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October 23, 2015

VIA ELECTRONIC TRANSMISSION

Robert McDonald
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonald:

On October 21, 2014, I sent a letter to the Department of Veterans Affairs (VA), along with then-Chairman Darrell Issa, requesting information on the VA's use of administrative leave.¹ Information provided by the VA and other federal agencies confirmed the finding of a report issued by the Government Accountability Office (GAO) that agencies are placing employees on extended periods of administrative leave for personnel-related matters, such as a pending disciplinary action or investigation into alleged misconduct.²

The VA has a troubled record with respect to the use of administrative leave. The VA reportedly placed employees on paid administrative leave pending investigations into their inappropriate actions related to secret VA waiting lists.³ At the same time, the VA has also faced accusations of using administrative leave as retaliation for employees

¹ Letter from Charles E. Grassley, Ranking Member, U.S. Senate Comm. on the Judiciary, Darrell Issa, Chairman, House Comm. on Oversight and Gov't Reform, to Robert McDonald, Sec'y, U.S. Dep't of Veterans Affairs (Oct. 21, 2014).

² U.S. Gov't Accountability Office, GAO-15-79, *Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data* (2014).

³ Josh Hicks, *VA Secretary Shinseki to Testify About Alleged Cover-ups of Treatment Delays*, Wash. Post (May 8, 2014), <http://www.washingtonpost.com/blogs/federal-eye/wp/2014/05/08/house-committee-subpoenas-va-over-secret-waiting-list/>.

who objected to instructions to manipulate appointment times or other improper practices.⁴ GAO reported that the VA placed nearly 6,000 employees on administrative leave for between 1 and 6 months in fiscal years 2011-2013, comprising nearly 2% of its workforce. And, in fiscal year 2014, the VA outspent all other agencies surveyed with respect to employees on administrative leave for a month or more.⁵ As such, oversight of the VA's use of administrative leave is critical.

In order to understand the circumstances in which agencies are using extended periods of administrative leave and ensure the appropriate use of such leave, I asked for additional information about the VA's use of extended administrative leave. Specifically, for all employees identified in GAO's report as having been on paid administrative leave for more than one year, and employees on administrative leave for more than one year at the time of your response, I requested "for each employee a detailed narrative of the circumstances surrounding the extended paid leave," including, among other things:

- reason for being placed on administrative leave,
- a full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave, and
- a full explanation of why the employee was not placed on some form of unpaid leave.

The VA reported that it placed 46 employees on paid administrative leave for a year or more.⁶ The agency's explanations for doing so were largely vague, incomplete, or incoherent:

- In the 4 instances that the VA identified as relating to misconduct, employees were placed on administrative leave for an average of 3,100 hours (over 19 months), despite the VA Handbook providing that employees may be placed on administrative leave only "for a brief but reasonable period of time" or "the short

⁴ Felicia Schwartz, *Agency Examines 67 Claims of Retaliation Against VA Whistleblowers*, Wall St. J. (July 8, 2014, 11:44 PM), <http://www.wsj.com/articles/agency-examines-67-claims-of-retaliation-against-va-whistleblowers-1404855963>; David Zucchini et al., *Growing Evidence Points to Widespread Problems Throughout the Healthcare System*, L.A. Times (May 18, 2014, 5:00 AM), <http://touch.latimes.com/#section/-1/article/p2p-80235287/>.

⁵ This is notwithstanding that, while most agencies provided total compensation estimates including benefits, the VA, could not calculate its total administrative leave costs.

⁶ Letter from Gina S. Farrisee, Assistant Sec'y Human Res. & Admin., U.S. Dep't of Veterans Affairs, to Charles E. Grassley, Chairman, U.S. Senate Comm. on the Judiciary (Feb. 21 2015). These were the 46 employees identified in GAO's report as having been on administrative leave for one year or more, fiscal years 2011-2013. The VA reported that it did not have any additional employees on administrative leave for a period of greater than one year as of the time of the VA's response.

time necessary to effect suspension.”⁷ The VA did not provide full explanations as to why reassignment to other duties or another location was not considered, or why the employee was not placed on some form of unpaid leave.

- For 13 employees the VA did not provide any reason or explanation at all.
- Explanations were incomplete and confusing. For example, the explanation for an employee who had charged over a year of administrative leave was that his absence was authorized for 3 days of New Employee Orientation. Similarly, another employee charged over a year of administrative leave, the basis for which was a 5-day conference. Yet another employee for whom the VA’s leave system reported was on leave for more than a year, the explanation provided was “there was no Administrative Leave taken.”
- In the instance of longest duration, an employee has been on administrative leave for over 2 years for a “USERRA case,” with no further explanation as to the necessity of the administrative leave.⁸
- Other employees charged administrative leave for union duties and while enrolled in the VA National Education for Employees Program (VANEEP), among other reasons, which may be authorized by the VA’s policy on administrative absence.

The VA’s responses suggest it may be placing some employees on administrative leave for inappropriately long periods of time and that it does not adequately track or manage use of administrative leave. Further, the VA’s incomplete responses to this inquiry make it impossible to fully evaluate the agency’s use of administrative leave, and thus frustrate meaningful oversight.

Lastly, I asked the VA why it had placed nearly 6,000 employees—almost 2% of its workforce—on administrative leave for between one and six months. The VA did not explain this situation, but instead noted that there are differences between agencies’ leave recording practices because there is no government-wide guidance on what agencies should record and limited guidance on what payroll providers should report. This is not an explanation. However, the VA also stated that it is in the process of

⁷ Department of Veteran’s Affairs, Policy on Administrative Absence, VA Handbook 5011, at III-25, III-64 (provided as an attachment to Letter from Gina S. Farrissee, Assistant Sec’y Human Res. & Admin., U.S. Dep’t of Veterans Affairs, to Charles E. Grassley, Chairman, U.S. Senate Comm. on the Judiciary (Feb. 21 2015)).

⁸ The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-35, prohibits discrimination in employment and related practices based on military service as well as protects individuals who have not been timely and properly reemployed following their return from military service.

reviewing its policies on administrative leave and has developed guidance to ensure it is charged and coded appropriately. In addition, the VA stated it will be implementing a new time-keeping system that will allow the VA to refine how it records such things as union activities, training, and temporary duty, and that the system will provide opportunities for the VA to document specific reasons for the charge of administrative leave.

In order to understand the details surrounding the VA's use of extended administrative leave and how the VA ensures the appropriate use of such leave, please provide the information originally requested last year. Specifically, for each employee who was included in the department's response of February 21, 2015, and any additional employees on administrative leave for more than one year since the time of the VA's response, include a full account of the circumstances surrounding each employee's use of administrative leave. The full account should include the following:

Misconduct investigations and other non-duty reasons

1. The specific misconduct alleged and/or under investigation.
2. Whether the employee posed an immediate threat to safety, the agency mission, or to government property, and a full explanation of who determined that the employee posed such a threat and on the basis of what evidence the determination was made.
3. A full and detailed explanation of why the seriousness of the issues necessitated administrative leave for over one year, but were insufficient to support an indefinite suspension action or other form of unpaid leave.
4. A full and detailed explanation justifying the length of administrative leave, including all relevant dates and entities involved: when incidents took place; when determinations to place the employee on administrative leave were made and by whom; when investigations began, who conducted them, and the findings; and when adverse actions were proposed and taken. Your responses to this question should fully account for the duration of the administrative leave, noting gaps in investigative or other activity where they occur.
5. Other specific positions or duties that were considered for temporary reassignment, including, where applicable, in other departmental components.

Official duty activities authorized by the VA Handbook

6. Explanation of the safeguards in place to ensure adherence to VA policy and an accurate accounting of administrative leave usage, including how the VA ensures compliance with 5 U.S.C. § 7131, which differentiates between union activities that are allowable as official time and those that are not.

7. Explanation of any discrepancy between the amount of leave charged and the basis for its authorization (i.e., the VA's explanation should account for all hours of administrative leave taken).

Please provide the following information regarding the outcome of the VA's recent efforts to improve administrative leave policies and recording practices:

8. What actions did the VA take to review its policies on administrative leave and how was new guidance developed? Please provide a copy of the VA's new guidance.
9. When will the VA's new time system be implemented?
10. When will these new policies and time system enable the VA to explain why it placed nearly 2% of its workforce on paid administrative leave for between 1 and 6 months?

Please provide your responses by November 6, 2015. Should you have any questions, please contact DeLisa Lay of my Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley Chairman
Senate Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary