

Guidance on Implementing Section 1111 of the FY 2021 National Defense Authorization Act

A. Background

1. 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: 360 hours for certain employees stationed outside the United States and 720 hours for members of the Senior Executive Service and certain other senior officials. (See 5 U.S.C. 6304(a), (b), and (f).) Certain employees have temporary personal leave carryover limits (5 U.S.C. 6304(c)).
2. A new leave year begins on the first day of the first pay period beginning on or after January 1. For employees on the standard biweekly pay period cycle, the 2021 leave year begins on January 3, 2021.
3. Annual leave that is forfeited due to application of the applicable carryover limit may be restored under certain conditions (5 U.S.C. 6304(d)).
4. Section 1111 provides the Director of the Office of Personnel Management (OPM) with authority to establish a higher annual leave carryover limit to be applied at the beginning of the 2021 leave year. Application of the higher annual leave carryover limit under section 1111 will prevent forfeiture of any annual leave that is subject to the higher limit. See section C for discussion of differences between restored leave and section 1111 excess leave. See section D for policies regarding how the restored leave provisions work in conjunction with section 1111 excess leave.

B. Coverage

1. The policy established by the OPM Director under section 1111 must be applied for leave year 2021 to any employee identified as eligible for coverage under section 1111, if the employee would otherwise have annual leave forfeited on January 3, 2021, and not restored under the annual leave carryover limit provisions that normally apply to the employee. The OPM Director policy must be applied retroactive to January 3, 2021, after an agency has applied the regular leave restoration rules, as described in section D.
2. An employee is eligible for coverage under section 1111 if he or she occupies a position in the civil service (as defined in 5 U.S.C. 2101(1)) in the executive branch of the Federal Government, excluding any individual occupying a position that is classified at or above the level of a Senior Executive Service position or the equivalent thereof.
 - a. An employee of the United States Postal Service and Postal Regulatory Commission is eligible for coverage under section 1111 (since the employee holds a position in the civil service) and is mandatorily covered by the OPM policy established under section 1111. (See section E.)
 - b. An employee of a nonappropriated fund instrumentality (NAFI) described in 5 U.S.C. 2105(c) is not eligible for coverage under section 1111, since section

2105(c) provides that such an employee is deemed not to be an employee for the purpose of laws administered by the Office of Personnel Management, except as specifically provided in law, and since OPM is responsible for administering section 1111.

- c. An employee appointed under 38 U.S.C. chapter 74 is eligible for coverage under section 1111 and is mandatorily covered by the OPM policy established under section 1111, notwithstanding section 7421(a), section 7425(b), or any other provision of chapter 74. (See section 1111(c)(2)(A)(ii); see also section E.)
- d. An employee of the Federal Aviation Administration or the Transportation Security Administration is eligible for coverage under section 1111 and is mandatorily covered by the OPM policy established under section 1111. (See section E.)
- e. Any employee serving in an executive branch position identified in 5 U.S.C. 6304(f)(1) is considered to be occupying a position that is classified at or above the level of a Senior Executive Service position or the equivalent thereof. An executive branch agency that administers an annual leave program under an authority other than 5 U.S.C. chapter 63 is authorized to determine what senior positions are equivalent in terms of classification level to a Senior Executive Service position.

C. Differences Between the Treatment of Section 1111 Excess Leave and Restored Leave under 5 U.S.C. 6304(d)

- 1. Section 1111 does not eliminate the annual leave restoration rules in 5 U.S.C. 6304(d), which are applied after annual leave hours in excess of the normally applicable annual leave carryover limit are forfeited. The following table shows key differences between excess leave under section 1111 and restored leave under 5 U.S.C. 6304(d):

	Section 1111 Excess Leave	Section 6304(d) Restored Leave
Approach to allowing carryover above normal limits	Higher carryover limit prevents forfeiture (conditions for applying higher limit are determined by OPM Director)	Leave in excess of the carryover limit is forfeited and then restored if certain statutory conditions are met
Time limits on usage	Must be used during leave year 2021	Varies, but at least 2 years. (See 5 CFR 630.306-630.310.)
Inclusion in lump-sum annual leave payment upon separation	May not be included.	Is included.
Limitation on amount	Leave carryover ceiling is 125% of normal ceiling (for most employees, 300 hours instead of 240 hours)	No limitation (but cannot be more than a given employee can accrue in a full leave year)

2. Because of the above differences, application of section 1111 can result in less favorable treatment than results under the regular leave restoration rules. The guidance in section D addresses this issue by requiring application of the regulation leave restoration rules before application of section 1111.

D. Policies for Employees Covered by Annual Leave System under 5 U.S.C. Chapter 63

1. *Coverage.* The policies in this section D apply to executive branch employees who are covered by the annual leave system established under 5 U.S.C. chapter 63, if they are identified as eligible for coverage under section 1111. (See section B.)
2. *Carryover Limits.* The higher annual leave carryover limit established under section 1111 applies to an employee if the employee would otherwise have annual leave forfeited and not restored under the annual leave carryover limit provisions that normally apply to the employee (5 U.S.C. 6304(a) and (b)).

	Normal Carryover Limit (5 U.S.C. 6304(a), (b), or (f))	Section 1111 Carryover Limit (125% of Normal Limit)
Employees in U.S.	240 hours	300 hours
Employees stationed outside U.S.	360 hours	450 hours
SES Members and certain other Senior Officials	720 hours	Not applicable

3. *Sequencing of Rules.* At the beginning of the 2021 leave year (January 3, 2021, for most employees), each agency with employees covered by the policies established by OPM under section 1111 must first apply regular leave restoration rules and then apply section 1111 to any remaining annual leave that would otherwise be forfeited under the normal carryover limit.
 - a. First, for each employee, apply all applicable leave restoration rules, including the national emergency rules in 5 CFR 630.310.
 - b. Second, if any employee has any remaining annual leave (after applying leave restoration rules) that would otherwise be forfeited under the normal carryover limit (240-hour limit for most employees), apply the higher 125 percent carryover limit under the section 1111 authority to prevent forfeiture to the extent possible under the higher limit. Any annual leave in excess of the higher limit would be forfeited.

- c. In applying the section 1111 carryover limit, hours of newly restored leave would be excluded. In other words, add the otherwise forfeited leave remaining after applying leave restoration rules to the leave carried over under the normal limit and compare that sum to the 125 percent limit.
4. *Personal Leave Ceilings.* Section 1111 does not affect the determination of an employee’s personal leave ceiling under 5 U.S.C. 6304(c). However, if an employee’s personal leave ceiling is below the applicable section 1111 limit, the employee may be credited with excess leave under section 1111.
5. *Use in Leave Year 2021.* Any excess annual leave—i.e., annual leave in excess of the normal carryover limit that is carried over into leave year 2021 under the section 1111 authority—is “for use in leave year 2021” (section 1111(a)). In other words, the section 1111 excess leave must be used by the employee-recipient by taking the leave during leave year 2021, or it will be forfeited at the beginning of leave year 2022 (January 2, 2022, for employees on the standard biweekly payroll cycle).
 - a. Section 1111 excess leave may not be included in a lump-sum annual leave payment under 5 U.S.C. 5551-5552. (See section 1111(b).)
 - b. Section 1111 excess leave may not be donated under a leave transfer program. If an employee wishes to donate annual leave, he or she must draw from the employee’s regular annual leave account. (We note that an employee may donate extra hours of annual leave before the end of leave year 2020, since the extra hours are not converted to section 1111 excess leave until the beginning of leave year 2021.)
6. *Sequencing of Annual Leave Usage.* During leave year 2021, an employee must use section 1111 excess annual leave before using any other annual leave available to the employee—i.e., annual leave accrued in a past year, annual leave accrued during leave year 2021, advanced annual leave, donated annual leave, and restored leave.
7. *Account Administration.* Employing agencies must establish methods of tracking section 1111 excess leave accounts to ensure that statutory and policy requirements are met—for example, the requirements that excess leave be used during the 2021 leave year or forfeited and that excess leave is not included in any lump-sum annual leave payment.

E. Delegation of Authority

By delegation from the OPM Director under 5 U.S.C. 1104(a)(2), the heads of executive branch agencies who administer annual leave programs under an authority other than 5 U.S.C. chapter 63 are required to apply section 1111 by establishing policies that are parallel to those set forth in section D to the maximum extent practicable. This delegated authority does not prevent an agency head from providing a greater benefit under the agency head’s independent leave system authority.

F. Legislation

SEC. 1111. TEMPORARY INCREASE IN LIMITATION ON ACCUMULATION OF ANNUAL LEAVE FOR EXECUTIVE BRANCH EMPLOYEES.

(a) IN GENERAL.—At the discretion of the Director of the Office of Personnel Management, annual leave provided to an Executive branch employee may accumulate for use in leave year 2021 in an amount equal to 125% of the maximum amount of annual leave permitted, but for this subsection, to accumulate for use in that leave year under the leave system covering such employee.

(b) EXCLUSION FROM LUMP-SUM PAYMENT.—Any annual leave accumulated pursuant to subsection (a) in excess of the maximum amount of annual leave permitted, but for this section, to accumulate for use in succeeding years shall not be included in any lump-sum payment for leave to an individual, including any lump-sum payment under section 5551 or 5552 of title 5, United States Code.

(c) DEFINITIONS.—In this section—

(1) the term “agency” means each agency, office, or other establishment in the executive branch of the Federal Government; and

(2) the term “Executive branch employee”—

(A) means—

(i) an employee of an agency;

(ii) an employee appointed under chapter 74 of title 38, United States Code, notwithstanding section 7421(a), section 7425(b), or any other provision of chapter 74 of such title; and

(iii) any other individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code) in the executive branch of the Federal Government; and

(B) does not include any individual occupying a position that is classified at or above the level of a Senior Executive Service position or the equivalent thereof.