DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

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TO: OPDIV Heads
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Human Resources Center Directors (Baltimore, Atlanta, & Rockville)
Human Resources Office Directors (NIH and HIS)

FROM: Robert Hosenfeld
Deputy Assistant Secretary for Human Resources

SUBJECT: HHS Policy Governing "Creditable Service Based on Non-Federal Experience for Annual Leave Accrual" - INFORMATION

Attached for your information is an amendment to the HHS Personnel Instructions, titled "Leave and Excused Absence." This issuance will add paragraph 630-1-120, "Creditable Service Based on Non-Federal Experience for Annual Leave Accrual" to the Leave and Excused Absence policy. It covers procedures for determining creditable service for leave accrual purposes. Specifically, the amendment outlines HHS interim policy implementing Section 202a of the Federal Workforce Flexibility Act of 2004, which allows Federal agencies to grant a newly appointed or reappointed employee credit for prior work experience in determining the employee's annual leave accrual rate.

Specifically, an employee who is covered by the Federal annual and sick leave program established under chapter 63 of title 5, United States Code, may receive service credit for prior non-Federal work experience or experience in a uniformed service that otherwise would not be creditable for the purpose of determining his or her annual leave accrual rate. In addition, the selecting officials must determine that the skills and experience the employee possesses were acquired through performance in a non-Federal or active duty uniformed service position having duties which directly related to the duties of the position to which the selected employee is appointed.

The interim policy is effective on the date of this memorandum. The policy will be posted at the following website http://www.hhs.gov/ohr/manual/06_01.pdf.

Attachment

HHS PERSONNEL INSTRUCTION 630-1
LEAVE AND EXCUSED ABSENCE

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630-1-00 PURPOSE

This Instruction states Department policies and requirements for the administration of leave and excused absence.

630-1-10 COVERAGE

All Department employees are covered by this Instruction, except individuals appointed by the President with the advice and consent of the Senate and other employees excluded by 5 U.S. Code 6301. Commissioned Corps officers are covered only as indicated in 630-1-110 below.

630-1-20 REFERENCES

A. U.S. Code 5551 (law - lump-sum payment for accumulated and accrued leave on separation)
B. U.S. Code, Chapter 63 (law - leave)
C. U.S. Code 501(g) (law - lump-sum leave payments made to Commissioned Corps employees)
D. 5 CFR, Part 630 (regulations - absence and leave)
E. HHS Personnel Instruction 550-11 (compensatory time off for religious observances)

F. HHS Personnel Instruction 610-3 (temporary closing of work places)
G. HHS Personnel Instruction 792-2 (employee assistance program)
H. HHS Guide for Timekeepers
I. HHS Travel Manual Chapter 1-40 (attendance at nongovernment sponsored meetings)
J. General Accounting Office Civilian Personnel Law Manual, Title II (index and summaries of CG decisions concerning leave issues)
K. Comptroller General Decision B-133674
L. Comptroller General Decision B-241272
M. Comptroller General Decision B-246359
N. 52 CG 66471
O. 60 CG 381
P. 61 CG 558
Q. U.S. Code 6303
R. 5 CFR 630.205 (absence and leave: creditable service)

630-1-30 GENERAL PROVISIONS

A. Requesting and Charging Leave

1. Operating Divisions (OPDIVs) may prescribe the procedures for requesting leave. Employees may be required to use the Standard Form 71, but OPDIVs may prescribe other procedures, such as using a memorandum or in some situations, making the request verbally.
2. The standard minimum charge for absence in pay status (leave) and for absence in nonpay status (leave without pay or absence without leave) is ¼ hour, except where OPDIV heads, or their designees, have established a minimum leave charge of ½ hour or 1 hour.
3. An employee must not be required to perform work during those periods of tardiness or unauthorized absence from duty for which the employee is charged with leave or absence without leave.
4. Leave is not charged for holidays or officially established nonwork days, except in certain situations pertaining to leave without pay and absence without leave (see 630-1-30E below).

B. Mandatory Approval of Leave

If an employee has followed the proper procedures for requesting leave and provides acceptable evidence:

1. The leave-approving official must grant an employee's request for sick leave, annual leave, or leave without pay (but is not required to grant a request for advance sick or annual leave) :

a. When an employee who is a disabled veteran presents an official statement from a medical authority that medical treatment is required in connection with the disability. The employee must give prior notice of the period during which absence for treatment will occur.
b. When the employee has suffered an incapacitating job-related injury or illness, has exhausted any available continuation of pay, and is awaiting adjudication of a claim for employee's compensation by the Office of Workers' Compensation Programs.

C. Uncommon Tours of Duty

For employees who work uncommon tours of duty during a regularly scheduled administrative work week which is in excess of 40 hours in a calendar week, leave is charged for the number of hours of absence during the regularly scheduled tour, for example:

1. An employee whose regularly scheduled tour of duty is 10 hours a day is absent for 8 hours and works 2 hours. The employee is charged 8 hours leave.
2. An employee whose regularly scheduled tour of duty is 44 hours a week is absent for a full week. The employee is charged 44 hours leave.

D. Leave Without Pay

Leave without pay (LWOP) is approved leave for which the employee is not paid. Except for specified situations such as the Family and Medical Leave Act, employees do not have a right to LWOP. Management has the discretion to determine whether requests for LWOP will be approved. LWOP must not be granted when absence without leave (AWOL) is appropriate, see E below.

E. Absence Without Leave

1. AWOL is a nonpay status for any absence from duty not authorized by the proper leave-approving official.
2. AWOL should be charged when an employee is absent without permission or has not notified his/her supervisor or provided satisfactory explanation or documentation for the absence from duty. An AWOL charge may be changed later to an appropriate type of leave if the leave-approving official determines that the employee has satisfactorily explained the absence or presented acceptable documentation.

F. Charges to AWOL or LWOP for Holidays

Legal holidays that occur during a period of AWOL or LWOP are charged to AWOL or LWOP as follows:

1. Employees who are in a nonpay status (AWOL or LWOP) immediately before and after a holiday are not entitled to pay for the holiday. They must be charged AWOL or LWOP, as appropriate, for the holiday. See CG Decision B-187520, February 22, 1977, and the HHS Guide for Timekeepers, Chapter 5, Section D.
2. Employees who are in a nonpay status (AWOL or LWOP) before or after a holiday are not charged AWOL or LWOP for the holiday. They are entitled to pay for the holiday. It is presumed that the employee" would have been available for work on the holiday unless the employee was in a nonpay status both before and after the-holiday. See 56 CG 393.
3. Employees scheduled to be on LWOP during a Pay Period when a holiday occurs must not be returned to pay status (i.e., duty or paid leave) either the day before or the day after the holiday for the sole purpose of taking advantage of being paid for the holiday.

G. Repayment of Advance Leave by Employees Who Are Separating

Employees separating from the Federal service must repay any annual or sick leave advanced and not earned at the time of separation, except that no repayment is necessary under any of the following conditions:

1. If the separation is because of entry into the military service with restoration rights. (However, if the employee exercises the restoration rights, the leave indebtedness will be recredited as an indebtedness.)
2. If the separation is because of death or disability retirement.
3. If the separation is based on a disability that prevents" the employee from returning to duty or continuing in the service.

H. Family and Medical Leave Act

1. Under the Family and Medical Leave Act, employees are entitled to up to 12 weeks of LWOP for (a) the birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of a family member with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. This is in addition to other leave which the employee may be entitled to.
2. The Department has determined that for purposes of the Family and Medical Leave Act, the definition of family member is expanded to be the same as under the Voluntary Leave Transfer Program, see 630-1-60B.2.

A. Qualifying Period

1. An employee whose appointment is for 90 calendar days or longer earns and may be granted annual leave beginning with the first day of the first full pay period following appointment. If an appointment is for less than 90 days, the employee is not entitled to annual leave but may request leave without pay. (If an appointment of less than 90 days is extended or converted to another appointment of less than 90 days without a break in service of one work day, the employee will still not earn annual leave until the actual employment counted from the initial appointment equals 90 days. As soon as the employee has 90 days of employment, he/she earns annual leave retroactive to the initial appointment date.) If after an initial appointment of less than 90 days, the extension or conversion to another appointment was for 90 days or more, the employee earns annual leave retroactive to the date of the initial appointment.
2. If an employee took leave without pay while under an appointment of less than 90 days and then earns annual leave retroactive to the initial date of the appointment as described in number 1 above, he/she may not substitute annual leave for the leave without pay.
3. If an employee is currently on an appointment of less than 90 days 'and- has annual leave recredited from a lump-sum payment from previous Federal service, the employee may use the recredited annual leave during the current appointment.

B. Maximum Accumulation

Employees can carry over to the next leave year a maximum of 30 days (240 hours) of accrued annual leave, (720 hours for members of the Senior Executive Service) . Leave earned in excess of these maximums is forfeited if not used by the end of the leave year. (Under special conditions, forfeited annual leave may be restored, as described in 630-1-40F below.)

C. Granting Annual Leave

1. The employee initiates a request for use of annual leave, and the request is acted upon by the leave-approving official. Leave-approving officials may, consistent with operational demands, prescribe when annual leave may be taken, refuse to grant annual leave, or revoke annual leave that has been granted and recall an employee to duty.
2. For circumstances in which annual leave may be substituted for sick leave, see 630-1-50A.3 below.
3. For circumstances in which sick leave may be substituted for annual leave, see 630-1-50A.2f below.

D. Advance Annual Leave

Employees have no entitlement to advance annual leave. However, under very unusual circumstances, an employee may be granted advance annual leave up to the amount to be earned by the end of the appointment or the end of the current leave year, whichever is sooner. Annual leave must not be advanced when it is likely the employee will retire, be separated, or resign before the advanced leave will be earned.

E. Leave Indebtedness

1. An employee's annual leave account may be overdrawn at the end of the leave year through error or because the employee was advanced annual leave and then did not earn the expected amount because the employee was on leave without pay or was absent without leave. When an employee's account is overdrawn, the debit will be carried over and charged against annual leave earned in the following year, unless the employee elects to make a refund payment.
2. An employee who is separated while indebted for advance annual leave must refund the amount due or have the amount owed deducted from any monies due to the employee. For exceptions, see 630-1-30F.

F. Restoration of Annual Leave

1. Conditions

a. As a general rule, annual leave in excess of an employee's maximum carryover balance is forfeited if not used by the end of the leave year. This excess annual leave, sometimes called "use or lose" leave, may be considered for restoration only under one of the following conditions:

(1) To correct an administrative error, when the error causes the loss of annual leave.

(2) When annual leave is scheduled in writing in advance but its use is denied because of an exigency of the public business.

(3) When use of scheduled annual leave is prevented by illness or injury, provided the annual leave was scheduled in writing in advance and its use could not be rescheduled between the termination of the illness and the end of the leave year, either because of an exigency or because the termination of the illness occurred too late in the leave year to permit rescheduling.

(4) OPM regulations require that "use or lose" annual leave must be scheduled at least three pay periods prior to the end of the leave year, and except as noted below, the Department has no authority to waive this requirement.

b. The leave-approving official must approve the employee's request "in writing in advance" for "use or lose" annual leave for use at the time requested by the employee or, if that is not possible, must reschedule it for use at some other mutually agreeable time before the end of the leave year.

c. If an exigency arises which necessitates cancellation of the employee's "use or lose" annual leave, the situation must be presented to the official with authority to make an exigency determination.

(1) That official must determine:

(a) Whether or not an exigency exists which is of such importance that an employee cannot be released from duty; and

(b) Whether or not there is any reasonable alternative to the cancellation of an employee's "use or lose " annual leave, or to the assignment of that employee to the work generated by the exigency.

(2) The determination must be documented, and the specific beginning and ending dates of the exigency must be fixed. The determination of the exigency must be made before the cancellation of the employee's scheduled leave and not after the fact.

d. If the requirements in b and c (2) above are not met (i.e., the employee's request 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 (see 57

CG 325 and 58 CG 684). However, if the requirement in b above is not met (i.e., the employee did not request the leave in writing in advance), this cannot be considered as an administrative error and the forfeited annual leave cannot be restored. (The only exception is for a prolonged illness preceding the end of a leave year, where the employee may be presumed to have requested proper scheduling of the annual leave.) (See CG Decision B-193431, dated August 8, 1979.)

e. If an exigency or illness that caused cancellation of an employee's "use or lose" annual leave terminates before the end of the leave year, efforts must be made to reschedule the annual leave before the end of the leave year to avoid forfeiture.

2. Time Limit for Use of Restored Annual Leave—Extent for Extended Exigency

a. The maximum time limit for use of restored leave is the end of the leave year in which the 2-year anniversary date of restoration occurs. Leave which is not used by this deadline may not be restored again.

b. The date of restoration is determined as follows:

(1) The date the annual leave was restored in correcting an administrative error; or

(2) The date fixed by management as the end of the exigency that resulted in the forfeiture of the annual leave; or

(3) The date the supervisor, after considering the medical documentation, ascertains that the employee is able to return to duty, if the leave was forfeited because of sickness.

b. Employees with a restored annual leave account may use their regular annual leave and their restored leave in any order they may wish, but they must advise their leave-approving official and the timekeeper of their choice. Once an employee makes an election, he/she may not change it after the leave has been used.

3. Time Limit for Use of Restored Annual Leave—Extended Exigency

a. An extended exigency is defined as significant circumstances that meet all of the following conditions:

(1) Threaten the national security, safety, or welfare;

(2) Last more than 3 calendar years;

(3) Affect a segment of an agency or occupational class; and

(4) Preclude subsequent use of both restored and accrued annual leave within the time limit specified in 630-1-40F.2 above.

b. The maximum time limit for use of annual leave restored because of an extended exigency is two years for each calendar year, or part thereof, that the exigency existed, regardless of the number of years during the exigency in which the employee forfeited leave.

G. Lump-Sum Payment for Annual Leave

An employee with accumulated annual leave, including unused restored leave in a separate account, who is separated is paid a lump-sum at his/her current hourly rate for all unused annual leave at the time of separation. If there is a general pay increase during the period of time which would have been covered by the leave had the employee actually used it, the employee is paid at the higher rate of pay for leave which would have covered the period following the effective date of the pay increase. The lump-sum payment may be adjusted to collect the amount of any debts owed to the Government.

630-1-50 SICK LEAVE

A. Granting Sick Leave

1. A leave-approving official may grant sick leave to an employee for non-emergency dental, optical, or medical examination or treatment (including for physical or mental conditions). The employee must request sick leave for non-emergency purposes in advance.

2. If the employee has followed proper leave-requesting procedures and provides acceptable evidence, a leave-approving official must grant an employee's request for sick leave (but is not required to grant a request for advance sick leave) :

a. When the employee is incapacitated to perform duties due to illness (physical or mental), injury, or temporary disability, including pregnancy. An employee with a disability who depends on an aid, mechanical or otherwise, to perform work is normally incapacitated without the aid. A seeing-eye dog, a wheelchair, or any prosthetic device may be considered an extension of the person, and a grant of sick leave or such purposes as training, replacement, or repair is appropriate under the same conditions as any other incapacitation.

b. For emergency medical, dental, or optical examination or treatment.

c. Subject to the limitations in the Family Friendly Leave Act and OPM regulations, when an employee is required to care for a member of his/her immediate family. These limitations concern the amount of sick leave the employee may use. Full-time employees may use 104 hours in a year as long as their balance remains at 80. Sick leave may not be advanced to keep the balance at 80. Employees whose balance is less than 80 hours may use 40 hours. The limitations for part-time employees are proportional to those for full-time employees, see 5 CFR 630.401. The definition of family member is the same as under the Voluntary Leave Transfer Program, see 630-1-60B.2.

d. Sick leave may be used in connection with the adoption of a child, see 5 CFR 630.401.

e. When the organization has made a determination that the employee is incapacitated and meets the requirements for disability retirement and OPM is processing the employee's retirement application.

f. For treatment of a disabled veteran or adjudication of a claim concerning a job-related injury or illness, as described in 630-1-30B.1 above.

g. When an employee is sick within a period of annual leave, provided that, immediately upon return to duty, the employee presents medical documentation to support the sick leave.

3. An employee may request annual leave, if available, or leave without pay for a period of illness which cannot be covered by sick leave to an employee's credit, or advanced to the employee, and leave-approving officials may grant such requests. However, annual leave must not be substituted retroactively for regular sick leave. Annual leave may be substituted retroactively to liquidate an employee's indebtedness for advance sick leave.

4. Leave-approving officials will usually charge sick leave only at an employee's request.

   a. Officials may, however, place an employee on sick leave without the employee's request when the employee is absent under extenuating circumstances clearly indicating that he/she is unable to work and unable to request leave (e.g., the employee is in a coma) . If the employee is still unable to work after exhausting his/her accrued sick leave and the employee is still unable to request appropriate leave, the leave-approving official may consider advancing sick leave or may consider charging the continued absence to annual leave or to leave without pay in such a situation. In addition, the official may pursue use of the Voluntary Leave Transfer Program on behalf of the employee.

   b. In extraordinary circumstances, leave-approving officials may also place an employee on sick leave without the employee's request if the employee reports for duty but is determined to be unable to work because of illness (mental or physical) . However, placing an employee on sick leave in this situation without his/her consent has been determined by the Merit Systems Protection Board to be a suspension, thus entitling the employee to notice and other due process protection.

B. <u>Advance Sick Leave</u>

1. An advance of sick leave may be made to an employee with a zero sick leave balance, if the employee has a serious disability or ailment, provided the total advance at no time exceeds 30 days and there is a reasonable expectation that the employee will return to duty. For an employee holding a limited appointment, sick leave must not be advanced in excess of the sick leave to be earned during the remaining period of employment. Sick leave must not be advanced when it is likely the employee will retire, be separated, or resign before the advance leave will be earned. Employees have no entitlement to advance sick leave.

2. The employee's request for advance sick leave must be in writing and must be supported by medical documentation acceptable to the leave-approving official. Usually the disability or ailment will be of such seriousness as to require a period of absence of at least 5 consecutive work days, unless an absence for a shorter period is determined to be appropriate (for example, intermittent absences for cancer chemotherapy, kidney dialysis, etc.) .

3. Advance sick leave may be granted regardless of whether the employee has annual leave to his/her credit. Any sick leave earned after the sick leave is advanced will be used to liquidate the advance sick leave.

4. An employee separated while indebted for advance sick leave must refund the amount due or have the amount owed deducted from any monies due to the employee. For exceptions, see 630-1-30F.

5. As an alternative to advance sick leave, the employee and the supervisor may consider the Voluntary Leave Transfer Program, leave without pay, or an adjustment from full-time to part-time employment during a period of recuperation, thus allowing the employee to work less than 8 hours daily until the employee is fully recovered. In considering such options, the supervisor and the employee should consult the servicing personnel office regarding the effects of LWOP and part-time employment on an employee's benefits, as well as possible employment ceiling implications in moving between full-time and part-time status.

C. Evidence to Support Sick Leave

1. Employees must submit evidence as required by their leave-approving officials to support approvals of sick leave. Officials have the discretion to require different forms of evidence depending upon the circumstances. For example, a leave-approving official:

   a. May require medical documentation for extended absences, e.g. , over 3 consecutive work days (or for shorter periods when an employee has been advised that medical documentation will be required). Medical documentation is defined as that which is signed by the employee's health care provider and is sufficiently specific for the leave-approving official to make a reasonable decision that the employee was incapacitated to perform the duties of his/her position.

b. May require the employee's signature on the SF 71, a written statement signed by the employee, or other evidence which is administratively acceptable to the leave-approving official, when the period of absence is relatively short or the nature of the employee's illness did not require an appointment with a health care provider.

2. Employees must submit required evidence within a reasonable amount of time after return to duty. Failure to do so is grounds for taking a disciplinary action for failure to follow proper leave procedures. If the employee is placed on AWOL, the Merit Systems Protection Board has ruled that if the employee later submits adequate documentation, the AWOL cannot stand and any disciplinary action based solely on AWOL would be overturned. However, an action based on failure to follow proper leave procedures could still be upheld.

3. Leave-approving officials may require that employees submit medical documentation during a period of extended sickness. The purpose of such a requirement is to obtain information (e.g., the health care provider's prognosis of when the employee will be able to return to work; what limitations, if any, the physician will temporarily place on the employee's activities; and, if so, what other work the employee could perform) which is necessary for planning work or for determining that the approval of continued leave is appropriate.

630-1-60 VOLUNTARY TRANSFER OF LEAVE

A. Purpose

Under the Voluntary Leave Transfer Program (VLTP), unused accrued annual leave belonging to one employee may be transferred for use by another employee who has been determined to have a medical or family medical emergency and has been approved as a leave recipient.

B. Definitions

1. Medical emergency means a medical condition of an employee or a family member that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee (24 hours for full-time employees) because of the unavailability of paid leave. (Absence from duty necessitated by pregnancy and child birth is an acceptable reason for requesting use of the VLTP.)

2. Family member means the following relatives of the employee: (a) spouse, and parents thereof; (b) children, including adopted children and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

C. Applying to Become a Leave Recipient

1. Current employees affected by a medical or family medical emergency must apply in writing to become a leave recipient. In the event that an employee is not capable of making application on his or her own behalf, another employee in this Department, an employee's representative, or a family member may make the application.

2. Each application for VLTP is to be initially submitted to the immediate supervisor of the potential leave recipient for consideration and must include:

   a. The name, position title, and grade or pay level of the prospective leave recipient.

   b. A brief description of the nature, severity, and anticipated duration of the medical or family medical emergency affecting the applicant.

   c. A statement from a physician or other appropriate expert (e.g. , Christian Science Practitioner, chiropractor, psychologist, etc.) and any additional information, as appropriate, that shows the nature, severity, and duration of the medical or family medical emergency.

D. Retroactivity

Transferred annual leave may be substituted retroactively for a period of leave without pay (LWOP) or to liquidate advanced annual or sick leave granted to the approved leave recipient to cover absences during a medical or family medical emergency.

E. Processing Applications

The actual approval or disapproval of an application must be based on the determination by designated officials as to whether the potential leave recipient's absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours. (In the case of a part-time employee or an employee with an uncommon tour of duty, the determination should be made on the basis of 30% of the average number of hours of work in the employee's biweekly scheduled tour of duty.) Such absence can be consecutive or intermittent hours during the leave year.

F. Leave Donations From Other Federal Agencies

This Department will accept the transfer of annual leave from donors employed in other Federal agencies, and employees of this Department may donate annual leave to employees in other Federal agencies if other agencies will accept outside donations.

G. Using Transferred Leave

1. A recipient's annual and sick leave accrued and accumulated prior to the approval date of the recipient's application must be used before any transferred annual leave. In situations involving care for a family member, the leave which must first be used would include sick leave authorized by the Family Friendly Leave Act.

2. Transferred annual leave may accumulate without regard to the limitations imposed by 5 U.S.C. 6304(a).

3. Transferred leave may not be:

   a. Transferred to another leave recipient.

   b. Included in a lump-sum payment.

   c. Made available for recredit upon reemployment by a Federal agency.

   d. Used after the recipient's medical or family medical emergency is terminated.

H. Accrual of Annual and Sick Leave

1. Once the employee is using the transferred leave, he/she continues to accrue annual and sick leave up to a maximum of 40 hours in each category (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty) , regardless of whether it is a family medical or personal medical emergency. Once 40 hours of each are accumulated in this separate account and the medical emergency still exists, this separate leave accumulation stops.

2. This annual and sick leave accrued by the employee while in transferred leave status must be kept in a separate leave account from any leave account under 5 U.S.C. 6304 and 5 U.S.C. 6307 and must not be available for the employee's use until the first applicable pay period beginning after the date on which the employee's medical emergency ends, extent that it may be used if the employee exhausts all donated leave.

3. Any leave recipient who returns to work on a part-time schedule while still in a medical emergency situation (e.g., therapy, gradual return to work under doctor's orders, family member's therapy) will earn regular annual and sick leave (5 U.S. Code 6304 and 6307). If in a given pay period, an employee uses some donated leave but also works and uses regular leave, all leave earned during that pay period is credited to the employee's regular leave account, not the separate account described in 2 above. If otherwise permitted, this accrued regular leave must be used before any donated leave.

4. If an employee who is in a leave transfer status terminates his/her Federal service, these separate, 40-hour annual and sick leave accruals may not be credited to the employee for lump-sum leave purposes.

I. Donating Leave

1. Without a waiver, a leave donor may not donate more than one-half of the amount of annual leave he/she would be entitled to accrue during the leave year in which the donation is made. This one-half limit applies whether the leave is donated all at one time or in increments at various times during the leave year. Waivers can be approved by leave-approving officials.

2. Without a waiver, a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year may not donate more than the lesser of:

   a. Half the amount of annual leave he/she would be entitled to accrue during the leave year in which the donation is made, or

   b. The number of work hours remaining in the leave year (as of the date of the transfer) for which he/she is scheduled to work and receive pay.

3. As indicated in the law and regulations, an employee cannot donate leave to his/her immediate supervisor.

J. Restoring Transferred Annual Leave

Upon termination of a medical or family medical emergency, unused leave donated to the recipient must be restored to the donor(s) account(s).

630-1-70 VOLUNTARY LEAVE BANK PROGRAM

OPDIVs may elect to establish and administer a Voluntary Leave Bank Program, consistent with the applicable law and Office of Personnel Management regulations. A Voluntary Leave Bank Program enables employees to contribute accrued or accumulated annual leave to a "leave bank". The leave from this bank may be made available to an employee who requires leave because of a medical emergency.

630-1-80 EXCUSED ABSENCE

A. Definition

Excused absence is absence from duty administratively authorized without loss of pay and without charge to leave. The term "administrative leave" is sometimes used to refer to excused absence. Both the Merit Systems Protection Board and the Comptroller General have determined that it is inappropriate to grant long periods of excused absence for no other reason than to settle a case or to permit an employee to accumulate enough time to become eligible to retire.

B. Excused Absence Situations

Situations where excused absence may be authorized include, but are not limited to, the following:

1. Attendance at administrative hearings.

2. Bone marrow and organ/tissue donation and transplantation (5 U.S. Code 6327 grants employees up to 7 days of excused absence for these purposes) .

3. Blood donations.

4. Holidays for part-time employees. Part-time employees are not entitled to (a) holidays designated by law or executive order or (b) days observed as holidays when the actual holiday falls on one of their nonwork days (see 26 Comptroller General 690, and 32 Comptroller General 378) . They are not entitled to an in lieu of holiday. For example, if Christmas falls on Saturday, the in lieu of holiday is Friday for most employees. A part-time employee is not entitled to the Friday as a holiday, even if he/she were scheduled to work on that day. However, in such a situation, the employee may be granted excused absence where, for example, the office is closed (see Comptroller General Decision B-210741, April 24, 1984).

5. Medical Examinations and Treatments.

   a. Examples are examination in connection with an application for disability retirement initiated by the Department, and examination or preventive treatment authorized under the Federal Employees' Health Program.

   b. For an employee who suffers a disabling traumatic injury on the job, the employee's absence on the day of injury will be excused. Continuation of pay (C.O.P.) may be authorized for subsequent absences, examinations, or treatments related to a traumatic injury. When an employee has exhausted (or is not eligible for) the 45 days of C.O.P. and has returned to work, then LWOP, annual leave, or sick leave may be granted for injury-related examinations or treatment; the employee may then apply to the Office of Workers' Compensation Programs for compensation or leave buy back for the period in question.

6. Registration for military service.

7. Participation in civil defense activities.

8. Voting and registration.

9. Inclement weather or closure of work place.

10. Job interviews and other out-placement activities when it is determined that this is in the Department's interest. (Downsizing is the most common but not the only example where excused absence would be appropriate.)

11. Participation in health and fitness activities. An official with delegated authority may approve excused absence for an employee to participate in health and fitness activities if the activity is officially sponsored and administered and for a specific, fixed duration. Examples are Federal Fitness Day Event, Department sponsored health screening, agency fitness center orientation, or a smoking cessation program.

C. Official Time

1. Official time is not excused absence, but there may be situations where an employee is authorized to use official time to perform activities other than his/her normal duties. The distinction can be very important because, for example, an employee injured while on excused absence may not be entitled to benefits under the Federal Employees' Compensation Act (FECA), while an employee injured while on official time may be covered.

Official time is included on the employee's Time and Attendance Report as normal hours of work and is not entered as administrative leave.

2. Supervisors may authorize official time in situations such as the following:

a. For an employee serving as a labor organization representative, see 5 U.S.C. 7131 and applicable negotiated agreements.

b. For an employee representing another employee in an appeal, discrimination complaint, or grievance.

c. For an employee preparing a response to a notice of proposed adverse action.

d. For an employee meeting with an equal employment opportunity counselor.

e. For employees meeting with employee assistance staff for counseling.

f. For an employee who has prevailed in a civil rights action against the Department, the employee's absence in connection with the action should be changed to official time (see 59 CG 290). A determination to treat such an absence as official time can be made only upon conclusion of the court action. While the court action is in process, the employee should request annual leave or leave without pay in accordance with 630-1-90D.3 below.

g. For employees to participate in fitness activities in order to help them meet job-related medical standards or physical requirements.

630-1-90 COURT LEAVE

A. Definition.

Court leave is authorized absence of an employee from official duty for attendance at court and other judicial proceedings, either as a juror or a witness in certain circumstances, without charge to other leave or loss of pay.

B. Granting of Court Leave

1. Court leave is granted to permanent and temporary employees, both full-time and part-time, for serving in a nonofficial capacity for:

   a. Jury duty with a Federal, District of Columbia, State, or local court.

   b. Witness duty on behalf of a State or local government.

   c. Witness duty on behalf of a private party when the Federal or District of Columbia government, or a State or local government, is a party to the judicial proceeding.

2. Intermittent employees may not be granted court leave.

3. A night shift employee who is eligible for court leave and who is in court during the day is granted court leave for the night shift. The employee is entitled to the night shift differential.

4. When an employee is required to serve on a jury or as a witness while on annual leave, the leave-approving official must substitute court leave if the employee is eligible. An employee who is on leave without pay when required to serve is not to be granted court leave.

5. Court leave granted only for the days of an employee's scheduled tour of duty on which the employee performs court service, or for portions of such days.

C. Jury Duty

1. It is Department policy to request exemption of an employee from jury duty only in those rare cases where the employee's absence would seriously handicap the work of the Department. In such cases, the supervisor should prepare a written statement which clearly relates how the work of the Department would be adversely affected and request an exemption from the appropriate court authority. Employees may request exemptions for compelling personal reasons on their own initiative.

2. When excused from jury duty for a day or a part of a day, an employee must return to work if dismissed early enough to return more than 2 hours before the tour of duty is over. The official authorized to grant court leave may continue the employee on court leave for the rest of the day in such cases only if the official determines that return to work would constitute a hardship for the employee.

C. Witness Duty

1. Attendance at a judicial proceeding as a witness in an official capacity is considered official duty and no leave of any kind is charged. Attendance at a judicial proceeding by an employee who is summoned by the court or authority, or assigned by the Department, to testify in a nonofficial capacity on behalf of the United States Government or that of the District of Columbia, is also considered official duty. Travel expenses for court attendance may be authorized in situations where the employee is considered to be performing official duty.

2. Court leave may be granted to an employee who is testifying in a nonofficial capacity on behalf of a State or local government.

3. Court leave may be granted to an employee who is testifying in a nonofficial capacity on behalf of a private party when the United States or District of Columbia Government or a State or local government is a party to the proceeding. (However, court leave is not to be granted to an employee who appears as a witness on his/her own behalf if such a suit is filed by that employee or if the employee is the defendant in the suit. For absences for this purpose, the employee may request annual leave or leave without pay.)

4. An employee may request annual leave or leave without pay when the employee is testifying in a nonofficial capacity in a court suit between private individuals or companies (i.e., the United States or District of Columbia Government or a State or local government is not a party to the suit).

E. Procedures

1. An employee who is called for court service as either a witness or juror must present the court order, subpoena, or summons to the leave-approving official. Upon return to duty, the employee must submit to the leave-approving official written evidence, such as a marshal's statement, of court attendance.

2. Fees received by an employee for jury or witness service for which court leave is granted or official duty is considered proper cannot be retained by the employee. The employee should accept such fees and submit them to the appropriate HHS finance office.

   a. Fees may be retained if they are for service outside the regular tour of duty or on a non-workday or holiday. Fees may also be retained if they are for service as a nonofficial witness in a court suit between private individuals or companies, since the employee is not on court leave or official duty in such a situation.

   b. Not all monies received for jury or witness service are classified as fees. Some government entities provide "expense money " which is considered reimbursement for expenses incurred while serving as a juror or witness. Expense money received may be retained by the employee and need not be refunded to the Federal Government.

630-1-100 MILITARY LEAVE

Military leave is the authorized absence of an employee from official duty to perform active military duty, active duty for training, or law enforcement. Military leave is not authorized for inactive duty training (usually weekend drills).

A. Eligibility

Full-time and part-time employees with permanent appointments are eligible for military leave. (Part-time employees must have scheduled tours of duty of 16 to 32 hours a week.)

B. Types of Military Leave

1. Full-time employees who are members of the National Guard or the Armed Forces Reserves are entitled to 15 calendar days of regular military leave in a fiscal year for active duty or active duty for training. (See 5 U.S. Code 6323(a).)

   a. For members of the National Guard, the active duty or training must be service for the Federal Government and not just for the State.
   b. For part-time employees, the leave is Prorated, by multiplying the scheduled number of hours in the employee's work week by 15 (the maximum number of days per year) and then dividing by 40 (the number of hours in a regular work week) . For example, an employee who works 32 hours a week is entitled to 12 days of regular military leave per year (i.e., 32 times 15 = 480, divided by 40 = 12).

2. In addition, employees who are members of the National Guard or the Armed Forces Reserves are entitled to 22 work days of special military leave in a calendar year for the purpose of providing military aid to enforce the law. (See 5 U.S. Code 6323(b).)

3. Employees who are members of the National Guard of the District of Columbia (D.C.) are entitled to unlimited military leave for all days of parade or encampment. (See 5 U.S. Code 6323©.)

C. Accumulating Military Leave

1. Employees who are entitled to regular military leave but who do not use the entire 15 calendar days (or prorated earnings, for part-timers) may carry over the unused portion from one fiscal year to the next. A maximum of 15 days can be carried over.

2. Employees who are entitled to special military leave may not carry over any unused portion of the 22 work days to the next calendar year.

D. Charges for Military Leave

1. For those employees who are entitled to regular military leave, the leave is charged in increments of one day and includes nonwork days falling within the period of absence on military duty. (See 52 CG 471.) The fact that more than one set of orders may be involved is not sufficient reason to consider a continuous period of absence as separate periods of military duty (see 61 CG 558). Nonwork days falling at the beginning or end of included in the period of military B-133674).

2. Employees may use up to 30 days of military leave in any fiscal year. The military leave may be used during one or more periods of military duty during the fiscal year.

3. Employees may take the full 15 days of military leave at the beginning of the fiscal year, even if the maximum of 30 days of military leave had been taken during the prior fiscal year and even if the military service is continuous. (See CG Decision B-241272.)

4. For those employees who are entitled to special military leave, the leave is charged in the same increments as annual and sick leave.

5. For those employees who are entitled to-unlimited military leave for parades and encampments, the military leave is charged in increments of one day. (See 60 CG 381.)

E. Crediting Military Pay Against Civilian Pay

1. For those employees who are entitled to regular military leave, the employee may retain the military pay as well as the civilian pay.

2. For those employees who are entitled to special military leave, the employee's civilian pay is offset by the amount of the military pay. (See 5 U.S. Code 5519.)

3. For those employees who are entitled to unlimited military leave for parades and encampments, the employee's civilian pay is offset by the amount of the military. (See 5 U.S. Code 5519.)

F. Documentation

Employees called to military duty must furnish to their leave-approving official a copy of their military orders or a statement from their commanding officer.

630-1-110 TRANSFER AND RECREDIT OF LEAVE BETWEEN THE CIVIL SERVICE AND OTHER LEAVE SYSTEMS

A. Statutory Requirements

1. 5 U.S.C. 6308 requires the transfer of leave between different leave systems when there is no break in service. This provision has been interpreted by the Comptroller General to include the Commissioned Corps leave system. (See 34 CG 287.)

2. 5 U.S.C. 6306 requires a refund and recredit of annual leave when an individual is reemployed in the same leave system or a different leave system before the end of the period covered by the lump-sum leave payments made to Commissioned Corps officers under 37 U.S.C. 501(g). (See CG Decision B-119016, dated July 20, 1956.)

B. Break in Service

A break in service means a break of:

1. One or more calendar days when an individual leaves a position in which his/her leave account is maintained on the basis of a 7-day work week (e.g., Commissioned Corps leave system).

2. One or more work days (including holidays) when an individual leaves a position in which his/her leave account is maintained on a 5-day work week basis (e.g., civil service leave system) .

B. Transfer and Recredit of Annual Leave

1. Adjustment of Leave

When annual leave is transferred between different leave systems, 7 calendar days of leave are considered equal to 5 work days of leave. Thus , employees appointed to the Commissioned Corps from a civil service position would have their leave augmented by seven-fifths, while an appointment to a civil service position from the Commissioned Corps would result in a reduction to five-sevenths of the officer's leave account.

2. Maximum Amount Transferred or Recredited

a. Officers or employees transferring between different leave systems without a break in service may transfer all annual leave to their credit at the time of transfer (see 48 CG 212).

b. Officers or employees who have a break in service and are reemployed under a different leave system before the end of the period covered by their lump-sum leave payment will be recredited with annual leave representing the unexpired portion of their lump-sum leave payment. Any leave to their credit which was not included in their lump-sum payment will not be recredited upon reemployment. Such leave was forfeited at the time of separation. (See 33 CG 85.) (Since Commissioned Corps officers can receive a lump-sum payment for a maximum of 60 days, they may be allowed to use-any leave above this amount before they separate from the Corps if they will have a break in service before being employed in the civil service.)

3. Leave Ceiling

a. The maximum carryover (or leave ceiling) for Commissioned Corps annual leave is 60 calendar days, as opposed to 30 work days under the civil service leave system. This ceiling is the maximum amount of annual leave that can be carried forward from one leave year to the next and that can be paid to an officer as a lump-sum leave payment upon separation. For officers appointed to civil service positions, the amount of leave that can be carried forward from one leave year to the next will be the amount of leave

credited to them at the time of their civil service appointment, except this cannot exceed 60 days of Commissioned Corps leave

(342 hours when converted). This amount will remain to their credit as accumulated leave until used. The use during any leave year of an amount in excess of the leave they accrue during the year will automatically reduce this maximum allowable accumulation until the accumulation no longer exceeds the maximum allowed for other employees under the civil service leave system.

b. For example, if an officer transfers to the civil service in July with 75 days of Commissioned Corps annual leave (429 hours when converted to civil service leave) , at the end of the leave year the employee can carry over a maximum of 342 hours (which is the equivalent of 60 days of Commissioned Corps leave) . The extra 87 hours transferred with the employee, plus the civil service leave earned since July, must be used by the end of the leave year, or they will be forfeited.

D. Transfer and Recredit of Sick Leave

Since the Commissioned Corps leave system does not provide an accumulation or accrual of sick leave, there will be no transfer of sick leave when an officer is appointed from the Commissioned Corps to a civil service position. When individuals are appointed to the Commissioned Corps from the civil service leave system and they have sick leave to their credit, no sick leave is transferred. (See 33 CG 85.) However, the sick leave will be recredited to the individuals if they return to the civil service leave system after separation from the Commissioned Corps.

E. Transfer of Leave From Other Leave Systems

When an employee from another Federal agency with a different leave system transfers to a civil service position in this Department, the employee's leave should be transferred in accordance with 5 CFR, Part 630, Subpart E, and 48 CG 212. For example, a nurse in the Veterans Administration earns 8 hours of annual leave per pay period and may accumulate a maximum of 685 hours. If a nurse with an accumulation of 685 hours transfers to a civil service position in this Department, the 685 hours will constitute the employee's annual leave ceiling (rather than the normal 240 hours). When the nurse uses more leave than he/she accrues during a year, the leave balance at the end of the leave year becomes the employee's new maximum carryover (until it reaches the normal 240-hour carryover).

630-1-120 CREDITABLE SERVICE BASED ON NON-FEDERAL EXPERIENCE FOR ANNUAL LEAVE ACCRUAL

A. PURPOSE

This supplements the Office of Personnel Management (OPM) regulations at 5 CFR 630.205, titled "Absence and Leave: Creditable Service". OPM's interim regulations implementing Section 202a of the Federal Workforce Flexibility Act of 2004, allows the head of an agency to provide credit for the purpose of determining an employees annual leave accrual rate for prior work experience that otherwise would not be creditable.

B. AUTHORITY

5 U.S.C. 6303
5 CFR 630.205
70 Federal Register 20457

C. POLICY (Interim)

It is the policy of HHS to allow the flexibility of offering potential job candidates a service credit towards their annual leave accrual rate. This hiring flexibility is to be used as a recruitment incentive for employees that will be newly appointed or employees being reappointed after a break in service of 90 days or more. The credited experience must have been obtained in a non-Federal or active duty military position having duties that directly relate to the duties of the position to be filled. The OPDIV/STAFFDIV Head and human resources officials must concur that this experience is necessary to achieve an important Department mission or performance goal.

D. RESPONSIBILITY

1. **Office of Human Resources (OHR), Office of the Assistant Secretary for Administration and Management (ASAM), Office of the Secretary (OS) -** The OHR is responsible for developing and issuing this policy. The Deputy Assistant Secretary for Human Resources (DASHR) has authority to interpret and issue human resources policy within HHS.

2. **Operating Division (OPDIV)/Staff Division (STAFFDIV) Heads** – The OPDIV or STAFFDIV Heads or their designees must approve that the selectee's experience is necessary to achieve an important Department mission or performance goal.

3. **Human Resources (HR) Directors** – The Human Resources (HR) Directors have authority to implement the OPM's regulations under 5 CFR 630.205. For the purpose of this document a HR Director will include the Human Resources Center Directors (Rockville, Baltimore, and Atlanta) as well as the HR Director for the National Institutes of Health and the HR Director for the Indian Health Service. Using 5 CFR 630.205, the HR Directors must:

   a. In conjunction with the selecting official, determine that the selectee hired:

      (1) Has the skills and experience necessary and essential to the position.

      (2) Acquired the skills and experience through the performance of duties in a non-Federal position or an active duty uniform position that directly relates to the duties of the position for which the individual has been selected.

   b. Determine the amount of service to be credited for leave purposes. This amount may not exceed the actual period of service during which the individual performed duties directly related to the position to which he or she is being appointed.

   c. Approve all documentation prior to the effective date of the employee's entry on duty, and grant service credit prior to the employee's entry on duty.

E. DOCUMENTATION

The selectee must provide written documentation, acceptable to the agency, of his or her qualifying service. All documentation must be approved by the HR Director prior to the effective date of the employee's entry on duty. Credit is to be granted effective on the date that the employee enters on duty in the relevant position.

The HRC Director shall justify and document (Attachment A) his or her reasons for the granting of credit. Such documentation shall include:

1) a copy of the position description for the position being filled and the vacancy announcement for the position (if applicable);

2) the selectee's resume, which in the case of non-Federal personnel, must clearly document the length and nature of the service to be credited or be supplemented by supporting documentation to this effect;

3) for each period of service for which credit is granted, an explanation of how the duties relate to the position to which the selectee will be appointed; and

4) in the case of active duty uniformed service credited, a form DD214 documenting the service.

5) For each grant of credit, a copy of the justification and documentation, position description, vacancy announcement, and resume (both non-federal and uniformed service) shall be submitted to their Human Resource Director with sufficient time to allow approval prior to the effective date of the employee's entry on duty.

F. SUSPENSION OF CREDITABLE SERVICE

In order to retain this service credit beyond his or her initial appointment, an employee must complete one full year of continuous service with the OPDIV/STAFFDIV. Should an employee leave the position prior to his or her first full year of employment, the Department must recalculate his or her service computation date for leave purposes; however, the employee will retain all accrued or accumulated annual leave for purposes of transfer or lump-sum leave payment.

For guidance for processing personnel actions or additional information, please contact your Human Resource Center Leave Coordinator. Questions and answers on the interim regulations can be viewed at http://www.opm.gov/oca/compmemo/2005/2005-07_QA.asp.

G. REPORTING

The HR Directors shall submit an annual report to the Deputy Assistant Secretary for Human Resources on the use of this policy. The report should contain information on the total number of selectees who were granted service credit during the previous fiscal year, the amount of annual leave the selectee was granted; and the number of positions designated necessary to achieve an important Department mission and goal. This report is due on or before October 30.

In addition, the DASHR may rescind this authority if it is determined that this flexibility is used inappropriately.

Attachment A

DEPARTMENT OF HEALTH AND HUMAN SERVICES
JUSTIFICATION FOR CREDITING PRIOR EXPERIENCE
TOWARDS AN EMPLOYEE'S ANNUAL LEAVE ACCRUAL RATE

The Office of Personnel Management issued interim regulations on April 28, 2005, to implement Section 202(a) of the Federal Workforce Flexibility Act of 2004. Section 202(a) amends 5 U.S.C. 6303 to provide OPM with the authority to prescribe regulations under which a newly appointed or re-appointed employee who is covered by the Federal annual and sick leave program, may be given service credit for prior experience that otherwise would not be creditable for the purpose of determining the employee's annual leave accrual rate.
OPM has added regulations at 5 CFR 630.205(a) to allow the head of an agency or designee the authority to grant a newly appointed or reappointed employee with service credit for annual leave accrual rate purposes based on prior non-Federal work experience or a period of active duty in a uniformed service.

Employees Name:_____
Position, Pay plan, Series, Grade:_____

Prior to granting such credit, the HR Director must determine that this employee meets both of the following conditions through reviewing justifications from the requesting organization:

1. The skills and experience that this employee possesses are essential to the new position and were acquired through performance in a non-Federal position having duties that directly related to the position to which he or she is being appointed. **Justification:**

2. The use of this authority is necessary to achieve an important agency mission or performance goal. **Justification:**

Note: The vacancy announcement, position description(s), and employee's application package must be attached to this justification. If the service credit is based on a period of active duty in a uniformed service, you must also attach the employees DD-214 documenting this service.

REVIEWS AND APPROVALS

OPDIV/Center Recommending Official's Signature	Title	Date
OPDIV/Center Approving Official's Signature	Title	Date
HR Director's Signature	Title	Date

HHS/OS/ASAM/OH
R 9/14/05

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CREDITABLE SERVICE FOR ANNUAL LEAVE ACCRUAL SERVICE AGREEMENT

Name (Type/Print First, Middle, Last)_
_____

In consideration of service credit I am receiving towards my leave accrual rate and service computation date for which I am entitled to under the policies of the Department of Health and Human Services, I hereby agree:

1. To serve in (OPDIV)_____. for a minimum of 1 full year of continuous service.

2. That I am a newly appointed employee or an employee who is being reappointed following a break in service of at least 90 calendar days after my last period of civilian Federal employment.

3. That the amount of service credited to me shall be determined by the HR Director or his/her designee as prescribed by the HHS policy for Credible Service for Annual Leave Accrual. The service credited under this agreement is _____years, ___ months, _____days.

4. That my annual leave accrual rate will be: ☐ 4 hours ☐ 6 hours ☐ 8 hours / bi- weekly.

5. That my service computation date for annual leave accrual purposes will be: ___/__/____.

mm/dd/yyyyy

6. That acceptance of this agreement does not alter the conditions or terms of my employment.

7. That this credit of service is based solely on the position to which I am assigned and is not associated with my performance and/or conduct. Accordingly, this agreement will not preclude nor limit the Department of Health and Human Services from effecting personnel actions as may be appropriate.

8. That in the event I separate from Federal service or transfer to another agency or HHS OPDIV prior to completing 1 full year of continuous service, my service computation date will be re-calculated subtracting the credit that I received under this agreement.

9. That HHS policy is incorporated into and made a part of this agreement and I have read this policy.

I _____, agree to the terms of this agreement on
Name (printed)
___/__/____.
mm/dd/yyyyy

_____
Employee Signature

REVIEWS AND APPROVALS

OPDIV/Center Recommending Official's Signature	Title	Date
OPDIV/Center Approving Official's Signature	Title	Date
HR Director's Signature	Title	Date
I certify that the information entered on this form is accurate and that the proposed service credit is in compliance with statutory and regulatory requirements.	HR Specialist's Signature and Title	Date

HHS/OS/ASAM/OHR