



Ohio National Guard Federal Employee Benefits Bulletin

Bulletin Number: OH-07	Date: 15 March 2021
Applicability: National Guard (NG) Technicians (T5 and T32)	Subject: Higher Annual Leave Carry Over Limit under Section 1111 of NDAA 2021 (Updated Guidance)

Background: NDAA for FY 2021 section 1111 grants the OPM Director discretionary authority to establish a higher leave carryover limit. This authority was exercised and applied retroactively back to the start of the 2021 leave year. Subsequently, OPM directed agencies to grant a higher annual leave carryover equal to 125 percent of the applicable annual leave carryover ceiling. DCPAS, in coordination with Defense Finance and Accounting Service, provided procedures to assist DoD components in the application of section 1111. Please also reference our previous FEBB-OH06 for more detailed background information regarding this leave.

Implementation: Normal leave restoration rules in 5 U.S.C. 6304(d) still apply. All applicable leave restoration rules would be applied prior to application of section 1111. **The deadline to request leave restoration under the normal rules has passed.** 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.

Defense Finance Accounting Service (DFAS) has 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. **Employees should look for this information to show up on their LES.**

Looking Forward: 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.). Excess 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.**

Please refer to the frequently asked questions page below for more information.

For any other questions or concerns regarding any of the information listed above or on any Technician Benefits, please contact the Benefits email distro at:

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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.

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.

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.