



Homeland
Security

FEB 22 2016

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Chairman Grassley:

Thank you for your October 19, 2015 letter. The Secretary asked me to respond on his behalf.

This response follows our interim reply of November 2, 2015, in which we provided a copy of the Department of Homeland Security (DHS) Interim Policy 112-10, Proper Use of Administrative Leave. Since our October 19 response, we have done the following:

1. Implemented the Interim Policy by requiring Component Head (or designee) approval for any administrative leave usage in excess of 30 calendar days. Based on preliminary discussions with Components, we know that as a result of the new policy, Component leaders are closely monitoring the use of administrative leave and instituting internal controls to more aggressively manage its use.
2. Required Components to submit quarterly reports of cases that have reached or exceeded 320 hours on administrative leave to the Component Head, and of cases that have reached or exceeded 960 hours to the DHS Chief Human Capital Officer (CHCO). This provides an increased level of oversight for both the Components and DHS Headquarters. Then CHCO will meet with human capital leaders in the Components to identify concrete steps Components will take to further reduce the use of extended administrative leave, including sharing best practices. The initial focus will be on those matters that are within the control of the Department, with a subsequent focus on matters involving an outside agency or party.
3. Engaged the Human Capital Leadership Council in an ongoing discussion and plans regarding the proper use of administrative leave, resulting in a renewed

focus on educating supervisors. We will provide training this fiscal year to all supervisors through both new and ongoing supervisor training.

Over the past several months, we have also engaged with the Government Accountability Office (GAO), which has been reviewing the use of administrative leave within the Department. In the recent exit conference, GAO acknowledged the Department's Interim Policy and as a preliminary recommendation, suggested greater internal controls. We are already considering such additional measures as we look forward to receiving their formal recommendations on how to improve the use and oversight of administrative leave.

Your October 19, letter requested a significant amount of data over a five year period, and it has taken considerable effort to collect this information, particularly for older cases. We have endeavored to get you this information as promptly as possible. As a result, there may be inconsistencies in the manner in which the information is presented, and for older cases, we have done our best to reconstruct discretionary decisions that may not have been formally documented. Per your request, I am enclosing four reports concerning those individuals on administrative leave for more than one year. Although some of the information included may implicate the Department's confidentiality interests, we are providing this information to you without forgoing those interests now or in the future. Further, we are providing this information to you with the understanding that the Department intends that this information remain confidential.

The first report provides updates regarding the 88 employees, with the exception of cases involving Office of Inspector General (OIG) employees,¹ whom the Department previously reported as being on administrative leave for more than one year during Fiscal Years 2011-2014. Eighty-five of the 88 employees are no longer on administrative leave. The second report provides a list of employees who crossed the one-year administrative leave threshold in Fiscal Year 2015 and whose cases remain open. The third report is of employees who moved into the one-year or more administrative leave category in Fiscal Year 2015, but had their cases closed. The fourth report provides a list of OIG employees who were on administrative leave for more than one year during Fiscal Years 2011-2015.

Many of the cases in the enclosed reports involve situations in which it was determined based on initial allegations or concerns that it was in the best interests of the government for the employee, often a law enforcement officer, to discontinue coming to work until more information was available. Although agencies may place employees on indefinite suspension in some of these situations, doing so is not always possible or may take time. Indefinite suspensions must comply with 5 U.S.C. Chapter 75, Office of

¹ All OIG cases are in a separate report because oversight of OIG employees and their use of administrative leave is outside the purview of my office.

The Honorable Charles Grassley

Page 3

Personnel Management regulations governing adverse actions, and applicable case law governing indefinite suspensions. Before an agency may indefinitely suspend an employee it must provide due process, including advanced notice and an opportunity to respond. Employees indefinitely suspended for more than fourteen days may appeal the suspensions to the Merit Systems Protection Board or seek review through negotiated grievance procedures.

Overall, we must make each decision to place an employee on administrative leave on a case-by-case basis. We must carefully balance the employee's rights with the Department's concern over preventing any possible harm that could come to members of the public or other employees, property, or the mission of the Department. I am confident that the measures that we are taking throughout the Department will ensure that we more effectively manage administrative leave. If you have additional questions, please do not hesitate to contact me.

Sincerely,



Russell C. Deyo

Enclosures

cc: The Honorable Patrick Leahy