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February 9, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Lynch:

As you may know, in November 2014, I sent an inquiry to the Department of Justice regarding its use of paid administrative leave.¹ The information received in response to that request, along with information obtained from 18 agencies, formed the basis of a report issued by Judiciary Committee investigative staff on agency use of administrative leave.² This staff report confirmed the finding of an earlier report issued by the Government Accountability Office (GAO) that agencies are placing employees on extended periods of administrative leave for personnel-related matters, such as a pending disciplinary action or investigation into alleged misconduct.³

In order to address issues raised by the use and abuse of paid administrative leave, I, along with Senators Tester, Johnson, and Carper, have introduced

¹ Letter from Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Eric H. Holder, Jr., Attorney General, Department of Justice (November 20, 2014).

² *Agency Use of Administrative Leave*, Memorandum from Senate Judiciary Committee, Oversight and Investigations Staff for Senator Charles E. Grassley, to Senate Committee on the Judiciary, et al. (Nov. 30, 2015), available at <http://www.grassley.senate.gov/news/news-releases/grassley-releases-investigative-report-agencies%E2%80%99-use-paid-administrative-leave> [hereinafter Administrative Leave Report].

³ U.S. Gov't Accountability Office, GAO-15-79, *Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data* (2014) [hereinafter GAO Report].

comprehensive, bipartisan legislation that will ensure both fairness to employees and to the taxpayers when it comes to administrative leave.⁴ This commonsense legislation eliminates extended administrative leave and establishes meaningful, escalating controls on the use of new categories of leave for employees under investigation or in a notice period. These controls will ensure high-level oversight of extended paid leave practices and help curb abuse.

Of the 19 agencies that were surveyed for the Judiciary staff report on administrative leave, the Justice Department had the most robust controls over the use of administrative leave. In particular, since 2002, the Justice Department has had guidance in place that allowed managers to place employees on administrative leave pending disciplinary action for not more than ten work days.⁵ Extensions beyond these ten days may be granted by the Department's Deputy Assistant Attorney General for Human Resources and Administration pursuant to guidance issued to components requiring them to explain the basis for placing the employee on administrative leave and provide a compelling reason for requesting an extension, among other things.⁶

While the Justice Department has had a large number of employees with higher-than-average total administrative leave,⁷ including instances that seem to be longer than warranted,⁸ the controls in place appear to have reduced the frequency of extended periods of administrative leave—i.e., more than one year—as compared with other CFO Act agencies.⁹ This is particularly noteworthy as the Justice Department employed about thirty-three percent of all full-time federal law enforcement officers—second only

⁴ S. 2450, 114th Cong. (2016).

⁵ Administrative Leave Report, at 7 (citing Memorandum from Robert F. Diegelman, Acting Assistant Att'y Gen. for Admin., Dep't of Justice (DOJ), on Proper Use of Administrative Leave (Sept. 27, 2002) (Appendix II)).

⁶ Administrative Leave Report, at 7 (citing Memorandum from Joanne W. Simms, Deputy Assistant Att'y Gen. for Human Res. & Admin., DOJ, to DOJ Bureau Pers. Officers (Nov. 26, 2002) (Appendix II); Memorandum from Mari Barr Santangelo, Deputy Assistant Att'y Gen. for Human Res. & Admin., DOJ, to DOJ Exec. Officers (Jan. 7, 2010) (Appendix II)).

⁷ From fiscal years 2011-2013, DOJ placed a total of 1,690 employees on administrative leave for 1-3 months, 136 for 3-6 months, 22 for 6-9 months, and 1 from 9-12 months. GAO Report, at 46.

⁸ As noted in the staff report on administrative leave, DOJ did not explain why, for example, the U.S. Marshals Service required almost half a year of administrative leave to remove a Deputy U.S. Marshal accused of, on three separate occasions, unholstering his weapon and threatening to open fire on another deputy marshal. Administrative Leave Report, at 17.

⁹ From fiscal years 2011-2013, DOJ did not have any employee on administrative leave for over one year for that time period. GAO Report, at 46. As of March 25, 2015, DOJ had zero employees on administrative leave for more than six months. Letter from Peter J. Kadzick, Assistant Att'y Gen., DOJ, to Charles E. Grassley, Chairman, U.S. Senate Comm. on the Judiciary, and Patrick J. Leahy, Ranking Member, U.S. Senate Comm. on the Judiciary (Apr. 15, 2015).

among federal agencies to the Department of Homeland Security.¹⁰ As such, controls similar to those at the Justice Department have been proposed as part of the Administrative Leave Act of 2016. In particular, the legislation would require the approval of the Chief Human Capital Officer of an agency, or designee, to extend investigative leave beyond ten days—investigative leave being a paid leave status in which an employee who is the subject of an investigation is placed. Subsequent extensions of such leave are available in 30-day increments, for a total of 120 days. After that time, additional controls would take effect.

Given that the Justice Department has been operating under a similar framework of control since 2002, the department is positioned to shed light on best practices and lessons learned from this process. These insights will be valuable to agencies as they seek to restrain the use of administrative leave generally and in eventually implementing the proposed legislation. In addition, it will help inform the Office of Personnel Management, which has the duty to oversee and regulate the use of administrative leave under the bill. As such, please provide responses to the following questions:

1. How have the Justice Department's controls over the use of administrative leave contributed to the reduction in its use?
2. What best practices has the department developed with respect to the implementation of its policies on administrative leave?
3. What challenges has the department encountered with respect to the use of administrative leave and what have been the lessons learned in addressing these challenges?
4. What challenges with respect to the use of administrative leave has the department encountered in addressing misconduct, discipline, and other personnel issues involving law enforcement officers? How has the Justice Department successfully addressed these challenges? How has the Justice Department managed the use of extended administrative leave with respect to law enforcement officers?

Please provide your responses to these questions no later than February 24, 2016. In addition, I request that you make knowledgeable officials available to brief my staff as on these issues as soon as possible. Please contact DeLisa Lay of my Committee staff at

¹⁰ This is based on the most recent year of data available from the Bureau of Justice Statistics. DOJ, Office of Justice Programs, Bureau of Justice Statistics, NCJ 238250, *Federal Law Enforcement Officers, 2008* (2012), available at <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=250>.

(202) 224-5225 should you have any questions and to schedule a briefing. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary

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