

U.S. Office of Personnel Management

Questions and Answers on 5 CFR Part 630, Subparts N and O Administrative Leave, Investigative Leave, and Notice Leave

General

- 1) **The Final Rule includes a compliance date of September 13, 2025. What steps must agencies take to comply with these regulations?**

Agencies must revise and implement their internal policies and procedures pertaining to discipline, leave, telework, time and attendance, and any other policies, as necessary, by the compliance date. Agencies should be particularly mindful of new time reporting codes, Congressional notification requirements, and any collective bargaining obligations when modifying internal policies and procedures.

- 2) **Are agencies required to record and report usage of administrative leave, investigative leave, and notice leave as separate leave categories?**

Yes, all leave covered by these regulations must be recorded and reported by type of leave. The Administrative Leave Act (“ALA”) requires OPM to regulate the proper recording of administrative leave, investigative leave, notice leave, and other leave authorized by law. Data on leave usage is critical to support oversight by agency leaders, the U.S. Government Accountability Office (GAO), and the Congress.

- 3) **What codes should agencies use to record the new categories of leave established by the Final Rule?**

The regulations prescribe four new categories of leave agencies must use to record administrative, investigative, and notice leave: (1) administrative leave for investigative purposes (related to employee conduct, performance, or other reasons prompting an investigation), (2) administrative leave for other purposes, (3) investigative leave, and (4) notice leave. OPM established a fifth category for weather and safety leave under a previous final rule. OPM notes that the two categories of leave related to investigations are necessary since the ALA requires an agency to exhaust the 10-workday annual limit for administrative leave for investigative purposes before placing an employee on investigative leave.

OPM will provide payroll and shared service providers with further instructions to code the new categories of leave.

4) What information should agencies prepare to report to Congress and GAO?

The regulations implement three separate reporting requirements to Congress or GAO. First, agencies that grant further extensions of investigative leave under 5 CFR 630.1504(g) must notify the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Accountability of the House of Representatives, and any other committees of jurisdiction over an agency, within five business days of any further extension. Each notification must include the information identified at 5 CFR 630.1504(g). Second, agencies should be prepared to respond to requests from their committees of jurisdiction seeking information and documentation required under 5 CFR 630.1506(a). Lastly, agencies should be prepared to provide to GAO at least every five years the information required under section 1138(d)(2) of Public Law 114-328 (5 U.S.C. 6329a (Editorial Notes)).

Administrative Leave

5) What limitations apply to an agency's use of administrative leave?

The regulations limit the placement of employees on administrative leave for investigative purposes to 10 workdays in a calendar year (i.e., January 1 to December 31). The "investigative purposes" language pertains to situations where an agency places an employee (by management action not contingent on employee consent) on administrative leave in connection with an investigation of the employee that could lead to an adverse action or other adverse outcome. Otherwise, the 10-workday annual limit does not apply when an agency grants an employee administrative leave.

The regulations separately authorize agencies to grant administrative leave when the absence is directly related to the agency's mission; is officially sponsored or sanctioned by the agency; will clearly enhance the professional development or skills of the employee in the employee's current position; or is in the interest of the agency or the Government as a whole.

An agency's determination that a paid absence from duty meets any of these four criteria must either be (1) established under written agency policies or (2) reviewed and approved by an official of the agency who is at a higher level than the official making the determination if the specific type of use and amount of leave for that use has not

been authorized under established written policy. The regulations state that use of administrative leave should generally be for a brief period (usually not more than 1 workday) and limited to ad hoc, event-specific, or time-limited situations. However, agencies have discretion to grant administrative leave in other situations when determined to be appropriate after consideration of relevant factors. An agency may approve administrative leave for recurring circumstances, such as blood donation or voting, but must retain discretion to not approve the leave for any employee based on mission needs. Administrative leave is not an entitlement but is always granted at the discretion of the agency subject to mission needs.

6) How should agencies apply the 10-workday annual calendar year limitation on administrative leave?

The 10-workday annual limit applies only to administrative leave for investigative purposes as described in 5 CFR 630.1404. This limitation applies to management-initiated actions to “place” an employee on administrative leave, with or without the employee’s consent, only for the purpose of investigating certain personnel matters that could lead to an adverse personnel action or other adverse outcome. In any calendar year, an agency must place an employee on 10 workdays of administrative leave for investigative purposes before it places the employee on an initial period of investigative leave.

7) Should agencies use the calendar year (i.e., January 1 to December 31) or the payroll calendar year when applying the 10-workday annual limit for placing an employee on administrative leave for investigative purposes?

The ALA requires that agencies use the calendar year (i.e., January 1-December 31) in applying the 10-workday annual limit for administrative leave for investigative purposes.

8) Does the granting of administrative leave for purposes other than investigative purposes count towards the 10-workday annual limit?

No, if an agency grants an employee administrative leave for purposes other than investigative purposes, for example, to vote in an election, that time will not count if the same employee is later under investigation that could lead to an adverse action or other adverse outcome. Agencies will use different codes provided by OPM to track both types of administrative leave in this example to aid in their compliance with the regulations.

- 9) If an agency places an employee on administrative leave for investigative purposes at the end of the calendar year for a period that continues into the new calendar year, how should the agency calculate this time towards the 10-workday annual limit?**

The 10-workday annual limit applies on a calendar year basis. For those days that an agency places an employee on administrative leave for investigative purposes at the end of a calendar year, those days will not count towards the 10-workday annual limit in the following year. For example, if an employee were placed on administrative leave for investigative purposes on December 27-31, that time would not count towards the 10-workday annual limit for the following year if administrative leave continued into January. The agency in this example would therefore need to place an employee on administrative leave for 10 workdays in the new calendar year before proceeding to place the employee on investigative leave, if it determines that is appropriate.

- 10) If an employee who exhausted the 10-workday annual limit for administrative leave for investigative purposes moves to another federal agency during the same calendar year, must the gaining agency count the time the losing agency placed the employee on administrative leave for investigative purposes?**

No, the 10-workday annual limit applies separately to each agency that may employ an employee during the year. Use by different employing agencies is not aggregated. The annual count resets if an employee moves to another agency. (For the purposes of these regulations, “agency” has the same meaning as an “Executive agency” as defined in 5 U.S.C. 105, which includes Executive departments, Government corporations, and independent establishments.) Thus, administrative leave for investigative purposes used for an employee who moves within the same Executive department continues to count against the 10-workday limit at the other subagency. For example, the Department of the Army (Army) and the Department of the Navy (Navy) both fall under the Department of Defense, the Executive department. Movement from the Army to the Navy would require Navy to include any time the Army placed the employee on administrative leave for investigative purposes within the calendar year when determining whether the 10-workday limit had been exhausted.

11) If an agency places an employee on administrative leave subject to the 10-workday annual limit, must it take an adverse or other administrative action against the employee?

No, the placement of an employee on administrative leave for investigative purposes does not require that the agency eventually take an adverse or other administrative action against the employee. The purpose of this authority is to limit the use of administrative leave by agencies when an employee is under investigation.

12) Do the regulations define acceptable uses of administrative leave outside of the time used for investigation purposes?

The regulations establish general principles and specific requirements to guide agencies in approving administrative leave. The regulations do not list all possible acceptable uses of administrative leave. Agencies may establish acceptable uses in policy or through ad hoc approval by an authorized official at least one level higher than the official making the determination to grant administrative leave. When doing so, agencies should consider the limitations described in the regulations. Also, agencies should adhere to any collective bargaining obligations as discussed later in this guidance.

13) Do the regulations prohibit using administrative leave for specific purposes?

Yes, the regulations prohibit agencies from granting administrative leave to employees (1) to mark the memory of a deceased former Federal official and (2) as a reward to recognize the performance or contributions of an employee or group of employees. See 5 CFR 630.1403(b). This latter prohibition does not preclude an agency from granting employees time-off awards as authorized by its performance award policy as separate legal authority permits such awards. See 5 U.S.C. 4502(e) and 5 CFR 451.104(a) and (f).

14) Can agencies offer employees administrative leave to engage in fitness or wellness activities consistent with the regulations?

The regulations do not prohibit the use of administrative leave for fitness or wellness activities. Agencies may grant administrative leave provided that they do so consistent with the principles and the limitations in these regulations. But agencies are accountable for their policies and actions to approve administrative leave and should be prepared to justify those policies and actions and show how they gave due consideration to the regulatory factors in 5 CFR 630.1403(a)(6). Agencies should ensure that they retain the discretion to grant or not grant administrative leave based on

agency judgments of mission needs and that administrative leave not become an entitlement without regard to mission needs.

15) Do the regulations authorize an agency to provide administrative leave as part of a settlement agreement?

As a general matter, all settlement agreements must comport with applicable law and regulation. Where a settlement agreement provides for prospective relief including the granting of administrative leave, such relief is constrained by the limits set forth in the ALA and these regulations. For retroactive relief in the form of pay for nonwork periods, the Back Pay Act (5 U.S.C. 5596) provides the appropriate, separate legal authority. Retroactive salary payments to cover periods of erroneous separation are a correction and, therefore, do not constitute leave under the ALA or these regulations.

16) If an agency has specific authority to put an employee in a paid, non-duty status, does that time count towards the 10-workday limit for administrative leave for investigations?

No, these regulations are limited to the leave categories established under the Administrative Leave Act of 2016. Where separate statutory authority exists to support placing an employee in a non-duty status without a loss in pay, leave, or status, agencies may do so without adhering to these regulations. Agency personnel should consult with their legal counsel for further guidance.

Investigative Leave and Notice Leave

17) What does “investigation” mean under the investigative leave regulations?

The regulations at 5 CFR 630.1502 define “investigation” to mean an inquiry by an investigative entity regarding an employee involving such matters as: (1) an employee’s alleged misconduct that could result in an adverse action as described in 5 CFR part 752 or similar authority or other matters that could lead to outcomes adverse to the employee; or (2) an employee’s compliance with or adherence to security requirements.

An investigation includes an inquiry involving (1) security concerns, including eligibility for logical or physical access to agency facilities; (2) the period of time during which an appeal of a security clearance or revocation is pending; and (3) preparation of an investigative report and recommendation(s) related to the subject of the investigation. Although the regulatory definition includes some examples, it is not intended to be an exhaustive list of circumstances that meet the definition. -For

example, an investigation may also include the period of time when an agency is negotiating a settlement. Agencies should consult 5 CFR 630.1502 for the complete definition of “investigation.”

18) Which organizations or individuals qualify as an investigative entity for purposes of an investigation under these regulations?

The regulations define “investigative entity” as (1) an internal investigative unit of an agency¹, (2) the Office of the Inspector General of an agency, (3) the Attorney General, or (4) the Office of Special Counsel (OSC). An internal investigative unit of an agency may be composed of one or more persons, such as supervisors, managers, human resources practitioners, personnel security office staff, workplace violence prevention team members, or other agency representatives.

The regulations provide examples of what may be considered an internal investigative unit. It is not intended to be an exhaustive list. For example, agency counsel could be considered part of an investigative unit as an agency representative if they serve in that capacity.

19) Are agencies required to use investigative leave?

No, an agency’s use of investigative leave is discretionary. In most circumstances, an employee who is being investigated should remain in a duty status in their regular position during the investigation period.

20) What steps must an agency take to place an employee on investigative leave?

An agency may exercise its discretion to place an employee on investigative leave after placing an employee on administrative leave for investigative purposes for 10 workdays in a single calendar year and determining that further investigation is necessary. An authorized agency official must then determine in writing that, through evaluation of the baseline factors at 5 CFR 630.1503(e), the continued presence of the employee in the workplace may pose a threat to the employee or others; result in the destruction of

¹ The regulations at 5 CFR 630.1502 fully describe an internal investigative unit of any agency as follows:

- (1) An internal investigative unit of an agency granting investigative leave under this subpart, which may be composed of one or more persons, such as supervisors, managers, human resources practitioners, personnel security office staff, workplace violence prevention team members, or other agency representatives[.]

evidence relevant to an investigation; result in loss of or damage to Government property; or otherwise jeopardize legitimate Government interests.

Lastly, agencies must consider options to avoid or minimize the use of investigative leave, such as changing the employee's duties or work location, allowing the employee to voluntarily take leave, and placing the employee in an absent without leave status if the employee is absent from duty without approval.

21) What is the meaning of “threat” when an agency is determining if an employee should be placed on investigative leave?

The word “threat” carries a specific meaning under the ALA and refers to a broad variety of risks an employee could pose towards agency personnel, information, facilities, and information systems if the employee were permitted to continue to have access to the workplace or agency systems during the pendency of his or her investigation. Determinations made under 5 U.S.C. 6329b and 5 CFR 630.1503 to place an employee on investigative leave are uniquely within the authority, and in the discretion, of the agency. Also, before placing an employee on an initial period of investigative leave, the employee must have been previously placed on section 6329a administrative leave for investigative purposes for 10 workdays during the given calendar year. (See Questions 5-11 for more information.)

22) If an agency places an employee on administrative leave while it conducts an investigation of the employee prior to the publication of the regulations in the Federal Register, how should the agency adjust its practices as a result of these regulations?

An agency should first revise and implement its internal policies to comply with these regulations within 270 days from publication. Any amount of time spent by an employee on administrative leave before an agency modifies its internal policies or the 270-day compliance deadline, whichever occurs first, does not count towards the 10-workday annual calendar limit that is required before placing an employee on investigative leave. After an agency modifies its internal policies or the 270-day compliance deadline passes, the use of administrative leave for investigative purposes and investigative leave must comply with these regulations. Once an employee reaches the 10-workday annual limit for administrative leave for investigative purposes, the agency may place the employee on investigative leave if it determines such leave is appropriate.

23) How long may an agency place an employee on investigative leave?

An agency may place an employee in an investigative leave status for an initial period of not more than 30 workdays. If an agency determines that an extended period of investigative leave is appropriate, the agency's Chief Human Capital Officer (CHCO) (or the CHCO's designee) may approve extensions in increments of no more than 30 workdays for up to a total of 90 workdays. This 90-day limit applies to extensions of investigative leave associated with a single initial period of investigative leave. Further extensions beyond the 90-day limit require following special procedures as explained in Question 23.

The approving official must make a written determination that continued use of investigative leave is warranted for each extension. In the case of an employee of an Office of the Inspector General, there is a different requirement for approval of extensions that is described in 5 CFR 630.1504(f)(3)(iii).

24) May an agency continue to extend an employee's investigative leave beyond the 90-day limit?

Yes, however, further extensions beyond the 90-day limit are limited and subject to conditions. First, an official authorized to approve an extension under 5 CFR 630.1504(f)(3) may only approve additional extensions in increments of up to 30 workdays. Second, each extension must be based on the same criteria used to approve the initial period of investigative leave under 5 CFR 630.1504(b) and the extensions under 5 CFR 630.1504(f). Lastly, no later than 5 business days after granting each extension, the agency must submit a report to Congress that addresses the criteria in 5 CFR 630.1504(g)(1)-(8).

25) Is it appropriate to include time preparing the investigative report, associated recommendations, and the notice of proposed adverse action as a part of the investigative process?

Yes, an agency may include time spent preparing an investigative report (including developing recommended actions) as part of the investigation process and, thus, continue investigative leave. Similarly, an agency may keep an employee in an investigative leave status while it is deciding whether to propose and while preparing a notice of proposed adverse action. For more information, see the definition of "investigation" in 5 CFR 630.1502.

26) How do federal holidays and an employee's use of personal leave impact investigative leave?

An employee can only be in one leave status at a time. Therefore, if an agency's authorized official has placed an employee on investigative leave, the employee does not use investigative leave when they are using holiday paid time off or personal leave. Under 5 CFR 630.1504(b), the duration of investigative leave is based solely on the number of regular "workdays" (that is, excluding days of approved leave and paid holidays) on which an employee is actually in an investigative leave status. Accordingly, the calendar date on which the employee will reach 30 workdays of investigative leave may change.

If a period of investigative leave is interrupted, the employee is not on investigative leave during the interruption, and those days do not count against the 30-workday limit. For example, an employee is placed on investigative leave for 30 workdays beginning August 15 and is granted approval to use annual leave on the Tuesday and Wednesday immediately after Labor Day. The two days of annual leave and the Labor Day holiday interrupt the employee's investigative leave period and are excluded from the 30-workday count of investigative leave.

27) Is an agency required to place an employee on investigative leave before the agency requires the employee to telework?

No. Telework may be required only when the employee would satisfy the conditions for investigative leave under 5 U.S.C. 6329b and would otherwise be placed on such leave. Agencies should follow the procedures under 5 CFR 630.1503(c) when requiring an employee to telework in lieu of being placed on investigative leave.

28) May an agency permit an eligible employee who has not previously teleworked to telework voluntarily in lieu of being placed on investigative leave?

Yes. If an employee who is eligible for telework but has not been participating in an agency's telework program is willing to begin such participation voluntarily to avoid being placed on investigative leave, the agency may opt to approve the employee's request for voluntary telework. Although the regulations do not require agencies to conduct the same analysis under 5 CFR 630.1503(c) when considering a request to telework voluntarily, they should still consider these factors as a prudent step to protect against the risks posed by the employee.

29) Can an agency direct an employee to telework in lieu of investigative leave?

Yes. The ALA added 5 U.S.C. 6502(c) to the Telework Enhancement Act, authorizing agencies to require an employee to telework in lieu of investigative leave. Further, 5 CFR 630.1503(c)(2) provides that any voluntary telework agreement must be superseded as necessary to comply with an agency's action to require telework. This new authority allows an agency to keep an employee in a productive role contributing to an agency's mission without having to resort to placing the employee in a paid, non-duty status until an investigation is completed. Agencies are strongly encouraged to consider utilizing this authority after determining that the employee does not pose a threat and is otherwise eligible to telework (see 5 CFR 630.1503(c)).

If an agency requires telework in lieu of placement on investigative leave, the agency must provide the employee with a written explanation regarding the required telework in lieu of placement on investigative leave. The written explanation must include the agency's determination under 5 CFR 630.1503(c)(1) and a description of the limitations of the required telework, including the expected duration of telework. Agencies should also consider whether to incorporate existing telework agreement requirements into the written explanation such as duty location, frequency and modes of communication, and work expectations.

An agency's determination to require telework, including all conditions and requirements, is made at the agency's discretion. Agency telework policies will govern whether telework is appropriate in specific circumstances. OPM notes that agencies can change their telework policies and make special exceptions to policies for employees who are required to telework under 5 CFR 630.1503(c). However, it is incumbent upon agencies that they ensure that an employee's performance does not diminish even while in an investigation status. Supervisors are still responsible for communicating performance and behavioral expectations, monitoring and assessing employee performance, and taking appropriate actions when an employee is not performing successfully.

30) Does the ALA or these regulations require an agency to consider placement of an employee on telework before placing the employee on investigative leave when the employee has performance or conduct issues?

No. While the ALA requires agencies to consider certain alternatives before placing an employee on investigative leave (5 CFR 6329b(b)(2)), telework is not one of the alternatives agencies are required to consider.

However, an agency has discretion in deciding whether it will require telework by an employee who would otherwise be placed in investigative leave. Under 5 CFR 630.1503(c)(1)(ii), the regulations authorize an agency to require that an employee telework only if the employee is eligible to telework under the conditions set forth in 5 U.S.C. 6502(a) and (b)(4). Before an agency requires telework, it must determine that the employee would not pose certain risks to Government personnel, property, or other interests. 5 CFR 630.1503(c)(1)(i). After considering the above-described conditions, an agency still has the discretion not to require telework.

Although the use of telework is not subject to the approval and reporting accountability measures in place for use of investigative leave, agencies should continue to manage telework and hold employees accountable for productive work.

31) If an employee is placed on investigative leave near the end of the calendar year, and the investigation continues into the new year, must the agency use 10 days of administrative leave for investigative purposes under 5 U.S.C. 6329a before resuming the use of investigative leave under 5 U.S.C. 6329b in the new calendar year?

No. The bar in 5 U.S.C. 6329b(b)(3)—under which investigative leave may not be used unless the 10-workday annual limit has first been met—applies only to the placement of an employee on an initial period of investigative leave. That bar does not apply to an extension of investigative leave under section 6329b(c) (regulated in 5 CFR 630.1504(f)) or a further extension of investigative leave under section 6329b(d) (regulated in 5 CFR 630.1504(g)). For example, if a particular investigation of an employee begins in one calendar year and is extended or further extended in the next calendar year, there is no requirement to use 10 days of administrative leave for investigative purposes before approving an extension in the next calendar year. If the agency resolves the investigation after placing the employee on investigative leave, but later in the same calendar year initiates a new investigation of the same employee, the agency would then be required to exhaust the 10-workday annual limit of administrative leave since it had not already done so in the calendar year.

32) If investigative leave has been used, what are the agency's obligations at the end of the period of an initial or extended period of investigative leave?

No later than the day after the last day of an initial or extended period of investigative leave, an agency must: (1) return the employee to regular duty status; (2) take one or

more of the actions under 5 CFR 630.1503(b)(2); (3) propose or initiate an adverse action against the employee as provided under law; or (4) extend the period of investigative leave, if permitted.

The options set forth at 5 CFR 630.1503(b)(2) are: (1) keeping the employee in a duty status by assigning other duties; (2) permitting the use of voluntary paid leave; (3) placing the employee in an absence without leave status if the employee has been absent without approval; or (4) curtailing the notice period if the agency is proposing an adverse action and has reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.

33) Does the period of time the agency places the employee on administrative leave for investigative purposes (i.e., 10-workday annual limit) count towards the 70 workdays of investigative leave that qualifies as a personnel action in applying the prohibited personnel practices provisions at 5 U.S.C. 2302(b)(8) or (9)?

No, the placement of an employee on administrative leave for investigative purposes does not count towards this 70-workday period. Under 5 CFR 630.1504(i), the 70-workday period applies to an agency's placement of an employee on investigative leave. Agencies should contact their legal counsel for assistance in determining whether leave under the ALA or these regulations establishes a personnel action for purposes of 5 U.S.C. 2302(b)(8) or (9).

34) If an agency declines to take an adverse or other administrative action against an employee placed under investigative leave, must the agency maintain written records showing that the employee was placed on investigative leave?

Yes. 5 CFR 630.1506 requires that agencies maintain a record of the placement of an employee in investigative leave, including documentation regarding why the agency determined that keeping the employee in the workplace would be inappropriate. The agency must keep these records and make them available to OPM, any Congressional committee with jurisdiction over that agency, or as otherwise required by law or regulation. However, agencies remain subject to the rules for protecting sensitive information and personnel records, including the provisions of the Privacy Act.

35) What steps must an agency take to place an employee on notice leave?

Prior to placing an employee on notice leave, an agency must make a written determination that the employee's continued presence in the workplace poses a threat to Government personnel, property, or other interests as required by 5 CFR 630.1503(b).

When an employee is in a notice period as defined at 5 CFR 630.1502, the agency may proceed with placing the employee on notice leave after making this required assessment. Note that an agency may place an employee on notice leave without first using investigative leave.

Where an employee is the subject of an investigation and in an investigative leave status, the agency must make a new determination under 5 CFR 630.1503(b) before changing the employee's status from investigative leave to notice leave. This new determination will allow the agency to make an independent assessment that the employee continues to meet one or more of the criteria described in 5 CFR 630.1503(b).

36) What effect do the regulations for investigative leave and notice leave have on an agency's ability to impose an indefinite suspension without pay?

The investigative leave and notice leave regulations do not alter an agency's authority to impose an indefinite suspension under 5 CFR part 752. Both types of leave under these regulations give agencies the discretion to place an employee in a paid, non-duty status, provided that doing so meets the criteria in 5 CFR 630.1503.

37) Are agencies required to place an employee on notice leave during a notice period?

No. Agencies retain the discretion in determining whether to place an employee on notice leave. Normally, an employee should remain in a duty status in their regular position during the period pending an agency's decision on a proposed adverse action.

38) What must an agency tell an employee when placing the employee on notice leave?

As provided in 5 CFR 630.1504(c), the agency must provide the employee with a written explanation that includes: (1) a description of the limitations of the leave placement, including the duration of leave; (2) notice of the actions that the agency may take at the end of the conclusion of the investigative leave period and that the agency will be obliged to take one of those actions; and (3) notice that placement on investigative leave for 70 workdays or more is considered a "personnel action" for purposes of OSC's authority regarding the prohibited personnel practices provisions at 5 U.S.C. 2302(b)(8)-(9).²

² Agencies and employees should note, however, that placement on investigative leave is not an adverse action and does not establish an independent basis under 5 CFR part 752 for filing an appeal with the MSPB. Employees must seek corrective action with OSC before filing an individual right of action appeal with the MSPB under 5 U.S.C. 1221

39) How should an agency communicate to an employee that investigative leave for 70 or more workdays is considered a “personnel action” for purposes of 5 U.S.C. 2302(b)(8)-(9)?

As explained above, the regulation requires that agencies notify an employee about the 70-workday threshold as part of the written explanation to an employee placed on investigative leave. Any additional information provided to the employee, such as OSC’s procedures, as part of its written determination is at the agency’s discretion.

40) Should an agency use notice leave during a period when it negotiates a settlement with an employee but prior to an agency proposing an adverse action?

No. Agencies are not permitted to use notice leave solely for the purpose of engaging in settlement negotiations. As explained in response to Question 35 above, use of notice leave is limited to two occasions that both require initiating or proposing an adverse action. However, an agency may appropriately keep an employee in an investigation status and on investigative leave while it is deciding whether to propose and/or preparing a notice of proposed adverse action.

41) Can the authority to place an employee on notice leave be delegated to the agency official proposing the adverse action?

Yes. The regulations do not prohibit agencies from delegating the authority to place an employee on notice leave to the lowest reasonable level within the agency. Agencies have the discretion to establish the appropriate authority level for placing an employee on notice leave within their organizations.

42) Did OPM amend 5 CFR part 752 to provide more detail regarding notice periods?

Yes. OPM revised 5 CFR 752.404(b)(3)(iv) and 752.604(b)(2)(iv) to reflect that an agency may, if the criteria in 5 CFR 630.1503(b) are met, place an employee in notice leave status for not longer than the duration of the notice period. The notice period ends on either the effective date of the adverse action or the date on which the agency notifies the employee that no adverse action will be taken.

43) Is there a limit on the amount of notice leave an agency can use?

No. However, notice leave may be used only for the duration of the notice period and provided that the criteria under 5 CFR 630.1503(b) are met.

44) How does an agency's workplace violence policy impact the agency's assessment of baseline factors in 5 CFR 630.1503(e) which are required for investigative leave and notice leave?

The baseline factors are to be used as a starting point when determining whether an employee should be placed on investigative leave or notice leave according to the facts and circumstances of each individual situation. These factors do not replace workplace violence policies but may require agencies to review them in the face of these factors to ensure consistent application of both.

45) If an employee chooses not to request "use or lose" annual leave because of being on investigative leave or notice leave and forfeits the annual leave, is it subject to restoration?

No. Being placed on investigative leave or notice leave does not relieve an employee of the responsibility to properly schedule annual leave that would otherwise be forfeited. If the employee fails to properly schedule the use of annual leave that would otherwise be forfeited, the agency cannot restore it to the employee.

46) If an agency approves an employee's timely request to use "use or lose" annual leave but the employee decides not to use the leave and instead remain on investigative leave or notice leave, is the employee's "use or lose" leave subject to restoration?

No. The agency is not denying the employee's request to use the properly scheduled excess annual leave. It is the employee's choice not to use the leave the agency has approved. As such, there is no authority to restore "use or lose" annual leave the employee chooses not to use.

47) Can an agency require an employee in a "use or lose" status to use their annual leave instead of placing the employee on investigative leave or notice leave?

No. An agency cannot require an employee to use annual leave when the agency has placed the employee on investigative leave or notice leave. Employees on investigative leave or notice leave may request to use their available leave or paid time off as appropriate under this final rule (5 CFR 630.1503(b)(2)(ii) and 630.1504(b)(2)). Being placed on investigative leave or notice leave does not relieve an employee of the responsibility to schedule annual leave that would otherwise be forfeited. If the employee fails to properly schedule "use or lose" annual leave in accordance with 5 CFR 630.308(a) (that is, by the applicable "use or lose" advanced scheduling date found

in the OPM fact sheet “[Leave Year Beginning and Ending Dates](#)”) the agency cannot restore it to the employee.

48) If an employee properly schedules “use or lose” annual leave in accordance with 5 CFR 630.308(a) (that is, by the applicable “use or lose” advanced scheduling date found in OPM fact sheet “[Leave Year Beginning and Ending Dates](#)”) and the agency denies the employee’s request to use the scheduled annual leave while the employee is placed on investigative leave or notice leave, can the employee’s excess annual leave be restored?

As long as the denial of the annual leave request is based on a need for the employee’s services (that is, an exigency of the public business), the excess annual leave resulting from the denial may be restored. For example, an agency may deny an annual leave request if the agency needs the employee to be available to report promptly to work for purposes of the investigation. If an employee properly schedules the use of annual leave that would otherwise be forfeited and the agency denies the request based on an exigency of the public business (as determined by the agency head or designee), the agency is required to restore the annual leave and set the appropriate time limit for use of the restored annual leave. (See 5 U.S.C. 6304(d)(1)(B) and (d)(2), 5 CFR 630.306(a)(2), and the OPM fact sheet “[Restoration of Annual Leave](#).”) Employees on investigative leave or notice leave may use their available leave or paid time off as appropriate under this final rule and should do so if they will be unavailable to report promptly to the agency during the period of investigation or notice period. Agencies should consider granting such employees’ “use or lose” annual leave requests to avoid forfeiture of the annual leave.

49) While on investigative leave or notice leave, can an employee voluntarily request to take leave or time off in place of investigative leave or notice leave?

Yes. 5 CFR 630.1503(b)(2)(ii) allows an employee to request personal leave (paid or unpaid) or paid time off in advance, as appropriate under the rules governing each category of leave or paid time off. The agency may approve such requests based on the permissible uses of the various types of leave. 5 CFR 630.1503(d)(1) provides that an employee on investigative leave or notice leave must be prepared to report to work at any time during the employee’s regularly scheduled tour of duty or must obtain approval of the appropriate leave to eliminate the possible obligation to report to work promptly if called. It may be advantageous for an employee to request to use leave or

time off voluntarily in place of investigative leave or notice leave if they are unavailable to report to work.

50) Is there a specific timeframe in which an employee is expected to report promptly if an agency requires an employee to return to duty during investigative leave or notice leave?

Agencies are responsible for establishing reporting requirements and communicating expectations to employees when they are notified of placement on investigative leave or notice leave, including what is meant by “report promptly.”

51) What are the recordkeeping requirements for investigative leave and notice leave?

5 CFR 630.1506 requires that an agency must maintain an accurate record of the placement of an employee on investigative leave or notice leave, including: (1) the reasons for the initial decision, including the alleged action(s) of the employee that required investigation or issuance of a notice of proposed action; (2) the basis for the determination made under 5 CFR 630.1503(b)(1); (3) an explanation of why an action under 5 CFR 630.1503(b)(2) was not appropriate; (4) the length of the period of investigative leave or notice leave; and (5) the amount of salary paid to the employee during the period of leave.

An agency must make these records available upon request to any committee of jurisdiction, to OPM, to GAO, and as otherwise required by law. In addition, agencies must retain records on investigative leave and notice leave for a minimum period of 6 years in accordance with 5 CFR 630.1506(b)(3). This duration will facilitate GAO’s ability to provide reports to Congress every 5 years that evaluate agencies’ implementation of investigative leave and notice leave.

52) Must an agency report their use of investigative leave and notice leave as categories of leave?

Yes, investigative leave and notice leave under these regulations is subject to reporting requirements. 5 CFR 630.1506(c)(1) requires that an agency submit data reports to OPM of investigative leave and notice leave under 5 U.S.C. 6329b(f) and these regulations as categories of leave separate from other types of leave. This will aid agencies in meeting their obligations under 5 CFR 630.1506(c)(2) to provide information to GAO every 5 years, as that office is required to submit reports to Congress.

Labor Relations

53) How will these regulations impact collective bargaining agreements?

If a collective bargaining agreement is in effect before the date these regulations are prescribed, then any regulatory provisions (other than those restating statutory requirements) that conflict with the agreement may be enforced only when the current term of the collective bargaining agreement expires, whether or not the agreement is officially reopened for negotiations or is automatically renewed through a rollover provision. Those regulatory provisions which do not conflict with a collective bargaining agreement are immediately enforceable.

Where an existing collective bargaining agreement conflicts with statutory requirements, those statutory requirements take precedence over any conflicting language in a collective bargaining agreement. Any collective bargaining agreement that takes effect on the date of or after these regulations are prescribed must comport with these regulations. Where a conflict exists, the provisions in conflict will be unenforceable.

Lastly, agencies should note that efforts to bring internal policies and procedures into compliance within 270 days of publication of the regulations may require collective bargaining consistent with the federal labor statute and any applicable collective bargaining agreements.

54) The regulations require agencies to revise and implement internal policies consistent with the ALA within 270 calendar days after the date they are published. Will agencies be required to negotiate these changes to policies with its labor unions prior to implementation?

Agencies have a statutory obligation to revise and implement their internal policies to conform with the requirements of the ALA and these regulations within 270 days after publication of the regulations. Agencies are not relieved, however, from their collective bargaining obligations. Agencies should provide applicable labor unions with notice and an opportunity to bargain any changes to conditions of employment necessitated by these regulations and consistent with their requirements under the federal labor statute and any applicable collective bargaining agreements.

55) Do the regulations prohibit an agency from agreeing to provide administrative leave lasting more than one workday in a collective bargaining agreement?

No, the regulations do not prohibit an agency from granting an employee administrative leave lasting longer than one day. However, any such leave is subject to an agency's determination that such leave is appropriate. 5 CFR 630.1403(a)(3). The agency determination must consider to the decision factors listed in 5 CFR 630.1403(a)(6). Regardless of the length of time granted to an employee, the granting of administrative leave is subject to the limitations found in 5 CFR 630.1403, and those limitations may not be altered through collective bargaining.

56) May an agency agree to a provision in a collective bargaining agreement that provides recurring use of administrative leave for employees?

The regulations allow an agency to grant employees administrative leave for a recurring set of circumstances (such as blood donation or specified voting-related activities) as long as the use is justified under the regulations and the agency retains the discretion to disapprove or cancel such leave based on mission requirements. (Agencies should also note the guidance provided in response to Questions 14 and 57, related to administrative leave for fitness or wellness activities).

57) Must an agency negotiate over whether to authorize administrative leave for bargaining unit employees to engage in fitness or wellness activities, donate blood, participate in civil air patrol, or any other activity or purpose sought by a labor union through proposals for a collective bargaining agreement?

Generally, agencies are obligated to bargain over the types of activities authorized for general administrative leave subject to these regulations. The regulations only specifically prohibit two uses of general administrative leave (5 CFR 630.1403(b)), and, therefore, parties cannot negotiate administrative leave for these two purposes.

Additionally, the regulations provide various limitations on both parties to a collective bargaining agreement when negotiating for specific uses of administrative leave. The use of administrative leave for purposes other than an investigation is limited by general principles and limitations set forth in 5 CFR 630.1403(a).

FLRA case law prohibits parties to a collective bargaining agreement from disregarding the statutory or regulatory limitations placed upon agencies exercising discretion over

conditions of employment.³ Likewise, the FLRA has held as nonnegotiable provisions to a collective bargaining agreement requiring management to grant administrative leave without preserving management's discretion to determine whether an employee should remain on duty to perform work.⁴ Thus, proposals or provisions that would, for example, not allow an agency to disapprove a request for administrative leave based on mission needs would be inconsistent with these regulations (5 CFR 630.1403(a)(4)) and, therefore, be non-negotiable. Agencies should also consider that case law interpreting and applying the negotiability of administrative leave may need to be reexamined in light of the ALA and publication of these regulations.

58) Should agencies provide administrative leave for employees serving in a representational status as a labor union official?

The federal labor statute authorizes paid time for labor union officials to perform certain representational activities (5 U.S.C. 7131(a) and (c)) while prohibiting such paid time for internal union business (5 U.S.C. 7131(b)). Agencies may provide or agree to as part of a collective bargaining agreement additional paid time for employees to conduct representational activities authorized under the labor statute that are reasonable, necessary, and in the public interest. 5 U.S.C. 7131(d).

Where official time under the labor statute is not available to an employee in a representational status, there may be limited instances where an agency may approve or agree to provide in a collective bargaining agreement administrative leave consistent with these regulations.⁵

In light of the ALA and these regulations' new, substantive limitations, agencies should review the use of administrative leave for certain purposes previously deemed lawful by the FLRA and federal courts.

³ See Nat'l Treasury Emps. Union and Nuclear Regulatory Comm'n, 29 FLRA 217, 220 (1987).

⁴ Nat'l Treasury Emps. Union and Internal Revenue Serv., 39 FLRA 27, 43 (1991) (Provision 5); see also Nat'l Fed'n of Fed. Emps. and Nat'l Park Serv., 41 FLRA 1158 (1991) (Proposal 5).

⁵ See e.g. *Nat'l Fed'n of Fed. Emps. and Dep't of the Interior*, 4 FLRA 785 (1980) (FLRA found negotiable a labor union proposal granting up to 48 hours of administrative leave annually to union officials to attend union sponsored training).

Appendix B: Chart on Requirements for Use of Administrative Leave for Investigative Purposes, Investigative Leave, and Notice Leave Under 5 CFR Part 630*

Leave Type	Duration	Regulation	Requirements for Use	Reporting Requirement
Administrative Leave for Investigative Purposes	Up to 10 workdays per calendar year	5 CFR 630.1404	Employee under investigation as defined at 5 CFR 630.1502; limited to 10 workdays each annual year by 5 CFR 630.1404(a)	Report use in agency's biweekly payroll data submissions to the OPM EHRI Data Warehouse. Provide GAO with all the information it requests to support its 5-year-cycle evaluation reports to Congress under section 1138(d)(2) of Public Law 114-328 (5 U.S.C. 6329a (Editorial Notes)) and 5 CFR 630.1406(c)(2).
Initial Period of Investigative Leave	Up to 30 workdays	5 CFR 630.1504(b)	Assess in writing the criteria at 5 CFR 630.1503(b)(1) and (2).	Report use in agency's biweekly payroll data submissions to the OPM EHRI Data Warehouse. Provide GAO with all the information it requests to support its 5-year-cycle evaluation reports to Congress under section 1138(d)(2) of Public Law 114-328 (5 U.S.C. 6329a (Editorial Notes)) and 5 CFR 630.1406(c)(2).

*All leave identified in this chart is discretionary. Consult your agency, local policies, and collective bargaining agreements for any restrictions or additional conditions of use.

Leave Type	Duration	Regulation	Requirements for Use	Reporting Requirement
Incremental Extensions of Investigative Leave	Increments of up to 30 workdays; total extensions of investigative leave do not exceed 90 workdays	5 CFR 630.1504(f)	Reassess in writing the criteria at 5 CFR 630.1503(b)(1) and (2) and obtain an extension from CHCO, designee, or Inspector General after that official consults with the investigator.	Report use in agency's biweekly payroll data submissions to the OPM EHRI Data Warehouse. Provide GAO with all the information it requests to support its 5-year-cycle evaluation reports to Congress under section 1138(d)(2) of Public Law 114-328 (5 U.S.C. 6329a (Editorial Notes)) and 5 CFR 630.1406(c)(2).
Further Extensions of Investigative Leave	Increments of up to 30 workdays each	5 CFR 630.1504(g)	Reassess in writing the criteria at 5 CFR 630.1503(b)(1) and (2) and obtain an extension from CHCO, designee, or Inspector General after the official consults with the investigator.	Report use in agency's biweekly payroll data submissions to the OPM EHRI Data Warehouse. Provide GAO with all the information it requests to support its 5-year-cycle evaluation reports to Congress under section 1138(d)(2) of Public Law 114-328 (5 U.S.C. 6329a (Editorial Notes)) and 5 CFR 630.1406(c)(2). Not later than 5 business days after the authorized official has granted each further extension, submit a report containing the information set forth in 5 CFR 630.1504(g)(1)-(8) to the two specified Congressional Committees.

Leave Type	Duration	Regulation	Requirements for Use	Reporting Requirement
Notice Leave	Notice Period	5 CFR 630.1505(b)	Assess in writing the criteria at 5 CFR 630.1503(b)(1) and (2).	Report use in agency's biweekly payroll data submissions to the OPM EHRI Data Warehouse. Provide GAO with all the information it requests to support its 5-year-cycle evaluation reports to Congress under section 1138(d)(2) of Public Law 114-328 (5 U.S.C. 6329a (Editorial Notes)) and 5 CFR 630.1406(c)(2).

Appendix C: Sample Notice to Employee Required to Telework

Dear Employee Name:

This letter serves as notice that Agency Name has determined it is appropriate to require you to telework in lieu of being placed on investigative leave. Agency Name expects you to continue teleworking in lieu of investigative leave until Insert Date.

Our determination is based on a consideration of factors required by governmentwide regulation that your continued working in a telework status would not pose a threat to yourself or others; would not result in the destruction of evidence relevant to Agency Name investigation; would not result in loss or damage to Government property; and otherwise would not jeopardize legitimate Government interests. We also considered keeping you in a duty status at your official worksite but assigning you duties in which you would not pose a threat.

You may be ordered to return to regular duty at any time before End Date and required to return Insert Timeframe (e.g., within x hours, the next business day)] to your official worksite. If you wish to take paid accrued leave (e.g., annual and sick leave) while Agency Name requires you to telework in lieu of placement on investigative leave, you may do so with the advance approval of your supervisor. Failure to obtain advance approval from your supervisor for any absence after being ordered to return to regular duty may result in being placed in an absent without leave status.

You may contact Agency Representative if you have any questions about this letter.

Authorized Agency Official Signature

Date

Receipt Acknowledged:

Employee Signature

Date

Appendix D: Sample Notice to Employee Placed on Investigative Leave

Dear Employee Name:

This letter serves as notice that Agency Name has determined it is appropriate to place you on investigative leave for 30 workdays (tentatively ending on End Date).

While placed on investigative leave, you must report daily to your supervisor by 9:00 a.m. that you are available to work. You will not lose pay, leave, or credit for time or service. You are not authorized to access your government furnished equipment, information systems, or official worksite except when notifying your supervisor of your availability to work.

You may be ordered to return to duty at any time during the period when you are on investigative leave and required to return promptly to your official worksite. If you wish to take paid accrued leave (e.g., annual and sick leave) while on investigative leave, you may do so with the advance approval of your supervisor. Failure to obtain advance approval from your supervisor for any absence after being ordered to return to duty may result in being placed in an absent without leave status.

Once this period of investigative leave has elapsed, Agency Name must take one of the following actions: return you to full duty; return you to duty but assign you duties in which you may not pose a threat; authorize you to take accrued paid or unpaid leave; carry you in an absent without leave status; propose or initiate an adverse action; or extend the period of investigative leave as permitted by regulation. You may contact Agency Representative if you have any questions about this letter.

Lastly, please note that placement on investigative leave for 70 workdays or more is considered a “personnel action” for purposes of the Office of Special Counsel’s authority to act in applying the prohibited personnel practices provisions at 5 U.S.C. 2302(b)(8)-(9).

Authorized Agency Official Signature

Date

Receipt Acknowledged:

Employee Signature

Date

Appendix E: Sample Notice to Employee Placed on Notice Leave

Dear Employee Name:

This letter serves as notice that Agency Name has determined it is appropriate to place you on notice leave beginning Insert Date after providing you notice of a Insert Name Of Proposed Adverse Action on Insert Date Of Proposed Adverse Action. This period of notice leave will end on either the effective date of the adverse action, if upheld, or the date when Agency Name notifies you that no such action will be taken. Agency Name may, however, return you to duty before any decision on an adverse action is made.

While placed on notice leave, you must report daily to your supervisor by 9:00 a.m. that you are available to work. You will not lose pay, leave, or credit for time or service. You are not authorized to access your government furnished equipment, information systems, or official worksite except when notifying your supervisor of your availability to work.

You may be ordered to return to duty at any time before the agency makes a decision on the proposed adverse action. If ordered to return to duty, you are required to return promptly to your official worksite as directed by Agency Name. If you wish to take paid accrued leave (e.g., annual and sick leave) while on investigative leave, you may do so with the advance approval of your supervisor. Failure to obtain advance approval from your supervisor for any absence after being ordered to return to duty may result in being placed in an absent without leave status.

You may contact Agency Representative if you have any questions about this letter.

Authorized Agency Official Signature

Date

Receipt Acknowledged:

Employee Signature

Date

Appendix F: Designation Guidance for Approval of Extensions of Investigative Leave

Under the Administrative Leave Act of 2016 (ALA), if a Chief Human Capital Officer (CHCO) delegates authority to approve extensions to investigative leave, that individual must be at a sufficiently high level within the agency to make an impartial and independent determination regarding the extension.

The U.S. Office of Personnel Management (OPM) regulations prescribe provisions for an initial extension of investigative leave as well as further extensions at 5 CFR 630.1504(f) and (g), respectively. OPM recognizes the difficulty of any single official exercising direct personal control over all aspects of approving extensions of investigative leave. Therefore, pursuant to 5 CFR 630.1504(g), an official authorized through delegation from the CHCO of an agency to approve an initial extension may approve further extensions. Such officials may further redelegate this authority consistent with agency internal policies.

In determining the appropriate level of delegation, agencies should consider:

- the frequency an agency uses administrative leave prior to the publication of the regulations under the ALA;
- the capability of the designated official to efficiently make risk assessments and consider alternatives;
- the accessibility of the delegated official to the investigating authority;
- the ability for the CHCO to effectively exercise oversight authority, particularly in a large department or agency; and
- that the appropriate official delegated this authority is sufficiently removed from the facts and circumstances of an investigation to avoid actual or apparent conflicts of interest.

In most cases, the designee should be a manager who establishes the priorities or directs the work of multiple organizational units or specialized programs, such as determining organizational or program objectives, committing resources, and adjusting schedules. All delegations or redelegations of authority regarding extensions of investigative leave should be made in writing. We further recommend that delegation or redelegation of authority should be prohibited if the delegation or redelegation limits the capability of the CHCO to exercise the control necessary to discharge properly their responsibilities in accordance with 5 U.S.C. 6329b(c).