
POLICY AND PROCEDURES

Office of Management

Restoration of Forfeited Annual Leave

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BACKGROUND

This MAPP provides information on the restoration of forfeited annual leave and the procedures for requesting and using restored annual leave for civilian employees in the Center for Drug Evaluation and Research (CDER).

POLICY

1. Generally, annual leave in excess of an employee's maximum carryover balance is forfeited if not used before the end of the leave year. The maximum carryover balance is **240 hours** for most civilian employees and **720 hours** for senior Executive Service (SES) employees.
2. Forfeited annual leave may be considered for restoration **only** under one of the following conditions:
 - a. To correct an administrative error, when the error causes the loss of annual leave.
 - b. When annual leave is scheduled through ITAS in advance, but its use is subsequently denied due to an exigency of public business. **Only** the

approving official (Center's Associate Director for Management) is authorized to determine whether an exigency exists.

- c. When use of scheduled annual leave is prevented by illness or injury, provided that the annual leave was scheduled in writing, in advance, and its use could not be rescheduled between the termination of illness or injury and the end of the leave year, either as a result of an exigency or because the termination of the illness or injury occurred too late in the leave year to permit rescheduling.
3. In b and c above, the employee must submit an ITAS leave request for the use-or-lose leave ***prior to the beginning of the third biweekly pay period before the end of the leave year***. Employees ***cannot*** have leave restored unless they request annual leave in advance through ITAS, even if they suspect that its use will be denied. If the above requirements are not met, the forfeited annual leave cannot be restored because this is not considered an administrative error. The only exception is a prolonged illness preceding the end of the leave year where the employee may be presumed to have requested proper scheduling of the annual leave.
4. The leave approving official must approve the employee's request for use-or-lose annual leave for the time requested by the employee ***prior to the beginning of the third biweekly pay period before the end of the leave year***. If the leave cannot be approved for use at the requested time, the leave must be rescheduled for use at some other mutually agreeable time before the end of the leave year.
5. If an exigency occurs that necessitates cancellation of the employee's approved use-or-lose annual leave, the Center's Associate Director for Management will determine whether or not an exigency exists of such importance that the employee cannot be released from duty and whether there is any reasonable alternative to the cancellation of the employee's use-or-lose annual leave. The determination of the exigency must be documented and specific, beginning and ending dates must be established before the employee's scheduled leave is canceled. See Procedures section to request an exigency of public business.
 - a. If the requirements in number five above are not met (i.e., the employee's request for use-or-lose leave was submitted but not approved or the exigency determination was not made before the employee's leave was canceled), this may be considered an administrative error and the forfeited annual leave may be considered for restoration.
6. If an exigency, illness, or injury that caused cancellation of an employee's use-or-lose annual leave terminates before the end of the leave year, every effort must be made to reschedule the annual leave before the end of the leave year to avoid forfeiture.

7. An employee may not use credit hours in lieu of use-or-lose annual leave to maintain the use-or-lose balance to have the annual leave restored. Use-or-lose leave must be used before credit time.
8. If an employee has a restored leave balance from a previous year that is due to expire in the current year, the restored leave should be used before using current use-or-lose annual leave.
9. An employee wishing to donate his or her use-or-lose annual leave may participate as a leave donor in the Voluntary Leave Transfer Program. The Voluntary Leave Transfer Program allows an employee to donate various amounts of his or her annual leave, before the end of the leave year, to an employee participating in the Program. For further information on the Voluntary Leave Transfer Program, please refer to the reference section.

Employees Separating/Transferring/Other Situations

1. An employee separating from the Federal Government with accumulated annual leave, including unused restored leave in a separate account, is paid a lump sum at his or her current hourly rate of all unused annual leave at the time of separation. The lump sum payment may be adjusted to collect the amount of any debt owed to the government.
 2. When an employee transfers to another agency, unused restored annual leave is transferred in accordance with standard regulatory provisions governing leave transfers.
 3. When an employee separates from the Federal Government, receives a lump sum annual leave payment, and is then reemployed in the Federal Government before the end of the period covering the lump sum payment, the regular and restored annual leave is recredited and the lump sum payment is reimbursed to the government.
 4. Active employees are in a missing status when they are determined to be missing in action, interned in a foreign country, captured by hostile forces, or detained in a foreign country against their will. Former missing employees may elect to receive payment for their forfeited leave or have the leave restored to them. A written request for either must be filed within 90 days immediately following the termination of their missing status. If payment for forfeited leave is elected, it shall be paid at the employees' rate of basic pay in effect at the time of forfeit. If restored leave is elected, Office of Personnel Management (OPM) shall prescribe the time limit for use in each case, taking into consideration the amount of restored leave and other relevant factors.
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Time Limitations:

1. Time Limitations for Requesting the Restoration of Annual Leave

Requests for restoration of annual leave must be submitted for approval to the Center's Restored Leave Coordinator *by mid-February of the leave year following the leave year in which the annual leave was forfeited*. Under very unusual circumstances (e.g., a prolonged illness, furloughs), requests for restoration of annual leave may be submitted after the first quarter but before the end of the leave year following the leave year in which annual leave was forfeited.

2. Time Limitations for Requesting Restored Annual Leave Due to Situations Other than an Extended Exigency

- a. Restored Leave must be used by the end of the leave year of the second year from the date of restoration. For example, if leave is restored on February 11, 2011, the restored leave must be used by the end of the 2013 leave year. The restoration date is determined by:
 - i. The date the annual leave was restored in correcting administrative error
 - ii. The date fixed by management as the end of the exigency that resulted in the forfeiture of the annual leave
 - iii. The date the supervisor, after considering the medical document, ascertains that the employee is able to return to duty, if the leave was forfeited because of illness or injury
- b. Restored annual leave can be used at any time during the leave year. The employee must request to use restored annual leave through ITAS and specify "restored leave" to be used. ***Once the restored leave is used, it cannot be changed.***

Caution: Employees and leave-approving officials should pay special attention to current year leave balances when employees use restored leave, in order to prevent placing employees in another possible forfeit of "use-or-lose" leave situation (or restored leave request situation).

3. Time Limitations for Use of Restored Annual Leave Due to an Extended Exigency

- a. The maximum time limit for use of annual leave restored due to an extended exigency is 2 years for each calendar year, or part thereof, that the exigency existed, regardless of the number of years during the exigency. For example, if the extended exigency began on October 1, 2006, and ended on November

18, 2010 (4 years), the restored leave would need to be used by the end of the 2018 leave year.

- b. The provisions of paragraph 2 above regarding use of restored annual leave also apply to employees with a restored leave account due to an extended exigency.

An employee cannot use the approved restored leave until it appears on the Leave and Earnings Statement.

The Associate Director for Management has been delegated authority to approve CDER Restoration of Annual Leave requests.

PROCEDURES

1. Exigency Determination Request (Attachment 1)

- a. The **supervisor** must request an exigency determination through the Center's Associate Director for Management **before cancellation** of an employee's use-or-lose leave in ITAS. The request must be in writing with the following required information:
 - i. Description of the exigency, the reason that the employee was affected by the work requirements generated by the exigency, and why the employee could not be released from duty
 - ii. Why leave cannot be rescheduled during the current calendar year
 - iii. The reason that another employee cannot do the work
 - iv. Beginning and ending dates of the exigency
 - v. The original ITAS Request (e-mail notification of pending/approval) and a copy of the Administrative Time and Leave Record, HHS-564
- b. The **timekeeper** attaches the ITAS Request (pending approval e-mail) and HHS-564 to the memo, makes a copy of the request, and forwards the **original** request with supporting documentation to the appropriate program specialist/management officer.
- c. The **Program Specialist/Management Officer** reviews the request and supporting documentation for accuracy and completeness and ensures that it is in compliance with Center policy; makes a copy of the request for his or her files; and forwards the **original** package to the Restored Leave Coordinator in the Office of Management.

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- d. The **Restored Leave Coordinator** reviews the request and supporting documentation for accuracy and completeness and ensures that it is in compliance with Center policy and forwards the *original* package to the Center's Associate Director for Management for exigency determination.
 - e. The **Center's Associate Director for Management** will determine whether or not an exigency exists of such importance that the employee cannot be released from duty, and if there is any reasonable alternative to cancellation of the employee's use-or-lose annual leave. Once a determination is made, the Associate Director will complete the Exigency Determination Request by signing and marking approved or disapproved. The Associate Director will return the package to the Restored Leave Coordinator.
 - f. The **Restored Leave Coordinator** will forward a copy of the original request to the requesting supervisor through the appropriate program specialist/management officer. The original copy will be maintained in the Office of Management.
 - g. The **Supervisor** will cancel the requested leave in ITAS through the timekeeper and ITAS coordinator if determined to be an Exigency of Public Business by the Associate Director for Management.
2. Restored Leave Request (Attachment 2)
- a. The **employee**, or any level of management in the employee's organization below the approving official, must complete the Request for Restoration of Annual Leave form FDA 3525 to request the restoration of forfeited annual leave. The request must be in writing and must include the following information:
 - i. Employee name and Social Security number
 - ii. Office phone number
 - iii. Employee timekeeper number
 - iv. Leave year of forfeited leave
 - v. Number of hours of annual leave to be restored
 - vi. Justification for the request (attach to form)
 - b. Additional documentation, as listed below, which supports the justification is also required and must be attached to the request.

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- i. A request for restoration of forfeited annual leave **due to administrative error** must include:
- A copy of the approved ITAS leave approval dates and amount of annual leave scheduled, date of approval, and signature of the leave approving official.
 - A copy of the requesting employee's leave and earnings statement (LES) for the last pay period of the leave year.
 - A copy of the requesting employees' Administrative Time and Leave Record (HHS-564) for the leave year.
 - A detailed description and the date(s) of the events that caused the error, and official supporting statements attesting to the events.
- ii. A request for restoration of forfeited annual leave **due to an exigency of public business** must include:
- A copy of the ITAS approval notice screen identifying the date of the employee's leave request, dates and amount of annual leave scheduled, date of approval.
 - A copy of the requesting employee's LES for the last pay period of the leave year.
 - A copy of the requesting employee's Administrative Time and Leave Record (HHS-564) for the leave year.
 - A signed copy of the Exigency Determination (see procedures for the supervisor).
 - If the exigency ended before the end of the leave year, efforts made, if any to reschedule the canceled annual leave, including:
 - The date that canceled leave was rescheduled
 - The date(s) on which the leave was rescheduled for use and the amount of leave that was rescheduled
 - The reason all of the canceled leave was not rescheduled or used
- iii. A request for restoration of forfeited annual leave **due to illness or injury** must include:

- A copy of the ITAS leave approval notice identifying the date of the employee's leave request, dates and amount of annual leave scheduled, date of approval.
- A copy of the requesting employee's LES for the last pay period of the leave year.
- Administrative Time and Leave Record – (HHS-564).
- Attached Explanation including:
 - i. The beginning date of illness or injury
 - ii. Date employee would be recovered and able to return to duty (including a copy of medical certificate)
 - iii. The type of leave taken and number of hours charged
 - iv. Efforts made, if any, to reschedule cancelled annual leave, including:
 - a. Date cancelled leave was rescheduled, date(s) on which the leave was rescheduled for use, and the amount rescheduled.
 - b. The reason all of the cancelled leave was not rescheduled.
 - c. Any other factors pertaining to the individual situation that supports the action taken.

The Restored Leave Coordinator Duties:

- The Restored Leave Coordinator will obtain approval of all restored leave requests and forward all approvals to the OHR Payroll Liaison for processing.
- The Restored Leave Coordinator will maintain all case documents, including but not limited to: FDA Form 3525, Request for Restoration of Annual Leave; ITAS Report of approval/disapproval of leave; copy of employee's HHS-564, Administrative Time and Leave Record, employee's LES for the last pay period of the leave year and exigency determination approvals.

REFERENCES

1. FDA Staff Manual Guide 1431.15, Authority to Restore Annual Leave, November 12, 2004
2. HHS Instruction 630-1-40F, Restoration of Annual Leave, July 26, 1996
3. HHS Guide for Timekeeping, Chapter 4, Restored Annual Leave, January 18, 2005, (FDA Intranet click: Payroll/Timekeeper Information/Guide for Timekeeping/Related Links-Guide for Timekeeping)

- 4. Office of Management/DMS/PMSB Web page for Restored Leave
- 5. CDER MAPP 4657.12, Voluntary Leave Transfer Program

DEFINITIONS

Forfeited Annual Leave: Also referred to as Use-or-Lose Annual Leave, is annual leave in excess of an employee's maximum carryover balance that will be lost if it is not used before the end of the leave year.

Restored Annual Leave: Forfeited annual leave that is approved for restoration and is carried over to the next leave year.

Administrative Error: An error that is administrative in nature (e.g., a timekeeping or payroll error).

Exigency of Public Business: A work situation requiring immediate action or attention (e.g., natural disaster, or other public emergency, sudden recall, alert or warning concerning drugs, etc).

Extended Exigency: Significant circumstances that meet **all** of the following four conditions:

- 1. Constitutes a threat to the national security, safety, or welfare
- 2. Lasts more than 3 calendar days
- 3. Affects a segment of an agency or occupational class
- 4. Precludes subsequent use of both restored and accrued leave within the time limit specified

SUMMARY OF CHANGES

Updated to be consistent with ITAS as well as final approval authority.

EFFECTIVE DATE

This MAPP is effective upon date of publication.

CHANGE CONTROL TABLE

Effective Date	Revision Number	Revisions
07/09/2014	4	Updated Policy and Procedures

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ATTACHMENT 1- EXIGENCY DETERMINATION REQUEST

(SAMPLE ONLY- Copy can be found on OM/DMS/PMSB website)

MEMORANDUM

**Department of Health and Human Services
Public Health Service
Food and Drug Administration
Center for Drug Evaluation and Research**

DATE: (Current Date)
FROM: (Employee's Supervisor)
SUBJECT: Request for and Exigency Determination
TO: Melanie Keller
Associate Director for Management
Office of Management, CDER

THROUGH: CDER Restored Leave Coordinator

Employee's Name:

Number of Hours of Use or Lose that Will be Lost:

Justification: (Complete description of the nature of exigency and why employee could not be released from duty, why leave cannot be rescheduled, the reason another employee cannot do the work, and the beginning and ending dates of the exigency.)

(Supervisor's signature/title)

(Date)

Associate Director for Management
Office of Management, CDER

(Date)

Approved_____

Disapproved_____

ATTACHMENTS: Approved ITAS Leave Request, Up-to-date
Administrative Time and Leave Record (HHS-564)

ATTACHMENT 2 - RESTORED LEAVE REQUEST

(SAMPLE ONLY - FILLIABLE FORM can be found on OM/DMS/PMSB website)

Department of Health and Human Services Food and Drug Administration REQUEST FOR RESTORATION OF ANNUAL LEAVE	
TO: <u>Associate Director for Management, CDER</u> Approving Official	
EMPLOYEE NAME _____	SOCIAL SECURITY NUMBER _____
CENTER/OFFICE PHONE NUMBER _____	TIMEKEEPER NUMBER _____
LEAVE YEAR OF FORFEITED LEAVE _____	NUMBER OF HOURS TO BE RESTORED _____
BASIS FOR RESTORATION (Check one - see page 2)	
<input type="checkbox"/> Exigency of Public Business (Examples include: priority project(s) required timely completion; unavoidable and/or unplanned leave of other staff required employee to be present in order to carry out Agency mission; etc. See page two for information that must accompany a request based on Exigency of Public Business.) <input type="checkbox"/> Employee Sickness (Employee became ill and was unable to use or re-schedule the leave.) <input type="checkbox"/> Administrative Error (Examples include: supervisor did not act on leave request in a timely manner; supervisor canceled approved leave before appropriate official had declared that an exigency existed; etc.)	
MANDATORY REQUIREMENTS (Both requirements must be met for Exigency of Public Business and Employee Sickness)	
- Employee request leave, in writing before the beginning of the third pay period prior to the end of the leave year; and - Employee and supervisor attempted to reschedule canceled leave, but appropriate alternative dates were not available (e.g., not enough time left in the leave year to reschedule, additional priority projects prevented rescheduling, etc.).	
REQUESTING SIGNATURERS (Signatures indicate that all requirements for restoration of leave are met)	
REQUESTOR/REQUESTING OFFICIAL (See page 2)	
Name and Title _____ _____	Signature _____ Date _____
CO-SIGNATURE IF APPLICABLE (See page 2)	
Name and Title _____ _____	Signature _____ Date _____
DECISION OF APPROVING OFFICIAL	
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	
Name and Title <u>Melanie Keller</u> <u>Associate Director for Management, CDER</u>	Signature _____ Date _____
Forward copies of approved request to employee's supervisor and timekeeper, and Payroll Liaison Office at HFA-722	
THE TIMEKEEPERS MUST MAINTAIN THE FOLLOWING SUPPORTING DOCUMENTS FOR 6 YEARS	
- Copies of employee's approved leave from ITAS - Form HHS-564, "Administrative Time and Leave Record" indicating when leave was taken	- Last Earnings and Leave Statement of the leave year Showing the number of hours of leave lost - Copy of signed Form FDEA 3525, "Request for Restoration of Annual Leave"

Form FDA 3525 (1/07) Page 1
 Attachment 2 cont'd

**USE OR LOSE ANNUAL LEAVE
FDA CIVILIAN EMPLOYEES ONLY**

In most cases the maximum amount of annual leave an employee may carry over from year to year is 240 hours for non-SESers and 720 hours for SESers. A small number of employees may have larger personal leave ceilings based on service in other leave systems, overseas service, etc.

Annual leave in excess of an employee's carryover balance is generally referred to as "use or lose" leave and must be used by the end of the leave year in which it is earned, or it is lost (forfeited). There are a few circumstances in which forfeited annual leave may be restored.

RESTORATION OF ANNUAL LEAVE

Employees must request use of leave, in writing, before the start of the 3rd biweekly pay period prior to the end of the leave year. If so requested, but later denied or canceled by the leave approving official, and one of the following conditions exists, and rescheduling of the canceled leave is impossible, the annual leave must be restored.

EXIGENCY OF PUBLIC BUSINESS existed:

- Exigencies are determined by Deputy Commissioners, Chief Counsel and Center/Office Directors and are situations of such importance that the work of the office, and consequently the work of the Agency, would be negatively impacted if the employee were unavailable to perform his/her duties.
- A copy of the signed exigency determination must be attached to a request for restoration of leave based on an exigency of public business and must include:

Description of the exigency and why employee could not be released from duty

Why leave could not be rescheduled

Beginning and ending dates of the exigency

EMPLOYEE SICKNESS occurred:

- Employee became ill prior to and/or during the time when leave was scheduled and leave could not be re-scheduled

ADMINISTRATIVE ERROR occurred. Examples include:

- Employee's leave request was submitted appropriately, but not acted on in a timely manner.
- Exigency determination was not made before the employee's leave was canceled.

An employee or his/her supervisor may initiate a request for restoration of annual leave. If the employee is the requestor, the supervisor must co-sign the request certifying that all requirements for restoration of annual leave have been met and documentation is being maintained by the timekeeper.

Form FDA 3525 (1/07) Page 2