

POLICY AND PROCEDURES

OFFICE OF MANAGEMENT

Restoration of Forfeited Annual Leave

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FORM 352515

PURPOSE

- This MAPP provides information on the cancellation of annual leave requests due to an exigency, 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

General

1. 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; for employees serving in foreign posts it is **360 hours**; and, members of the Senior Executive Service (SES) and Senior Level (SL) may carryover **720 hours**.
2. Forfeited annual leave may be considered for restoration **only** under one of

Originating Office: Office of Management

Effective Date: ~~12/23/1996; 10/30/1998; 10/27/2000; 11/16/2010; 1/13/2006; 7/9/2014;~~ 9/2/2021

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 Executive Officer and Director, Office of 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.

Note: In b and c above, the employee must schedule annual leave by sending an e-mail, scheduling the leave in an electronic calendar, or entering the leave in ITAS no later than ***the beginning of the third biweekly pay period before the end of the leave year.***

If the above requirements are not met, the forfeited annual leave cannot be restored because the leave does not fall under the definition of 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.

3. 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.
4. If an exigency occurs that necessitates cancellation of the employee's approved use-or-lose annual leave, the Center's Executive Officer and the Director, Office of 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.

Note: If 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.

5. 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.
6. 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.
7. 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.
8. 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 (VLTP). The VLTP allows employees to donate various amounts of their annual leave, before the end of the leave year, to an employee participating in the VLTP. For further information on the VLTP, please refer to the reference section.
9. An employee cannot use the approved restored leave until it appears on the Leave and Earnings Statement.
10. The Center's Executive Officer and the Director, Office of Management have been delegated authority to approve CDER Restoration of Annual Leave requests.

Employees Separating/Transferring/Other Situations

1. Employees separating from the federal government with accumulated annual leave, including unused restored leave in a separate account, are paid a lump sum at their 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.

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 the scheduled deadline as communicated in the following 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, 2021, the restored leave must be used by the end of the 2023 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 whether 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.***

Note of Caution: Employees and leave-approving officials should pay special attention to current year leave balances when employees use restored leave 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, 2016, and ended on November 18, 2020 (4 years), the restored leave would need to be used by the end of the 2028 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.

RESPONSIBILITIES

Employee:

- Requests annual leave by sending an e-mail, scheduling the leave in an electronic calendar, or entering the leave in ITAS.
- Requests restoration of annual leave by completing FDA Form 3535, Request for Restoration of Annual Leave.

Supervisor:

- If there is an exigency to decline an employee's request to take use-or-lose leave in ITAS, requests a determination through the Center's Executive Officer and Director, Office of Management **before canceling** an employee's use-or-lose leave in ITAS.
- Approves or denies the requests to take use-or-lose annual leave.

Program Specialist/Management Officer:

- Reviews exigency determination requests and requests for restoration of forfeited annual leave for completeness, accuracy and compliance with Center policy.
- Coordinates submission of all exigency determination requests and requests for restoration of forfeited annual to the Center Restored Leave Coordinator.

Restored Leave Coordinator:

- Obtains approval of all exigency determination requests through the approving official and provides a copy to the requesting supervisor.
- Obtains approval of all restored leave requests and forwards all approvals to the Office of Human Capital Management Payroll Liaison for processing.
- Maintains 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 for 3 years.
- Provides annual notifications for scheduling use or lose annual leave, exigency of public business, and for requesting restoration of forfeited annual leave.

Center Executive Officer and the Director, Office of Management:

- Approves/Disapproves all exigency determination requests.
- Approves/Disapproves all restored leave requests.

The ITAS AO Duties:

- Sets up Restored Leave Account in ITAS.
- Provides guidance to Timekeepers in reference to restored leave procedures and timekeeping record maintenance.
- If restored leave is not used by the expiration date and is forfeited, closes the restored leave account in ITAS.

The Timekeeper:

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- Maintains restored leave records in employee's electronic timekeeping file for 3 years.
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PROCEDURES

1. The employee requests leave by sending an e-mail to their supervisor, scheduling the leave in an electronic calendar, or entering the leave in ITAS.
2. Exigency Determination Request
 - a. The **supervisor** requests an exigency determination through the Center's Executive Officer and Director, Office of Management **before canceling** an employee's use-or-lose leave in ITAS using the memorandum format in Attachment 1. The supervisor fills out the memorandum, which must contain 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 annual leave request in writing and a copy of the Administrative Time and Leave Record, HHS-564.
 - b. The **timekeeper** attaches the annual leave request in writing, if not already attached by the supervisor, and HHS-564 to the memorandum, maintains a copy of the request in the employee's electronic timekeeping file, 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.
 - d. The **Restored Leave Coordinator** reviews the request and supporting documentation for accuracy and completeness and ensures that it complies with Center policy and forwards the **original** package to the Center's

Executive Officer and Director, Office of Management for exigency determination.

- e. The **Center's Executive Officer and Director, Office of 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 Executive Officer will complete the Exigency Determination Request by signing and marking approved or disapproved. The Executive Officer 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 Center's Executive Officer and Director, Office of Management.

3. Restored Leave Request

- 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 (Attachment 2) to request the restoration of forfeited annual leave. The request must be in email and must include the following information:
 - i. Employee name
 - 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. Basis for Restoration (Exigency of Public Business, Illness/Injury, or Administrative Error)
 - vii. Center Restored Leave Checklist

b. Additional documentation, as listed below, that supports the justification is also required and must be attached to the request.

i. A request for restoration of forfeited annual leave **due to administrative error** must include:

1. A copy of the approved annual leave request in writing or in ITAS with leave approval dates and amount of annual leave scheduled, date of approval, and signature of the leave approving official.
2. A copy of the requesting employee's leave and earnings statement (LES) for the last pay period of the leave year.
3. A copy of the requesting employees' Administrative Time and Leave Record (HHS-564) for the leave year.
4. A detailed description and the date(s) of the events that caused the error, and official supporting statements attesting to the events and the amount of forfeited leave.

ii. A request for restoration of forfeited annual leave **due to an exigency of public business** must include:

1. A copy of the ITAS Report or other communication in writing displaying leave denial/cancellation.
2. A copy of the requesting employee's LES for the last pay period of the leave year.
3. A copy of the requesting employee's Administrative Time and Leave Record (HHS-564) for the leave year.
4. A signed copy of the Exigency Determination (see procedures for the supervisor).
5. If the exigency ended before the end of the leave year, efforts made, if any to reschedule the canceled annual leave, including:

- a. The date that canceled leave was rescheduled.
 - b. The date(s) on which the leave was rescheduled for use and the amount of leave that was rescheduled.
 - c. 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:
1. A copy of the approved annual leave request in writing or in ITAS with leave approval dates and amount of annual leave scheduled, date of approval, and signature of the leave approving official.
 2. A copy of the requesting employee's LES for the last pay period of the leave year.
 3. Administrative Time and Leave Record – (HHS-564).
 4. Attached Explanation including:
 - a. The beginning date of illness or injury
 - b. Date employee would be recovered and able to return to duty (including a copy of medical certificate)
 - c. The type of leave used and number of hours charged
 - d. Efforts made, if any, to reschedule canceled annual leave, including:
 - i. Date canceled leave was requested by employee to reschedule with supervisor
 - ii. Date (range) the leave was rescheduled for use
 - iii. Total amount of hours rescheduled
 - iv. The reason all of the canceled leave was not rescheduled
 - v. Any other factors pertaining to the individual situation that supports the action taken
- c. Provide a copy of the LES showing a restored leave balance to the ITAS AO in order to set up the Restored Leave Account in ITAS.

REFERENCES

- FDA Staff Manual Guide 1431.15, Authority to Restore Annual Leave, November 12, 2004
 - HHS Instruction 630-1-40F, Restoration of Annual Leave, December 17, 2010
 - HHS Guide for Timekeeping, Chapter 4, Restored Annual Leave, September 26, 2018
 - CDER Administrative Toolbox – Human Capital – Restoration of Annual Leave
 - CDER MAPP 4657.12, Voluntary Leave Transfer Program
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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).
 - Extended Exigency: Significant circumstances that meet **all** of the following four conditions:
 - Constitutes a threat to the national security, safety, or welfare
 - Lasts more than 3 calendar days
 - Affects a segment of an agency or occupational class
 - Precludes subsequent use of both restored and accrued leave within the time limit specified
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EFFECTIVE DATE

- This MAPP is effective upon date of publication.

CHANGE CONTROL TABLE

Effective Date	Revision Number	Revisions
12/23/1996		Initial
10/30/1998	1	Updated
10/27/2000	2	Updated
1/13/2006	3	Updated
11/16/2010		Updated
7/9/2014	4	Updated Policy and Procedures
9/2/2021	5	Updated Policy to include maximum carryover for employees serving in foreign posts Updated Approving Official title throughout Updated Time Limitations samples Updated Procedures Updated References Updated the Attachments

**ATTACHMENT 1 – EXIGENCY DETERMINATION REQUEST
MEMORANDUM**

(SAMPLE ONLY- Copy can be found on the CDER Administrative Toolbox)

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 an Exigency Determination

TO: Eric Stone
Executive Officer and Director
Office of Management, CDER

THROUGH: CDER Restored Leave Coordinator

Employee's Name:

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

Justification: The justification for the exigency determination must include:

1. Specific beginning and ending dates (estimated if unknown) of the exigency
2. Describe the nature of exigency;
 - A. Complete description of the nature of exigency,
 - B. Provide the reason that the employee is affected by the work requirement generated by the exigency,
 - C. Why employee could not be released from duty?
 - D. Why leave cannot be rescheduled?
 - E. The reason another employee cannot do the work,
3. Other supporting factors.

(Exigencies of public business do not include normal workload fluctuations, inadequate staffing, or poor leave planning. Exigencies of public business should be considered for situations that would not have been anticipated at the time that a supervisor would have initially approved the employee's annual leave. Also, there would be a negative impact to the work of the office and the Agency mission or public health if the employee were

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unavailable to perform his/her duties in response to the emergent situation. Exigencies of public business may arise due to natural disasters or other public emergency, or a sudden recall, alert, or warning concerning foods, drugs, medical devices, and/or cosmetics.)

(Supervisor's signature/title)

(Date)

Executive Officer and Director
Office of Management, CDER

(Date)

Approved _____

Disapproved _____

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

ATTACHMENT 2 –RESTORED LEAVE REQUEST FORM 3525

(SAMPLE ONLY- FILLIABLE FORM can be found on CDER Administrative Toolbox)

DEPARTMENT OF HEALTH AND HUMAN SERVICES FOOD AND DRUG ADMINISTRATION				
TO: <u>Executive Officer and Director, OM, CDER</u> Approving Official				
EMPLOYEE NAME				
CENTER/OFFICE PHONE NUMBER	TIMEKEEPER NUMBER			
LEAVE YEAR OF FORFEITED LEAVE	NUMBER OF HOURS TO BE RESTORED			
BASIS FOR RESTORATION <i>(Check one – see page 2)</i>				
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 reverse side for information that must accompany a request based on Exigency of Public Business.) Employee Sickness (Employee became ill and was unable to use or re-schedule the leave.) 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 <i>(Both requirements must be met for Exigency of Public Business and Employee Sickness)</i>				
<ul style="list-style-type: none"> • Employee requested 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 SIGNATURES <i>(Signatures indicate that all requirements for restoration of leave are met)</i>				
REQUESTOR/REQUESTING OFFICIAL <i>(See page 2)</i>				
Name and Title	Signature	Date		
CO-SIGNATURE IF APPLICABLE <i>(See page 2)</i>				
Name and Title	Signature	Date		
DECISION OF APPROVING OFFICIAL				
<table style="width:100%; border: none;"> <tr> <td style="width: 50%; text-align: center;">Approved</td> <td style="width: 50%; text-align: center;">Disapproved</td> </tr> </table>			Approved	Disapproved
Approved	Disapproved			
Name and Title of Approving Official Eric Stone, Executive Officer & Director, OM, CDER	Signature	Date		

Forward copies of approved request to employee’s supervisor & timekeeper, and Payroll Liaison Office at HFA-722.

THE TIMEKEEPER MUST MAINTAIN THE FOLLOWING SUPPORTING DOCUMENTS FOR 6 YEARS:

- Copies of employee's approved OPM Form 71, leave "Request for Leave or Approved Absence" lost
- Form HHS-564, "Administrative Time and Leave Request for Record," indicating when leave was taken
- Last Earnings and Leave Statement of the year showing number of hours of leave
- Copy of signed Form FDA 3525, "Restoration of Annual Leave"

FORM FDA 3525 (3/18) Page 1

Attachment 2 Continued

**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.

1. 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
2. EMPLOYEE SICKNESS occurred:
 - Employee became ill prior to and/or during the time when leave was scheduled, and leave could not be re-scheduled.
3. 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.

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