



DEPARTMENT OF DEFENSE
DEFENSE CIVILIAN PERSONNEL ADVISORY SERVICE
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-1100

FOR: CIVILIAN PERSONNEL POLICY COUNCIL MEMBERS

FROM: Defense Civilian Personnel Advisory Service Director, Ms. Michelle LoweSolis

SUBJECT: Higher Annual Leave Carryover Limits under Section 1111 of the National Defense Authorization Act for Fiscal Year 2021

AUDIENCE: Nonappropriated Fund and Appropriated Fund Personnel

ACTION: Disseminate to Department of Defense (DoD) Human Resources Practitioners and Hiring Managers

REFERENCES:

- a. Defense Civilian Personnel Advisory Service (DCPAS) Message 2021005, "Higher Annual Leave Carryover Limits under Section 1111 of the National Defense Authorization Act for Fiscal Year 2021," dated January 8, 2021 (attached)
- b. DCPAS Reference Guide, "Higher Annual Leave Carryover Limits under Section 1111 of the National Defense Authorization Act for Fiscal Year 2021" (attached)

BACKGROUND/INTENT: Section 1111 of the National Defense Authorization Act for Fiscal Year 2021, provided the Director of the Office of Personnel Management with discretionary authority to establish a higher annual leave carryover limit to be applied at the beginning of the 2021 leave year. As stated in reference (a), the higher annual leave carryover is equal to 125 percent of the otherwise applicable leave carryover ceiling and is retroactive to January 3, 2021.

Reference (b) is the guide developed by DCPAS, in coordination with the Defense Finance Accounting Service, and includes procedures to assist DoD Components in their application of section 1111.

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FOR: CIVILIAN PERSONNEL POLICY COUNCIL MEMBERS

FROM: Defense Civilian Personnel Advisory Service Director, Ms. Michelle LoweSolis

SUBJECT: Higher Annual Leave Carryover Limit under Section 1111 of the National Defense Authorization Act for Fiscal Year 2021

AUDIENCE: Nonappropriated Fund and Appropriated Fund

ACTION: Disseminate to all Department of Defense (DoD) Human Resources Practitioners

REFERENCE(S):

- a. Office of Personnel Management (OPM) Memorandum, "Higher Annual Leave Carryover Limit under Section 1111 of the National Defense Authorization Act for Fiscal Year 2021," dated January 5, 2021, <https://www.chcoc.gov/content/higher-annual-leave-carryover-limit-under-section-1111-national-defense-authorization-act>
- b. Department of Defense Instruction 1400.25, Volume 1406, "DoD Civilian Personnel Management System: Nonappropriated Fund (NAF) Attendance and Leave," March 20, 2015, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/140025/1400.25-V1406.pdf>

BACKGROUND/INTENT: Reference (a) provides the OPM memorandum and implementation guidance pursuant to section 1111 of the National Defense Authorization Act for Fiscal Year 2021, which grants the Director of OPM discretionary authority to establish a higher leave carryover limit to be applied at the start of the 2021 leave year. The guidance includes information on employees eligible for coverage, along with the necessary procedures to apply this authority, which is retroactive to January 3, 2021. The higher annual leave carryover is equal to 125 percent of the otherwise applicable leave carryover ceiling. This higher limit is applicable if the covered employee has any excess annual leave that would otherwise be forfeited under the normal carryover limit, and not restored under the annual leave carryover provisions that normally apply under section 6304 (a) and (b) of title 5, United States Code.

In accordance with reference (b), section 1111 is administratively extended to Nonappropriated Fund activities and employees. However, NAF activities should follow the OPM guidance and procedures as of the first day of the first pay period beginning on or after January 1, 2021.

DCPAS, in coordination with the Defense Finance and Accounting Service, will be disseminating forthcoming supplemental information to assist DoD Components in determining coverage and application of section 1111 to their affected employee population.

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HIGHER ANNUAL LEAVE CARRYOVER LIMITS UNDER SECTION 1111 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2021

INTRODUCTION

The Office of Personnel Management (OPM) issued guidance on January 5, 2021 implementing the higher annual leave carryover limit established under section 1111 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (H.R. 6395), which was enacted on January 1, 2021. The OPM guidance is retroactive to January 3, 2021.

BACKGROUND

Section 1111 provided the Director of OPM with discretionary authority to establish a higher annual leave carryover limit—125 percent of the limit that would otherwise apply to a given employee—to be applied at the beginning of the 2021 leave year for Executive branch employees. All employees identified as eligible for coverage are entitled to the application of the higher carryover limit at the beginning of leave year 2021, if they would otherwise have annual leave forfeited on January 3, 2021, and not restored under the normal annual leave carryover limit provisions (section 6304(c) and (d) of title 5, United States Code (U.S.C.)). The statute specifically excludes any individual occupying a position that is classified at or above the level of a Senior Executive Service position or the equivalent thereof.

Although the OPM guidance indicates that an employee of a nonappropriated fund instrumentality (NAFI) as described in 5 U.S.C. 2105(c), is not eligible for coverage, the Department of Defense (DoD) has exercised the authority in DoD Instruction 1400.25, Volume 1406, “DoD Civilian Personnel Management System: Nonappropriated Fund (NAF) Attendance and Leave,” to administratively extend this OPM guidance to NAFI employees. Therefore, NAF activities will adhere to the OPM guidance regarding procedures for determining affected employees and crediting the excess carryover annual leave for leave year 2021.

APPLICATION OF SECTION 1111 AND CREDITING OF EXCESS LEAVE

The OPM Director has exercised this discretionary authority via a policy memorandum (CPM 2021-05), which included an attachment with guidance on how to implement section 1111. Where provisions of this guidance specific to leave restoration under 5 U.S.C. 6304(d) differ from negotiated collective bargaining agreements (CBA), the provisions of the negotiated CBA apply.

Normal leave restoration rules in 5 U.S.C. 6304(d) still apply. All applicable leave restoration rules should be applied prior to application of section 1111. If an employee has any remaining leave (after applying leave restoration rules) that would otherwise be forfeited under the normal carryover limit, the higher 125 percent carryover limit under section 1111 authority would apply. Any annual leave in excess of the higher limit would be forfeited.

Once Components carry out their normal leave restoration process, the Defense Finance Accounting Service (DFAS) will run a report to identify covered employees. A one-time program will be run to credit the one-year restored annual leave account for section 1111 leave restoral.

Any excess annual leave credited under section 1111 is for use in leave year 2021. An employee must use this excess leave before using any other annual leave available (e.g., annual leave accrued in a past leave year, annual leave accrued during leave year 2021, advanced annual leave, etc.). Excessive annual leave credited under section 1111 is not included in a lump-sum annual leave payment under 5 U.S.C. 5551 – 5552, nor may this excess leave be donated under a leave transfer program. Any excess annual leave credited under section 1111 that is not taken in leave year 2021, will be forfeited at the beginning of leave year 2022 on January 2, 2022.

FREQUENTLY ASKED QUESTIONS

Q1. What is the difference between normal leave restoration under 5 U.S.C. 6304(d) and section 1111 leave restoral?

A1. Normal leave restoration under 5 U.S.C. 6304(d), allows an employee to be restored annual leave that was lost due to an administrative error, exigencies of the public business when the annual leave was scheduled in advance, or sickness of the employee when the annual leave was scheduled in advance. This also includes annual leave that may be restored subject to the provisions of Part 630, Subpart C, section 630.310 regarding exigencies of the public business due to national emergencies.

Section 1111 allows for a temporary increase of the amount of annual leave that may be carried over into the 2021 leave year in circumstances when the employee will forfeit excess annual leave that cannot be restored under 5 U.S.C. 6304(d). Section 1111 works in conjunction with the normal leave restoration rules as a means for a covered employee to carryover additional annual leave into the 2021 leave year that might otherwise be forfeited.

Q2. Will all eligible employees automatically receive this higher carryover leave ceiling?

A2. No. In accordance with the OPM guidance, the normal leave restoration rules must be applied first. If there is any remaining annual leave that would otherwise be forfeited under the normal carryover limit, then the 125 percent carryover limit may be applied to prevent forfeiture to the extent possible under the higher limit.

For example, employee “A” and employee “B” both have a normal annual leave carryover limit of 240 hours and are eligible for coverage under section 1111. At the end of the 2020 leave year, both employees had 80 hours in excess of the 240 hours that may be carried over into the 2021 leave year. The DoD Component must first determine if the excess 80 hours could be restored to these employees under the normal leave restoration rules in 5 U.S.C. 6304(d) before determining if section 1111 would be applicable to any remaining annual leave that would otherwise be forfeited.

Q3. The 125 percent temporary increase already allows for more annual leave to be carried over into 2021 so why is there a requirement to first apply the normal leave restoration rules?

A3. Section 1111 does not eliminate the annual leave restoration rules in 5 U.S.C. 6304(d). There are some key differences between the two, and application of section 1111 can result in a different outcome than the results under the normal leave restoration rules. The OPM guidance, paragraph C, summarizes these key differences and paragraph D explains how these two rules work in conjunction.

Using the example from the previous question, in the case of employee “A”, the 80 hours of excess leave can be restored under the normal leave restoration rules so application of the section 1111 carryover limit is unnecessary as the employee does not have any remaining excess leave subject to forfeiture at the end of the 2020 leave year. **NOTE:** If section 1111 rules had been applied first, employee “A” would have forfeited 20 hours of annual leave as only 60 hours of the excess 80 hours could have been credited before exceeding the 125 percent limit. However, since the normal annual leave restoration rules were applied first and all 80 hours of excess leave was eligible to be restored, employee “A” benefited from a different outcome.

In the case of employee “B”, only 10 hours of the 80 hours of excess leave is eligible to be restored under normal leave restoration rules. Therefore, the DoD Component may then apply the higher 125 percent carryover limit under section 1111 to employee “B’s” normal carry over limit of 240 hours to prevent the forfeiture of the remaining 70 hours. This will result in a temporary higher annual carryover of 300 hours into leave year 2021. Employee “B” will be allowed to carry over only 60 hours of the remaining 70 hours before reaching the 300 hour limit. The remaining 10 hours will be forfeited at the end of the 2020 leave year as those hours are not eligible for normal leave restoration and are in excess of the 125 percent limit that may be carried over into the 2021 leave year. **NOTE:** Although employee “B” was able to restore some of the excess annual leave under normal leave restoration rules, under section 1111, only the remaining amount of excess leave that does not exceed the 125 percent limit may be carried over into the 2021 leave year.

Q4. When should Components complete normal annual leave restoration procedures so that DFAS can credit eligible employees with excess leave under section 1111?

A4. Components should ensure employees’ requests for annual leave restoration under 5 U.S.C. 6304(d) are completed and credited to the employees by February 27, 2021, so that DFAS can run a one-time program to credit the one-year restored annual leave account for section 1111 leave restoral. The program will be run after pay processes the first week of March, prior to pay period ending March 13, 2021.

NAF employers will work with their payroll providers to ensure normal annual leave restoration procedures and credit of excess leave under section 1111 are completed in a timely manner.

Q5. Will employees with personal leave ceilings that are higher than the standard 240 hour annual carryover limit receive section 1111 leave restoral?

A5. Section 1111 does not impact personal leave ceilings as allowed by 5 U.S.C. 6304(c). However, if an employee’s personal leave ceiling is below the applicable section 1111 limit (125 percent), the employee may be credited with excess leave under section 1111. If the employee’s personal leave ceiling is higher than the section 1111 established limit, then the employee would not be credited section 1111 leave restoral.

Example 1. Employee A’s personal leave ceiling is 290 hours. The employee had 320 hours of leave at the end of the 2020 leave year and forfeited the excess 30 hours. It is determined none of the 30 hours is eligible to be restored under normal leave restoration rules. Under section 1111, 125 percent of the normal 240 hours annual carryover limit is 300 hours. Therefore, employee A can restore 10 hours of

his or her forfeited leave under section 1111 for a total of 300 hours of leave in the 2021 leave year. The remaining 20 hours is forfeited as it is in excess of 300 hours.

Example 2. Employee B's personal leave ceiling is 350 hours. The employee had 400 hours of leave at the end of the 2020 leave year and forfeited the excess 50 hours. It is determined none of the 50 hours is eligible to be restored under normal leave restoration rules. Under section 1111, 125 percent of the normal 240 hours is 300 hours. As employee B's personal leave ceiling is already higher than the section 1111 carryover limit of 300 hours, none of the forfeited leave may be carried over into the 2021 leave year.

Q6. What happens if an employee needs to complete time card revisions for the leave year 2020?

A6. Any necessary time card revisions should be completed no later than February 27, 2020. Once pay processes the first week of March, DFAS will run a one-time program to credit leave restoral under section 1111. The amount of leave credited will be based on the system's recorded amount of forfeited annual leave that was not restored under normal annual leave restoration rules.

Q7. When will the excess leave under section 1111 be credited to covered employees?

A7. The employees' payroll account will be credited with section 1111 leave during the pay period ending March 13, 2021. Employees will first see the restored annual leave credited on their leave and earning statement for pay date March 19 or 25, 2021.

Timelines for NAF employers will vary based on payroll providers and leave crediting processes.

Q8. How will employees know how much excess leave has been credited under section 1111? Will it appear as a separate line in the leave and earning statement (LES)?

A8. Employees will see the amount of leave credited under section 1111 on the LES for pay period ending March 13, 2021 with the pay date of on March 19 or 25, 2021. The amount will appear as Restored Leave with the associated expiration date.

Q9. What if an employee receives credit for section 1111 leave, but later was granted approval for leave restoration under 5 U.S.C. 6304(d)? How can this be corrected?

A9. The employee's customer service representative can adjust the restored leave from the one-year expiration bucket into the appropriate restored leave account at any time. The employee must follow the employing organization's restored leave process.

Q10. Section 1111 requires this credited leave to be used before all other types of available annual leave. If an employee is credited leave under section 1111 but already used another type of annual leave on/after January 3, 2021, will DFAS automatically substitute section 1111 leave for the annual leave that was taken prior to the date this

leave was credited? Or will the employee have to submit a corrected time and attendance sheet?

A10. No, the payroll system will not automatically substitute annual leave previously taken. Employees who are credited with section 1111 leave must recode any annual leave taken in January or February to restored leave with one-year expiration using timecard code 'LR'. Any subsequent annual leave should be coded 'LR' until the section 1111 leave is exhausted.

Q11. If a DoD employee receives excess annual leave under section 1111 and then transfers to another federal agency before the end of the 2021 leave year and prior to using all of the section 1111 leave, will the remaining excess section 1111 leave automatically transfer with the employee to the new agency? Or is the employee required to use the section 1111 leave prior to the transfer?

A11. If an employee serviced by DFAS payroll transfers to another DoD agency or a non-DoD agency paid by DFAS, the restored leave will automatically transfer with the employee in the payroll system. If an employee transfers to an agency serviced by another payroll provider, the employee's restored leave will transfer through the regular process of sending the new payroll provider the leave information. The employee is encouraged to bring the last LES received from DFAS to the new employer to assist with transferring leave.

Q12. Is section 1111 leave portable for movements between the DoD appropriated fund (APF) civil service and DoD NAF employment systems?

A12. Yes. Section 1111 or OPM implementing regulations do not prohibit the transfer of the higher amount of annual leave between employers. Section 1111 leave therefore transfers if the employee moves between employment systems in leave year 2021. The leave transfers between APF and NAF in accordance with portability law in 5 U.S.C. 6308(b) and consistent with DoD's administrative extension of section 1111 to NAF activities and employees. The leave must be used in leave year 2021 or be forfeited. The leave is prohibited from inclusion in lump-sum annual leave payments upon separation, and cannot be added to retirement.

REFERENCES

H.R. 6395 – William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), section 1111 (<https://www.congress.gov/116/bills/hr6395/BILLS-116hr6395enr.pdf>)

Office of Personnel Management Memorandum for Heads of Executive Departments and Agencies (CPM 2021-05), "Higher Annual Leave Carryover Limit under Section 1111 of National Defense Authorization Action for Fiscal Year 2021," dated January 5, 2021 (<https://chcoc.gov/content/higher-annual-leave-carryover-limit-under-section-1111-national-defense-authorization-act>)

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