



United States Department of Agriculture

Departmental  
Administration

Office of the  
Assistant Secretary  
for Administration

Office of Human  
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**TO:** USDA-CHCO-COUNCIL  
Mission Area Chief Operating Officers  
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**FROM:** Anita R. Adkins  
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Office of Human Resources Management

**SUBJECT:** UPDATE: Annual Leave “Use-or-Lose” Notice – OHRM Advisory  
2022-001

This memorandum has been updated to include a link to the Office of Personnel Management’s (OPM’s) Compensation Policy Memorandum - [2021-24, Annual Leave Restoration Procedures for Leave Year 2021](#). The update also emphasizes agency responsibilities to use the COVID-19 National Emergency Authority and when to terminate that authority.

### ***Requirements to have Forfeited Annual Leave Restored***

As we approach the end of the calendar year, we want to remind employees who wish to have their forfeited annual leave restored due to an exigency of public business or sickness of the employee, that the leave must be scheduled in writing by November 20, 2021. Even though many employees are working from home or on modified schedules due to COVID-19, employees should be encouraged to use their leave throughout the year to avoid a use-or-lose leave situation.

For most employees, any annual leave in excess of 240 hours is forfeited at the beginning of the leave year. Certain employees have higher annual leave carryover limits (720 hours for members of the Senior Executive Service and certain other senior officials; 360 hours for certain employees stationed outside the U.S.; and certain employees have temporary personal leave carryover limits). Agencies may restore annual leave that was forfeited due to an exigency of the public business or sickness of the employee only if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. (See [5 CFR 630.308\(a\)](#))

Employee requests to restore forfeited annual leave must be scheduled and approved in writing (i.e., leave request through WebTA, OPM-71, or email) before the end of Pay Period 23 on November 20, 2021. Annual leave that is not scheduled in writing by November 20, 2021 is not eligible for restoration, even if the leave is cancelled for an exigency of public business, sickness of the employee, or other emergency situation.

Leave restoration should be the exception rather than the rule. Supervisors are responsible for determining if leave needs to be cancelled based on an exigency of

public business; it is not at the discretion of the employee. Supervisors should provide written cancellation notices to employees before the employee is scheduled to take leave. Employees unable to use approved leave due to an exigency of public business, personal illness, or administrative error, may request restoration.

### ***Annual Leave Recredit***

Annual leave re-credited under [Section 1111 of the National Defense Authorization Act](#) (NDAA) must be used by January 1, 2022, and may not be restored.

### ***Restoration of Annual Leave for Employees Impacted by the COVID-19 National Emergency***

The OPM Director has reaffirmed the COVID national emergency is a qualifying exigency of the public business for the purpose of restoring forfeited annual leave. Employees who have been identified as essential for the response to the COVID-19 national emergency will continue to have their excess annual leave automatically restored if they were unable to use their leave because they were required to respond to the emergency. (See [5 CFR 630.310](#))

#### **Actions Required by Agencies to use the COVID-19 National Emergency Authority**

Agencies are required to perform the following actions:

1. Determine the specific employees or groups of employees whose services are essential in response to the national emergency and who are qualified for coverage under the regulations;
2. Inform designated employees in writing of such a determination;
3. Continually monitor the agency's response to the national emergency and determine whether the services of the designated employees to respond to the national emergency are still required, preventing the employees from scheduling and using their annual leave; and
4. Fix a termination date of the exigency of the public business for each employee or group of employees in accordance with the regulatory criteria and inform both the affected employees and the National Finance Center in writing of the termination date.

#### **When to Terminate the COVID-19 National Emergency Authority**

Agencies are responsible to continually monitor their response to COVID and fix a termination date of the exigency of the public business for each employee whom the agency covered under this authority. (See [5 CFR 630.310\(f\)](#))

Assuming the exigency has not been terminated by action of the President, the OPM Director, or the Office of Human Resources Management (OHRM), the exigency must be

terminated for each covered employee on the date one of the following events occurs, whichever is earliest:

1. When the agency determines that the services of a covered employee is no longer essential to the response to the national emergency or that the employee is able to follow the normal leave scheduling procedures;
2. On the day that is 12 months after the national emergency has been declared (however, OHRM may extend this deadline annually by an additional 12 months (no more than two 12-month extensions); or
3. When an employee whose services were determined to be essential during the national emergency moves to a position not involving services determined by the agency to be essential to the response to the national emergency.

### ***Compensatory Time Off***

Compensatory time off should be used before annual leave; however, employees who are in a use-or-lose situation should use their annual leave before using compensatory time off hours. If an employee uses compensatory time off that is about to expire or credit hours and it results in the forfeiture of excess annual leave, the forfeited annual leave may not be restored because that does not constitute an exigency of public business.

### ***Voluntary Leave Transfer Program***

Employees unable to schedule and use all leave in excess of 240 hours by the end of the leave year may want to consider donating the extra leave to the Voluntary Leave Transfer Program (VLTP). This program supports employees in need of leave donations due to serious health conditions. Employees should contact their servicing Human Resources Office for a list of current recipients and information on the VLTP program. Excess NDAA carryover hours may not be donated.

Please ensure your Agency employees are informed of these requirements.

If you have any questions about this guidance, please contact Lisa Swenka, HR Specialist, Pay and Leave Policy, at [Lisa.Swenka@usda.gov](mailto:Lisa.Swenka@usda.gov) or at (202)731-7958 or Allen Hatcher, Acting Deputy Chief Human Capital Officer, at [Allen.Hatcher@usda.gov](mailto:Allen.Hatcher@usda.gov) or at (703) 457-7760.