as an exercise of agency discretion under 5 U.S.C. §§ 301–302 or otherwise outside of that which is authorized by this bill or other authority provided by statute. Moreover, agencies should not circumvent the five-day limit by putting an employee on leave for five days, taking the employee off of leave, and then placing the employee on leave again.

This section also requires agencies to record administrative leave separately from leave authorized under any other provision of law. It further requires the Office of Personnel Management (OPM) to prescribe regulations to carry out this section, and prescribe regulations that provide guidance to agencies regarding acceptable uses of administrative leave and the proper recording of administrative leave and other leave authorized by law. To the extent that Congress authorizes additional forms of excused absence, agencies should record those separately. Agencies have one year after the

date upon which OPM has prescribed regulations to revise and implement their internal policies to conform to the requirements of this section and thus implement the provisions of this bill.

Finally, this section provides for OPM, in consultation with Federal agencies, unions, and other relevant stakeholders, to provide a study to the Senate Committee on Homeland Security and Governmental Affairs and the House Oversight and Government Reform Committee identifying agency practices of placing an employee on administrative leave for more than five consecutive days when the placement was not specifically authorized under law.

Section 4. Investigative leave and notice leave

This section defines the terms “agency”, “Chief Human Capital Officer”, “committees of jurisdiction”, “Director”, “employee,” “investigative leave”, “notice leave”, and “notice period.”

This section creates new forms of paid leave under Section 6330a, subchapter II of chapter 63, Title 5, by providing leave for employees under investigation or in a notice period. The section states that an agency may not place an employee on investigative leave or notice leave unless the continued presence of the employee in the workplace during an investigation or notice period (a) poses a threat to the employee or other employees; (b) results in the destruction of evidence; (c) results in the loss of or damage to government property; or (d) otherwise jeopardizes legitimate government interests.⁴⁴

After making a determination with respect to an employee, and before placing an employee on investigative or notice leave, this section requires agencies to consider taking one or more of the following actions: (a) assigning the employee to duties in which an employee no longer poses a threat; (b) allowing the employee to take leave for which they are eligible; (c) requiring the employee to telework under section 6502(c); (d) should the employee become absent without approved leave, carrying the employee in absence without leave status; (e) for an employee who is 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.

This section limits the initial period of investigative leave to ten days. Extensions, each lasting not more than 30 days, may be granted should the Chief Human Capital Officer of an agency, or the designee of the Chief Human Capital Officer, approve the extension after consulting with the investigator responsible for the investigation. Such extensions, taken together, may not exceed 110 days (for a total of 120 days when the initial ten days is included). For employees of an Office of the Inspector General, the Inspector General or the designee of the Inspector General, approves the extension of investigative leave for an employee. Should the Inspector General make the request, the head of an agency is eligible to designate an official to approve an extension of such leave. This section requires the Chief Human Capital Officers Council and the Council of the Inspectors General on Integrity and Efficiency to issue guidance on appropriate designations under this section. Des-

⁴⁴ With respect to investigations in connection with the suspension or revocation of a security clearance, agencies may use administrative leave where the continued presence of the employee in the workplaces “otherwise jeopardizes legitimate government interests.”

ignations must be at a sufficiently high level within the agency to ensure an impartial and independent determination is made with respect to the extension. High-level agency attention and oversight have proven effective in limiting the amount of paid leave and any designation should not be delegated to a level that is insufficient to ensure such scrutiny.

Further extensions of 60 days of investigative leave may be granted by the head of an agency (or the inspector general) before the extension period expires when the agency submits reasons of the further extension to the Congressional committees of jurisdiction. Such extensions are subject to OPM review. After six years, agencies may no longer grant 60-day extensions, and will instead be capped at the 30-day extensions totaling no more than 110 days (extensions beyond a total of 120 days granted prior to the statutory expiration of the authority are valid, but no more may be granted). This section requires the Government Accountability Office to evaluate the implementation of investigative leave and the applicable extensions prior to the six-year sunset. Among other topics, the GAO study must address agencies' placement of employees on administrative leave because of a determination that the continued presence of the employee may jeopardize legitimate Government interests to ensure agencies are not abusing this authority.

This section also states that the placement of an employee on notice leave shall be for a period of not longer than the duration of the notice period.⁴⁵

Agencies are required to provide the employee on investigative or notice leave a written explanation of the leave. Agencies are also required to, not later than the day after the last day of a period of investigative leave: (a) return the employee to regular duty status; (b) take one or more of the actions previously stated; (c) propose or initiate an adverse action against the employee; or (d) extend the period of investigative leave accorded by the bill.

To improve communication between investigators and agency personnel who are responsible for making decisions about the necessity of placing employees on investigative leave, this section requires the Council of the Inspectors General on Integrity and Efficiency, in consultation with the Attorney General and the Special Counsel, to issue guidance on best practices for consultation between an investigator and the agency. The guidance is intended to encourage communication between investigative entities and agencies, to the extent possible, so that agencies do not assume the necessity of paid leave just because an investigation is ongoing. OPM is also required to provide guidance to agencies on the use of investigative leave and notice leave; how such leave and other statu-

⁴⁵ Administrative Law Judges (ALJs) have statutory protections greater than those provided to other Federal employees—including prohibition on an adverse action without a finding of good cause by the Merit Systems Protection Board (MSPB), 5 U.S.C. § 7521, and prohibition on the performance of duties inconsistent with the duties and responsibilities as ALJs, 5 U.S.C. § 3105. The provisions of this bill apply to ALJs and the Committee intends for agencies to use notice leave pending the good cause determination by the MSPB with respect to an ALJ whose continued presence in the workplace may pose a threat to the employee or others, result in the destruction of evidence relevant to an investigation, result in loss of or damage to government property, or otherwise jeopardize legitimate government interests. This will enable S. 2450 to be read consistent with existing law governing ALJs; the legislation controls to the extent it is inconsistent with existing regulations governing the placement of ALJs on leave. See, e.g., 5 CFR. § 930.211(b) (allowing ALJs to be placed on administrative leave status “when there are circumstances in which the retention of an [ALJ] in his or her position is detrimental to the interests of the Federal Government”).

torily authorized forms of leave are to be properly recorded; and baseline factors that agencies must consider when making a “threat determination.” Recognizing that each situation presents a unique set of facts and circumstances, OPM guidance will help ensure that agencies are assessing similar factors when determining whether an employee should be on non-duty paid status pending an investigation or notice period. OPM must also prescribe procedures and criteria for how agencies should approve of extensions of investigative and notice leave under this section, including how agencies should submit extension requests to the Director for review.

This section also allows an agency to require an employee to telework under the provisions of section 6502 of title 5, if the continued presence of an employee in the workplace during an investigation or when the employee is in a notice period, poses one or more of the threats described in the previous section.

Section 5. Leave for weather and safety issues

This section amends subchapter II of chapter 63, Title 5 to include a new section, 6330b, for “weather and safety leave”. Agencies may approve paid leave without loss or reduction in pay for an employee or group of employees if they are prevented from safely traveling to or performing work due to an act of God, terrorist attack, or another condition that prevents them from safely traveling to or performing work at an approved location. This section also requires agencies to record such leave separately from leave already authorized under law.

Section 6. Additional oversight

This section provides for the Director of OPM to complete a review of agency policies to determine whether agencies have complied with the requirements of this bill no later than three years after enactment. These findings are then to be submitted, in report form, to Congress 90 days after completion.

IV. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MARCH 23, 2016.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2450, the Administrative Leave Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dan Ready, who can be reached at 226-2880.

Sincerely,

KEITH HALL.

Enclosure.

S. 2450—Administrative Leave Act of 2016

S. 2450 would create three new types of leave for agencies to use in lieu of administrative leave in specific circumstances. Two of the new types of leave—investigative leave and notice leave—would be available for removing an employee from the workplace while an agency is investigating misconduct or taking adverse action against that employee. The third new type of leave would be for weather and safety issues, when an agency determines employees cannot travel safely to or from work. S. 2450 would restrict the length of time an agency can place an employee on administrative leave, investigative leave, or notice leave and would require nearly all executive branch agencies to keep records related to the use of administrative leave and the three new types of leave.

In addition, S. 2450 would require the Office of Personnel Management (OPM) to prescribe regulations to implement the new leave categories and to report on current practices regarding administrative leave. Finally, the Government Accountability Office (GAO) would have to write a report on the bill's implementation five years after enactment.

Adding the new types of leave would not change the amounts that agencies would pay an employee. In addition, because agencies already record several different types of leave and keep records related to personnel actions, CBO expects they should be able to integrate the new categories relatively easily. On the basis of information from OPM and GAO, CBO estimates that implementing the legislation would have no significant effect on the budget.

Because S. 2450 would not affect direct spending or revenues, pay-as-you-go procedures do not apply. Enacting S. 2450 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2450 contains 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.

The CBO staff contact for this estimate is Dan Ready. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in *roman*):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart A—General Provisions

* * * * *

CHAPTER 23—MERIT SYSTEM PRINCIPLES

* * * * *

SEC. 2302. ADMINISTRATIVE LEAVE

(a) * * *

(1) * * *

(2) * * *

(A) * * *

(i)

* * * * *

(xi) the implementation or enforcement of any non-disclosure policy, form, or agreement; **[and]**

(xii) a determination made by an agency under section 6330a(c)(1) that the continued presence of an employee in the workplace during an investigation of the employee or while the employee is in a notice period, if 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; and

[(xii)] *(xiii) any other significant change in duties, responsibilities, or working conditions;*

* * * * *

Subpart E—Attendance and Leave

* * * * *

CHAPTER 63—LEAVE

* * * * *

Subchapter II—Other Paid Leave

6321. * * *

* * * * *

6330. Administrative Leave.

6330a. Investigative and Notice Leave.

6330b. Weather and Safety Leave.

SEC. 6330. 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); and*
 - (B) *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 work week.*
- (b) **ADMINISTRATIVE LEAVE.—**
 - (1) **IN GENERAL.—***An agency may place an employee in administrative leave for a period of not more than 5 consecutive days.*
 - (2) **RULE OF CONSTRUCTION.—***Nothing in paragraph (1) shall be construed to limit the use of leave that is—*
 - (A) *specifically authorized under law; and*
 - (B) *not administrative leave.*
 - (3) **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 1 year 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 1 year 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.*
- SEC. 6330a. 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); and*
 - (B) *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 in the Senate and 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 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;

(7) 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

(8) 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 subsection (c)(1).
- (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 under subsection (c)(1);
 - (B) considered the available options for the employee under subsection (c)(2); and
 - (C) determined that none of the available options under subsection (c)(2) is appropriate.
- (c) **EMPLOYEES UNDER INVESTIGATION OR IN A NOTICE PERIOD.**—
- (1) **DETERMINATIONS.**—An agency may not place an employee in investigative leave or notice leave under subsection (b) unless the continued presence of the employee in the workplace during an investigation of the employee or while the employee is in a notice period, if applicable, may—
- (A) pose a threat to the employee or others;
 - (B) result in the destruction of evidence relevant to an investigation;
 - (C) result in loss of or damage to Government property;
- or
- (D) otherwise jeopardize legitimate Government interests.
- (2) **AVAILABLE OPTIONS FOR EMPLOYEES UNDER INVESTIGATION OR IN A NOTICE PERIOD.**—After making a determination under paragraph (1) with respect to an employee, and before placing an employee in investigative leave or notice leave under subsection (b), an agency shall consider taking 1 or more of the following actions:
- (A) Assigning the employee to duties in which the employee is no longer a threat to—
 - (i) safety;
 - (ii) the mission of the agency;
 - (iii) Government property; or
 - (iv) evidence relevant to an investigation.
 - (B) Allowing the employee to take leave for which the employee is eligible.
 - (C) Requiring the employee to telework under section 6502(c).
 - (D) If the employee is absent from duty without approved leave, carrying the employee in absence without leave status.
 - (E) 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.
- (3) **DURATION OF LEAVE.**—
- (A) **INVESTIGATIVE LEAVE.**—Subject to extensions of a period of investigative leave for which an employee may be eligible under subsections (d) and (e), the initial placement of an employee in investigative leave shall be for a period not longer than 10 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 subsection (b), the agency shall provide the employee a written explanation of the leave placement and the reasons for the leave placement.

(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 subsection (b)(1), an agency shall—

(A) return the employee to regular duty status;

(B) take 1 or more of the actions authorized under paragraph (2), meaning—

(i) assigning the employee to duties in which the employee is no longer a threat to—

(I) safety;

(II) the mission of the agency;

(III) Government property; or

(IV) evidence relevant to an investigation;

(ii) allowing the employee to take leave for which the employee is eligible;

(iii) requiring the employee to telework under section 6502(c);

(iv) if the employee is absent from duty without approved leave, carrying the employee in absence without leave status; or

(v) 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;

(C) propose or initiate an adverse action against the employee as provided under law; or

(D) extend the period of investigative leave under subsections (d) and (e).

(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 (d) and (e).

(d) *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 days.

(2) *MAXIMUM NUMBER OF EXTENSIONS.*—The total period of additional investigative leave for an employee under paragraph (1) may not exceed 110 days.

(3) *DESIGNATION GUIDANCE.*—Not later than 1 year 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 1 year 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.

(e) *FURTHER EXTENSION OF INVESTIGATIVE LEAVE.*—

(1) *IN GENERAL.*—After reaching the limit under subsection (d)(2), an agency may further extend a period of investigative leave for an employee for a period of not more than 60 days if, before the further extension begins, the head of the agency or, in the case of an employee of an Office of Inspector General, the Inspector General submits a notification that includes the reasons for the further extension to the—

(A) committees of jurisdiction;

(B) Committee on Homeland Security and Governmental Affairs of the Senate; and

(C) Committee on Oversight and Government Reform of the House of Representatives.

(2) *NO LIMIT.*—There shall be no limit on the number of further extensions that an agency may grant to an employee under paragraph (1).

(3) *OPM REVIEW.*—An agency shall request from the Director, and include with the notification required under paragraph (1), the opinion of the Director—

(A) with respect to whether to grant a further extension under this subsection, including the reasons for that opinion; and

(B) which shall not be binding on the agency.

(4) *SUNSET.*—The authority provided under this subsection shall expire on the date that is 6 years after the date of enactment of this section.

(f) *CONSULTATION GUIDANCE.*—Not later than 1 year 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 work place 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.

(g) *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 (c)(1);
- (B) an explanation of why an action under subsection (c)(2) 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 (d)(1); and
- (F) 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 (d) or (e).

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

- (A) to any committee of Congress, 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.

(h) *REGULATIONS.*—

(1) *OPM ACTION.*—Not later than 1 year 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 (d) or (e).

(2) AGENCY ACTION.—Not later than 1 year 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.

(i) 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.’

SEC. 6330b. WEATHER AND SAFETY LEAVE.

(a) DEFINITIONS.—In this section—

(1) the term ‘agency’—

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

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

(2) 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 work week.

(b) LEAVE FOR WEATHER AND SAFETY ISSUES.—An agency may approve the provision of leave under this section to an employee or a group of employees without loss of or reduction in the pay of the employee or employees, leave to which the employee or employees are otherwise entitled, or credit to the employee or employees for time or service only if the employee or group of employees is prevented from safely traveling to or performing work at an approved location due to—

(1) an act of God;

(2) a terrorist attack; or

(3) another condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location.

(c) RECORDS.—An agency shall record leave provided under this section separately from leave authorized under any other provision of law.

(d) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Director of the Office of Personnel Management shall prescribe regulations to carry out this section, including—

(1) guidance to agencies regarding the appropriate purposes for providing leave under this section; and

(2) the proper recording of leave provided under this section.

(e) 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.

* * * * *

CHAPTER 65—TELEWORK

* * * * *

SEC. 6502. EXECUTIVE AGENCIES TELEWORK REQUIREMENT

(a) * * *

(b) * * *

(c) REQUIRED TELEWORK.—If an agency determines under section 6330a(c)(1) that the continued presence of an employee in the workplace during an investigation of the employee or while the employee is in a notice period, if applicable, may pose 1 or more of the threats described in that section and the employee is eligible to telework under subsections (a) and (b) of this section, the agency may require the employee to telework for the duration of the investigation or the notice period, if applicable.

