Appendix III – Additional Cited Materials

Letter to Social Security Administration (July 30, 2010) III-1

Letter to National Archives & Records Administration (July 24, 2013) III-23

Letter to National Archives & Records Administration (Feb. 21, 2014) III-32

Letter U.S. Government Accountability Office (Apr. 23, 2013) III-37

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

July 30, 2010

Via Electronic Transmission

The Honorable Michael J. Astrue
Commissioner
United States Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Astrue:

As a senior member of Congress and the Ranking Member of the Senate Committee on Finance, I have a duty to conduct oversight into the actions of executive branch agencies. A critical part of this responsibility is to prevent fraud, waste, and abuse within these agencies and ensure that taxpayer funds are being spent appropriately. Congress regularly obtains reports from the Office of Inspectors General (OIG) whose mission is to conduct independent and objective audits, evaluations and investigations, to inspire public confidence in the integrity and security of its programs and operations and protect them against fraud, waste and abuse. I was troubled by the findings in a recent Audit Report prepared by the Social Security Administration (SSA) OIG, in which the OIG found little to no oversight on millions of taxpayer dollars spent on thousands of unproductive man hours.

In the report, titled *Administrative Leave Use*, the OIG concluded that from October 2005 to January 2009, SSA employees were granted a total of 1,291,249 hours of administrative leave. Administrative leave refers to an excused absence from duty that is authorized without loss of pay or charge against the employee's leave balances. An example of this would be a snowstorm where an employee could not make it into work; the employee's supervisor would allow the employee to remain home and collect pay for the day without using any of his or her leave. Another example involves investigations into employee wrongdoing, when it is in the best interest of the Government to have the employee off the job, but continue to pay the employee until the investigation is complete.

According to the OIG report, SSA's oversight of short periods of administrative leave was generally effective; however there have been at least seventeen instances since 2005, where employees were granted more than 1000 hours each, of paid extended administrative leave, totaling $1,480,900.

What is particularly concerning about this report is the lack of oversight on the part of SSA management to track extended administrative leave. The OIG found several instances where time keepers and certifiers could provide no justification as to why

extended administrative leave was granted. Additionally, there was no documentation available identifying who authorized the administrative leave. For example, one employee was granted 2,480 hours of administrative leave collecting $185,538 in salary, yet the OIG could find no documentation explaining the reason for this leave. Another employee was granted 1,704 hours of administrative leave totaling $132,446 in salary; again, no documentation was provided in order to support this extended administrative leave.

I am troubled that employees can simply "disappear" from their jobs and continue to get paid, without any monitoring taking place. In light of these facts, please provide answers to the following questions:

1) What policies and procedures are in place at SSA to grant someone paid administrative leave for an extended period of time?

2) Who has the authority to grant someone paid extended administrative leave?

3) Who has the authority to stop someone from collecting pay when on extended administrative leave?

4) The report stated that time keepers would receive verbal instructions to place a person on paid extended administrative leave. What changes are going to be made in order to ensure all future instructions will be documented?

5) The report listed four employees who retired after being on paid extended administrative leave. Of these four employees, how many were retirement eligible before being placed on administrative leave, and how many became eligible for retirement while they were on extended paid administrative leave?

Thank you in advance for your cooperation. Accompanying this letter is a courtesy copy of the OIG Audit Report, A-06-09-29133. I would appreciate a response to the above questions by August 13, 2010. If you have any questions, please do not hesitate to contact Chris Armstrong or Thomas Guastini at (202) 224-4515. All formal correspondence should be sent electronically in PDF format to Brian_Downey@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,

Charles E. Grassley
Ranking Member

Attachment

SOCIAL SECURITY

MEMORANDUM

Date: July 23, 2010 Refer To:

To: The Commissioner

From: Inspector General

Subject: Administrative Leave Use (A-06-09-29133)

The attached final report presents the results of our review. Our objectives were to determine the effectiveness of the controls over the Social Security Administration's administrative leave use and the appropriateness of administrative leave granted to Agency employees.

Please provide within 60 days a corrective action plan that addresses each recommendation. If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.

Patrick P. O'Carroll, Jr.

Attachment

OFFICE OF THE INSPECTOR GENERAL

SOCIAL SECURITY ADMINISTRATION

ADMINISTRATIVE LEAVE USE

July 2010 **A-06-09-29133**

AUDIT REPORT

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- **Promote economy, effectiveness, and efficiency within the agency.**
- **Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- **Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- **Independence to determine what reviews to perform.**
- **Access to all information necessary for the reviews.**
- **Authority to publish findings and recommendations based on the reviews.**

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

SOCIAL SECURITY

MEMORANDUM

Date: July 23, 2010 Refer To:

To: The Commissioner

From: Inspector General

Subject: Administrative Leave Use (A-06-09-29133)

OBJECTIVE

Our objectives were to determine the effectiveness of the controls over the Social Security Administration's (SSA) administrative leave usage and the appropriateness of administrative leave granted to SSA employees.

BACKGROUND

Administrative leave refers to an excused absence from duty that is authorized without loss of pay or a charge against the employee's leave balances. The Office of Personnel Management (OPM) develops and maintains Government-wide regulations and policies on leave administration but does not provide detailed guidance governing excused absences. Instead, applicable excused absence guidance is incorporated into a manual published by the Office of the General Counsel, U.S. Government Accountability Office.[1] The guidance states that, since there are no general OPM regulations covering administrative leave, each agency has the authority to determine the situations in which excusing employees from work without charge to leave is appropriate. However, the guidance indicates that generally, Federal employees may not be placed on administrative leave with pay for an extended period.[2] Also, during an investigation of an employee for wrongdoing, when it is in the best interest of the Government to have the employee off the job, the employee may be relieved from duty and continued in a pay status without charge to leave for the short time necessary to process a suspension.[3]

In situations where a disruption occurs on the job or where there is a belief that the potential for violence exists, a supervisor may need to keep an employee away from the

[1] Civilian Personnel Law Manual, Title II, Leave, Chapter 5, Part A, *Administrative Leave*.

[2] Ibid, Chapter 5:03.b.

[3] Ibid, Chapter 5:05.e.

worksite to ensure the safety of employees while deciding a course of action. Placing the employee in a paid, non-duty status (administrative leave) is an immediate, temporary solution to the problem. Agencies should monitor these situations and move toward longer term actions, when necessary, appropriate, and prudent.[4]

Supervisors are sometimes faced with a situation where they have insufficient information to determine whether an employee poses a safety risk, has committed a crime, or has a mental condition that might make disciplinary action inappropriate. In these instances, the agency can issue an indefinite suspension[5]—an adverse action that takes an employee off-duty and out of pay status until the completion of an inquiry or investigation into allegations of misconduct. To issue an indefinite suspension, the agency must use adverse action procedures, which require a 30-day paid status during the advance notice of the adverse action. After the 30-day advanced notice period, the employee can be taken out of pay status pending completion of the investigation, criminal proceeding, or medical determination.[6]

We obtained data from SSA's Mainframe Time and Attendance System (MTAS) identifying all administrative leave granted to employees from October 2005 through January 2009. As illustrated in Table 1, during the period reviewed, 97.1 percent of SSA employees received fewer than 80 hours of administrative leave each. A small number of employees (17) received 1,000 or more hours of administrative leave each.

Table 1: Administrative Leave Granted to SSA Employees
October 2005 to January 2009

Hours	Number of Employees	%	Cumulative Hours	%	Average Hours Per Employee Per Year
Under 80	62,307	97.1	1,025,804	79.4	5
80 to 159.9	1,551	2.4	159,525	12.4	32
160 to 239.9	185	0.3	34,282	2.7	57
240 to 479.9	56	0.1	18,119	1.4	100
480 to 999.9	31	0.1	21,096	1.6	209
1,000 or More	17	0.0	32,423	2.5	587
Totals:	**64,147**	**100**	**1,291,249**	**100**	

See Appendix B for additional background and Appendix C for the scope and methodology of this review.

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[4] OPM, Dealing with Workplace Violence: A Guide for Agency Planners, Part III, Section 3, *Administrative Actions to Keep an Employee Away from the Worksite*.

[5] Agencies usually propose indefinite suspensions when they will need more than 30 days to await the results of an investigation, await the completion of a criminal proceeding, or make a determination on the employee's medical condition.

[6] See Footnote 4.

RESULTS OF REVIEW

SSA's oversight of short periods of administrative leave was generally effective. Review of documentation in components with the highest administrative leave use or supporting specific days where the highest amount of administrative leave was granted indicated the leave was properly authorized and appropriate.[7]

However, SSA did not establish policies governing leave use in the small number of instances where it granted employees administrative leave for extended periods.[8] SSA did not require that timekeepers or certifiers retain documentation justifying or excusing the absences. Instead, SSA granted extended periods of administrative leave based on a manager or supervisor's verbal approval. SSA did not require any legal or administrative review of extended periods of administrative leave. Further, once the leave was approved, SSA did not develop a process to monitor extended leave use. Lack of effective controls over extended administrative leave use could result in unwarranted payment of salary and benefits to employees who should otherwise be suspended without pay. Properly documenting leave use helps maintain the integrity and accuracy of SSA's payroll system.

Extended Administrative Leave

SSA did not develop specific policies governing extended administrative leave or require periodic administrative or legal review of cases where it placed employees on extended administrative leave. As shown in Table 2, we identified 17 SSA employees who received 1,000 or more hours of administrative leave from October 2005 through January 2009.

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[7] Inclement weather was the primary contributing factor.

[8] We use the term "extended" in reference to approved leave in excess of 30 workdays (240 hours).

Table 2: Instances Where SSA Granted an Employee 1,000 or More Hours of Paid Administrative Leave				
	Leave Hours	**Estimated Salary Paid While on Leave**	**Leave Explained and Documented?**	**End Result**
1	1,880	$140,280	NO	Pending at the time of our review.
2	4,200	$66,664	YES	SSA terminated the employee.
3	2,800	$56,159	NO	SSA terminated the employee.
4	2,616	$206,123	YES	SSA terminated the employee.
5	2,114	$63,337	YES	SSA terminated the employee.
6	2,120	$76,190	NO	SSA terminated the employee.
7	1,544	$118,370	NO	SSA terminated the employee.
8	1,136	$14,634	NO	SSA terminated the employee.
9	1,008	$39,837	NO	SSA terminated the employee.
10	2,480	$185,538	NO	Employee retired voluntarily.
11	1,928	$150,772	YES	Employee retired voluntarily.
12	1,704	$132,446	NO	Employee retired voluntarily.
13	1,184	$68,055	NO	Employee retired voluntarily.
14	1,784	$71,045	NO	Employee returned to work.
15	1,232	$40,670	YES	Employee returned to work.
16	1,016	$50,780	NO	Employee returned to work.
17	1,261	N/A	N/A	Administrative error occurred.
Totals	**32,007**	**$1,480,900**		

In one case, a timekeeper and certifying official incorrectly charged work hours an employee—a union representative—spent on union-related activities to administrative leave instead of to official duty time. SSA was correcting this error at the time of our audit. In the other 16 cases, SSA placed the employees on extended administrative leave while deciding on a course of action after incidents of alleged misconduct or illegal acts. SSA paid approximately $1.5 million in wages to 16 employees who were not working while the Agency was deciding a course of action.

We requested documentation from the employees' timekeepers and certifiers to justify approval of the extended leave. We found that, in 11 of 16 cases, timekeepers and certifiers maintained no documentation to explain or justify the administrative leave. These timekeepers or certifiers stated the extended leave was authorized based on verbal instructions received from someone in their chain of command. Illustrations follow.

- Two teleservice center employees were arrested at their workplace while in the act of blackmailing/extorting other SSA employees. SSA placed both employees on paid administrative leave in February 2007. One employee remained on paid administrative leave for approximately 6 months (1,136 hours) and the other for approximately 16 months (2,800 hours) before SSA terminated their employment. Neither the timekeeper nor the certifying official could provide written documentation to support continued payment of salary and benefits to these individuals. The certifying official stated that someone in either the Regional Commissioner or the Assistant Regional Commissioner's office verbally instructed him to approve the

administrative leave. The certifying official stated one individual received less paid leave than the other because he was a newly hired employee in a probationary status. As a result, the process for terminating his employment was shorter.

- A field office employee was arrested and placed on administrative leave in December 2005. SSA continued to pay the employee's salary and benefits for approximately 1 calendar month. At that time, the employee was issued an indefinite suspension without pay because the Agency had reasonable cause to believe the employee had committed a crime for which a sentence of imprisonment may be imposed. The employee remained on indefinite suspension until April 2007 when he was placed back on paid administrative leave, receiving his full salary and benefits for another 11 months (the employee was granted a total of 2,114 hours of administrative leave) before SSA terminated his employment. The certifying official stated she thought SSA had changed the employee's status from indefinite suspension to paid administrative leave because prosecutors dropped the formal charges against him. The certifying official could provide no documentation to justify reinstating the suspended employee's pay and benefits, and stated the personnel office ". . . took the action without paperwork."

- In August 2006, a field office employee called his manager to request use of his remaining annual leave because of a family emergency. Available documentation indicated that while on leave, the employee was arrested on undisclosed charges and remained in jail for at least 10 days. According to the manager, the employee left a voice message indicating he was in jail and requesting leave without pay. In September 2006, the employee's manager issued a written notice informing the employee he was barred from entering SSA premises as a result of his arrest and was placed on paid administrative leave "until further notice." The employee continued to receive full salary and benefits for the next 10 months (1,784 hours), at which time a new Area Director reviewed the case, terminated the administrative leave, and determined the employee should report to work. The District Manager's letter to the employee stated, "I do not believe that it is in SSA's interest for you to remain on paid administrative leave indefinitely pending the resolution of these charges. As a result, I am ordering you to report to duty. . . ." The employee later resigned. The certifying official stated the decisions and discussion regarding placing this employee on administrative leave involved Regional, Office of Labor Relations, and Office of General Counsel (OGC) staff. However, the certifier stated these discussions and decisions were not documented because of confidentiality concerns. The certifying official further stated that placing the employee on indefinite paid administrative leave was consistent with Region-wide practices.

We contacted both OGC and Office of Personnel (OPE) staff to discuss their roles in ensuring that SSA authorized extended administrative leave only under appropriate circumstances. OGC staff stated their input was not required before authorization of extended administrative leave. OGC periodically provided input on the appropriateness of placing an employee on administrative leave as it related to the adverse action notice

period.[9] However, OGC staff stated its involvement in these cases was limited and only provided if requested. OPE staff acknowledged SSA has not established policies and procedures for granting extended administrative leave. OPE staff stated managers should strive for consistency, avoid disparate treatment, and ensure that approval of extended leave provides some benefit to the Agency. OPE staff stated that while these cases are usually discussed at several levels of management, approval of extended leave is ultimately the responsibility of the supervisor. Both OGC and OPE staff stated they did not have an ongoing or follow-up role in monitoring the appropriateness of extended administrative leave use. Because SSA did not develop or implement formal policies governing extended administrative leave use or implement a mechanism to periodically review instances where employees were placed on administrative leave for indefinite periods of time, SSA had no assurance that extended leave granted to its employees was necessary, appropriate, or consistently approved/denied.

CONCLUSION AND RECOMMENDATIONS

SSA's controls over administrative leave for short periods were generally effective. However, SSA placed a small number of its employees on extended administrative leave but did not develop or implement policies governing use and oversight of extended administrative leave. Placing employees in paid, non-duty status for extended periods resulted in both substantial costs and lost productivity to the Agency. Establishing clear policies governing approval of extended administrative leave helps maintain the integrity of SSA's payroll system.

As a result, we recommend SSA:

1. Develop and implement policies governing authorization, review, and approval of extended periods of administrative leave.

2. Establish procedures to monitor extended administrative leave use.

AGENCY COMMENTS

SSA agreed with our recommendations. SSA's comments are included in Appendix D.

Patrick P. O'Carroll, Jr.

[9] Pursuant to 5 U.S.C. § 7513, in an adverse action for removal, suspension of more than 14 days, reduction in grade or pay, or furlough for 30 days or less, an employee receives 30 days notice ". . . unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed . . . ." If there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the agency can shorten the notice period to 7 days.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Additional Background

APPENDIX C – Scope and Methodology

APPENDIX D – Agency Comments

APPENDIX E – OIG Contacts and Staff Acknowledgments

Appendix A

Acronyms

MTAS	Mainframe Time and Attendance System
OGC	Office of General Counsel
OIG	Office of the Inspector General
OPE	Office of Personnel
OPM	Office of Personnel Management
SSA	Social Security Administration
U.S.C.	United States Code

Appendix B

Additional Background

The Commissioner of Social Security delegated the approval of administrative leave to the Deputy Commissioner for Human Resources. Per the Social Security Administration's (SSA) Delegation of Authority manual, the Deputy Commissioner for Human Resources further delegated this authority to various levels of management within SSA. The SSA Personnel Policy Manual provides specific guidance to management on the approval of short periods of administrative leave for specific purposes (for example, blood donation or certain types of preventative health screening).

SSA generally requires that leave requests and approvals be documented on Form SSA-71, *Application for Leave*. In some instances (for example, office closures due to severe weather conditions or a building emergency), SSA management can issue an administrative order granting administrative leave to a group of employees in lieu of obtaining a Form SSA-71 for each employee impacted by the office closure.

SSA records administrative leave use in its Mainframe Time and Attendance System (MTAS). The timekeeper is responsible for inputting the time an employee worked and periods of absence in MTAS. Per SSA policy, the timekeeper should have a Form SSA-71 or an administrative order to support any type of leave recorded in MTAS for an employee. The certifier[1] is responsible for ensuring the timekeeper has the proper documentation for an employee's leave use. Ultimately, the timekeeper and the certifier are responsible for the accuracy of leave charged to an employee.[2] Time and attendance records upon which leave input data are based must be retained for 6 years or until a Government Accountability Office audit, whichever is sooner.[3]

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[1] The certifier is the individual who signs off on the entries made by the timekeeper in MTAS. The certifier is not always an employee's leave approving official.

[2] SSA Timekeeper Policy, Chapter 2, page 5.

[3] National Archives and Records Administration General Records Schedule, Transmittal No. 8, General Records Schedule 2, page 3.

Appendix C

Scope and Methodology

To accomplish our objectives, we reviewed administrative leave data retrieved from the Mainframe Time and Attendance System (MTAS) for all Social Security Administration (SSA) employees from October 2005 through January 2009. We did not analyze the system controls for inputting and maintaining administrative leave data. We performed the following analysis on the administrative leave data.

- Identified individuals who were granted relatively high amounts of administrative leave and reviewed all 17 instances where SSA granted an employee 1,000 or more hours of administrative leave.

- Identified those components who granted relatively high amounts of administrative leave hours to employees. We performed further analysis and identified the top four components with the highest amount of administrative leave. For each component, we identified the two highest years for which administrative leave was granted. Within each year, we selected the top five pay period days. We received documentation for these pay period days to support the administrative leave recorded in MTAS.

- Identified pay period days with a relatively high number of administrative leave records. Next, we identified the top five components that granted the highest administrative leave hours for each pay period day. Documentation was received from these components to support the administrative leave recorded in MTAS.

In addition to this data analysis, we performed the following steps.

- Reviewed current published SSA administrative leave policy and practices.

- Reviewed decisions and policy from the Comptroller General.

- Interviewed employees from the Office of the Deputy Commissioner for Human Resources to gain an understanding of how SSA grants, tracks, and monitors administrative leave and to clarify SSA policy and practices.

- Reviewed applicable Federal laws as well as Office of Personnel Management and Office of the General Counsel, U.S. Government Accountability Office, guidance.

- Received supporting documentation from timekeepers, certifiers, and other SSA personnel, as needed.

- Assessed the appropriateness of the administrative leave granted by comparing the source document explanations to SSA policy.

We tested the data obtained for our audit and determined them to be sufficiently reliable to meet our objectives. The entity reviewed was the Office of Personnel under the Office of the Deputy Commissioner for Human Resources, as well as selected employees' assigned timekeeper and certifier roles in various SSA components. We performed our review from September through December 2009 in Dallas, Texas. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix D

Agency Comments

SOCIAL SECURITY

MEMORANDUM

Date: July 16, 2010 Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: James A. Winn /s/
Executive Counselor to the Commissioner

Subject: Office of the Inspector General (OIG) Draft Report, "Administrative Leave Use" (A-06-09-29133)--INFORMATION

Thank you for the opportunity to review and comment on the draft report. We appreciate OIG's efforts in conducting this review. Attached is our response to the report findings and recommendations.

Please let me know if we can be of further assistance. Please direct staff inquiries to Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Attachment
SSA Response

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, "ADMINISTRATIVE LEAVE USE"(A-06-09-29133)

Thank you for the opportunity to review the draft report. Below are our responses to the recommendations.

Recommendation 1

Develop and implement policies governing authorization, review, and approval of extended periods of administrative leave.

Response

We agree. We will develop and implement specific policies governing the use of extended administrative leave.

Recommendation 2

Establish procedures to monitor extended administrative leave use.

Response

We agree. We will run reports to identify any employees granted 40 or more continuous hours of administrative leave. We will send the reports to the appropriate component for review and necessary action.

Appendix E

OIG Contacts and Staff Acknowledgments

OIG Contacts

Ron Gunia, Director, Dallas Audit Division

Jason Arrington, Audit Manager

Acknowledgments

In addition to those named above:

Chasity Crawley, Senior Auditor

For additional copies of this report, please visit our web site at www.ssa.gov/oig or contact the Office of the Inspector General's Public Affairs Staff Assistant at (410) 965-4518. Refer to Common Identification Number A-06-09-29133.

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Social Security Advisory Board

Overview of the Office of the Inspector General

The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

Office of Investigations

OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Office of the Counsel to the Inspector General

OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

Office of External Relations

OER manages OIG's external and public affairs programs, and serves as the principal advisor on news releases and in providing information to the various news reporting services. OER develops OIG's media and public information policies, directs OIG's external and public affairs programs, and serves as the primary contact for those seeking information about OIG. OER prepares OIG publications, speeches, and presentations to internal and external organizations, and responds to Congressional correspondence.

Office of Technology and Resource Management

OTRM supports OIG by providing information management and systems security. OTRM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, OTRM is the focal point for OIG's strategic planning function, and the development and monitoring of performance measures. In addition, OTRM receives and assigns for action allegations of criminal and administrative violations of Social Security laws, identifies fugitives receiving benefit payments from SSA, and provides technological assistance to investigations.

Congress of the United States

Washington, DC 20515

July 24, 2013

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, D.C. 20408

Dear Mr. Ferriero:

On September 14, 2012, you placed Paul Brachfeld, the Inspector General for the National Archives and Records Administration (NARA), on administrative leave after becoming "aware of two external inquiries into [his] conduct as NARA's IG."[1] Almost ten months later, Brachfeld remains on administrative leave, with no resolution in sight. The decision to pursue this course of action has left the Office of Inspector General in turmoil. More dangerous, however, is the fact that the decision to place Brachfeld on leave pending the resolution of these inquiries risks setting a precedent that could threaten the independence of federal inspectors general.

On the same day you sent your letter to the NARA IG notifying him that he had been placed on administrative leave, your staff informed Congress that you had "received several serious complaints from OIG employees about the conduct of the IG."[2] You referred these complaints to the Council of the Inspectors General for Integrity and Efficiency (CIGIE) for evaluation.[3] According to your staff, CIGIE opened an investigation into the allegations. In addition, you were "notified that the Office of Special Counsel (OSC) [was] conducting an inquiry."[4] Therefore, you advised, "[i]n order to ensure fair and orderly CIGIE and OSC reviews, and to maintain a functional Office of the Inspector General, the Archivist has placed the OIG on administrative leave until further notice."[5] Congressional staff later learned that you hired the law firm Baker Botts, at taxpayer expense, to advise you on how to proceed in this matter.

After receiving these complaints, CIGIE declined to open an investigation, citing the fact that OSC was conducting its own.[6] OSC recently concluded its investigation and

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[1] Letter from David S. Ferriero, Archivist, Nat'l Archives, to Paul Brachfeld, Inspector Gen., Nat'l Archives (Sept. 14, 2012).
[2] E-mail from Staff, Nat'l Archives, to Congressional Staff (Sept. 13, 2012, 5:29 PM).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Congressional staff meeting with CIGIE Integrity Committee.

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found Brachfeld did not engage in any prohibited personnel practices. OSC also informed NARA, however, that it had cause to believe that Brachfeld may have violated NARA standards of employee conduct.

Instead of reinstating Brachfeld, you resubmitted all the original allegations against him back to CIGIE. Most of these allegations involved alleged prohibited personnel practices, which OSC has already investigated and found to be without merit. As a result, CIGIE has reopened its inquiry. CIGIE's Integrity Committee only meets every three months, which means the evaluation of the allegations against Brachfeld will not be handled in an expedited manner. This arrangement drags out Brachfeld's already-excessive leave. By refusing to reinstate Brachfeld during the pendency of CIGIE's inquiry, you have placed both him and CIGIE in a difficult position.

NARA attempted to justify Brachfeld's continued administrative leave status by citing OSC's finding that he may have violated NARA standards of employee conduct. NARA staff told Congress:

> OSC concluded that "*based on this investigation, OSC has reasonable cause to believe that a violation of a law, rule, or regulation that falls outside of OSC's enforcement jurisdiction has occurred.*" OSC copied the Chair of the Integrity Committee of CIGIE on this finding and asked the Archivist to respond to OSC within 30 days 'with a description of what action has been taken or is to be taken and when the action will be completed.[7]

OSC is legally required to use the italicized language.[8] Providing this statement to congressional staff without additional context that the actual alleged violation is not a violation of law or regulation is highly misleading. It further gives the impression that the potential violation is more serious than a violation of employee policy.

Shortly after OSC cleared Brachfeld, NARA placed several more restrictions on his ability to contact OIG employees and obtain evidence for his defense. Specifically, you made the following changes to Brachfeld's long-standing administrative leave:[9]

1. Because Brachfeld informed NARA that he had retained a lawyer, he is no longer allowed to contact the NARA General Counsel regarding the CIGIE referral except through his attorney.

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[7] E-mail from Staff, Nat'l Archives, to Congressional Staff (June 7, 2013) (emphasis added).
[8] *See* 5 U.S.C. § 1214(e).
[9] Letter from Christopher M. Runkel, Senior Counsel, Nat'l Archives, to Paul Brachfeld, Inspector Gen., Nat'l Archives (June 19, 2013).

2. Any requests by Brachfeld for documents will be processed through the Freedom of Information Act and subject to the Privacy Act.

3. Brachfeld is "not to have contact with the staff of the Office of Inspector General."

We have several concerns with these new restrictions, which give the impression that they are motivated by a vindictive animus. First, Brachfeld has not retained counsel. Second, on September 14, 2012, you informed Brachfeld:

> Should you need to speak with a member of the OIG staff in connection with the CIGIE inquiry or any other review please contact Deputy Archivist Debra Wall. She will coordinate with James Springs [Acting IG] and they will assist you with information gathering in accordance with approved CIGIE policies and procedures.[10]

Aside from OSC's memo to you clearing Brachfeld of the charges against him, nothing has significantly changed since September 14, 2012. Further restricting Brachfeld's access to information that will aid his defense, at this point, seems extraordinary and ill-advised. Lastly, you cannot prevent NARA employees from associating with Brachfeld freely on their own time.

Brachfeld has been on administrative leave for almost ten months. Three government agencies have conducted multiple inquiries and investigations and NARA has retained a private law firm.

Inspectors General play a critical role in preventing waste, fraud, and abuse and also provide Congress with invaluable information. The actions taken and decisions made in this case—including placing an IG on administrative leave for over nine months, preventing his access to documents and information to defend himself, and forbidding him from contacting OIG staff—undercuts the independence of the OIG and raises serious questions about the motivations behind them.

To assist us in understanding your actions, please provide the following documents and information:

1. The contract between NARA and Baker Botts, with any modifications or changes made since its origination.

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[10] Letter from David Ferriero, Archivist, Nat'l Archives, to Paul Brachfeld, Inspector Gen., Nat'l Archives (September 14, 2012).

2. The total sum billed by Baker Botts, thus far.

3. Any contacts between NARA and any outside firm retained as a result of complaints against Brachfeld.

4. The total sum paid to these firms to date, as well as an estimate of future expenses incurred.

5. OSC's report to you regarding Brachfeld.

6. All submissions made by NARA to CIGIE regarding Brachfeld.

7. Any legal guidance that informed the position that a NARA employee on administrative leave must use the FOIA process to obtain documents in order to defend himself.

8. Any legal guidance that informed the position that the Archivist can prohibit a NARA employee on administrative leaving from having contact with NARA employees during non-working hours.

9. Any legal guidance that informed the position that the Archivist can place an IG on extended administrative leave.

10. All communications since January 1, 2012, between and among you, Debra Wall, Gary Stern, John Hamilton, Gregory Tremaglio, Rachel Neil, David Berry, Mitchell Yockelson and Thomas Bennett regarding Brachfeld, the allegations against Brachfeld, and the referral of those allegations to CIGIE.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. The Senate Committee on the Judiciary considers, among other things, matters relating to government information. An attachment to this letter provides additional information about responding to the Committees' request.

Please provide the documents and information requested as soon as possible, but by no later than noon on August 7, 2013. If you have any questions, please do not hesitate to contact Chris Lucas for the Committee on the Judiciary at (202) 224-5225, Jessica Donlon for the House Oversight and Government Reform Committee at (202) 225-5074 or Brian Downey for the Committee on Homeland Security and Governmental Affairs at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,

Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

Tom A. Coburn, Ranking Member
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

Enclosures

cc: The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
U.S. Senate

The Honorable Tom Carper, Chairman
Committee on Homeland Security and Governmental Affairs
U.S. Senate

The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Phyllis Fong, Chair
Council of the Inspectors General on Integrity & Efficiency

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

Congress of the United States

Washington, DC 20510

February 21, 2014

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, D.C. 20408

Dear Mr. Ferriero:

On September 14, 2012, you placed National Archives and Records Administration (NARA) Inspector General (IG) Paul Brachfeld on administrative leave, citing a series of accusations made against him, which you referred to the Council of Inspectors General on Integrity and Efficiency (CIGIE). IG Brachfeld has now been on administrative leave for over 17 months. We are concerned in general about the use of extended, paid administrative leave. It appears not only to waste taxpayer dollars, but also to harm the mission of the agency. Particularly when it is forced on a senior official with a unique statutory mission, such as an IG, it undermines the independence that Congress intended for that office. Moreover, it raises questions as to whether the Inspector General Reform Act adequately ensures that Congress receives formal notice and explanation when an agency takes action to prevent an IG from performing his duties.

At the time you placed IG Brachfeld on administrative leave, we raised concerns about the possible length of his leave and the harm it might cause to IG independence. You dismissed these concerns. When we wrote to you regarding these and other concerns, you responded, "Federal agencies have broad discretion in placing employees on administrative leave. . . ."[1] The precedents we have reviewed, however, do not indicate that agency discretion is as "broad" as you suggest. On the contrary, the relevant precedents show that agency discretion is limited to short periods of time. Now, six months since your August 21, 2013, letter, IG Brachfeld is *still* on involuntary paid administrative leave.

Regardless of whether you choose to allow the IG to return to work or decide to take an adverse personnel action against him, the time has come for you to resolve this situation. It is not fair to the taxpayers to continue paying the IG his full $186,000 salary while not permitting him to work and effectively leaving him in limbo. The failure to resolve this matter in a timely way threatens the independence of IGs and frankly raises questions about your leadership. Given the inordinate amount of time it has allegedly taken to investigate the allegations against Mr. Brachfeld, the net effect of your decision to place him on involuntary paid leave has been to decapitate the office that Congress established to be the taxpayers' watchdog of your agency.

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[1] Letter from David Ferriero, Archivist, Nat'l Archives to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Tom Coburn, Ranking Member, S. Comm. on Homeland Security & Gov't Affairs, and Charles Grassley, Ranking Member, S. Comm. on the Judiciary (Aug. 21, 2013).

Seven months ago the Office of Special Counsel found that the Inspector General committed no prohibited personnel practices. Yet, you continue to prevent him from working.

Federal law does not explicitly authorize paid administrative leave.[2] Rather, agencies have the discretion to grant such leave. According to the precedents of the Comptroller General, the Office of Personnel Management, and the Merit Systems Protection Board, however, that discretion only applies to short periods of time.[3] More lengthy absences would only be appropriate in the unusual event that an absence "is in connection with furthering a function of the agency."[4] It is unclear what NARA function it serves to force IG Brachfeld to remain idle for 17 months. In fact, this decision has done severe harm to the NARA IG's mission to help the agency combat waste, fraud, and abuse. In reading IG Brachfeld's reports prior to his leave of absence, it appears that waste, fraud, and abuse presented a serious problem for NARA.

Moreover, the agency's seemingly unlawful imposition of extended administrative leave could itself constitute a prohibited personnel practice. Prohibited practices include any personnel

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[2] 45 M.S.P.R. 263, 266 (1990) ("There is no general statutory provision authorizing such excused absences...").

[3] To the Chairman, U.S. Civil Service Commission, 38 Comp. Gen. 203 (1958) (where removal of an employee is necessitated by safety concerns, only 24 hours administrative leave is appropriately authorized, and extensive paid leave pending an investigation does not qualify as a proper use of "administrative leave," but rather "immediate" steps should be taken to reduce time during which an employee is on paid leave); Navy Department-Reduction In Force-Administrative Leave During 30-Day Notice Period, 66 Comp. Gen. 639, 640 (1987) (holding that decisions of the Comptroller General and the guidelines of the Office of Personnel Management limit an agency's discretion to grant administrative leave to situations involving brief absences); Ricardo S. Morado – Excused Absence, 1980 WL 17293, 1 (1980) (when it became clear that an employee would not be returning to work, an agency was not authorized to grant administrative leave pending the separation); Miller v. Department of Defense, 45 M.S.P.R. 263, 266 (MSPB, 1990) (a settlement agreement was declared invalid as the Merit Systems Protection Board determined that the Department of Defense did not have the authority to grant an employee nine months of paid administrative leave, where said employee was to be removed at the end of the period of administrative leave, because there was no statutory provision that authorized the agency to grant paid administrative leave for such an "extended period of time"); *pet. for rehearing denied by* Miller v. Dep't of Defense, 1992 U.S. App. LEXIS 2457 (Fed. Cir. Feb. 18, 1992); In the Matter of the Grant of Administrative Leave Under Arbitration Leave, 53 Comp. Gen. 1054, 1056-57 (the Comptroller General refused to grant an employee thirty days of administrative leave, where that employee was injured on the job and unable to work in his full capacity, as the grant of administrative leave constituted an "extended period of excused absence" that was not permitted under any statute); Nina R. Mathews-Age Discrimination/Title VII Resolution Agreement-Compensatory Damages, 1990 WL 278216, 1-2 (where an employee was granted twenty-two weeks of administrative leave pay in settlement of a personnel claim, the agreement was deemed invalid by the GAO, as the Comptroller determined that there was no relevant legal basis by which the employee could be placed on extended administrative leave with pay); Excused Absence for Bar Examination Preparation, 1975 WL 8763, 1 (1975) (periods of 14, 28 and 31 days did not constitute "periods of brief duration" under which an agency had authority to grant administrative leave for employees to take their Bar examinations); Department of Housing and Urban Development Employee-Administrative Leave, 67 Comp. Gen. 126, 128 (1987) (The Comptroller General held that the agency's "decision to allow the employee to participate in a NIH therapeutic trial for 3 days a month in a cancer research effort being run by the National Cancer Institute is consistent with the broad framework of decisions of this Office and the FPM Supplement addressing the discretionary agency review of administrative leave requests"); Frederick W. Merkle, Jr. – Administrative Leave, 1980 WL 14633, 1 (1980) (an eight-week period could not constitute administrative leave for an employee awaiting a decision on his eligibility for early retirement, as it constituted an "extended period of time"); Gladys W. Sutton-Administrative Leave in Lieu of Leave Without Pay, 1983 WL 27142, 1 (a five-week period constituted an "extended period" where administrative leave could not be properly granted by an agency so that an employee could preserve her eligibility for a discontinued service retirement program).

[4] 67 Comp. Gen. 126, 127 (1987); 45 M.S.P.R. 263 (1990).

action that "violates any law, rule, or regulation implementing, or directly concerning certain merit system principles."[5] One such merit principle mandates that "[t]he Federal work force should be used efficiently and effectively."[6] Forcing IG Brachfeld to take extended paid administrative leave, which appears to be beyond the discretion of the agency to grant, is not an efficient use of the federal work force.

In addition, by refusing to place any limit on IG Brachfeld's paid administrative leave or otherwise resolve this matter, NARA has wasted the $248,000 of IG Brachfeld's salary over the past 17 months. NARA has also spent or obligated $128,860 on outside counsel to represent itself in the dispute, even though it has not technically even taken an adverse personnel action against him. Paid leave is not considered an adverse personnel action.[7] Thus, these circumstances prevent the IG from doing his job while denying him due process to challenge the decision. Each day the matter remains unresolved costs the taxpayers more money. Including the agency's legal bills, the taxpayer support for the repeated requests for investigations of IG Brachfeld is at least $376,860. This $376,860 does not include the salaries of investigators at either the Office of Special Counsel or the Inspector General's office conducting an inquiry on behalf of the CIGIE.

We also note that after IG Brachfeld was placed on administrative leave, the lead complainant against him also filed a grievance against the Acting Inspector General with the MSPB. We have been told that despite this pending claim, you have not placed the Acting Inspector General on administrative leave as you did IG Brachfeld.

In an effort to examine administrative leave more broadly, we have requested that the Government Accountability Office (GAO) conduct a detailed analysis of administrative leave across the federal government. GAO is currently conducting this study. We are also considering potential legislation regarding an agency's authority to place an IG on indefinite leave unilaterally, without formal notice and explanation to Congress, and the timeliness of the process for investigating and resolving allegations against IGs.

To better understand the basis for NARA's claim that it has the authority to place the Inspector General on paid administrative leave for over 17 months, please answer the following questions:

1. Do you believe that 17 months is an unusual and extended period of administrative leave? Why or why not?

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[5] 5 U.S.C.A. § 2302(b)(12).

[6] 5 U.S.C.A. § 2301(b)(5).

[7] A suspension with pay and full benefits pending a timely investigation into suspected wrongdoing is not an adverse employment action." White v. Burlington N. & Santa Fe Ry. Co., 364 F.3d 789, 803 (6th Cir.2004) (emphasis in original) (citing Jackson v. City of Columbus, 194 F.3d 737, 744, 752 (6th Cir.1999), abrogated on other grounds by Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002)); *see also* Breaux v. City of Garland, 205 F.3d 150, 158 (5th Cir.2000) (holding that a police officer suffered no adverse employment action where he was temporarily placed on paid administrative leave during an internal investigation).

2. Were you generally aware of the precedents cited above before you placed Mr. Brachfeld on administrative leave? If so, did you take any steps to limit the leave to a lawfully authorized period? If not, why not?

3. Following frequent questions from various Congressional offices regarding the length of IG Brachfeld's administrative leave, did you take any steps to determine whether it was lawful for you to place IG Brachfeld on extended administrative leave? If so, what steps did you take and what was the basis for your conclusion that extended paid leave was lawful?

4. Do you still believe your actions in keeping IG Brachfeld on administrative leave for 17 months are justified, particularly after the Office of Special Counsel cleared IG Brachfeld of engaging in any prohibited personnel practices? If so, why?

5. Do you believe your actions in keeping IG Brachfeld on administrative leave for 17 months is an efficient use of the federal workforce? If so, why?

6. What alternatives to extended paid leave did you consider, if any, to address the concerns that caused you to initiate the leave in the first place? If none, why?

7. Did you consider sending Congress a written notice of removal pursuant to Section 3 of the Inspector General Reform Act of 2008? Did any NARA personnel or outside counsel for NARA prepare a draft notice to Congress? If so, please provide a copy of the draft notice.

8. Please explain why you believe this forced extended leave does not constitute a constructive removal of the IG for the purposes of that statute.

9. Have you or any of your staff mentioned IG Brachfeld's retirement eligibility status to him during his paid leave? If so, please describe the communications in detail.

10. Have you or any of your staff suggested that IG Brachfeld retire? If so, please describe the communications in detail?

11. Is it your intent to use this period of forced extended leave to persuade IG Brachfeld to retire?

12. Is it your intent to keep IG Brachfeld on paid leave indefinitely? If not, when do you intend to either allow him to return to work or take action to suspend or remove him?

Please provide the documents and information requested as soon as possible, but by no later than noon on March 7, 2014. If you have any questions, please do not hesitate to contact Chris Lucas for the Senate Committee on the Judiciary at (202) 224-5225, Jessica Donlon for the House Oversight and Government Reform Committee at (202) 225-5074, or Brian Downey for the Committee on Homeland Security and Government Affairs at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,

Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

Tom A. Coburn, Ranking Member
Committee on Homeland Security and Governmental Affairs
U.S. Senate

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

The Honorable Tom Carper, Chairman
U.S. Senate, Committee on Homeland Security and Government Affairs

The Honorable Phyllis Fong, Chair
Council of the Inspectors General on Integrity & Efficiency

Congress of the United States
Washington, DC 20510

April 23, 2013

VIA ELECTRONIC TRANSMISSION

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro:

Despite a lack of clear statutory or regulatory authority, the federal government frequently places employees suspected of misconduct on what is designated as "paid administrative leave." The Merit Systems Protection Board (MSPB) has cited Comptroller General decisions and Office of Personnel Management guidelines that "limit an agency's discretion to grant administrative leave *to brief absences*."[1] "[W]here an absence is for a lengthy period of time," MSPB has stated, "extended absence is not appropriate 'unless the absence is in connection with furthering a function of the agency.'"[2] However, in practice, such terms have been protracted. This pay status for federal civil servants pending lengthy internal inquiries could represent a significant amount of lost value to taxpayers who pay the salaries of federal workers who are not working. Per federal regulation, an employee who has been recommended for removal or suspension is normally entitled to remain in his or her position for a notice period before adverse action may be taken.[3]

Notably, however, a "rare circumstances" exception does exist whereby if an employee whose presence is determined by the agency to possibly (i) pose a potential

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[1] Merle v. Dep't of Defense, 45 *Decisions of the United States Merit Systems Protection Board* (M.S.P.B.) 263, 267 (1990) (citing 67 *Comp. Gen.* 126, 127 (1987)) (emphasis added).
[2] *Id.*
[3] *See* 5 C.F.R. § 752.404(b)(3) (2013).

threat to the employee or others, (ii) result in loss of or damage to government property, or (iii) "otherwise jeopardize legitimate Government interests," then that employee may be placed on "*paid, nonduty status for such time as is necessary to effect the action.*"[4] Therefore, such designated employees may continue to receive pay to *not work* and remain in this ambiguous state for months or even years before their respective employers make a final determination—all at the expense of the American taxpayer.

Therefore, we request that you examine the following issues:

1) Which agencies track paid administrative leave?

2) How is paid administrative leave usually tracked and recorded?

3) Among the agencies that track paid administrative leave, please provide the total amount of paid administrative leave each agency has granted over the past five (5) years. If possible, calculate the costs each agency has incurred through paid administrative leave.

4) Among the agencies that track paid administrative leave, please provide summaries of the top five (5) federal agencies with the most frequent use of paid administrative leave. For those five agencies, please indicate the total number of individuals placed on paid administrative leave each year from 2007 to 2012.

5) Among the agencies that track paid administrative leave, please provide summaries of the top five (5) federal agencies that had the longest durations of paid administrative leave for individual employees. For those five agencies, please indicate the details of each individual case from 2007 to 2012 when an individual was placed on longer than 5 days' paid administrative leave.

6) What has been the cumulative cost to American taxpayers for employees placed on paid administrative leave for the past five (5) years?

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[4] *Id.* (emphasis added); *see also* 5 C.F.R. § 752.604(2) (2013) (regulatory procedures for taking adverse action against individuals in the Senior Executive Service).

If you have any questions about this request, please contact Tristan Leavitt with Ranking Member Grassley's staff at (202) 224-5225, James Gelfand with Ranking Member Coburn's staff at (202) 224-4751, or Jennifer Hemingway with Chairman Issa's staff at (202) 225-5074. We look forward to your response.

Sincerely,

Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

Tom A. Coburn, M.D., Ranking Member
Committee on Homeland Security and
Governmental Affairs
U.S. Senate