

# Calendar No. 545

114TH CONGRESS  
2D SESSION

# S. 2450

[Report No. 114-292]

To amend title 5, United States Code, to address administrative leave for Federal employees, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2016

Mr. TESTER (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. CARPER, Mr. LANKFORD, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JULY 6, 2016

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To amend title 5, United States Code, to address administrative leave for Federal employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Administrative Leave  
5 Act of 2016”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

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

7 (A) in contravention of—

8 (i) established precedent of the Comp-  
9 troller General of the United States; and

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

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

14 (2) administrative leave should be used spar-  
15 ingly;

16 (3) prior to the use of administrative leave, an  
17 agency should consider other actions, including—

18 (A) temporary reassignment;

19 (B) transfer; and

20 (C) telework;

21 (4) an agency should prioritize and expedi-  
22 tiously conclude an investigation in which an em-  
23 ployee is placed in administrative leave so that, not  
24 later than the conclusion of the leave period—

25 (A) the employee is returned to duty sta-  
26 tus; or

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

3           (5) data show that there are too many examples  
4           of employees placed in administrative leave for 6  
5           months or longer, leaving the employees without any  
6           available recourse to—

7           (A) return to duty status; or

8           (B) challenge the decision of the agency;

9           (6) an agency should ensure accurate and con-  
10          sistent recording of the use of administrative leave  
11          so that administrative leave can be managed and  
12          overseen effectively; and

13          (7) other forms of excused absence authorized  
14          by law should be recorded separately from adminis-  
15          trative leave, as defined by this Act.

16 **SEC. 3. ADMINISTRATIVE LEAVE.**

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

20 **“§ 6329. Administrative leave**

21          “(a) DEFINITIONS.—In this section—

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

24                          “(A) without loss of or reduction in—

25                                  “(i) pay;

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

3                   “(iii) credit for time or service; and

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

6                   “(2) the term ‘agency’—

7                   “(A) means an Executive agency (as de-  
8                   fined in section 105 of this title); and

9                   “(B) does not include the Government Ac-  
10                  countability Office; and

11                  “(3) the term ‘employee’ means an employee of  
12                  an agency.

13                  “(b) ADMINISTRATIVE LEAVE.—

14                  “(1) IN GENERAL.—An agency may not place  
15                  an employee in administrative leave for a period of  
16                  more than 5 consecutive days.

17                  “(2) RULE OF CONSTRUCTION.—Nothing in  
18                  paragraph (1) shall be construed to limit the use of  
19                  leave that was specifically authorized under law on  
20                  the day before the date of enactment of this section.

21                  “(3) RECORDS.—An agency shall record admin-  
22                  istrative leave separately from leave authorized  
23                  under any other provision of law.

24                  “(c) REGULATIONS.—

1           “(1) OPM REGULATIONS.—Not later than 1  
2 year after the date of enactment of this section, the  
3 Director of the Office of Personnel Management  
4 shall—

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

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

9                           “(i) acceptable agency uses of admin-  
10 istrative leave; and

11                           “(ii) the proper recording of—

12                                   “(I) administrative leave; and

13                                   “(II) other leave authorized by  
14 law.

15           “(2) AGENCY ACTION.—Not later than 1 year  
16 after the date on which the Director of the Office of  
17 Personnel Management prescribes regulations under  
18 paragraph (1), each agency shall revise and imple-  
19 ment the internal policies of the agency to meet the  
20 requirements of this section.”.

21           “(b) OPM STUDY.—Not later than 120 days after the  
22 date of enactment of this Act, the Director of the Office  
23 of Personnel Management, in consultation with Federal  
24 agencies, groups representing Federal employees, and  
25 other relevant stakeholders, shall submit to the Committee

1 on Homeland Security and Governmental Affairs of the  
 2 Senate and the Committee on Oversight and Government  
 3 Reform of the House of Representatives a report identi-  
 4 fying agency practices, before the date of enactment of  
 5 this Act, of placing an employee in administrative leave  
 6 for more than 5 consecutive days when the placement was  
 7 not specifically authorized by law.

8 (e) TECHNICAL AND CONFORMING AMENDMENT.—  
 9 The table of sections for subchapter II of chapter 63 of  
 10 title 5, United States Code, is amended by inserting after  
 11 the item relating to section 6328 the following:

“6329. Administrative leave.”.

12 **SEC. 4. INVESTIGATIVE LEAVE AND NOTICE LEAVE.**

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

16 **“§ 6330. Investigative leave and notice leave**

17 “(a) DEFINITIONS.—In this section—

18 “(1) the term ‘agency’—

19 “(A) means an Executive agency (as de-  
 20 fined in section 105 of this title);

21 “(B) does not include the Government Ac-  
 22 countability Office; and

23 “(C) for the purposes of notice leave,  
 24 means the employing agency of an employee  
 25 covered under chapter 75;

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

3           “(A) the Chief Human Capital Officer of  
4 an agency designated or appointed under sec-  
5 tion 1401; or

6           “(B) the equivalent;

7           “(3) the term ‘committees of jurisdiction’, with  
8 respect to an agency, means each committee in the  
9 Senate and House of Representatives with jurisdic-  
10 tion over the agency;

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

13           “(5) the term ‘employee’—

14           “(A) means an employee of an agency; and

15           “(B) does not include the Inspector Gen-  
16 eral of an agency;

17           “(6) the term ‘investigative leave’ means  
18 leave—

19           “(A) without loss of or reduction in—

20           “(i) pay;

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

23           “(iii) credit for time or service;

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

1           “(C) in which an employee who is the sub-  
2           ject of an investigation is placed;

3           ~~“(7) the term ‘notice leave’ means leave—~~

4           ~~“(A) without loss of or reduction in—~~

5           ~~“(i) pay;~~

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

8           ~~“(iii) credit for time or service;~~

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

11          ~~“(C) in which an employee who is in a no-~~  
12          ~~tice period is placed; and~~

13          ~~“(8) the term ‘notice period’ means a period be-~~  
14          ~~ginning on the date on which an employee is pro-~~  
15          ~~vided notice required under law of a proposed ad-~~  
16          ~~verse action against the employee and ending on the~~  
17          ~~date on which an agency may take the adverse ac-~~  
18          ~~tion.~~

19          ~~“(b) LEAVE FOR EMPLOYEES UNDER INVESTIGA-~~  
20          ~~TION OR IN A NOTICE PERIOD.—~~

21          ~~“(1) AUTHORITY.—An agency may, in accord-~~  
22          ~~ance with paragraph (2), place an employee in—~~

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



1           ~~“(B) notice leave if the employee is in a~~  
 2           ~~notice period; or~~

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

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

10                   ~~“(ii) the agency determines that the~~  
 11                   ~~employee continues to meet 1 or more of~~  
 12                   ~~the criteria described in subsection (e)(1).~~

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

16                   ~~“(A) made a determination with respect to~~  
 17                   ~~the employee under subsection (e)(1);~~

18                   ~~“(B) considered the available options for~~  
 19                   ~~the employee under subsection (e)(2); and~~

20                   ~~“(C) determined that none of the available~~  
 21                   ~~options under subsection (e)(2) is appropriate.~~

22           ~~“(e) EMPLOYEES UNDER INVESTIGATION OR IN A~~  
 23           ~~NOTICE PERIOD.—~~

24                   ~~“(1) DETERMINATIONS.—An agency may not~~  
 25           ~~place an employee in investigative leave or notice~~

1 leave under subsection (b) unless the continued pres-  
 2 ence of the employee in the workplace during an in-  
 3 vestigation of the employee or while the employee is  
 4 in a notice period, if applicable, may—

5 “(A) pose a threat to the employee or oth-  
 6 ers;

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

9 “(C) result in loss of or damage to Govern-  
 10 ment property; or

11 “(D) otherwise jeopardize legitimate Gov-  
 12 ernment interests.

13 “(2) AVAILABLE OPTIONS FOR EMPLOYEES  
 14 UNDER INVESTIGATION OR IN A NOTICE PERIOD.—

15 After making a determination under paragraph (1)  
 16 with respect to an employee, and before placing an  
 17 employee in investigative leave or notice leave under  
 18 subsection (b), an agency shall consider taking 1 or  
 19 more of the following actions:

20 “(A) Assigning the employee to duties in  
 21 which the employee is no longer a threat to—

22 “(i) safety;

23 “(ii) the mission of the agency;

24 “(iii) Government property; or

1           ~~“(iv) evidence relevant to an investiga-~~  
2           ~~tion.~~

3           ~~“(B) Allowing the employee to take leave~~  
4           ~~for which the employee is eligible.~~

5           ~~“(C) Requiring the employee to telework~~  
6           ~~under section 6502(e).~~

7           ~~“(D) If the employee has become absent~~  
8           ~~without requesting leave, carrying the employee~~  
9           ~~in absence without leave status.~~

10          ~~“(E) For an employee subject to a notice~~  
11          ~~period, curtailing the notice period if there is~~  
12          ~~reasonable cause to believe the employee has~~  
13          ~~committed a crime for which a sentence of im-~~  
14          ~~prisonment may be imposed.~~

15          ~~“(3) DURATION OF LEAVE.—~~

16          ~~“(A) INVESTIGATIVE LEAVE.—Subject to~~  
17          ~~extensions of a period of investigative leave for~~  
18          ~~which an employee may be eligible under sub-~~  
19          ~~sections (d) and (e), the initial placement of an~~  
20          ~~employee in investigative leave shall be for a pe-~~  
21          ~~riod not longer than 10 days.~~

22          ~~“(B) NOTICE LEAVE.—Placement of an~~  
23          ~~employee in notice leave shall be for a period~~  
24          ~~not longer than the duration of the notice pe-~~  
25          ~~riod.~~

1           “(4) EXPLANATION OF LEAVE.—

2           “(A) IN GENERAL.—If an agency places an  
3           employee in leave under subsection (b), the  
4           agency shall provide the employee a written ex-  
5           planation of the leave placement and the rea-  
6           sons for the leave placement.

7           “(B) EXPLANATION.—The written notice  
8           under subparagraph (A) shall describe the limi-  
9           tations of the leave placement, including—

10           “(i) the applicable limitations under  
11           paragraph (3); and

12           “(ii) in the case of a placement in in-  
13           vestigative leave, an explanation that, at  
14           the conclusion of the period of leave, the  
15           agency shall take an action under para-  
16           graph (5).

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

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

23           “(B) take 1 or more of the actions author-  
24           ized under paragraph (2), meaning—

1           “(i) assigning the employee to duties  
2           in which the employee is no longer a threat  
3           to—

4                     “(I) safety;

5                     “(II) the mission of the agency;

6                     “(III) Government property; or

7                     “(IV) evidence relevant to an in-  
8           vestigation;

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

11          “(iii) requiring the employee to  
12          telework under section 6502(e);

13          “(iv) if the employee has become ab-  
14          sent without requesting leave, carrying the  
15          employee in absence without leave status;  
16          or

17          “(v) for an employee subject to a no-  
18          tice period, curtailing the notice period if  
19          there is reasonable cause to believe the em-  
20          ployee has committed a crime for which a  
21          sentence of imprisonment may be imposed;

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

24          “(D) extend the period of investigative  
25          leave under subsections (d) and (e).

1           “(6) **RULE OF CONSTRUCTION.**—Nothing in  
2 paragraph (5) shall be construed to prevent the con-  
3 tinued investigation of an employee, except that the  
4 placement of an employee in investigative leave may  
5 not be extended for that purpose except as provided  
6 in subsections (d) and (e).

7           “(d) **INITIAL EXTENSION OF INVESTIGATIVE**  
8 **LEAVE.**—

9           “(1) **IN GENERAL.**—Subject to paragraph (4),  
10 if the Chief Human Capital Officer of an agency, or  
11 the designee of the Chief Human Capital Officer,  
12 approves such an extension after consulting with the  
13 investigator responsible for conducting the investiga-  
14 tion to which an employee is subject, the agency may  
15 extend the period of investigative leave for the em-  
16 ployee under subsection (b) for not more than 30  
17 days.

18           “(2) **MAXIMUM NUMBER OF EXTENSIONS.**—The  
19 total period of additional investigative leave for an  
20 employee under paragraph (1) may not exceed 110  
21 days.

22           “(3) **DESIGNATION GUIDANCE.**—Not later than  
23 1 year after the date of enactment of this section,  
24 the Chief Human Capital Officers Council shall  
25 issue guidance to ensure that if the Chief Human

1 Capital Officer of an agency delegates the authority  
2 to approve an extension under paragraph (1) to a  
3 designee, the designee is at a sufficiently high level  
4 within the agency to make an impartial and inde-  
5 pendent determination regarding the extension.

6 “(4) EXTENSIONS FOR OIG EMPLOYEES.—

7 “(A) APPROVAL.—In the case of an em-  
8 ployee of an Office of Inspector General—

9 “(i) the Inspector General or the des-  
10 ignee of the Inspector General, rather than  
11 the Chief Human Capital Officer or the  
12 designee of the Chief Human Capital Offi-  
13 cer, shall approve an extension of a period  
14 of investigative leave for the employee  
15 under paragraph (1); or

16 “(ii) at the request of the Inspector  
17 General, the head of the agency within  
18 which the Office of Inspector General is lo-  
19 cated shall designate an official of the  
20 agency to approve an extension of a period  
21 of investigative leave for the employee  
22 under paragraph (1).

23 “(B) GUIDANCE.—Not later than 1 year  
24 after the date of enactment of this section, the  
25 Council of the Inspectors General on Integrity

1 and Efficiency shall issue guidance to ensure  
 2 that if the Inspector General or the head of an  
 3 agency, at the request of the Inspector General,  
 4 delegates the authority to approve an extension  
 5 under subparagraph (A) to a designee, the des-  
 6 ignee is at a sufficiently high level within the  
 7 Office of Inspector General or the agency, as  
 8 applicable, to make an impartial and inde-  
 9 pendent determination regarding the extension.

10 “(e) FURTHER EXTENSION OF INVESTIGATIVE  
 11 LEAVE.—

12 “(1) IN GENERAL.—After reaching the limit  
 13 under subsection (d)(2), an agency may further ex-  
 14 tend a period of investigative leave for an employee  
 15 for a period of not more than 60 days if, before the  
 16 further extension begins, the head of the agency or,  
 17 in the case of an employee of an Office of Inspector  
 18 General, the Inspector General submits a notifica-  
 19 tion that includes the reasons for the further exten-  
 20 sion to the—

21 “(A) committees of jurisdiction;

22 “(B) Committee on Homeland Security  
 23 and Governmental Affairs of the Senate; and

24 “(C) Committee on Oversight and Govern-  
 25 ment Reform of the House of Representatives.



1           “(2) NO LIMIT.—There shall be no limit on the  
2           number of further extensions that an agency may  
3           grant to an employee under paragraph (1).

4           “(3) OPM REVIEW.—An agency shall request  
5           from the Director, and include with the notification  
6           required under paragraph (1), the opinion of the Di-  
7           rector—

8                   “(A) with respect to whether to grant a  
9                   further extension under this subsection, includ-  
10                  ing the reasons for that opinion; and

11                   “(B) which shall not be binding on the  
12                  agency.

13           “(4) SUNSET.—The authority provided under  
14           this subsection shall expire on the date that is 6  
15           years after the date of enactment of this section.

16           “(f) CONSULTATION GUIDANCE.—Not later than 1  
17           year after the date of enactment of this section, the Coun-  
18           cil of the Inspectors General on Integrity and Efficiency,  
19           in consultation with the Attorney General and the Special  
20           Counsel, shall issue guidance on best practices for con-  
21           sultation between an investigator and an agency on the  
22           need to place an employee in investigative leave during an  
23           investigation of the employee, including during a criminal  
24           investigation, because the continued presence of the em-  
25           ployee in the workplace during the investigation may—

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

2           “(2) result in the destruction of evidence rel-  
3           evant to an investigation;

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

6           “(4) otherwise jeopardize legitimate Govern-  
7           ment interests.

8           “(g) REPORTING AND RECORDS.—

9           “(1) IN GENERAL.—An agency shall keep a  
10          record of the placement of an employee in investiga-  
11          tive leave or notice leave by the agency, including—

12                 “(A) the basis for the determination made  
13                 under subsection (c)(1);

14                 “(B) an explanation of why an action  
15                 under subsection (c)(2) was not appropriate;

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

17                 “(D) the amount of salary paid to the em-  
18                 ployee during the period of leave;

19                 “(E) the reasons for authorizing the leave,  
20                 including, if applicable, the recommendation  
21                 made by an investigator under subsection  
22                 (d)(1); and

23                 “(F) the action taken by the agency at the  
24                 end of the period of leave, including, if applica-

1           ble, the granting of any extension of a period  
2           of investigative leave.

3           ~~“(2) AVAILABILITY OF RECORDS.—An agency~~  
4           shall make a record kept under paragraph (1) avail-  
5           able—

6                   ~~“(A) to any committee of Congress, upon~~  
7                   request;

8                   ~~“(B) to the Office of Personnel Manage-~~  
9                   ment; and

10                   ~~“(C) as otherwise required by law, includ-~~  
11                   ing for the purposes of the Administrative  
12                   Leave Act of 2016.

13           ~~“(h) REGULATIONS.—~~

14                   ~~“(1) OPM ACTION.—Not later than 1 year~~  
15                   after the date of enactment of this section, the Di-  
16                   rector shall prescribe regulations to carry out this  
17                   section, including guidance to agencies regarding—

18                           ~~“(A) acceptable purposes for the use of—~~

19                                   ~~“(i) investigative leave; and~~

20                                   ~~“(ii) notice leave;~~

21                           ~~“(B) the proper recording of—~~

22                                   ~~“(i) the leave categories described in~~  
23                                   subparagraph (A); and

24                                   ~~“(ii) other leave authorized by law;~~

1           “(C) baseline factors that an agency shall  
2 consider when making a determination that the  
3 continued presence of an employee in the work-  
4 place may—

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

7           “(ii) result in the destruction of evi-  
8 dence relevant to an investigation;

9           “(iii) result in loss or damage to Gov-  
10 ernment property; or

11           “(iv) otherwise jeopardize legitimate  
12 Government interests; and

13           “(D) procedures and criteria for the ap-  
14 proval of an extension of a period of investiga-  
15 tive leave under subsection (d) or (e).

16           “(2) AGENCY ACTION.—Not later than 1 year  
17 after the date on which the Director prescribes regu-  
18 lations under paragraph (1), each agency shall revise  
19 and implement the internal policies of the agency to  
20 meet the requirements of this section.”.

21           (b) PERSONNEL ACTION.—Section 2302(a)(2)(A) of  
22 title 5, United States Code, is amended—

23           (1) in clause (xi), by striking “and” at the end;

24           (2) by redesignating clause (xii) as clause (xiii);

25           and

1           (3) by inserting after clause (xi) the following:

2                   “(xii) a determination made by an agency  
3           under section 6330(e)(1) that the continued  
4           presence of an employee in the workplace dur-  
5           ing an investigation of the employee or while  
6           the employee is in a notice period, if applicable,  
7           may—

8                   “(I) pose a threat to the employee or  
9           others;

10                   “(II) result in the destruction of evi-  
11           dence relevant to an investigation;

12                   “(III) result in loss or damage to  
13           Government property; or

14                   “(IV) otherwise jeopardize legitimate  
15           Government interests; and”.

16           (e) GAO REPORT.—Not later than 5 years after the  
17           date of enactment of this Act, the Comptroller General  
18           of the United States shall submit to Congress a report  
19           evaluating the implementation of the authority provided  
20           under sections 6329 and 6330 of title 5, United States  
21           Code, as added by section 3(a) and subsection (a) of this  
22           section, respectively, including—

23                   (1) an assessment of agency use of the author-  
24           ity provided under subsection (e) of such section  
25           6330, including data regarding—

1           (A) the number and length of extensions  
2 granted under that subsection; and

3           (B) the number of times that the Director  
4 of the Office of Personnel Management, under  
5 paragraph (3) of that subsection—

6           (i) concurred with the decision of an  
7 agency to grant an extension; and

8           (ii) did not concur with the decision of  
9 an agency to grant an extension, including  
10 the bases for those opinions of the Direc-  
11 tor;

12           (2) recommendations to Congress, as appro-  
13 priate, on the need for extensions beyond the exten-  
14 sions authorized under subsection (d) of such section  
15 6330; and

16           (3) a review of the practice of agency placement  
17 of an employee in investigative or notice leave under  
18 subsection (b) of such section 6330 because of a de-  
19 termination under subsection (c)(1)(D) of that sec-  
20 tion that the employee jeopardized legitimate Gov-  
21 ernment interests, including whether any agency  
22 abused the authority of the agency by making such  
23 a placement when the placement based on such a de-  
24 termination was not justified.

1 (d) TELEWORK.—Section 6502 of title 5, United  
 2 States Code, is amended by adding at the end the fol-  
 3 lowing:

4 “(e) REQUIRED TELEWORK.—If an agency deter-  
 5 mines under section 6330(e)(1) that the continued pres-  
 6 ence of an employee in the workplace during an investiga-  
 7 tion of the employee or while the employee is in a notice  
 8 period, if applicable, may pose 1 or more of the threats  
 9 described in that section and the employee is eligible to  
 10 telework under subsections (a) and (b) of this section, the  
 11 agency may require the employee to telework for the dura-  
 12 tion of the investigation or the notice period, if applica-  
 13 ble.”.

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

“6330. Investigative leave and notice leave.”.

19 **SEC. 5. LEAVE FOR WEATHER AND SAFETY ISSUES.**

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

23 **“§ 6331. Weather and safety leave**

24 “(a) DEFINITIONS.—In this section—

25 “(1) the term ‘agency’—

1           “(A) means an Executive agency (as de-  
2           fined in section 105 of this title); and

3           “(B) does not include the Government Ac-  
4           countability Office; and

5           “(2) the term ‘employee’ means an employee of  
6           an agency.

7           “(b) LEAVE FOR WEATHER AND SAFETY ISSUES.—

8           An agency may approve the provision of leave to an em-  
9           ployee or a group of employees without loss of or reduction  
10          in the pay of the employee or employees, leave to which  
11          the employee or employees are otherwise entitled, or credit  
12          to the employee or employees for time or service only if  
13          the employee or group of employees is prevented from  
14          safely traveling to or performing work at an approved loca-  
15          tion due to—

16                 “(1) an act of God;

17                 “(2) a terrorist attack; or

18                 “(3) another condition that prevents the em-  
19          ployee or group of employees from safely traveling to  
20          or performing work at an approved location.

21           “(c) RECORDS.—An agency shall record leave pro-  
22          vided under this section separately from leave authorized  
23          under any other provision of law.

24           “(d) REGULATIONS.—Not later than 1 year after the  
25          date of enactment of this section, the Director of the Of-



1 fice of Personnel Management shall prescribe regulations  
2 to carry out this section, including—

3           “(1) guidance to agencies regarding the appro-  
4 priate purposes for providing leave under this sec-  
5 tion; and

6           “(2) the proper recording of leave provided  
7 under this section.”.

8       (b) TECHNICAL AND CONFORMING AMENDMENT.—

9 The table of sections for subchapter II of chapter 63 of  
10 title 5, United States Code, is amended by inserting after  
11 the item relating to section 6330, as added by this Act,  
12 the following:

“6331. Weather and safety leave.”.

13 **SEC. 6. ADDITIONAL OVERSIGHT.**

14       (a) IN GENERAL.—Not later than 3 years after the  
15 date of enactment of this Act, the Director of the Office  
16 of Personnel Management shall complete a review of agen-  
17 cy policies to determine whether agencies have complied  
18 with the requirements of this Act.

19       (b) REPORT TO CONGRESS.—Not later than 90 days  
20 after completing the review under subsection (a), the Di-  
21 rector shall submit to Congress a report evaluating the  
22 results of the review.

23 **SECTION 1. SHORT TITLE.**

24       *This Act may be cited as the “Administrative Leave*  
25 *Act of 2016”.*

1 **SEC. 2. SENSE OF CONGRESS.**

2 *It is the sense of Congress that—*

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

7 *(A) in contravention of—*

8 *(i) established precedent of the Comp-*  
9 *troller General of the United States; and*

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

12 *(B) resulting in significant cost to the Fed-*  
13 *eral Government;*

14 *(2) administrative leave should be used spar-*  
15 *ingly;*

16 *(3) prior to the use of paid leave to address per-*  
17 *sonnel issues, an agency should consider other actions,*  
18 *including—*

19 *(A) temporary reassignment;*

20 *(B) transfer; and*

21 *(C) telework;*

22 *(4) an agency should prioritize and expedi-*  
23 *tiously conclude an investigation in which an em-*  
24 *ployee is placed in administrative leave so that, not*  
25 *later than the conclusion of the leave period—*

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

2           or

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

5           (5) data show that there are too many examples  
6           of employees placed in administrative leave for 6  
7           months or longer, leaving the employees without any  
8           available recourse to—

9           (A) return to duty status; or

10          (B) challenge the decision of the agency;

11          (6) an agency should ensure accurate and con-  
12          sistent recording of the use of administrative leave so  
13          that administrative leave can be managed and over-  
14          seen effectively; and

15          (7) other forms of excused absence authorized by  
16          law should be recorded separately from administra-  
17          tive leave, as defined by the amendments made by this  
18          Act.

19   **SEC. 3. ADMINISTRATIVE LEAVE.**

20          (a) *IN GENERAL.*—Subchapter II of chapter 63 of title  
21   5, United States Code, is amended by adding at the end  
22   the following:

23   **“§ 6330. Administrative leave**

24          “(a) *DEFINITIONS.*—In this section—

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

3           “(A) without loss of or reduction in—

4                 “(i) pay;

5                 “(ii) leave to which an employee is oth-  
6       erwise entitled under law; or

7                 “(iii) credit for time or service; and

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

10          “(2) the term ‘agency’—

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

13                 “(B) does not include the Government Ac-  
14       countability Office; and

15          “(3) the term ‘employee’—

16                 “(A) has the meaning given the term in sec-  
17       tion 2105; and

18                 “(B) does not include an intermittent em-  
19       ployee who does not have an established regular  
20       tour of duty during the administrative work-  
21       week.

22          “(b) ADMINISTRATIVE LEAVE.—

23                 “(1) IN GENERAL.—An agency may place an  
24       employee in administrative leave for a period of not  
25       more than 5 consecutive days.

1           “(2) *RULE OF CONSTRUCTION.*—*Nothing in*  
2           *paragraph (1) shall be construed to limit the use of*  
3           *leave that is—*

4                   “(A) *specifically authorized under law; and*

5                   “(B) *not administrative leave.*

6           “(3) *RECORDS.*—*An agency shall record admin-*  
7           *istrative leave separately from leave authorized under*  
8           *any other provision of law.*

9           “(c) *REGULATIONS.*—

10                   “(1) *OPM REGULATIONS.*—*Not later than 1 year*  
11           *after the date of enactment of this section, the Direc-*  
12           *tor of the Office of Personnel Management shall—*

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

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

17                                   “(i) *acceptable agency uses of adminis-*  
18                                   *trative leave; and*

19                                   “(ii) *the proper recording of—*

20   “(I) *administrative leave; and*

21   “(II) *other leave authorized by*  
22                                   *law.*

23           “(2) *AGENCY ACTION.*—*Not later than 1 year*  
24           *after the date on which the Director of the Office of*  
25           *Personnel Management prescribes regulations under*

1        *paragraph (1), each agency shall revise and imple-*  
2        *ment the internal policies of the agency to meet the*  
3        *requirements of this section.*

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

8        *(b) OPM STUDY.—Not later than 120 days after the*  
9        *date of enactment of this Act, the Director of the Office of*  
10       *Personnel Management, in consultation with Federal agen-*  
11       *cies, groups representing Federal employees, and other rel-*  
12       *evant stakeholders, shall submit to the Committee on Home-*  
13       *land Security and Governmental Affairs of the Senate and*  
14       *the Committee on Oversight and Government Reform of the*  
15       *House of Representatives a report identifying agency prac-*  
16       *tices, as of the date of enactment of this Act, of placing*  
17       *an employee in administrative leave for more than 5 con-*  
18       *secutive days when the placement was not specifically au-*  
19       *thorized by law.*

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

*“6330. Administrative leave.”.*

1 **SEC. 4. INVESTIGATIVE LEAVE AND NOTICE LEAVE.**

2       (a) *IN GENERAL.*—Subchapter II of chapter 63 of title  
3 5, United States Code, as amended by this Act, is further  
4 amended by adding at the end the following:

5 **“§ 6330a. Investigative leave and notice leave**

6       “(a) *DEFINITIONS.*—In this section—

7               “(1) the term ‘agency’—

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

10                      “(B) does not include the *Government Ac-*  
11 *countability Office*;

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

14                      “(A) the *Chief Human Capital Officer* of an  
15 *agency designated or appointed under section*  
16 *1401*; or

17                      “(B) the *equivalent*;

18               “(3) the term ‘*committees of jurisdiction*’, with  
19 *respect to an agency*, means each committee in the  
20 *Senate and House of Representatives with jurisdic-*  
21 *tion over the agency*;

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

24               “(5) the term ‘*employee*’—

25                      “(A) has the meaning given the term in *sec-*  
26 *tion 2105*; and

1                   “(B) does not include—  
2                    “(i) an intermittent employee who does  
3                    not have an established regular tour of duty  
4                    during the administrative workweek; or  
5                    “(ii) the Inspector General of an agen-  
6                    cy;  
7                   “(6) the term ‘investigative leave’ means leave—  
8                    “(A) without loss of or reduction in—  
9                    “(i) pay;  
10                   “(ii) leave to which an employee is oth-  
11                   erwise entitled under law; or  
12                    “(iii) credit for time or service;  
13                   “(B) that is not authorized under any other  
14                   provision of law; and  
15                   “(C) in which an employee who is the sub-  
16                   ject of an investigation is placed;  
17                   “(7) the term ‘notice leave’ means leave—  
18                    “(A) without loss of or reduction in—  
19                    “(i) pay;  
20                    “(ii) leave to which an employee is oth-  
21                   erwise entitled under law; or  
22                    “(iii) credit for time or service;  
23                   “(B) that is not authorized under any other  
24                   provision of law; and



1           “(C) *in which an employee who is in a no-*  
2           *tice period is placed; and*

3           “(8) *the term ‘notice period’ means a period be-*  
4           *ginning on the date on which an employee is provided*  
5           *notice required under law of a proposed adverse ac-*  
6           *tion against the employee and ending on the date on*  
7           *which an agency may take the adverse action.*

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

10           “(1) *AUTHORITY.—An agency may, in accord-*  
11           *ance with paragraph (2), place an employee in—*

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

14           “(B) *notice leave if the employee is in a no-*  
15           *tice period; or*

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

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

21           “(ii) *the agency determines that the*  
22           *employee continues to meet 1 or more of the*  
23           *criteria described in subsection (c)(1).*

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

4                   “(A) *made a determination with respect to*  
5 *the employee under subsection (c)(1);*

6                   “(B) *considered the available options for the*  
7 *employee under subsection (c)(2); and*

8                   “(C) *determined that none of the available*  
9 *options under subsection (c)(2) is appropriate.*

10           “(c) *EMPLOYEES UNDER INVESTIGATION OR IN A NO-*  
11 *TICE PERIOD.*—

12                   “(1) *DETERMINATIONS.*—*An agency may not*  
13 *place an employee in investigative leave or notice*  
14 *leave under subsection (b) unless the continued pres-*  
15 *ence of the employee in the workplace during an in-*  
16 *vestigation of the employee or while the employee is*  
17 *in a notice period, if applicable, may—*

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

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

21                           “(C) *result in loss of or damage to Govern-*  
22 *ment property; or*

23                           “(D) *otherwise jeopardize legitimate Gov-*  
24 *ernment interests.*

1           “(2) *AVAILABLE OPTIONS FOR EMPLOYEES*  
2           *UNDER INVESTIGATION OR IN A NOTICE PERIOD.—*  
3           *After making a determination under paragraph (1)*  
4           *with respect to an employee, and before placing an*  
5           *employee in investigative leave or notice leave under*  
6           *subsection (b), an agency shall consider taking 1 or*  
7           *more of the following actions:*

8                   “(A) *Assigning the employee to duties in*  
9                   *which the employee is no longer a threat to—*

10                           “(i) *safety;*

11                           “(ii) *the mission of the agency;*

12                           “(iii) *Government property; or*

13                           “(iv) *evidence relevant to an investiga-*  
14                           *tion.*

15                   “(B) *Allowing the employee to take leave for*  
16                   *which the employee is eligible.*

17                   “(C) *Requiring the employee to telework*  
18                   *under section 6502(c).*

19                   “(D) *If the employee is absent from duty*  
20                   *without approved leave, carrying the employee in*  
21                   *absence without leave status.*

22                   “(E) *For an employee subject to a notice*  
23                   *period, curtailing the notice period if there is*  
24                   *reasonable cause to believe the employee has com-*

1           *mitted a crime for which a sentence of imprison-*  
2           *ment may be imposed.*

3           “(3) *DURATION OF LEAVE.*—

4                   “(A) *INVESTIGATIVE LEAVE.*—*Subject to ex-*  
5                   *tensions of a period of investigative leave for*  
6                   *which an employee may be eligible under sub-*  
7                   *sections (d) and (e), the initial placement of an*  
8                   *employee in investigative leave shall be for a pe-*  
9                   *riod not longer than 10 days.*

10                   “(B) *NOTICE LEAVE.*—*Placement of an em-*  
11                   *ployee in notice leave shall be for a period not*  
12                   *longer than the duration of the notice period.*

13           “(4) *EXPLANATION OF LEAVE.*—

14                   “(A) *IN GENERAL.*—*If an agency places an*  
15                   *employee in leave under subsection (b), the agen-*  
16                   *cy shall provide the employee a written expla-*  
17                   *nation of the leave placement and the reasons for*  
18                   *the leave placement.*

19                   “(B) *EXPLANATION.*—*The written notice*  
20                   *under subparagraph (A) shall describe the limi-*  
21                   *tations of the leave placement, including—*

22                           “(i) *the applicable limitations under*  
23                           *paragraph (3); and*

24                           “(ii) *in the case of a placement in in-*  
25                           *vestigative leave, an explanation that, at the*

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

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

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

9                   “(B) *take 1 or more of the actions author-*  
10                  *ized under paragraph (2), meaning—*

11                  “(i) *assigning the employee to duties*  
12                  *in which the employee is no longer a threat*  
13                  *to—*

14                               “(I) *safety;*

15                               “(II) *the mission of the agency;*

16                               “(III) *Government property; or*

17                               “(IV) *evidence relevant to an in-*  
18                               *vestigation;*

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

21                               “(iii) *requiring the employee to*  
22                               *telework under section 6502(c);*

23                               “(iv) *if the employee is absent from*  
24                               *duty without approved leave, carrying the*  
25                               *employee in absence without leave status; or*

1                   “(v) for an employee subject to a notice  
2                   period, curtailing the notice period if there  
3                   is reasonable cause to believe the employee  
4                   has committed a crime for which a sentence  
5                   of imprisonment may be imposed;

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

8                   “(D) extend the period of investigative leave  
9                   under subsections (d) and (e).

10                  “(6) *RULE OF CONSTRUCTION.*—Nothing in  
11                  paragraph (5) shall be construed to prevent the con-  
12                  tinued investigation of an employee, except that the  
13                  placement of an employee in investigative leave may  
14                  not be extended for that purpose except as provided in  
15                  subsections (d) and (e).

16                  “(d) *INITIAL EXTENSION OF INVESTIGATIVE LEAVE.*—

17                  “(1) *IN GENERAL.*—Subject to paragraph (4), if  
18                  the Chief Human Capital Officer of an agency, or the  
19                  designee of the Chief Human Capital Officer, ap-  
20                  proves such an extension after consulting with the in-  
21                  vestigator responsible for conducting the investigation  
22                  to which an employee is subject, the agency may ex-  
23                  tend the period of investigative leave for the employee  
24                  under subsection (b) for not more than 30 days.

1           “(2) *MAXIMUM NUMBER OF EXTENSIONS.*—*The*  
2 *total period of additional investigative leave for an*  
3 *employee under paragraph (1) may not exceed 110*  
4 *days.*

5           “(3) *DESIGNATION GUIDANCE.*—*Not later than 1*  
6 *year after the date of enactment of this section, the*  
7 *Chief Human Capital Officers Council shall issue*  
8 *guidance to ensure that if the Chief Human Capital*  
9 *Officer of an agency delegates the authority to ap-*  
10 *prove an extension under paragraph (1) to a designee,*  
11 *the designee is at a sufficiently high level within the*  
12 *agency to make an impartial and independent deter-*  
13 *mination regarding the extension.*

14           “(4) *EXTENSIONS FOR OIG EMPLOYEES.*—

15           “(A) *APPROVAL.*—*In the case of an em-*  
16 *ployee of an Office of Inspector General—*

17                   “(i) *the Inspector General or the des-*  
18 *ignee of the Inspector General, rather than*  
19 *the Chief Human Capital Officer or the des-*  
20 *ignee of the Chief Human Capital Officer,*  
21 *shall approve an extension of a period of in-*  
22 *vestigative leave for the employee under*  
23 *paragraph (1); or*

24                   “(ii) *at the request of the Inspector*  
25 *General, the head of the agency within*

1           *which the Office of Inspector General is lo-*  
2           *cated shall designate an official of the agen-*  
3           *cy to approve an extension of a period of*  
4           *investigative leave for the employee under*  
5           *paragraph (1).*

6           “(B) *GUIDANCE.*—*Not later than 1 year*  
7           *after the date of enactment of this section, the*  
8           *Council of the Inspectors General on Integrity*  
9           *and Efficiency shall issue guidance to ensure*  
10           *that if the Inspector General or the head of an*  
11           *agency, at the request of the Inspector General,*  
12           *delegates the authority to approve an extension*  
13           *under subparagraph (A) to a designee, the des-*  
14           *ignee is at a sufficiently high level within the Of-*  
15           *fice of Inspector General or the agency, as appli-*  
16           *cable, to make an impartial and independent de-*  
17           *termination regarding the extension.*

18           “(e) *FURTHER EXTENSION OF INVESTIGATIVE*  
19           *LEAVE.*—

20           “(1) *IN GENERAL.*—*After reaching the limit*  
21           *under subsection (d)(2), an agency may further ex-*  
22           *tend a period of investigative leave for an employee*  
23           *for a period of not more than 60 days if, before the*  
24           *further extension begins, the head of the agency or, in*  
25           *the case of an employee of an Office of Inspector Gen-*



1 *eral, the Inspector General submits a notification that*  
2 *includes the reasons for the further extension to the—*

3 *“(A) committees of jurisdiction;*

4 *“(B) Committee on Homeland Security and*  
5 *Governmental Affairs of the Senate; and*

6 *“(C) Committee on Oversight and Govern-*  
7 *ment Reform of the House of Representatives.*

8 *“(2) NO LIMIT.—There shall be no limit on the*  
9 *number of further extensions that an agency may*  
10 *grant to an employee under paragraph (1).*

11 *“(3) OPM REVIEW.—An agency shall request*  
12 *from the Director, and include with the notification*  
13 *required under paragraph (1), the opinion of the Di-*  
14 *rector—*

15 *“(A) with respect to whether to grant a fur-*  
16 *ther extension under this subsection, including*  
17 *the reasons for that opinion; and*

18 *“(B) which shall not be binding on the*  
19 *agency.*

20 *“(4) SUNSET.—The authority provided under*  
21 *this subsection shall expire on the date that is 6 years*  
22 *after the date of enactment of this section.*

23 *“(f) CONSULTATION GUIDANCE.—Not later than 1 year*  
24 *after the date of enactment of this section, the Council of*  
25 *the Inspectors General on Integrity and Efficiency, in con-*

1 *sultation with the Attorney General and the Special Coun-*  
2 *sel, shall issue guidance on best practices for consultation*  
3 *between an investigator and an agency on the need to place*  
4 *an employee in investigative leave during an investigation*  
5 *of the employee, including during a criminal investigation,*  
6 *because the continued presence of the employee in the work-*  
7 *place during the investigation may—*

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

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

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

13           “(4) *otherwise jeopardize legitimate Government*  
14 *interests.*

15           “(g) *REPORTING AND RECORDS.—*

16           “(1) *IN GENERAL.—An agency shall keep a*  
17 *record of the placement of an employee in investiga-*  
18 *tive leave or notice leave by the agency, including—*

19           “(A) *the basis for the determination made*  
20 *under subsection (c)(1);*

21           “(B) *an explanation of why an action*  
22 *under subsection (c)(2) was not appropriate;*

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

24           “(D) *the amount of salary paid to the em-*  
25 *ployee during the period of leave;*

1           “(E) the reasons for authorizing the leave,  
2 including, if applicable, the recommendation  
3 made by an investigator under subsection (d)(1);  
4 and

5           “(F) the action taken by the agency at the  
6 end of the period of leave, including, if applica-  
7 ble, the granting of any extension of a period of  
8 investigative leave under subsection (d) or (e).

9           “(2) AVAILABILITY OF RECORDS.—An agency  
10 shall make a record kept under paragraph (1) avail-  
11 able—

12           “(A) to any committee of Congress, upon re-  
13 quest;

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

16           “(C) as otherwise required by law, includ-  
17 ing for the purposes of the Administrative Leave  
18 Act of 2016 and the amendments made by that  
19 Act.

20           “(h) REGULATIONS.—

21           “(1) OPM ACTION.—Not later than 1 year after  
22 the date of enactment of this section, the Director  
23 shall prescribe regulations to carry out this section,  
24 including guidance to agencies regarding—

25           “(A) acceptable purposes for the use of—

1                   “(i) *investigative leave; and*

2                   “(ii) *notice leave;*

3                   “(B) *the proper recording of—*

4                   “(i) *the leave categories described in*  
5                   *subparagraph (A); and*

6                   “(ii) *other leave authorized by law;*

7                   “(C) *baseline factors that an agency shall*  
8                   *consider when making a determination that the*  
9                   *continued presence of an employee in the work-*  
10                  *place may—*

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

13                  “(ii) *result in the destruction of evi-*  
14                  *dence relevant to an investigation;*

15                  “(iii) *result in loss or damage to Gov-*  
16                  *ernment property; or*

17                  “(iv) *otherwise jeopardize legitimate*  
18                  *Government interests; and*

19                  “(D) *procedures and criteria for the ap-*  
20                  *proval of an extension of a period of investiga-*  
21                  *tive leave under subsection (d) or (e).*

22                  “(2) *AGENCY ACTION.—Not later than 1 year*  
23                  *after the date on which the Director prescribes regula-*  
24                  *tions under paragraph (1), each agency shall revise*

1       and implement the internal policies of the agency to  
2       meet the requirements of this section.

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

7       (b) *PERSONNEL ACTION.*—Section 2302(a)(2)(A) of  
8       title 5, United States Code, is amended—

9             (1) in clause (xi), by striking “and” at the end;

10            (2) by redesignating clause (xii) as clause (xiii);

11       and

12            (3) by inserting after clause (xi) the following:

13                   “(xii) a determination made by an agency  
14                   under section 6330a(c)(1) that the continued  
15                   presence of an employee in the workplace during  
16                   an investigation of the employee or while the em-  
17                   ployee is in a notice period, if applicable, may—

18                           “(I) pose a threat to the employee or  
19                           others;

20                           “(II) result in the destruction of evi-  
21                           dence relevant to an investigation;

22                           “(III) result in loss of or damage to  
23                           Government property; or

24                           “(IV) otherwise jeopardize legitimate  
25                           Government interests; and”.

1           (c) *GAO REPORT.*—Not later than 5 years after the  
2 date of enactment of this Act, the Comptroller General of  
3 the United States shall report to the Committee on Home-  
4 land Security and Governmental Affairs of the Senate and  
5 the Committee on Oversight and Government Reform of the  
6 House of Representatives on the results of an evaluation of  
7 the implementation of the authority provided under sections  
8 6330 and 6330a of title 5, United States Code, as added  
9 by section 3(a) and subsection (a) of this section, respec-  
10 tively, including—

11                   (1) *an assessment of agency use of the authority*  
12                   *provided under subsection (e) of such section 6330a,*  
13                   *including data regarding—*

14                           (A) *the number and length of extensions*  
15                           *granted under that subsection; and*

16                           (B) *the number of times that the Director of*  
17                           *the Office of Personnel Management, under para-*  
18                           *graph (3) of that subsection—*

19                                   (i) *concurred with the decision of an*  
20                                   *agency to grant an extension; and*

21                                   (ii) *did not concur with the decision of*  
22                                   *an agency to grant an extension, including*  
23                                   *the bases for those opinions of the Director;*

24                   (2) *recommendations to Congress, as appro-*  
25                   *priate, on the need for extensions beyond the exten-*

1       sions authorized under subsection (d) of such section  
2       6330a; and

3             (3) a review of the practice of agency placement  
4       of an employee in investigative or notice leave under  
5       subsection (b) of such section 6330a because of a de-  
6       termination under subsection (c)(1)(D) of that section  
7       that the employee jeopardized legitimate Government  
8       interests, including the extent to which such deter-  
9       minations were supported by evidence.

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

12       “(c) *REQUIRED TELEWORK*.—If an agency determines  
13     under section 6330a(c)(1) that the continued presence of an  
14     employee in the workplace during an investigation of the  
15     employee or while the employee is in a notice period, if ap-  
16     plicable, may pose 1 or more of the threats described in  
17     that section and the employee is eligible to telework under  
18     subsections (a) and (b) of this section, the agency may re-  
19     quire the employee to telework for the duration of the inves-  
20     tigation or the notice period, if applicable.”.

21       (e) *TECHNICAL AND CONFORMING AMENDMENT*.—The  
22     table of sections for subchapter II of chapter 63 of title 5,  
23     United States Code, is amended by inserting after the item  
24     relating to section 6330, as added by this Act, the following:

“6330a. *Investigative leave and notice leave*.”.

1 **SEC. 5. LEAVE FOR WEATHER AND SAFETY ISSUES.**

2       (a) *IN GENERAL.*—Subchapter II of chapter 63 of title  
3 5, United States Code, as amended by this Act, is further  
4 amended by adding at the end the following:

5 **“§ 6330b. Weather and safety leave**

6       “(a) *DEFINITIONS.*—In this section—

7               “(1) the term ‘agency’—

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

10                      “(B) does not include the Government Ac-  
11 countability Office; and

12               “(2) the term ‘employee’—

13                      “(A) has the meaning given the term in sec-  
14 tion 2105; and

15                      “(B) does not include an intermittent em-  
16 ployee who does not have an established regular  
17 tour of duty during the administrative work-  
18 week.

19       “(b) *LEAVE FOR WEATHER AND SAFETY ISSUES.*—An  
20 agency may approve the provision of leave under this sec-  
21 tion to an employee or a group of employees without loss  
22 of or reduction in the pay of the employee or employees,  
23 leave to which the employee or employees are otherwise enti-  
24 tled, or credit to the employee or employees for time or serv-  
25 ice only if the employee or group of employees is prevented



1 *from safely traveling to or performing work at an approved*  
 2 *location due to—*

3           “(1) *an act of God;*

4           “(2) *a terrorist attack; or*

5           “(3) *another condition that prevents the em-*  
 6 *ployee or group of employees from safely traveling to*  
 7 *or performing work at an approved location.*

8           “(c) *RECORDS.—An agency shall record leave provided*  
 9 *under this section separately from leave authorized under*  
 10 *any other provision of law.*

11          “(d) *REGULATIONS.—Not later than 1 year after the*  
 12 *date of enactment of this section, the Director of the Office*  
 13 *of Personnel Management shall prescribe regulations to*  
 14 *carry out this section, including—*

15               “(1) *guidance to agencies regarding the appro-*  
 16 *priate purposes for providing leave under this section;*  
 17 *and*

18               “(2) *the proper recording of leave provided under*  
 19 *this section.*

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

24          “(b) *TECHNICAL AND CONFORMING AMENDMENT.—The*  
 25 *table of sections for subchapter II of chapter 63 of title 5,*

1 *United States Code, is amended by inserting after the item*  
2 *relating to section 6330a, as added by this Act, the fol-*  
3 *lowing:*

*“6330b. Weather and safety leave.”.*

4 **SEC. 6. ADDITIONAL OVERSIGHT.**

5       *(a) IN GENERAL.—Not later than 3 years after the*  
6 *date of enactment of this Act, the Director of the Office of*  
7 *Personnel Management shall complete a review of agency*  
8 *policies to determine whether agencies have complied with*  
9 *the requirements of this Act and the amendments made by*  
10 *this Act.*

11       *(b) REPORT TO CONGRESS.—Not later than 90 days*  
12 *after completing the review under subsection (a), the Direc-*  
13 *tor shall submit to Congress a report evaluating the results*  
14 *of the review.*



Calendar No. 545

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2450**

[Report No. 114-292]

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## **A BILL**

To amend title 5, United States Code, to address administrative leave for Federal employees, and for other purposes.

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JULY 6, 2016

Reported with an amendment