



ADMINISTRATIVE LEAVE ACT: CIGIE GUIDANCE

September 19, 2017

Why CIGIE issued this guidance

The Administrative Leave Act of 2016 (ALA), enacted on December 23, 2016, sharply curtails administrative leave use and creates three new categories of leave: investigative leave, notice leave, and weather and safety leave.

The ALA charged the Council of the Inspectors General on Integrity and Efficiency (CIGIE) with issuing guidance for two sections of the Act: (1) Extensions of Investigative Leave for Office of Inspector General (OIG) Employees and (2) Consultations between OIGs and Agencies about placement of employees on investigative leave. This guidance is required by September 19, 2017.

Additionally, the ALA requires OPM to issue its ALA regulations by September 19, 2017; however, the regulations will not take effect until 270 days after issuance (June 16, 2018). During this 270-day time period agencies are required to develop and issue their implementing policies and directives. Consequently, OIGs will likely need to coordinate their policies with their host agencies.

Overview of the guidance

The interim guidance provides CIGIE member OIGs with certain factors to consider when developing its policies, procedures, and practices relative to the ALA or executing the two provisions mentioned above. Part A of this guidance addresses extensions of investigative leave for OIG employees and Part B covers ALA consultations between OIGs and agencies.

Going forward, the working group will remain available on an ad hoc basis as a resource to OIGs needing assistance with ALA issues. Also, as the CIGIE community and agencies develop policy, templates, and other tools, the working group will collect, consolidate, and disseminate those to the community. Finally, the working group will recommend any necessary revisions, including best practices, for the CIGIE membership to adopt once the OPM regulations are final.

The ALA is attached as an appendix to this guidance.

This guidance was adopted by the CIGIE membership on September 19, 2017.

CIGIE Guidance:

A. Extensions of Investigative Leave for OIG Employees.

5 U.S.C. § 6329b(c)(4)(B) states:

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

This section addresses who is authorized to extend an OIG employee's investigative leave status. This guidance outlines functional factors to help ensure that the designee "is at a sufficiently high level within the [OIG]."

In considering a potential designee, the IG or the requested agency head should consider the following:

- a. Whether the designee can apply the investigative leave and reconsideration criteria reflected in Section 6329b.
- b. Whether the designee sufficiently understands the OIG employee's position and the nature of the employee's duties.
- c. Whether the designee is able to evaluate the potential impact of the alleged misconduct on the OIG's ability to carry out its mission.
- d. The designee's capacity or experience in making decisions based on information that may be limited based on the nature, scope, and the current status of the investigation of the employee.
- e. The OIG's customary guidelines, procedures or practices for delegations of authority, or continuity of operations.
- f. Whether an agency management official outside the OIG best meets the enumerated criteria.

- g. Whether the designee is sufficiently senior in rank.

B. Consultations between OIGs and Agencies.

5 U.S.C. § 6329b(e) states:

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

- (1) pose a threat to the employee or others;*
- (2) result in the destruction of evidence relevant to an investigation;*
- (3) result in loss of or damage to Government property; or*
- (4) otherwise jeopardize legitimate Government interests.*

This section addresses consultations between an agency and its OIG in connection with an OIG investigation of an agency employee and the agency's need to place or extend that employee on investigative leave.

In developing policies, procedures, and practices covering required consultations the IG should consider the following:

- a. Framing a process to identify the investigator(s) who will consult with the agency. This process should address whether the term "investigator" means the person conducting the investigation or some other person in the OIG.
- b. Whether the investigator(s) possesses the requisite knowledge of the investigative results.
- c. Whether the investigator(s) can address how the evidence establishes risk involving one or more of the four statutory factors for that agency's environment.

- d. When to suggest the agency consider engaging an outside expert. For example, a threat assessment may be outside of the scope of the investigation or the OIG's capabilities. In this case the agency may need an outside entity to perform a threat assessment to inform its decision.
- e. Establish a process to identify when an investigation implicates one or more of the four statutory factors and a method to timely communicate that information to the appropriate agency officials.
- f. Encourage agencies to timely notify the OIG of any plan to place an employee on investigative leave when the agency knows the employee is the subject of an OIG investigation.
- g. When consulting with the agency concerning a potential criminal matter, the OIG should coordinate with the cognizant prosecutorial authority consistent with their established practices.
- h. Establish procedures, controls, and forms to address the requirement for certification as required by 5 U.S.C. § 6329b(d)(2):

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

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

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

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procedures, or any agency, including a land management agency, when the agency is accepting applications from individuals outside its own workforce under the merit promotion procedures of the applicable agency”; and

(2) in subsection (d) by inserting “of the agency from which the former employee was most recently separated” after “deemed a time-limited employee”.

SEC. 1136. REVIEW OF OFFICIAL PERSONNEL FILE OF FORMER FEDERAL EMPLOYEES BEFORE REHIRING.

(a) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

5 USC 3330e.

“§ 3330e. Review of official personnel file of former Federal employees before rehiring

“(a) If a former Government employee is a candidate for a position within the competitive service or the excepted service, prior to making any determination with respect to the appointment or reinstatement of such employee to such position, the appointing authority shall review and consider merit-based information relating to such employee’s former period or periods of service such as official personnel actions, employee performance ratings, and disciplinary actions, if any, in such employee’s official personnel record file.

“(b) In subsection (a), the term ‘former Government employee’ means an individual whose most recent position with the Government prior to becoming a candidate as described under subsection (a) was within the competitive service or the excepted service.

“(c) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. Such regulations may not contain provisions that would increase the time required for agency hiring actions.”.

5 USC 3330e note.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any former Government employee (as described in section 3330e of title 5, United States Code, as added by such subsection) appointed or reinstated on or after the date that is 180 days after the date of enactment of this Act.

5 USC 3301 prec.

(c) CLERICAL AMENDMENT.—The table of sections of subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

“3330e. Review of official personnel file of former Federal employees before rehiring.”.

SEC. 1137. ONE-YEAR EXTENSION OF AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

Section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4615), as most recently amended by section 1108 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1027), is further amended by striking “through 2016” and inserting “through 2017”.

Administrative Leave Act of 2016.
5 USC 101 note.
5 USC 6329a note.

SEC. 1138. ADMINISTRATIVE LEAVE.

(a) SHORT TITLE.—This section may be cited as the “Administrative Leave Act of 2016”.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) agency use of administrative leave, and leave that is referred to incorrectly as administrative leave in agency recording practices, has exceeded reasonable amounts—

(A) in contravention of—

(i) established precedent of the Comptroller General of the United States; and

(ii) guidance provided by the Office of Personnel Management; and

(B) resulting in significant cost to the Federal Government;

(2) administrative leave should be used sparingly;

(3) prior to the use of paid leave to address personnel issues, an agency should consider other actions, including—

(A) temporary reassignment; and

(B) transfer;

(4) an agency should prioritize and expeditiously conclude an investigation in which an employee is placed in administrative leave so that, not later than the conclusion of the leave period—

(A) the employee is returned to duty status; or

(B) an appropriate personnel action is taken with respect to the employee;

(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;

(6) an agency should ensure accurate and consistent recording of the use of administrative leave so that administrative leave can be managed and overseen effectively; and

(7) other forms of excused absence authorized by law should be recorded separately from administrative leave, as defined by the amendments made by this section.

(c) ADMINISTRATIVE LEAVE.—

(1) IN GENERAL.—Subchapter II of chapter 63 of title 5, United States Code, is amended by adding at the end the following:

“§ 6329a. Administrative leave

5 USC 6329a.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘administrative leave’ means leave—

“(A) without loss of or reduction in—

“(i) pay;

“(ii) leave to which an employee is otherwise entitled under law; or

“(iii) credit for time or service; and

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

“(2) the term ‘agency’—

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

“(B) includes the Department of Veterans Affairs; and

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

“(3) the term ‘employee’—

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

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

“(b) ADMINISTRATIVE LEAVE.—

“(1) IN GENERAL.—During any calendar year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days.

“(2) RECORDS.—An agency shall record administrative leave separately from leave authorized under any other provision of law.

“(c) REGULATIONS.—

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

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

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

“(i) acceptable agency uses of administrative leave; and

“(ii) the proper recording of—

“(I) administrative leave; and

“(II) other leave authorized by law.

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

“(d) RELATION TO OTHER LAWS.—Notwithstanding subsection (a) of section 7421 of title 38, this section shall apply to an employee described in subsection (b) of that section.”.

5 USC 6301 prec.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 63 of title 5, United States Code, is amended by inserting after the item relating to section 6329 the following:

“6329a. Administrative leave.”.

(d) INVESTIGATIVE LEAVE AND NOTICE LEAVE.—

(1) IN GENERAL.—Subchapter II of chapter 63 of title 5, United States Code, as amended by this section, is further amended by adding at the end the following:

5 USC 6329b.

“§ 6329b. Investigative leave and notice leave

“(a) DEFINITIONS.—In this section—

“(1) the term ‘agency’—

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

“(B) includes the Department of Veterans Affairs; and

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

“(2) the term ‘Chief Human Capital Officer’ means—

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

“(B) the equivalent;

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

“(4) the term ‘Director’ means the Director of the Office of Personnel Management;

“(5) the term ‘employee’—

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

and

“(B) does not include—

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

“(ii) the Inspector General of an agency;

“(6) the term ‘investigative entity’ means—

“(A) an internal investigative unit of an agency granting investigative leave under this section;

“(B) the Office of Inspector General of an agency granting investigative leave under this section;

“(C) the Attorney General; and

“(D) the Office of Special Counsel;

“(7) the term ‘investigative leave’ means leave—

“(A) without loss of or reduction in—

“(i) pay;

“(ii) leave to which an employee is otherwise entitled under law; or

“(iii) credit for time or service;

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

“(C) in which an employee who is the subject of an investigation is placed;

“(8) the term ‘notice leave’ means leave—

“(A) without loss of or reduction in—

“(i) pay;

“(ii) leave to which an employee is otherwise entitled under law; or

“(iii) credit for time or service;

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

“(C) in which an employee who is in a notice period is placed; and

“(9) the term ‘notice period’ means a period beginning on the date on which an employee is provided notice required under law of a proposed adverse action against the employee and ending on the date on which an agency may take the adverse action.

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

“(1) AUTHORITY.—An agency may, in accordance with paragraph (2), place an employee in—

“(A) investigative leave if the employee is the subject of an investigation;

“(B) notice leave if the employee is in a notice period;

or

“(C) notice leave following a placement in investigative leave if, not later than the day after the last day of the period of investigative leave—

“(i) the agency proposes or initiates an adverse action against the employee; and

“(ii) the agency determines that the employee continues to meet 1 or more of the criteria described in paragraph (2)(A).

“(2) REQUIREMENTS.—An agency may place an employee in leave under paragraph (1) only if the agency has—

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

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

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

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

“(iv) otherwise jeopardize legitimate Government interests;

“(B) considered—

“(i) assigning the employee to duties in which the employee no longer poses a threat described in clauses (i) through (iv) of subparagraph (A);

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

“(iii) if the employee is absent from duty without approved leave, carrying the employee in absence without leave status; and

“(iv) for an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed; and

“(C) determined that none of the available options under clauses (i) through (iv) of subparagraph (B) is appropriate.

“(3) DURATION OF LEAVE.—

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

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

“(4) EXPLANATION OF LEAVE.—

“(A) IN GENERAL.—If an agency places an employee in leave under this subsection, the agency shall provide the employee a written explanation of whether the employee was placed in investigative leave or notice leave.

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

“(i) the applicable limitations under paragraph (3);

and

“(ii) in the case of a placement in investigative leave, an explanation that, at the conclusion of the

period of leave, the agency shall take an action under paragraph (5).

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

“(A) return the employee to regular duty status;

“(B) take 1 or more of the actions under clauses (i) through (iv) of paragraph (2)(B);

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

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

“(6) RULE OF CONSTRUCTION.—Nothing in paragraph (5) shall be construed to prevent the continued investigation of an employee, except that the placement of an employee in investigative leave may not be extended for that purpose except as provided in subsections (c) and (d).

“(c) INITIAL EXTENSION OF INVESTIGATIVE LEAVE.—

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

“(2) MAXIMUM NUMBER OF EXTENSIONS.—The total period of additional investigative leave for an employee under paragraph (1) may not exceed 90 work days.

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

“(4) EXTENSIONS FOR OIG EMPLOYEES.—

“(A) APPROVAL.—In the case of an employee of an Office of Inspector General—

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

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

“(B) GUIDANCE.—Not later than 270 calendar days after the date of enactment of this section, the Council of the Inspectors General on Integrity and Efficiency shall issue guidance to ensure that if the Inspector General or the head of an agency, at the request of the Inspector General, delegates the authority to approve an extension under subparagraph (A) to a designee, the designee is

at a sufficiently high level within the Office of Inspector General or the agency, as applicable, to make an impartial and independent determination regarding the extension.

“(d) FURTHER EXTENSION OF INVESTIGATIVE LEAVE.—

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

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

“(B) a description of the duties of the employee;

“(C) the reason the employee was placed in investigative leave;

“(D) an explanation as to why—

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

“(ii) the agency is not able to reassign the employee to another position within the agency;

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

“(i) the reasons that the agency required the employee to telework under that section; and

“(ii) the duration of the teleworking requirement;

“(F) the status of the investigation of the employee;

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

“(H) in the case of a completed investigation of the employee—

“(i) the results of the investigation; and

“(ii) the reason that the employee remains in investigative leave.

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

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

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

“(3) NO EXTENSIONS AFTER COMPLETION OF INVESTIGATION.—An agency may not further extend a period of investigative leave of an employee under paragraph (1) on or after the date that is 30 calendar days after the completion of the investigation of the employee by an investigative entity.

“(e) CONSULTATION GUIDANCE.—Not later than 270 calendar days after the date of enactment of this section, the Council of the Inspectors General on Integrity and Efficiency, in consultation with the Attorney General and the Special Counsel, shall issue guidance on best practices for consultation between an investigator

and an agency on the need to place an employee in investigative leave during an investigation of the employee, including during a criminal investigation, because the continued presence of the employee in the workplace during the investigation may—

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

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

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

or

“(4) otherwise jeopardize legitimate Government interests.

“(f) REPORTING AND RECORDS.—

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

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

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

“(C) the length of the period of leave;

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

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

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

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

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

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

“(B) to the Office of Personnel Management; and

“(C) as otherwise required by law, including for the purposes of the Administrative Leave Act of 2016 and the amendments made by that Act.

“(g) RECOURSE TO THE OFFICE OF SPECIAL COUNSEL.—For purposes of subchapter II of chapter 12 and section 1221, placement on investigative leave under subsection (b) of this section for a period of not less than 70 work days shall be considered a personnel action under paragraph (8) or (9) of section 2302(b).

“(h) REGULATIONS.—

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

“(A) acceptable purposes for the use of—

“(i) investigative leave; and

“(ii) notice leave;

“(B) the proper recording of—

“(i) the leave categories described in subparagraph

(A); and

“(ii) other leave authorized by law;

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

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

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

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

“(iv) otherwise jeopardize legitimate Government interests; and

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

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

“(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.”

5 USC 6329a
note.

(2) GAO REPORT.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the results of an evaluation of the implementation of the authority provided under sections 6329a and 6329b of title 5, United States Code, as added by subsection (c)(1) of this section and paragraph (1) of this subsection, respectively, including—

(A) the number of times that an agency, under subsection (c)(1) of such section 6329b—

(i) consulted with the investigator responsible for conducting the investigation to which an employee was subject with respect to the decision of the agency to grant an extension under that subsection; and

(ii) did not have a consultation described in clause (i), including the reasons that the agency failed to have such a consultation;

(B) an assessment of the use of the authority provided under subsection (d) of such section 6329b by agencies, including data regarding the number and length of extensions granted under that subsection;

(C) an assessment of the compliance with the requirements of subsection (f) of such section 6329b by agencies;

(D) a review of the practice of agency placement of an employee in investigative or notice leave under subsection (b) of such section 6329b because of a determination under subsection (b)(2)(A)(iv) of that section that the employee jeopardized legitimate Government interests, including the extent to which such determinations were supported by evidence; and

(E) an assessment of the effectiveness of subsection (g) of such section 6329b in preventing and correcting the use of extended investigative leave as a tool of reprisal for making a protected disclosure or engaging in protected

activity as described in paragraph (8) or (9) of section 2302(b) of title 5, United States Code.

(3) TELEWORK.—Section 6502 of title 5, United States Code, is amended by adding at the end the following:

“(c) REQUIRED TELEWORK.—If an agency places an employee in investigative leave under section 6329b, the agency may require the employee to, through telework, perform duties similar to the duties that the employee performs on-site if—

“(1) the agency determines that such a requirement would not—

“(A) pose a threat to the employee or others;

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

“(C) result in the loss of or damage to Government property; or

“(D) otherwise jeopardize legitimate Government interests;

“(2) the employee is eligible to telework under subsections (a) and (b) of this section; and

“(3) the agency determines that it would be appropriate for the employee to perform the duties of the employee through telework.”.

(4) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 63 of title 5, United States Code, is amended by inserting after the item relating to section 6329a, as added by this section, the following:

5 USC 6301 prec.

“6329b. Investigative leave and notice leave.”.

(e) WEATHER AND SAFETY LEAVE.—

(1) IN GENERAL.—Subchapter II of chapter 63 of title 5, United States Code, as amended by this section, is further amended by adding at the end the following:

“§ 6329c. Weather and safety leave

5 USC 6329c.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘agency’—

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

“(B) includes the Department of Veterans Affairs; and

“(C) does not include the Government Accountability Office; 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 workweek.

“(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 270 days 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.”

5 USC 6301 prec.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 63 of title 5, United States Code, is amended by inserting after the item relating to section 6329b, as added by this section, the following:

“6329c. Weather and safety leave.”

5 USC 3304 note.

SEC. 1139. DIRECT HIRING FOR FEDERAL WAGE SCHEDULE EMPLOYEES.

The Director of the Office of Personnel Management shall permit an agency with delegated examining authority under 1104(a)(2) of title 5, United States Code, to use direct-hire authority under section 3304(a)(3) of such title for a permanent or non-permanent position or group of positions in the competitive services at GS–15 (or equivalent) and below, or for prevailing rate employees, if the Director determines that there is either a severe shortage of candidates or a critical hiring need for such positions.

SEC. 1140. RECORD OF INVESTIGATION OF PERSONNEL ACTION IN SEPARATED EMPLOYEE’S OFFICIAL PERSONNEL FILE.

(a) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by inserting after section 3321 the following:

5 USC 3322.

“§ 3322. Voluntary separation before resolution of personnel investigation

“(a) With respect to any employee occupying a position in the competitive service or the excepted service who is the subject of a personnel investigation and resigns from Government employment prior to the resolution of such investigation, the head of the agency from which such employee so resigns shall, if an adverse finding was made with respect to such employee pursuant to such investigation, make a permanent notation in the employee’s official personnel record file. The head shall make such notation not later than 40 days after the date of the resolution of such investigation.

“(b) Prior to making a permanent notation in an employee’s official personnel record file under subsection (a), the head of the agency shall—

“(1) notify the employee in writing within 5 days of the resolution of the investigation and provide such employee a copy of the adverse finding and any supporting documentation;