PARTNERSHIP FOR PUBLIC SERVICE

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July 28, 2026

Director Scott Kupor
Director, Office of Personnel Management
The Office of Personnel Management
1900 E St. NW
Washington, D.C. 20415-1000

Re: RIN 3206-AP07, "Administrative Leave for Workforce Realignment and Other Purposes"

Dear Director Kupor,

The Partnership for Public Service submits these comments on the Office of Personnel Management's notice for comment "Administrative Leave for Workforce Realignment and Other Purposes" (Docket No. OPM-2026-0397, June 29, 2026). The Partnership is a nonprofit, nonpartisan organization committed to building a better government and a stronger democracy. We have advocated across administrations for federal laws, regulations and programs that improve the government's ability to attract, hire and retain a talented workforce that effectively serves the public.

In 2015 and 2016, Congress considered, and ultimately passed, a bill to clarify proper uses of administrative leave. One of the main objectives of this law was to ensure that administrative leave is not used improperly, including as a backdoor to keeping employees off the job. It was also intended to ensure financial oversight of federal personnel matters and to ensure taxpayers are not paying huge sums for federal employees not to work.

On introduction of the bill, sponsor Senator Chuck Grassley (R-IA), chairman of the Judiciary Committee, stated: "There's a Wild West environment among agencies on paid administrative leave. Some agencies use it too much, and the taxpayers get short-changed. The statutory and regulatory vacuum on the use of paid leave has contributed to this problem. Congress is stepping in with legislation to fill the void. Our bill puts strict limits on administrative leave. It makes clear when other forms of paid leave are allowable and when employees should be on the job instead. Paid leave shouldn't be a crutch for management to avoid making tough personnel decisions or a club for wrongdoers to use against whistleblowers."

With the introduction of the Deferred Resignation Program, the use of extended administration leave is once again an issue. And beyond DRP, the second Trump administration has used administrative leave regularly to send employees home from work—even when there were no performance issues and when the employee performed Congressionally mandated and/or otherwise critical functions. The widespread use of administrative leave in 2025 and 2026 prompts many of the same questions that drove the Administration Leave Act of 2016. Despite the clear law on the books, employees are being involuntarily and voluntarily (although often with the threat of a reduction in force if they stay) prevented from doing their jobs, while still being paid at the expense of taxpayers. It is clearly being used as a workaround to employee removal and workforce restructuring limitations, exactly what Congress prohibited.

The proposed rule promulgated by the Office of Personnel Management to justify its allowance of administrative leave for the DRP appears contrary to both the spirit and letter of section 1138 of Public Law 114-328.

If the administration would like to reduce federal staffing levels across the board or in certain components, OPM should work with OMB and Congress to update applicable laws and create a meaningful and appropriate severance package for federal employees—in line with the private sector—alongside other tools to modernize federal government reshaping, rather than moving agencies back to expanded use of administrative leave under law that clearly prohibits that.

In the meantime, we recommend leaving employees on the job to do the work they are being paid for—not pushing them unstrategically out the door without regard to the impact the loss of talent and expertise will have on agency service delivery.

While we appreciate the clarifications OPM proposes to make regarding uses of administrative leave for performance recognition or in relation to investigatory leave under § 630.1403, we offer the following considerations for those changes primarily relating to deferred resignation.

Addition of settlement agreement period to administrative leave uses:

In this proposed rule, OPM adds to its list of appropriate uses of administrative leave a tenth example, which allows agencies to provide extended use of such leave to facilitate the voluntary resignation of employees under a settlement agreement.

Given the categories of Investigative and Notice Leave under 5 CFR Part 630, Subpart O, it is unclear why OPM would apply this use to administrative leave rather than to investigative and notice leave. Although settlements may occur after the investigation, they often stem from the investigation period, and it makes sense that the period of a settlement when an employee may need to be on leave be considered investigative leave, particularly considering that this leave category was meant to assist agencies with dealing with employees with potential performance or conduct issues.

We suggest removing the addition of this example and instead placing it in the category of leave where it would be most applicable: investigative leave. This also helps an agency track the type of leave being used for performance or conduct issues, versus the broader category of administrative leave. Specificity is helpful on many fronts—for tracking the use of taxpayer resources, planning for workforce and budgetary needs, and reporting to Congress so that it can provide proper updates to law, appropriations and oversight.

Conflating Administrative Leave with Performance and Conduct Actions:

Following the list of examples of administrative leave use cases, the proposed rule goes on to state: "They can reduce the need to apply administratively burdensome and disruptive reduction in force procedures. They can also facilitate and expedite the removal of employees whose performance or conduct has been identified as unsatisfactory."

This is problematic on several levels. First, OPM has already issued proposed rules to modernize RIFs. This is a strategic tool that an agency should use to better align budget, work needs and workforce in a way that accounts for agency mission and impact. There is no strategy in the expanded use of administrative leave in the proposed rule, and it is an inappropriate workaround to laws that better serve the purpose of workforce restructuring. If the administration wants to further update the tools and laws for workforce restructuring, it should do that in a thoughtful, targeted manner—not indirectly through administrative leave.

Further, using administrative leave to facilitate the removal of employees with performance and conduct issues is directly contrary to the Administrative Leave Act of 2016, which created separate categories of leave for this purpose. Should an agency need to remove an employee, and should current rules and procedures not be sufficient, OPM should be addressing those directly rather than allowing agencies a workaround that would take us right back to pre-2016 when agencies just put employees on extended administrative leave rather than taking appropriate action to evaluate and, when necessary, remove employees.

Administrative Leave for Deferred Resignations Versus VSIP:

5 U.S. Code Chapter 35 Subchapter II Part III Subpart B authorizes agencies, under the guidance of OPM, to provide voluntary separation incentive payments (VSIP) to employees as part of workforce restructuring. Colloquially known as "buy-outs," these were supposed to be akin to severance payments that are used for the same purpose in the private sector. The VSIP law requires agencies to identify a strategy for which employees it offers buy-outs to, what impacts on organizational structure it will have and how it fits with other processes such as RIFs.

Because the law capped payments at $25,000—an amount determined when the bill was passed in the 1990s—this tool has fallen out of favor because the amount has not kept up with the labor market, cost of living or inflation. In acknowledgement of this, Congress passed a higher limit for the Department of Defense. Rather than going back to using administrative leave for any purpose an agency wants, OPM should work with Congress to remove the monetary amount from the statute and create a mechanism to instead allow for agencies to appropriately budget for and deploy VSIPs in a manner that reflects relevant laws, inflation, workforce dynamics and strategic objectives

Changes to regulations on resignation:

5 CFR 715.202 already uses the word "may" in determining whether to allow an employee to withdraw a resignation. The clarification considered in this proposed rule seems unnecessary and may unduly constrain agencies and employees in currently unanticipated ways.

Furthermore, adding deferred resignation into this rule—absent statutory authority to allow deferred resignations—also seems inappropriate. If an employee is on paid administrative leave, and then returns to work, the employee picks up working and accruing benefits as usual. The paid leave benefits that an employee receives under "deferred resignation" are no different than an employee placed on administrative leave—they are one and the same.

We recommend this provision not be added to regulations on resignation unless a statute allows for this type of resignation separate from traditional administrative leave. Even then, the need and rationale for it would require significant justification. Should OPM continue to pursue the addition of this provision, we recommend adding a time component within which an employee can make the decision to withdraw a deferred resignation.

Conclusion:

It is important that agencies have flexibility to use administrative leave as necessary, and for OPM to provide guidance on appropriate use cases. However, this rule appears to be contrary to current law, as well as an attempt to provide coverage for the DRP well after the fact of its implementation. For these reasons we recommend that OPM reconsider the proposed rule to ensure alignment with the Administrative Leave Act of 2016 while also working through appropriate channels to update VSIP and other related laws as needed in dialogue with Congress. The Partnership stands ready to work with you on those critical updates.

Sincerely,

Max Stier
President and CEO
Partnership for Public Service