



March 2016

# ADMINISTRATIVE LEAVE

## Evaluation of DHS's New Policy Can Help Identify Progress toward Reducing Leave Use

# GAO Highlights

Highlights of [GAO-16-342](#), a report to congressional requesters

## Why GAO Did This Study

Federal agencies have the discretion to authorize administrative leave—an excused absence without loss of pay or charge to leave—for personnel matters, such as when investigating employees for misconduct allegations. In October 2014, GAO reported on the use of administrative leave in the federal government. GAO found that, between fiscal years 2011 and 2013, 263 federal employees were on this type of leave for 1 year or more during this 3-year period. Of these, 71 were DHS employees.

GAO was asked to examine DHS's use of administrative leave across directorates, offices, and components (DHS components). This report describes (1) the number of DHS employees who were on administrative leave for 1 year or more for personnel matters from fiscal years 2011 through 2015, (2) the factors that contribute to the length of time employees are on administrative leave, and (3) the extent to which DHS has policies and procedures for managing such leave. GAO used data from DHS and the Office of Personnel Management, reviewed DHS policies and procedures, interviewed DHS officials, and reviewed information on selected cases of DHS employees placed on administrative leave. Cases were selected based on length of leave, reason for using leave, and DHS component, among other things.

## What GAO Recommends

GAO recommends that DHS evaluate the results of its administrative leave policy and share the evaluation results with the department's components. DHS concurred with the recommendation.

View [GAO-16-342](#). For more information, contact Andrew Von Ah at (213) 830-1011 or [vonaha@gao.gov](mailto:vonaha@gao.gov).

March 2016

## ADMINISTRATIVE LEAVE

### Evaluation of DHS's New Policy Can Help Identify Progress toward Reducing Leave Use

#### What GAO Found

Between fiscal years 2011 and 2015, 116 Department of Homeland Security (DHS) employees were on administrative leave for personnel matters for 1 year or more, with a total estimated salary cost of \$19.8 million for this period. Of these 116 employees on administrative leave:

- 69 employees (59 percent) were for matters related to misconduct allegations,
- 28 employees (24 percent) were for matters related to fitness for duty issues, and
- 19 employees (or 16 percent) were for matters related to security clearance investigations.

As of September 30, 2015, DHS reported that of these 116 employees:

- 68 employees (59 percent) were separated from the agency,
- 32 employees (28 percent) were back on duty,
- 2 employees (2 percent) were on indefinite suspension, and
- 14 employees (12 percent) remained on administrative leave.

Several factors can contribute to the length of time an employee is on administrative leave for personnel matters, such as certain legal procedural steps that must be completed before suspending or removing an employee, or time needed for completing investigations. For example, in one particularly long and complex misconduct investigation, an employee was on administrative leave for over 2 years while investigating officials conducted over 50 interviews abroad.

In September 2015, DHS issued an administrative leave policy to ensure proper and limited use of administrative leave across the department. The policy clarifies when such leave is proper, elevates the level of management approval needed for longer periods of leave, and requires quarterly reporting of leave use to component heads and the Chief Human Capital Officer. Component policies and procedures varied prior to the DHS policy; however, component officials stated they would make changes needed to comply with the new policy. Federal internal control standards call for agencies to conduct routine monitoring and separate evaluations to ensure agency controls are effective, and to share their results. While the quarterly reports required under DHS's policy provide routine monitoring information, the policy does not address how DHS will evaluate the effectiveness of the policy and related procedures or how DHS will share lessons learned. DHS officials said they plan to learn from reviewing quarterly reports, but agreed evaluations could be valuable in assessing policy effectiveness. Evaluations of DHS's administrative leave policy can help the department identify effective practices for managing administrative leave, as well as agency inefficiencies that increase the time employees spend on such leave. Sharing evaluation results with components may help ensure DHS's administrative leave policy and procedures are effective, and are achieving the intended result of reducing leave use.

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## Abbreviations

CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
EHRI	Enterprise Human Resources Integration
FEMA	Federal Emergency Management Agency
ICE	U.S. Immigration and Customs Enforcement
MSPB	Merit Systems Protection Board
NPPD	National Protection and Programs Directorate
OCSO	Office of the Chief Security Officer
OIG	Office of the Inspector General
OPM	U.S. Office of Personnel Management
TSA	Transportation Security Administration
USCG	U.S. Coast Guard
USCIS	U.S. Citizenship and Immigration Services
USSS	U.S. Secret Service

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March 23, 2016

The Honorable Scott Perry  
Chairman  
Subcommittee on Oversight and Management Efficiency  
Committee on Homeland Security  
House of Representatives

The Honorable Jeff Duncan  
House of Representatives

The federal government has different types of leave for employees to use when they are away from the workplace. These types of leave include annual leave, sick leave, leave without pay, leave donated under the voluntary leave transfer program, military leave, and administrative leave. Also, federal agencies have the discretion to authorize administrative leave—an excused absence without loss of pay or charge to leave—for a variety of reasons, including closures for severe weather, and for personnel matters, such as misconduct investigations. In October 2014, we reported on the use of administrative leave, which is a cost to taxpayers, across the federal government.<sup>1</sup> We found that, between fiscal years 2011 and 2013, 4,281 federal employees were on administrative leave for 3 months or more and that 263 of these employees were on this type of leave for 1 year or more, with an estimated salary cost of \$31 million during this 3-year period. Also, we found that 71 Department of Homeland Security (DHS) employees were on this type of leave for 1

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<sup>1</sup>GAO, *Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data*, [GAO-15-79](#) (Washington, D.C.: Oct. 2014). We recommended that, to help ensure that agencies report comparable and reliable data to the U.S. Office of Personnel Management (OPM), the Director of OPM, in coordination with agencies and payroll service providers, take the following actions: develop guidance for agencies on which activities to enter, or not enter, as paid administrative leave in agency time and attendance systems; and provide updated and specific guidance to payroll service providers on which activities to report, or not report, to the paid administrative leave data element in the pertinent OPM database. OPM partially concurred with our recommendations and is taking action to clarify guidance to agencies and payroll providers.

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year or more during the same period—more employees than at any other department.<sup>2</sup>

In light of the findings of our October 2014 report, you asked us to examine the use of administrative leave for personnel matters at DHS.<sup>3</sup> This report describes (1) the number of DHS employees who were on administrative leave for 1 year or more for personnel matters between fiscal years 2011 and 2015, (2) the factors that contribute to the length of time employees are on administrative leave at DHS, and (3) the extent to which DHS has policies and procedures for managing such leave.

Our scope involves all DHS directorates, offices, and components (DHS components) with employees who were on administrative leave for personnel matters between fiscal years 2011 and 2015. Specifically, these components include U.S. Customs and Border Protection (CBP), Federal Emergency Management Agency (FEMA), U.S. Immigration and Customs Enforcement (ICE), National Protection and Programs Directorate (NPPD), Office of the Chief Security Officer (OCSO), Office of the Inspector General (OIG), Transportation Security Administration (TSA), U.S. Coast Guard (USCG), U.S. Citizenship and Immigration Services (USCIS), and U.S. Secret Service (USSS).

To address these objectives, we interviewed DHS officials regarding their policies and procedures for managing administrative leave. We also reviewed U.S. Office of Personnel Management (OPM) guidance on the use of administrative leave and interviewed OPM officials regarding their role in providing oversight and guidance on administrative leave. To understand how DHS has used administrative leave for personnel matters, we obtained a list from DHS of all DHS employees who had

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<sup>2</sup>[GAO-15-79](#) included information on the use of administrative leave at more than 100 federal agencies, including 23 of the 24 agencies covered by the Chief Financial Officers Act of 1990, as amended. The report did not examine in detail the use of administrative leave at DHS.

<sup>3</sup>According to DHS officials and data, the three types of personnel reasons for which the agency put an employee on administrative leave were misconduct investigations, fitness for duty examinations, and security clearance investigations. Misconduct occurs when an employee refuses or fails to comply with a rule, regulation or law within the workplace. Fitness for duty examinations involve medical examinations that may be required or offered by an employing agency to determine an employee's ability to perform assigned duties. Security clearance investigations involve an agency investigation related to an employee's security clearance.

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been on administrative leave for a least 1 year between fiscal years 2011 and 2015, and analyzed information from 27 selected cases.<sup>4</sup> Criteria for selecting cases include length of leave, reason for being on leave, and DHS component, among other things. Information from the cases we selected is not generalizable, but our analysis of the information provided insights on administrative leave at DHS.

For our first objective, we used two data sets to help provide a complete picture of the DHS employees who were on administrative leave for personnel matters across the 5 fiscal years in our scope. Specifically, we used data provided by DHS and data from OPM's Enterprise Human Resources Integration (EHRI) system.<sup>5</sup> The data from EHRI allowed us to determine the number of DHS employees on administrative leave for at least 3 months between fiscal years 2011 and 2014.<sup>6</sup> EHRI data for fiscal year 2015 were not available in time to include in this report. Accordingly, to ensure we included information from fiscal year 2015, we used DHS-provided data on the number of DHS employees on administrative leave for 1 year or more between fiscal years 2011 and 2015 and related estimated salary costs.<sup>7</sup> The DHS-provided data also contained data fields not found in the OPM EHRI data such as reason for being on administrative leave, time on administrative leave, related estimated salary costs, and employment status as of the end of fiscal year 2015. DHS initially compiled these data between fiscal years 2011 and 2014 in response to a congressional inquiry, and subsequently updated these data through fiscal year 2015 in response to our request. To assess the reliability of the DHS-provided data, we discussed these data with DHS officials and we compared the DHS data with EHRI data for fiscal years 2011 through 2014. On the basis of our previous and current work with

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<sup>4</sup>The selected cases did not include fiscal year 2015 cases because they were not available when we selected the cases.

<sup>5</sup>In October 2014, we also used the OPM EHRI data to report, for example, the number of federal employees, including DHS employees, who had been on administrative leave for 3 months or more between fiscal years 2011 and 2013.

<sup>6</sup>We selected 3 months of administrative leave as the starting point for our analysis because an individual's cumulative use of administrative leave over a period of 4 years for non-personnel matters (such as administrative leave for blood donations, voting, after military deployments, and weather-related closures) can be up to 3 months.

<sup>7</sup>These are estimated salary costs because they include estimated benefits. Agency officials noted that these estimated benefits correspond to 30 percent of an employee's salary.

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the OPM EHRI data and our discussions with the DHS officials on their data, we determined the data coming from each agency's system were sufficiently reliable for the purposes of our report.

For our second objective, we reviewed case file documents and timelines for 27 selected DHS cases to identify factors contributing to the length of time an employee is on leave. We interviewed DHS and component officials about the time needed to complete actions to address personnel issues and related use of administrative leave. We reviewed legal procedural requirements and DHS component guidance regarding adverse actions against employees.

For our third objective, we reviewed DHS's September 2015 *Interim Policy on the Proper Use of Administrative Leave* and compared it to *Standards for Internal Control in the Federal Government*.<sup>8</sup> We also examined component policies and procedures on administrative leave and interviewed DHS officials on these policies and procedures, and on plans for implementing the new policy.

We conducted this performance audit from June 2015 to March 2016 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Federal agencies, including DHS and its components, have discretion to place employees on administrative leave in appropriate circumstances and for an appropriate length of time.<sup>9</sup> Administrative leave is an excused absence without loss of pay or charge to another type of leave. In the absence of statutory authority to promulgate regulations addressing

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<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#), (Washington D.C.: November, 1999).

<sup>9</sup>According to OPM, agency authority to grant an excused absence derives from the inherent authority for heads of agencies to prescribe regulations for the government of their organizations. See, e.g., 5 U.S.C. §§ 301-302. TSA has authority to establish its own personnel system. See 49 U.S.C. § 114(n). Generally, title 5 does not apply to TSA, and TSA has established policies related to administrative leave and adverse actions.

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administrative leave by all federal employees, OPM has mentioned this leave in limited contexts in regulations covering other types of leave and excused absences for federal employees.<sup>10</sup> OPM has provided additional guidance to federal agencies on administrative leave via government-wide memorandums, handbooks, fact sheets, and frequently asked questions. For example, in May 2015, OPM sent a memorandum to federal agencies that described the steps it was taking to address the recommendations from our October 2014 report on administrative leave and that included a fact sheet focused on this type of leave.

OPM guidance has acknowledged numerous purposes for which administrative leave is appropriate.<sup>11</sup> To promote equity and consistency across the government, OPM advises that administrative leave be limited to those situations not specifically prohibited by law and satisfying one or more of the following criteria:

- The absence is directly related to the department or agency's mission,
- The absence is officially sponsored or sanctioned by the head of the department or agency,
- The absence will clearly enhance the professional development or skills of the employee in his or her current position, or
- The absence is as brief as possible under the circumstances and is determined to be in the interest of the agency.

With respect to administrative leave for personnel matters, OPM states that placing an employee on administrative leave is an immediate, temporary solution for an employee who should be kept away from the worksite. As a general rule, administrative leave should not be used for an extended or indefinite period or on a recurring basis.

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<sup>10</sup>See, e.g., 5 C.F.R. § 630.206 (excused absence for tardiness); 5 C.F.R. part 610, subpart C (excused absence for federal wage employees); 5 C.F.R. § 752.404(b)(3)(iv) (administrative leave during advance notice period for adverse actions).

<sup>11</sup>OPM has provided guidance on granting excused absence (administrative leave) to employees who are prevented from reporting to work (or are faced with a personal emergency) because of severe weather or other emergency situations. More recently, OPM has strongly encouraged agencies to permit telework-ready employees to telework in such situations, thereby maintaining the continuing operations of the federal government.

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Specifically, OPM guidance discusses agency use of administrative leave before or after proposing an adverse action against an employee.<sup>12</sup> For example, an agency may place an employee on administrative leave during an investigation prior to proposing an adverse action when the agency believes the employee poses a threat to his own safety or the safety of others, the agency mission, or government systems or property.<sup>13</sup> According to OPM, a federal agency should monitor the situation and move towards longer-term actions when it is possible, appropriate, and prudent to do so.

An agency may also place an employee on administrative leave after proposing an adverse action. According to OPM regulations, under ordinary circumstances, an employee whose removal or suspension has been proposed will remain in a duty status in his or her regular position after the employee receives notice of the proposed adverse action.<sup>14</sup> In those rare circumstances after the agency proposes an adverse action when the agency believes the employee's continued presence in the workplace may pose a threat to the employee or others, result in loss of or damage to government property, or otherwise jeopardize legitimate government interests, the agency may place the employee on administrative leave for such time as is necessary to effect the adverse action. However, OPM strongly recommends agencies consider other options prior to using administrative leave in this scenario. Options include assigning the employee to duties and a location where he or she is not a threat to safety, the agency mission, or government property; allowing the employee to take leave (annual leave, sick leave as appropriate, or leave without pay); or curtailing the advance notice period for the proposed adverse action when the agency can invoke the "crime provision" because it has reasonable cause to believe the employee has

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<sup>12</sup>Adverse actions are comprised of removal and suspension, including indefinite suspension. An employee on indefinite suspension is in a temporary status without duties and pay pending investigation, inquiry, or further agency action. 5 C.F.R. § 752.402.

<sup>13</sup>An investigation or finding of wrong-doing by an employee can be grounds for an agency to take adverse action, which may involve placing the employee on suspension including indefinite suspension or removing the employee from the agency.

<sup>14</sup>5 C.F.R. § 752.404(b)(3).

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committed a crime for which a sentence of imprisonment may be imposed.<sup>15</sup>

The Merit Systems Protection Board (MSPB), among other things, adjudicates individual federal employee appeals of agency adverse actions.<sup>16</sup> MSPB has recognized the authority of agencies to place employees on short-term administrative leave while instituting adverse action procedures. MSPB has also ruled that placing an employee on administrative leave is not subject to procedural due process requirements and is not an appealable agency action. This is in contrast to adverse actions, such as removals or suspensions of more than 14 days, including indefinite suspensions, which require procedural due process (such as 30 days advance notice), and are subject to appeal and reversal by MSPB where agencies fail to follow such due process procedures. Similarly, where an agency bars an employee from duty for more than 14 days, requiring that employee to involuntarily use his or her own leave, such agency actions are also subject to appeal. A federal employee may obtain judicial review of a final MSPB decision with the United States Court of Appeals for the Federal Circuit by filing a petition for review within 60 days after the Board issues notice of its final action.<sup>17</sup>

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<sup>15</sup> U.S.C. § 7513(b)(1).

<sup>16</sup> The mission of the MSPB is to protect the merit systems principles and promote an effective federal workforce free of prohibited personnel practices.

<sup>17</sup> U.S.C. § 7703(b)(1); 28 U.S.C. § 1295(a)(9).

## Over the Past 5 Fiscal Years, More than 100 DHS Employees Were on Administrative Leave for Personnel Matters for 1 Year or More

Between fiscal years 2011 and 2015, DHS placed 116 employees on administrative leave for personnel matters for 1 year or more, with a total estimated salary cost of \$19.8 million during the same period, as shown in table 1.<sup>18</sup> DHS placed the majority of these employees (69 employees or 59 percent) on administrative leave for matters related to misconduct allegations, according to DHS data. For example, as of September 30, 2015, a law enforcement agent at a DHS component had been on administrative leave for over 3 years while under investigation for allegations of criminal and administrative misconduct. These allegations raised concerns about the protection of government resources and precluded him from working as a law enforcement agent, according to the component. While on administrative leave, the employee received an estimated \$455,000 in salary and benefits, according to DHS.

**Table 1: Department of Homeland Security (DHS) Components Use of Administrative Leave, by Types of Personnel Matters, for 1 Year or More between Fiscal Years 2011 and 2015**

	Types of Personnel Matters			Total cases	Estimated salary cost
	Misconduct	Fitness for Duty	Security clearance		
U.S. Customs and Border Protection	38	14		52	\$8,875,826
Federal Emergency Management Agency	1		3	4	\$619,205
U.S. Immigration and Customs Enforcement	11	6		17	\$2,991,283
National Protection and Programs Directorate	2	4	4	10	\$1,718,857
Office of the Chief Security Officer			1	1	\$198,012
Office of Inspector General	9			9	\$1,939,143
Transportation Security Administration	1		2	3	\$578,077
U.S. Coast Guard	4	1	1	6	\$603,102

<sup>18</sup>Between fiscal years 2011 and 2014, 752 DHS employees were on administrative leave for at least 3 months during this period, according to OPM data. See appendix I for detailed information on the numbers of employees on administrative leave for 3 months or more between fiscal years 2011 and 2014 on the basis of the OPM data. The appendix does not include fiscal year 2015 OPM data because these data are not available at the time of this report.

	Types of Personnel Matters			Total cases	Estimated salary cost
	Misconduct	Fitness for Duty	Security clearance		
U.S. Citizenship and Immigration Services	3			3	\$501,622
U.S. Secret Service		3	8	11	\$1,819,172
<b>Total cases</b>	<b>69</b>	<b>28</b>	<b>19</b>	<b>116</b>	
Estimated salary cost	\$12,480,331	\$3,893,402	\$3,470,565		\$19,844,299

Source: GAO analysis of DHS data. | GAO-16-342

DHS also placed employees on administrative leave for personnel matters involving fitness for duty and security clearances. Of the 116 DHS employees on administrative leave for at least 1 year between fiscal years 2011 through 2015, 28 employees (24 percent) faced matters related to fitness for duty and 19 employees (or 16 percent) faced matters related to security clearances. For example, a component placed an employee on administrative leave because of concerns regarding his personal conduct and his handling of protected information. After proposing revocation of his security clearance and allowing the employee time to respond, the agency revoked the employee's security clearance. The employee's position required a security clearance, and the employee remained on administrative leave while he exhausted the agency's appeal process for revocation of his security clearance. Ultimately, after almost 18 months on administrative leave with an estimated salary cost of over \$160,000, the employee was removed from the agency. As shown in table 1, CBP had the most employees placed on administrative leave for 1 year or more between fiscal years 2011 and 2015 (52 employees or 45 percent of the 116 DHS employees).<sup>19</sup> The estimated salary cost for these employees for the same period was \$8.9 million, according to DHS.

DHS reported the current status, as of the end of fiscal year 2015, of the employees that had been on administrative leave for more than one year

<sup>19</sup>CBP is the largest DHS component in terms of its total number of employees. In proportion to the size of the CBP workforce, the number of CBP employees on administrative leave for 1 year or more is less than 1 percent, which is similar to the percentage of employees on this type of leave at the other DHS components covered in this report.

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as one of four options: returned to duty, on indefinite suspension, separated, and on administrative leave.<sup>20</sup> Prior to proposing an adverse action, such as suspension or removal, an agency often conducts an investigation. If the agency determines that for safety or security reasons the employee cannot stay in the workplace while the investigation is being conducted, the agency may put the employee on administrative leave until it has sufficient evidence to support a proposed adverse action. If the agency cannot gather sufficient evidence, the agency may need to return the employee to duty. For example, on the basis of allegations of misconduct, a component placed an employee on administrative leave. The employee remained on administrative leave—for over 3 years with an estimated salary cost of over \$340,000—while the component conducted an investigation into the allegations of misconduct, according to DHS. Ultimately, the employee was returned to duty after the component determined that it had insufficient evidence to remove the employee or to put him on indefinite suspension.

Table 2 shows, as of September 30, 2015, the status of the 116 DHS employees who had been on administrative leave for at least 1 year between fiscal years 2011 and 2015. Specifically, DHS ultimately returned to duty 32 employees (28 percent), separated from the agency more than half (59 percent) of the employees, and put on indefinite suspension 2 employees (2 percent), according to DHS data.<sup>21</sup> As of September 30, 2015, 14 of the 116 employees (12 percent) were still on administrative leave, pending a final outcome, with an estimated salary cost of \$2.6 million between fiscal years 2011 and 2015.

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<sup>20</sup>According to DHS, return to duty means that the employee was returned to pay and duty status. Separated refers to actions that end employment with the agency and cover resignations, terminations, removals, separations due to reduction in force, separations to enter the uniformed services, retirement, and death-in-service. Indefinite suspension means the placing of an employee in temporary status without duties and pay pending investigation, inquiry, or further agency action.

<sup>21</sup>Employees on indefinite suspension generally are ultimately either returned to duty or separated from the agency.

**Table 2: Status of Department of Homeland Security (DHS) Employees on Administrative Leave for 1 Year or More between Fiscal Years 2011 and 2015 by Component, as of September 30, 2015**

	Status				Total
	Returned to Duty	Separated	Indefinite Suspension	Administrative Leave	
U.S. Customs and Border Protection	15	31	1	5	52
Federal Emergency Management Agency				4	4
U.S. Immigration and Customs Enforcement	5	12			17
National Protection and Programs Directorate	3	6	1		10
Office of the Chief Security Officer		1			1
Office of Inspector General	4	3		2	9
Transportation Security Administration	1	2			3
U.S. Coast Guard	2	4			6
U.S. Citizenship and Immigration Services		1		2	3
U.S. Secret Service	2	8		1	11
<b>Total</b>	<b>32</b>	<b>68</b>	<b>2</b>	<b>14</b>	<b>116</b>

Source: GAO analysis of Department of DHS data. | GAO-16-342

## Numerous Factors Affect the Length of Administrative Leave

Several factors can contribute to the length of time an employee is on administrative leave for personnel matters.<sup>22</sup> Factors contributing to the time an employee is on administrative leave include (1) adverse action legal procedural requirements and the length of time needed for completing investigations related to misconduct, fitness for duty, or security clearance issues; (2) limited options other than administrative leave; and (3) agency inefficiencies in resolving administrative leave cases as expeditiously as possible. These factors are described below with examples from the DHS case files we reviewed where the employee was on administrative leave for 1 year or more.

**Adverse action requirements.** It is important to note that an agency cannot take an adverse action, such as suspending for more than 14

<sup>22</sup>No statute specifically limits the length of time that a federal employee can be on administrative leave. DHS policy and OPM guidance do not limit the use of administrative leave but emphasize its short-term use, and use as a last resort for personnel matters.

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days or removing an employee before taking certain procedural steps outlined in law.<sup>23</sup> These procedural steps are described below.

Prior to proposing an adverse action, an agency may place an employee on administrative leave in situations when the employee should be kept away from the workplace when the agency believes the employee poses a threat to his or her own safety or the safety of others, to the agency mission, or to government systems or property while an investigation is pending.<sup>24</sup> For example, one DHS employee believed to be involved in alien smuggling and considered a risk was placed on administrative leave while the component collected evidence against the employee. An option could include assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or government property, if feasible.

After proposing an adverse action, agencies are required to provide employees with at least 30 days advance written notice of proposed adverse action (e.g., notice of proposed indefinite suspension, notice of proposed removal), unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, in which case a shorter notice may be provided.<sup>25</sup> For example, the notice period was shortened to a 7-day notice period for a case in which an employee was indicted for extortion and bribery, among other things. After a proposed removal notice was issued, the employee resigned. In another case, there were two 30-day proposed suspension notice periods because the employee was indefinitely suspended, reinstated, and then indefinitely suspended a second time.<sup>26</sup> Further, during the adverse action process, if new facts come to light it may be necessary to provide additional notification to the employee and provide them the opportunity to reply to that new information that will be considered in the final decision.

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<sup>23</sup>See 5 U.S.C. § 7513; 5 C.F.R. § 752.404. Agencies must also take certain procedural steps for suspensions of 14 days or less, as described in 5 C.F.R. § 752.203.

<sup>24</sup>OPM advises limiting the approval of administrative leave for this purpose, noting that where absences are for longer than brief periods, administrative leave is generally inappropriate.

<sup>25</sup>5 U.S.C. § 7513(b)(1); 5 C.F.R. § 752.404(b)(1), (d)(1).

<sup>26</sup>The employee was reinstated after several MSPB decisions were issued, causing agency officials to reevaluate the process under which they suspended the employee.

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An employee is also entitled to a reasonable time, but not less than 7 days, to respond to the notice of proposed adverse action orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.<sup>27</sup> In some cases, these responses can take months. For example, in one case the component issued a proposed removal notice in March 2014 because of the employee's lack of candor under oath. The employee responded in writing and orally over the next few months, raising issues that required clarification by the agency. Ultimately, the removal was finalized in November 2014, nearly 8 months after the original proposal. In addition, an employee or representative may request an extension of time to reply and has a right to review the information that the agency is relying upon. For example, in a case involving an employee accused of aggravated assault, the employee designated an attorney and requested time for the attorney to review the case before responding. Further, the component twice provided the employee with new information and time to respond. The original indefinite suspension proposal was issued in March 2014, but with the addition of the attorney and new evidence introduced, the oral response was not submitted until October 2014.

If the employee wishes for an agency to consider any medical condition that may contribute to a conduct, performance, or leave problem, the employee must be given a reasonable time to furnish medical documentation.<sup>28</sup> The agency may, if authorized, require a medical examination, or otherwise, at its option, offer a medical examination.<sup>29</sup> For example, in a case that took more than 20 months to resolve, the component ordered the employee to take a fitness-for-duty exam in July 2012, after the employee exhibited hostile behavior at work. Over the course of the next 20 months, the employee received a general exam and two psychiatric exams. During this time, the employee remained on administrative leave while exams were rescheduled, physicians requested additional information, and there was miscommunication regarding medical records. In March 2014, the component determined that, according to the medical evidence, the employee was a threat to

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<sup>27</sup>5 U.S.C. §7513(b)(2); 5 C.F.R. § 752.404(c).

<sup>28</sup>5 C.F.R. § 752.404(c)(3).

<sup>29</sup>See 5 C.F.R. §§ 339.301, .302.

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others and not able to safely perform his duties. The component ultimately removed the employee in September 2014.

**Conducting investigations and collecting evidence to make adverse action determination.** Investigations into allegations of employee misconduct may be extensive, potentially involving multiple interviews over a lengthy period of time, or require investigations by third parties.<sup>30</sup> Component officials indicated where parallel criminal investigations are ongoing by a third party, such as the Federal Bureau of Investigations, U.S. Attorney's Office, Department of Justice Office of Public Integrity, or the DHS OIG, the investigation may be lengthy and the component may be limited in its ability to conduct its own investigation because it may be precluded from obtaining documents and interviewing witnesses as that may interfere with the criminal investigation. For example, in a particularly long and complex misconduct investigation, component officials said the third-party investigation (by the DHS OIG) took over 2 years to complete, including over 50 interviews conducted abroad.

However, as DHS and component officials noted, well-documented investigations are vital for ensuring adverse action decisions are properly supported, as officials are cautious to avoid liability in subsequent proceedings from an appealable decision that may result in an award of back pay and attorney's fees, which can be as much as three times or more the cost of employee back pay. For example, in one case involving an employee who had been removed for knowingly hiring an undocumented alien, the employee appealed the component's decision to the MSPB. The MSPB reversed the removal decision, finding that the deciding official's consideration of the employee's conviction as grounds for removal without first notifying her of the significance that he attached to her criminal status was a due process violation. The MSPB ordered the component to retroactively restore pay and benefits to the employee.<sup>31</sup> Components have also withdrawn adverse actions in response to MSPB decisions. For example, after the MSPB handed down several decisions regarding indefinite suspensions based on security clearance investigations, DHS component officials rescinded the indefinite

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<sup>30</sup>An investigation or finding of wrong-doing can be grounds for an agency to take adverse action, such as a removal or placement of the employee on suspension, including indefinite suspension.

<sup>31</sup>Henderson v. Department of Homeland Security, 119 M.S.P.R. 388 (2013).

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suspensions for two similar cases and returned the employees to administrative leave in order to reevaluate its procedures for these cases.<sup>32</sup>

**Limited options other than administrative leave.** In certain situations, management officials may have limited alternative options to administrative leave. The DHS policy and OPM guidance note that agencies should consider options other than administrative leave, such as assigning the employee to alternative work arrangements or duties where he or she is no longer a threat to safety or government property. According to DHS, telework is an alternative option to administrative leave. However, if an employee engages in alleged misconduct involving the misuse of government equipment, telework is not likely an alternative option as the individual would have access to the same government equipment and systems that they have allegedly misused. In this case, the only alternative is placing the individual on administrative leave. Also, DHS and component officials noted that reassignment to another position is not always feasible or viable, depending on other circumstances. For example, the U.S. Secret Service requires all of its employees to maintain a top secret security clearance, so if an employee's clearance is suspended pending an investigation, there are no alternative duties or positions to assign the employee to until the investigation is complete and a final decision is made.

**Potentially inefficient agency procedures.** Inefficient procedures may also in some cases contribute to the extended use of administrative leave. While the facts and circumstances of each case are unique and management is faced with difficult decisions regarding appropriate actions to take in situations involving the use of administrative leave, our review of DHS case files identified examples where inefficient procedures may have contributed to the length of time the employee was on administrative leave. For example, at one DHS component, resolution of

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<sup>32</sup>In these cases, the MSPB applied a constitutional due process analysis to the agency's security clearance suspension and revocation process. These decisions were later overturned in *Gargiulo v. Department of Homeland Security*, 727 F. 3d 1181 (2013), which held that employees do not have constitutional due process rights with respect to the procedures used to determine whether to suspend or revoke security clearances and that MSPB review of an indefinite suspension pending a security clearance investigation is limited to whether a security clearance was denied, whether the security clearance was a requirement of the employee's position, and whether the procedures set forth in section 7513 of title 5 were followed.

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a case was delayed for months when the designated proposing and deciding officials—who are the officials responsible for proposing and making the decision on the adverse action regarding the employee—left their positions and the agency did not designate new officials in a timely manner.<sup>33</sup> During this time, the employee remained on administrative leave. Filling the positions and allowing for replacements to become familiar with the case added time to resolve the case, according to agency officials. The component has since revised its procedures to allow flexibility in terms of who serves in those roles. In another case, an employee's top secret security clearance was suspended based on concerns about the employee's behavior and the employee was placed on administrative leave in December 2011. However, a mandatory physical examination to establish the employee's fitness for duty was not scheduled for this employee until May 2012. In another case, it was almost 5 months from the notice of proposed removal to the final decision, although the component already had medical documentation the employee was unable to perform his job.

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## DHS's Recently Issued Policy Increases Oversight of Administrative Leave but Does Not Include an Evaluation Strategy

In September 2015, DHS issued a policy on the proper use of administrative leave across the department. Prior to its issuance, the department did not have a policy or guidance regarding the proper use of administrative leave. Instead, components had their own approach to managing administrative leave, and policies and procedures varied across the components in terms of oversight, approvals, and tracking. According to DHS officials, they issued this policy to help ensure proper and limited use of administrative leave across the department, consistent with OPM guidance. Component officials said they would modify their policies and procedures as necessary to ensure compliance with the requirements of the DHS policy. Key provisions in the DHS policy include the following.

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<sup>33</sup>DHS delegates human resource responsibilities, including adverse actions, to component heads, subject to DHS's Chief Human Capital Office oversight. In this case, the agency's policy established the employee's first line supervisor as the proposing official for such action, working with human resource and employee and labor relations officials. The deciding official is a second level supervisor, according to the procedures manual.

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- **An emphasis on using administrative leave for short periods of time and only as a last resort for personnel matters.** Citing OPM's guidance on the appropriate use of administrative leave, the policy includes examples of when it is appropriate for a manager to grant administrative leave, such as for dismissal or closure because of severe weather, voting, or blood donations. For personnel matters, such as during an investigation of the employee, the policy states that employees should remain in the workplace unless the employee is believed to pose a risk to him/her self, to others, or to government property, or otherwise jeopardize legitimate government interests. Other management options should then be considered, such as indefinite suspension, if appropriate, with administrative leave as a last resort.
  - **Requiring elevated management approval for longer periods of use.** Supervisors can approve administrative leave for short periods, consistent with legal authority and relevant guidance. Supervisors are expected to consult with human resources officials and counsel as appropriate. No component may place an employee on administrative leave for more than 30 consecutive days without the approval of the component head or his/her designee.
  - **Routine reporting on administrative leave use to component and DHS management for increased visibility.** Component heads are to receive quarterly reports on employees who are placed on administrative leave for 320 hours or more and to consider whether administrative leave continues to be warranted. Components are to report quarterly to the DHS Chief Human Capital Officer regarding employees placed on administrative leave for 960 hours (6 months) or more.

DHS's new policy is intended to increase DHS and component awareness regarding the use of administrative leave by requiring elevated management approval and routine reporting to component heads and the DHS Chief Human Capital Officer, among other things, according to DHS officials. However, the policy does not address how DHS will evaluate the effectiveness of the policy in ensuring proper and limited use of administrative leave. Federal internal control standards call for agency management to establish internal control activities to ensure that ongoing monitoring occurs in the course of normal operations and that separate

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evaluations are conducted to assess effectiveness at a specific time.<sup>34</sup> The standards also note that information on the deficiencies found during ongoing monitoring and evaluations should be communicated within the organization. DHS's new administrative leave policy provides for routine monitoring by component heads and the DHS Chief Human Capital Officer of administrative leave usage, which should help increase management visibility of the issue. DHS officials said they intend to use the quarterly reports to determine if administrative leave continues to be warranted for those specific cases. However, they acknowledged that conducting evaluations and sharing of evaluation results could help ensure the effectiveness of the policy and procedures across DHS.

Evaluations of DHS's administrative leave policy can help the department identify and share particularly effective component practices for managing administrative leave, such as identifying alternative duties to assign employees instead of placing them on administrative leave. They may also help identify inefficient component processes, such as those we identified, that could increase the length of time an employee spends on administrative leave, allowing DHS to then take steps to address such inefficiencies and their causes. An evaluation may also identify unintended consequences resulting from DHS's administrative leave policy that monitoring does not capture. For example, an evaluation may find that the reporting aspects of the policy serves as an incentive to suspend or remove an employee before such actions are supported by an investigation, which may cost a component more if the action is successfully appealed. Finally, conducting evaluations of DHS's administrative leave policy may help ensure DHS's administrative leave policy and procedures are effective in reducing the use of administrative leave—one of the intended goals of the new policy—and ensuring the use is proper and justified.

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## Conclusions

Administrative leave is a cost to the taxpayer and its use should be managed effectively. While the reporting requirements in DHS's new administrative leave policy should help increase DHS and component awareness regarding the use of such leave and will allow for regular monitoring, the policy does not require a more comprehensive separate evaluation of the effectiveness of the policy and related procedures. Once

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<sup>34</sup>[GAO/AIMD-00-21.3.1.](#)

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the DHS policy and procedures have been in place and administrative leave routinely monitored, a separate evaluation of the policy and procedures can help the department identify and share effective components practices for managing administrative leave as well as make adjustments needed to help ensure proper and limited use of administrative leave across DHS.

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## Recommendation for Executive Action

To ensure that the department's administrative leave policy is working as intended, we recommend that the Secretary of Homeland Security direct the Chief Human Capital Officer to conduct evaluations of the department's policy and related procedures to identify successful practices, potential inefficiencies, and necessary policy and procedural adjustments, and to share the evaluation results across the department.

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## Agency Comments and Our Evaluation

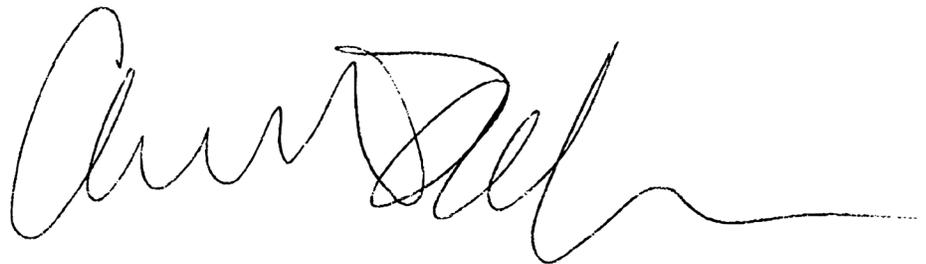
We provided a draft of this product to DHS and OPM for their review and comment. DHS provided written comments, which are reproduced in full in appendix II. OPM did not provide written comments. In its comments, DHS concurred with the recommendation in the report and described planned actions to address it. Specifically, DHS stated that it will evaluate the effectiveness of the new administrative leave policy and related procedures, as GAO recommends. Also, DHS noted that an initial review of the administrative leave data from the first quarter of fiscal year 2016 was completed in February 2016, and the review of all fiscal year 2016 data and recommendations concerning administrative leave policy and related procedures will be completed by March 31, 2017. These planned actions, if fully implemented, should address the intent of the recommendation contained in this report.

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We are sending copies of this report to the Secretary of Homeland Security, the Acting Director of the Office of Personnel Management, and the appropriate congressional committees. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (213) 830-1011 or [vonaha@gao.gov](mailto:vonaha@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix III.

A handwritten signature in black ink, appearing to read 'Andrew Von Ah', with a long horizontal flourish extending to the right.

Andrew Von Ah  
Acting Director  
Homeland Security and Justice

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# Appendix I: Department of Homeland Security (DHS) Employees on Administrative Leave for 3 Months or More between Fiscal Years 2011 and 2014 by Component

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To present more detailed information on DHS's use of administrative leave, and to help verify the reliability of the information we obtained from DHS, we analyzed data from the Office of Personnel Management's (OPM) Enterprise Human Resources Integration (EHRI) system on DHS employees on at least 3 months of administrative leave between fiscal years 2011 and 2014. Fiscal year 2015 data were not available at the time of this report. As shown in table 3, during this period a total of 752 DHS employees were on administrative leave for 3 months or more between fiscal years 2011 and 2014, and 90 of these DHS employees were on this type of leave for 1 year or more during this period.<sup>1</sup> This last number of employees is similar to the 87 employees on administrative leave for at least 1 year between fiscal years 2011 and 2014 reported in the DHS information.<sup>2</sup>

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<sup>1</sup>OPM's EHRI system data do not include information on the personnel matters related to this use of administrative leave.

<sup>2</sup>The GAO methodology for calculating the number of DHS employees on administrative leave between fiscal years 2011 and 2014 using the OPM data is different from the methodology DHS used to calculate the number of its employees on this leave during the same period. However, these different methodologies produce similar results regarding the numbers of DHS employees using administrative leave for 1 year or more during this period.

**Appendix I: Department of Homeland Security (DHS) Employees on Administrative Leave for 3 Months or More between Fiscal Years 2011 and 2014 by Component**

**Table 3: Office of Personnel Management (OPM) Data on Department of Homeland Security (DHS) Employees on Administrative Leave for 3 Months or More between Fiscal Years 2011 and 2014 by Component**

	<b>3 to 6 months</b>	<b>6 to 12 months</b>	<b>1 year or more</b>
U.S. Customs and Border Protection	69	50	32
Federal Emergency Management Agency	23	12	2
U.S. Immigration and Customs Enforcement	55	39	18
Office of Inspector General	7	5	9
Transportation Security Administration	166	28	5
U. S. Coast Guard	42	35	3
U.S. Citizenship and Immigration Services	19	9	3
U.S. Secret Service	39	28	13
Other	23	13	5
<b>Total</b>	<b>443</b>	<b>219</b>	<b>90</b>

Source: GAO analysis of OPM data. | GAO-16-342

Note: Other includes DHS headquarters components and other components not identified in the OPM data.

# Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

March 10, 2016

Andrew Von Ah  
Acting Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Re: Draft Report GAO-16-342, "ADMINISTRATIVE LEAVE: Evaluation of DHS' New Policy Can Help Identify Progress Towards Reducing Leave Use"

Dear Mr. Von Ah:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

DHS senior leadership is firmly committed to the appropriate and responsible application of paid administrative leave across the Department. We are pleased to note GAO's recognition that DHS issued a policy in September 2015 to ensure proper and limited use of administrative leave, in part, establishing quarterly reporting requirements and increased levels of oversight. In addition, DHS components are actively engaged and have established additional internal requirements, as appropriate.

The draft report contained one recommendation with which the Department concurs. Specifically, GAO recommended that:

**Recommendation:** The Secretary of Homeland Security direct the Chief Human Capital Officer [CHCO] to conduct evaluations of the Department's policy and related procedures to identify successful practices, potential inefficiencies, and necessary policy and procedural adjustments, and to share the evaluation results across the Department.

**Response:** Concur. The DHS CHCO will evaluate the effectiveness of the new administrative leave policy and procedures, as GAO recommends. An initial review of the data from the first quarter of fiscal year 2016 was completed in February 2016, and the review of all fiscal year 2016 data and recommendations concerning policy and procedures will be completed within the next year. Estimated Completion Date: March 31, 2017.

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**Appendix II: Comments from the Department  
of Homeland Security**

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Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Andrew Von Ah, (213) 830-1011 or [vonaha@gao.gov](mailto:vonaha@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Adam Hoffman (Assistant Director), Juan Tapia-Videla (Analyst-in-Charge), Monica Kelly, Tracey King, David Alexander, Cynthia Grant, and Chris Zbrozek made significant contributions to this report.

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