Congress of the United States
Washington, DC 20510

October 21, 2014

VIA ELECTRONIC TRANSMISSION

Sylvia Mathews Burwell
Secretary
U.S Department of Health and Human Services
Hubert Humphrey Building, Room 416 G
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Mathews Burwell:

A recent Government Accountability Office (GAO) report raises serious concerns about the use of paid administrative leave among 24 federal agencies from fiscal years 2011 to 2013.[21] The report reveals that during this period, agencies spent $31 million on salaries of employees who were placed on administrative leave for more than one year and more than $700 million on employees on leave for a month or more.[22]

Although administrative leave is not authorized by statute, precedent allows it as an exercise of agency discretion, but only for occasional, short periods of time and only when it is in the best interests of the taxpayer.[23] Placing employees on administrative

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[21] GAO, *Use of Paid Administrative Leave*, GAO-15-79 (Washington, D.C : October 2014).
[22] *Id.*
[23] 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

leave for extended periods of time raises questions about the potential abuse of administrative leave for time periods and purposes not authorized by law.

GAO has reported that the Department of Health and Human Services placed 4 employees on paid administrative leave for one year or more.[24] Given the significant costs to the taxpayer for salaries and benefits paid to these federal workers for not working, it is critical for Congress to understand why each of these employees was on paid leave for such a long time.

Thus, please respond to the following questions:

1. Please provide agency policy on paid administrative leave. If no policy exists, please explain how the agency grants administrative leave, and what controls, if any, are in place to prevent it from being used for extended periods of time. If there are no such safeguards, please explain why not.

2. How many employees were on paid administrative leave for more than one month in Fiscal Year (FY) 2014? What was the total cost to the agency in FY 2014 in salaries and benefits for those employees' paid administrative leave?

3. How many employees are currently on paid administrative leave that have been on such leave for:
   a. 1-3 months;
   b. 3-6 months;
   c. 6-9 months; and

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).

[24] GAO, *Use of Paid Administrative Leave,* GAO-15-79 (Washington, D.C : October 2014).

d. 9-12 months.

Do not include an employee in more than one category. For each category, what is the total cost to the agency in salaries and benefits for those employees' paid administrative leave?

4. Excluding those referenced above, how many employees currently on paid administrative leave have been on such leave for more than a year? What is the total cost to the agency in salaries and benefits for those employees' paid administrative leave?

5. For the employees described in the GAO report as being on paid administrative leave for one year or more, as well as for the employees described above as being currently on administrative leave for more than a year, please provide for each employee a detailed narrative of the circumstances surrounding the extended paid leave, including:
   a. Position title and GS level.
   b. Employee division/office/component.
   c. Total compensation received while on administrative leave.
   d. Reason for being placed on administrative leave.
   e. Exact length of time on administrative leave.
   f. Current status of the employee (i.e. reassigned, demoted, terminated, still on administrative leave, etc.)
   g. A full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave.
   h. A full explanation of why the employee was not placed on some form of unpaid leave.

Thank you in advance for your prompt attention to this matter. Should you have any questions regarding this matter, please contact Chris Lucas or Tristan Leavitt for Ranking Member Grassley at (202) 224-5225 and Jennifer Hemingway for Chairman Issa at (202)225-5074.

Sincerely,

Charles E. Grassley
Ranking Member
Judiciary Committee
U.S. Senate

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