



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

CPM 2023-03
March 14, 2023

Memorandum for Heads of Executive Departments and Agencies

From: Kiran A. Ahuja
Director

Subject: Revised Interim Regulations on Scheduling of Annual Leave by Employees Determined Necessary to Respond to Certain National Emergencies

The U.S. Office of Personnel Management (OPM) is revising the interim regulations regarding the restoration of annual leave for employees who are essential to respond to certain national emergencies, such as the National Emergency Concerning the Novel Coronavirus Disease (COVID-19), which can be found at <https://www.federalregister.gov/documents/2023/03/14/2023-05204/scheduling-of-annual-leave-by-employees-determined-necessary-to-respond-to-certain-national-emergencies>.

The Biden Administration has announced plans to end the COVID-19 national emergency on May 11, 2023. To simplify the rules for administering restored annual leave, the revised interim regulations automatically deem an agency extension of the COVID-19 national emergency exigency that had been set to end on March 13, 2023, to continue through the date that the President ends the COVID-19 national emergency, which is expected to be May 11, 2023. The regulation also permits an agency to authorize an extension of the exigency (i.e., to authorize an “ongoing exigency”) for employees identified as performing work in connection with the national emergency exigency concerning COVID-19 and its aftermath.

The regulations also provide for special treatment of restored annual leave resulting from an agency-authorized ongoing exigency that is directly related to a matter that was determined to be a national emergency exigency and that immediately follows the termination of the national emergency exigency. Finally, the regulations expand an agency’s authority to exempt employees from the advance annual leave scheduling requirement in the leave year during which a national emergency exigency is terminated.

Attachment 1 of this document describes the key features and waiver procedures

authorized under the revised interim regulations. This attachment provides a summary of the regulations and information on how an agency may submit a request to OPM for a waiver of the 12-month time limitation applicable to an agency-authorized ongoing exigency. We have also attached implementing guidance materials.

As a reminder, on August 10, 2020, OPM published interim regulations (85 FR 48096 at <https://www.federalregister.gov/documents/2020/08/10/2020-16823/scheduling-of-annual-leave-by-employees-determined-necessary-to-respond-to-certain-national>) to replace the reserved 5 CFR 630.310 with a new 5 CFR 630.310 to (1) allow agencies to continue to meet their vital missions while streamlining the process for restoration of annual leave for employees whose services are determined by the agency head (or designee) to be essential for the response to certain national emergencies and (2) permit the Director of OPM to deem a specific national emergency, as declared by the President under the National Emergencies Act, to be an exigency of the public business for the purpose of restoring annual leave under this authority. OPM will address previously submitted comments on the August 10, 2020, interim regulation and any comments submitted regarding the revised interim regulation when it issues final regulations.

Additional Information

Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov with their questions. Agency field offices should contact their appropriate headquarters-level agency human resources office. Employees should contact their agency human resources office for further information on this memorandum.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Work-Life Coordinators

Attachments (see 508-conformant PDFs below)

- Attachment 1: Key Features of the Revised Interim Regulations on the Scheduling of Annual Leave by Employees whose Work is Essential to Respond to Certain National Emergencies and Procedures for Requesting Waiver of the 12-Month Limitation on an Agency-Authorized Ongoing Exigency (5 CFR 630.310)
- Attachment 2: Setting Use by Date for Consolidated Restored Annual Leave Accounts

Key Features of the Revised Interim Regulations on the Scheduling of Annual Leave by Employees whose Work is Essential to Respond to Certain National Emergencies and Procedures for Requesting Waiver of the 12-Month Limitation on an Agency-Authorized Ongoing Exigency (5 CFR 630.310)

Key Features

The Biden Administration has announced plans to end the COVID-19 national emergency on May 11, 2023. To simplify the rules for administering restored annual leave, the revised interim regulations automatically deem an agency extension of the COVID-19 national emergency exigency that had been set to end on March 13, 2023, to continue through the date that the President ends the COVID-19 national emergency, which is expected to be May 11, 2023. The regulations also permit an agency to authorize an extension of the exigency (i.e., to authorize an “ongoing exigency”) for employees identified as performing work in connection with the national emergency concerning COVID-19 and its aftermath.

Background

- On March 13, 2020, the President issued Proclamation 9994 declaring a “National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak” (85 FR 15337 at <https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05794.pdf>).
- On August 27, 2020, the Director of OPM issued CPM 2020-11 at <https://www.chcoc.gov/content/interim-regulations-scheduling-annual-leave-employees-performing-services-determined-be> announcing the publication of the interim regulations (85 FR 48096 at <https://www.federalregister.gov/documents/2020/08/10/2020-16823/scheduling-of-annual-leave-by-employees-determined-necessary-to-respond-to-certain-national>).
- The memo also announced the Director’s determination that the COVID-19 national emergency constituted an exigency of the public business for the purpose of restoring forfeited annual leave and authorized agencies to utilize the streamlined process for restoration of annual leave under those interim regulations for the COVID-19 national emergency.
- Agencies were required to determine the specific employees or groups of employees whose services were essential in response to the COVID-19 national emergency and were qualified for coverage under the regulations and inform designated employees in writing of such determinations.

- Agencies using this regulatory authority were required to continually monitor the agency response to the national emergency and determine whether the services of individual employees or groups of employees continued to be essential for the response to the emergency such that they could not schedule or take annual leave.

When to terminate the national emergency exigency for annual leave restoration

The agency head (or designee) is also required to fix a termination date of the exigency of the public business for each employee or group of employees on the date one of the following events occurs, whichever is earliest:

- When the President declares an end to the national emergency;
- When the Director of OPM deems the national emergency to no longer be an exigency of the public business for purposes of this authority;
- When the agency head (or designee), in his or her sole and exclusive discretion, determines that the services of an employee or group of employees are no longer essential to the response to the national emergency or that such employees are able to follow the normal leave scheduling procedures in [5 CFR 630.308\(a\)](#);
- On the day that is 12 months after the national emergency has been declared, an agency head (or designee), in his or her sole and exclusive discretion, may extend this deadline annually by an additional 12 months; under no circumstances may an agency grant more than two 12-month extensions under this paragraph in connection with any national emergency (however, [5 CFR 630.309](#) may apply in the case of an extended exigency); or
- 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.

Under the August 10, 2020, interim regulation, an agency head (or designee) was not permitted to grant more than two 12-month extensions to the deadline for establishing the termination date of the exigency of the public business. (See 5 CFR 630.310(f)(2)(iv).)

- As noted above, the President declared the COVID-19 outbreak a national emergency on March 13, 2020.
- Assuming the exigency had not been terminated for employees for another reason listed in 5 CFR 630.310(f)(2), the regulation required the agency to establish the date for termination of the exigency as 12 months after the declaration of the exigency—i.e., **March 13, 2021**. The agency was authorized to extend this deadline annually by an additional 12 months, but

under no circumstances was an agency authorized to grant more than two 12-month extensions.

- Therefore, with respect to the COVID-19 national emergency, agencies were authorized to first extend the termination date of the exigency until **March 13, 2022**, and then to further extend the termination date until **March 13, 2023**. This established the latest possible termination date, which would have applied even if the COVID-19 national emergency continued past that date.
- The new interim regulations automatically deem an agency extension of the COVID-19 national emergency exigency that had been set to end on March 13, 2023, to continue through the date that the President ends the COVID-19 national emergency, which is expected to be May 11, 2023.

Scheduling annual leave in the leave year the national emergency exigency terminates

When the agency head or designee fixes a termination date of the national emergency exigency, covered employees are again required to schedule and use their annual leave according to the normal leave scheduling rules at 5 CFR 630.308(a) in order to avoid its forfeiture. The revised interim regulations provide an agency head (or designee) authority to exempt an employee or group of employees from this advanced scheduling requirement during the leave year in which the national emergency exigency is terminated if the agency head believes such an exemption is warranted. The agency must notify in writing any employee who is exempted from the advance scheduling requirement.

Agency-authorized ongoing exigency following termination of a national emergency exigency for annual leave restoration

Most employees who are or were performing work related to the national emergency exigency have again been able to resume taking annual leave, such that agencies have (or should have) terminated their coverage under these regulations. However, even once the COVID-19 national emergency terminates, the aftermath effects of that emergency can continue to have significant workload implications for a small subsection of employees at certain agencies. In these rare cases, the regulations provide agencies a new authority to provide additional coverage for employees identified as performing work in connection with an ongoing exigency related to COVID-19 and its aftermath effects (or for future national emergencies that may present similar issues).

Note: An “ongoing exigency” of the public business is defined in the revised interim regulations as an exigency that commences immediately after the termination of a

national emergency exigency and is directly related to the matter that was previously determined to be a national emergency exigency. In order for an employee to be covered under an ongoing exigency, the employee must first be covered by a national emergency exigency and then be covered by the ongoing exigency without a break in time.

The revised interim regulations provide the following new authorities related to an ongoing exigency—

- When a national emergency exigency that serves as a basis for use of the regulations is terminated under 5 CFR 630.310(f)(2)(i), (ii), or (iv) because—
 - The President declares an end to the national emergency;
 - The Director of OPM deems the national emergency to no longer be an exigency of the public business; or
 - The deadline to use the authority expires (this happens 12 months after the national emergency has been declared unless the agency extends this deadline annually by an additional 12 months; only two 12-month extensions are authorized);an agency head (or designee) may determine that certain agency employees continue to be subject to an ongoing exigency of the public business.
- In order for an employee to be covered under an ongoing exigency, the employee must first be covered by a national emergency exigency and then be covered by the ongoing exigency without a break in time.
- For example, if the President terminates the COVID-19 national emergency on May 11, 2023, an agency could establish an ongoing exigency related to the circumstances of COVID-19 and its lingering effects for certain employees effective May 12, 2023 (the day after the date on which it is anticipated that the President will terminate the COVID-19 national emergency).
- During the entire period during which an employee is covered by the ongoing exigency, the employee will not be subject to time limits on usage of any restored leave to the employee's credit.
- When the ongoing exigency ends, all restored annual leave to the employee's credit (i.e., annual leave restored because of the national emergency exigency, the ongoing exigency, as well as any previously restored annual leave to the employee's credit) must be consolidated at that time and made subject to a single time limit that is determined under the rules in 5 CFR 630.310(d), using the termination date of the ongoing exigency in place of the termination date of the national emergency exigency.
- Thus, if an agency establishes an ongoing exigency related to COVID-19 effective May 12, 2023 that is terminated on May 12, 2024, all restored leave to the employee's credit at that time (including the restored leave that was part of the consolidated total at the end the COVID-19 national emergency

exigency) will be consolidated into a single restored leave account and subject to a time limit established using the tiered time limits in 5 CFR 630.310(d) that vary based on the balance of hours, with the May 12, 2024, termination date being used in the calculation to set the date by which the restored annual leave must be used to avoid forfeiture.

- During the entire period during which an employee is covered by ongoing exigency, the employee will not be subject to the advance annual leave scheduling requirements.
- After the ongoing exigency terminates, an agency may choose to exempt an employee or a category of employees from these advanced scheduling requirements for the remainder of the leave year in which the termination of the ongoing exigency takes place.
- Coverage of an employee or a category of employees under an ongoing exigency may not continue for more than 12 months unless the Director of OPM approves the employing agency's request for one or more 12-month waivers based on a critical agency need for the services of the employees. See below for further information regarding the waiver request requirements and procedures.
- If the ongoing exigency covering an employee lasts for 3 full calendar years and meets the other requirements under 5 CFR 630.309(b) to qualify as an extended exigency, the usage time limits in that section would be used in place of the time limits in 5 CFR 630.310(d).
 - Any time an employee spent covered by the preceding national emergency exigency would not be considered in determining if the ongoing exigency is an extended exigency.
 - For example, if the COVID-19 national emergency terminates on May 11, 2023, an agency could authorize an ongoing exigency directly related to COVID-19 beginning on May 12, 2023. To potentially qualify as an extended exigency under 5 CFR 630.309, the agency must first receive the Director of OPM's approval of the required time-limited waivers of the ongoing exigency such that the ongoing exigency lasts at least 3 full calendar years (2024, 2025, and 2026). Thus, the ongoing exigency would have to last at least until January 1, 2027, to potentially qualify as an extended exigency.
 - The time an employee is covered under the COVID-19 national emergency exigency (beginning on March 13, 2020 and ending on May 11, 2023) would not count towards determining whether the ongoing exigency potentially qualifies as an extended exigency under 5 CFR 630.309.

Waiver of 12-month limitation of agency-authorized ongoing exigency

Description

- When a national emergency exigency that serves as a basis for use of these regulations is terminated under 5 CFR 630.310(f)(2)(i), (ii), or (iv), an agency may determine that certain employees immediately continue to be subject to an ongoing exigency of the public business that is directly related to the matter that was determined to be a national emergency exigency such that they may not schedule or take annual leave.
- For an employee to be covered under an ongoing exigency, the employee must first be covered by a national emergency exigency and then be covered by the ongoing exigency ***without a break in time***.
- This determination of an ongoing exigency must be made by the agency head or designee.
- An ongoing exigency for covered employees expires 12 months after the agency determination.
- However, agencies may request that the Director of OPM approve one or more waivers of the expiration date(s) based on a critical agency need for the services of the employee or group of employees.
- The interim regulations provide that the Director may approve a “time-limited waiver.”
- This guidance specifies that a waiver will be approved for a period of 12 months.
- An agency may apply for more than one 12-month waiver.
- Waivers should be very rarely needed, for the reasons described below.

Request for a waiver of the time limitation for use of agency-authorized ongoing exigency should rarely be needed

In order to have a healthy work-life balance and to be effective at their jobs, employees need access to annual leave to take vacations, rest and relax, and to attend to personal business or emergencies. Agencies should therefore do their utmost to ensure that employee coverage under these regulations is terminated as soon as practicable so that employees may again schedule and use their annual leave. The need for an agency to request a waiver from OPM of the 12-month time limitation for use of an ongoing exigency should be extremely rare. This is especially true for the COVID-19 national emergency since by the time such a waiver is requested, employees will have been covered under the regulations for 48 months/4 years.

Under the interim rule published on August 10, 2020—

- The authority to use the regulations at 5 CFR 630.310 for a national emergency exigency generally expires 12 months after the national emergency has been declared. (12 months)

- However, the agency is authorized to extend this deadline up to two times by an additional 12 months per extension. (Generally, an additional 24 months, for a total of 36 months for the national emergency exigency.)

Under the revised interim rule, once the national emergency exigency ends, the agency may authorize certain employees or categories of employees to be covered under an ongoing exigency for an additional 12 months, as described above. (Generally, an additional 12 months, for a total of 48 months for the national emergency exigency and an ongoing exigency.)

Generally, once an authorized national emergency exigency ends (no longer than three years), most agencies should have been able to generate solutions such that employees covered under this rule are able to again schedule and use their annual leave. The revised regulations give agencies the authority to exempt employees from the advanced scheduling requirement at 5 CFR 630.308(a) for the remainder of the leave year in which a national emergency exigency terminates. Thus, an agency should rarely need to authorize an ongoing exigency. Since the ongoing exigency provides an agency with an additional 12 months to use the 5 CFR 630.310 authority, the need for a waiver to continue to use section 630.310 beyond the additional 12 months should be extremely rare. Agencies would have to make a compelling case to OPM for the necessity of a waiver to the expiration of the time limit for coverage under an ongoing exigency.

Note: the time limits cited above would be almost two months longer solely as applied to the COVID-19 national emergency since the revised interim regulations automatically deem an agency extension of the COVID-19 national emergency exigency that had been set to end on March 13, 2023, to continue through the date that the President ends the COVID-19 national emergency, which is expected to be May 11, 2023.

Procedures for requesting waiver of the 12-month time limit for use of an agency-authorized ongoing exigency

In the rare case that a waiver to the time limit for use of an ongoing exigency is necessary, the agency head may request that the Director of OPM waive the 12-month ongoing exigency limitation based on a critical agency need.

Waiver requests must include—

1. A description of the critical need that makes the waiver necessary;
2. A description of alternatives to the waiver request that were considered and utilized and why they were not adequate to meet the need;
3. The occupational series and the number of employees in the occupational series for which the waiver is requested; and

4. The plans the agency will put in place to allow employees to again schedule and use their annual leave under normal procedures and thereby obviate the need for a subsequent 12-month waiver request.

If the request is for a subsequent 12-month waiver, the request must also include—

1. A description of the degree to which the plans outlined in the previous waiver request were or were not successful and why they were not fully successful;
2. Why the agency believes a subsequent waiver is justified; and
3. If a termination date was fixed for the ongoing exigency for any employees covered under the previous waiver, the occupational series and the number of employees in the occupational series for which the termination date was fixed and the date of the termination.

Waiver requests should be submitted at least 3 months prior to the termination date of the ongoing exigency.

Submission of requests

Requests should be submitted to—

Kiran A. Ahuja

Director

U.S. Office of Personnel Management

1900 E Street, NW.

Washington, DC 20415-8200

**Setting Use by Date
for Consolidated Restored Annual Leave Accounts**

Upon termination of the COVID-19 national emergency, an agency must combine all restored annual leave accounts and set the “use by” date for the annual leave in the consolidated restored annual leave account. The following guidance provides examples of how to set the expiration dates for the annual leave restored under the COVID-19 national emergency exigency. Many agencies have previously terminated the COVID-19 national emergency exigency for some or all of their covered employees, restored their annual leave, and set the use-by dates for this restored leave. For those exigencies that were not already terminated by an agency, this attachment provides guidance on this process, to include guidance on the new provisions for an agency-authorized ongoing exigency.

Rules for establishing “use by” date

Termination of the national emergency exigency or agency-authorized ongoing exigency

The regulations use a tiered approach to determine the deadline by which an employee must use the restored annual leave. This tiered approach to the use of restored annual leave means that employees with larger amounts of restored annual leave are provided a longer period of time to use the restored leave.

- Full-time employees must schedule and use restored annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date fixed by the agency head (or designee) as the termination date of the national emergency exigency (or a related ongoing exigency). This period is extended by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.
- Part-time employees must schedule and use restored annual leave in an amount equal to or less than 20 percent of the number of hours in the employee’s scheduled annual tour of duty by the end of the leave year in progress 2 years after the date fixed by the agency head (or designee) as the termination date of the national emergency exigency (or a related ongoing exigency). This period is extended by 1 leave year for each additional number of hours of excess annual leave, or any

portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

- The regulations contain special conversion rules for employees on an uncommon tour of duty. (See note to 5 CFR 630.310(d)(1).)

Agency-authorized ongoing exigency that qualifies as an extended exigency

If an ongoing exigency covering an employee lasts for 3 full calendar years and meets the other requirements to qualify as an extended exigency under 5 CFR 630.309, the usage time limits in that section would be used in place of the time limits in the regulations at 5 CFR 630.310(d) and cited in the sub bullets above. However, any time an employee spent covered by the preceding national emergency exigency would not be considered in determining if the ongoing exigency qualifies as an extended exigency.

Summary of consolidated restored annual leave time limits for use – no agency-authorized ongoing exigency

To provide further clarification of the above rules for determining the “use by” date for the consolidated restored annual leave hours when the agency has not authorized an ongoing exigency, we are providing the following summary. Assuming the President ends the COVID-19 national emergency on May 11, 2023, using the final possible termination date of the exigency of the public business of **May 11, 2023**, the actual “use by” date for all consolidated restored annual leave to avoid forfeiture is as follows:

- An employee who has **416 or less hours** of restored annual leave will have until **January 10, 2026**, to use the restored annual leave.
- An employee who has **417 to 624 hours** of restored annual leave will have until **January 9, 2027**, to use the restored annual leave because an agency must extend the period to use the leave by 1 leave year for each additional 208 hours of restored annual leave, or portion thereof.
- An employee who has **625 to 832 hours** of restored annual leave will have until **January 8, 2028**, to use the restored annual leave because an agency must extend the period to use the leave by 1 leave year for each additional 208 hours of restored annual leave, or portion thereof.

Scenario 1

The agency establishes the end of the national emergency exigency for the employee as March 13, 2023. Under the revised interim regulations, the exigency continues through the date that the President ends the COVID-19 national emergency, which is expected to be May 11, 2023.

At that time, the employee's consolidated restored annual leave account has a balance of 500 hours. Since the employee has an amount of annual leave greater than 416 hours (500 hours), the employee has until the end of the leave year ending 3 years after the agency determines that the employee's services are no longer necessary in response to the national emergency exigency, as extended by the revised interim regulations (i.e., until the leave year ending 2 years after the date fixed for 416 annual leave hours plus 1 additional year for each additional 208 hours of annual leave or portion thereof). Three years after May 11, 2023, is May 11, 2026. The end of the 2026 leave year is January 9, 2027.

Thus, the employee must schedule and **use the 500 hours** of restored annual leave **no later than January 9, 2027**. The employee will have the remaining portion of the 2023 leave year, as well as the 2024, 2025, and 2026 leave years, in which to schedule and use the 500 hours of restored annual leave.

Scenario 2

The agency establishes the end of the national emergency exigency for the employee as March 13, 2023. Under the revised interim regulations, the exigency continues through the date that the President ends the COVID-19 national emergency, which is expected to be May 11, 2023.

If the employee had 416 or less hours in the employee's consolidated restored annual leave account on May 11, 2023, the employee would have to schedule and use the restored annual leave by the end of the leave year in progress ending 2 years after the agency determined that the employee's services are no longer essential in response to the national emergency, as extended by the revised interim regulations. Two years after May 11, 2023, is May 11, 2025. The end of the 2025 leave year is January 10, 2026.

Thus, the employee must schedule and use the **416 hours or less** of restored annual leave **no later than January 10, 2026**. The employee would have the remaining portion of the 2023 leave year, as well as the 2024 and 2025 leave years in which to schedule and use the 416 or less hours of restored annual leave.

Summary of consolidated restored annual leave time limits for use – 12-month agency-authorized ongoing exigency

Assuming the President ends the COVID-19 national emergency on May 11, 2023, the final possible termination date of the exigency of the public business is May 11, 2023. However, when an agency determines that an ongoing exigency exists, the agency may establish an ongoing exigency effective May 12, 2023 (one day after the Presidentially declared national emergency is terminated on May 11, 2023). The ongoing exigency lasts for 12 months and is terminated by the agency on May 11, 2024 (unless a subsequent waiver is requested and approved by OPM). As provided under the revised interim rule, covered employees' previously restored annual leave is consolidated into one restored annual leave account along with the annual leave restored under the national emergency exigency and the ongoing exigency. The end date of the ongoing exigency and the balance of restored annual leave hours are used to determine the "use by" date for the consolidated restored annual leave (i.e., the date by which the restored annual leave must be used to avoid forfeiture).

The "use by" date for all consolidated restored annual leave to avoid forfeiture is as follows:

- An employee who has 416 or less hours of restored annual leave will have until January 9, 2027, to use the restored annual leave.
- An employee who has 417 to 624 hours of restored annual leave will have until January 8, 2028, to use the restored annual leave because an agency must extend the period to use the leave by 1 leave year for each additional 208 hours of restored annual leave, or portion thereof.
- An employee who has 625 to 832 hours of restored annual leave will have until January 6, 2029, to use the restored annual leave because an agency must extend the period to use the leave by 1 leave year for each additional 208 hours of restored annual leave, or portion thereof.

Summary of consolidated restored annual leave time limits for use – extended exigency of the public business under 5 CFR 630.309

If the ongoing exigency covering an employee lasts for 3 full calendar years and meets the other requirements to qualify as an extended exigency under 5 CFR 630.309, the usage time limits in that section would be used in place of the time limits in 5 CFR

630.310(d). However, any time an employee spent covered by the preceding national emergency exigency would not be considered in determining if the ongoing exigency is an extended exigency.

The time limits for use of the consolidated restored annual leave are not based on the amount of annual leave restored, but rather on the amount of time that the extended exigency of the public business lasted.

The formula for use is as follows:

- The consolidated restored annual leave must be scheduled and used within a time period that equals twice the number of full calendar years, or parts thereof, that the exigency existed.
- The time period begins at the beginning of the leave year following the leave year in which the exigency is declared to be ended.