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AAPD 15-02 REVISED 2 is archived because it has been replaced by the final rule in the [AIDAR Appendix D \(see the eCFR\)](#) as of Nov. 16, 2020. Its provisions for TCNPSCs have been replaced by the Appendix J deviation issued in [AAPD 20-08](#).



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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: December 12, 2019

AAPD 15-02, REVISED 2

Continuation of Deviation from the 'Leave and Holidays' clause, including Family and Medical Leave, under AIDAR Appendix D

Subject Category: Personal Services Contracts
Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE *unless* otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation. See page 2, Section II.

This AAPD: Is New Replaces/ Amends **AAPD 15-02, REVISED (from 15-02, issued Dec. 22, 2015)**

<p>Applicable to:</p> <p><input checked="" type="checkbox"/> Existing awards; <input checked="" type="checkbox"/> Modification required</p> <p><input type="checkbox"/> No later than</p> <p><input checked="" type="checkbox"/> As noted in guidance below*</p> <p><input checked="" type="checkbox"/> RFPs/RFAs issued on or after the effective date indicated in this AAPD; all other Pending Awards</p> <p><input type="checkbox"/> Other</p>	<p>Precedes change to:</p> <p><input type="checkbox"/> FAR Part(s)</p> <p><input checked="" type="checkbox"/> AIDAR Part(s) Appendix D</p> <p><input type="checkbox"/> USAID Automated Directives System (ADS) Chapter</p> <p><input type="checkbox"/> Other Code of Federal Regulations</p> <p><input type="checkbox"/> Other</p> <p><input type="checkbox"/> No change to regulations</p>
<p><input type="checkbox"/> New Provision/Clause Provided Herein: If checked, scheduled update to GLAAS:</p>	

_____/s/_____
Mark A. Walther

I. PURPOSE:

The purpose of this AAPD is to extend the applicability of the deviated regulatory text from AIDAR Appendix D previously published in [AAPDs 15-02 and 15-02, REVISED \(archived\)](#), now effective December 14, 2019 until **December 14, 2021** pending rulemaking.

II. REQUIRED ACTION:

1. Contracting Officers (COs, including warranted EXOs) must continue to include the revised **General Provision contract clause (GP) #5 (Attachment 1)** in all new USPSC solicitations and awards **effective as of December 14, 2019**.
2. For contracts that do not already contain the “DEC 2017” version of GP #5 included in **Attachment 1**, COs must also modify existing USPSC awards to incorporate the revised GP#5 when executing the next modification or earlier **also effective December 14, 2019**.

III. BACKGROUND:

The deviation underlying this AAPD extends the changes to AIDAR Appendix D, section 12, General Provision contract clause (GP) #5, “**Leave and Holidays.**” Included in this deviation is the continuation of the provision of USAID family and medical leave (FML) for U.S. personal services contractors (USPSCs) working both in the U.S. and abroad, as well as Country Leave for Qualifying Posts (CLQP) for TCNPSC positions that were classified as not subject to the local compensation plan in accordance with **AIDAR Appendix J, sec. 4(c)(2)(ii)(B)**.

As detailed in prior AAPD 15-02 policies, USAID’s Office of General Counsel determined that USPSCs working in the U.S. are entitled to leave under Title I of the Family and Medical Leave Act, as amended and administered by DOL. Although USPSCs working outside the U.S. are not covered by the FMLA, in November 2015 the Acting Administrator of USAID authorized equitable family and medical leave for USPSCs working outside the U.S. as a matter of Agency policy to ensure such leave applies consistently regardless of a USPSCs place of performance.

As published in AAPD 15-02, deviation #M-OAA-DEV-AIDAR-16-1c was effective December 14, 2015 for a period of two years, expiring December 13, 2017. As extended by AAPD 15-02 REVISED, deviation #M-OAA-DEV-AIDAR-18-1c extended the prior deviation effective through Dec. 14, 2019. **Deviation #M/OAA-DEV-AIDAR-20-2c that underlies this AAPD 15-02 REVISED 2** was approved on December 12, 2019 and will remain in effect for two years **expiring December 14, 2021**, or on the date the AIDAR rule is finalized and becomes effective in the code of federal regulations, whichever is earlier.

This **AAPD 15-02, REVISED 2** continues the effect of having replaced AAPDs 06-11 in its entirety.

IV. GUIDANCE:

To specifically implement USAID FML, see **Attachment 2**, “Policy Guidance for Family and Medical Leave for USPSCs” regarding eligibility criteria, required documentation and approvals.

COs, USPSC supervisors, and USPSCs (pursuant to their terms of contract) must adhere to these internal policies, procedures and instructions regarding leave under USAID FML.

Implementation of this policy will require USAID Missions, Bureaus and Offices to plan for potential absences of USPSCs who may be eligible for USAID FML.

V. POINT OF CONTACT:

USAID Contracting Officers may direct their questions about this AAPD to psepolycymailbox@usaid.gov.

ATTACHMENT 1:

AIDAR, Appendix D, Section 12, GP #5, Leave and Holidays (DEC 2017)

ATTACHMENT 2:

USAID Family and Medical Leave (FML) Policy for USPSCs

ATTACHMENT 1

Class Deviation M-OAA-DEV-AIDAR-20-2c

Title 48 of the Code of Federal Regulations (CFR) Chapter 7 USAID Acquisition Regulation (AIDAR), Appendix D--Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

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12. General Provisions for a Contract with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

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5. Leave and Holidays (DEC 2017)

(a) Annual Leave

(1) The contractor is not entitled to annual leave if the period of performance of this contract is 90 days or less. If the contract period of performance is more than 90 days, the contractor shall earn annual leave as of the start date of the contract period of performance as specified in paragraph (a)(2) below.

(2) The contractor shall accrue annual leave based on the contractor’s time in service according to the following table:

Time in Service	Annual Leave (AL) Accrual Calculation
0 to 3 years	Four hours of leave for each two week period
over 3, and up to 15 years	Six hours of AL for each two week period (including 10 hours AL for the final pay period of a calendar year)
over 15 years	Eight hours of AL for each two week period

USAID will calculate the contractor’s time in service based on all the previous service performed by the contractor as a: 1) USAID PSC (i.e., the contractor has served under any USAID personal services contracts of any duration covered by Sec. 636(a)(3) of the FAA or other statutory provision applicable to USAID); and/or 2) former U.S. Government (USG) direct-hire, under either civilian and/or military service.

(3) (i) AL is provided under this contract for the purposes of affording necessary rest and recreation during the period of performance. The contractor, in consultation with the USAID Mission or USAID/Washington, as appropriate, shall develop an AL schedule early in the contractor's period of performance, taking into consideration project requirements, the contractor’s preference, and other factors. All AL earned by the contractor must be used during the contractor’s period of performance. All AL earned by the contractor, but not taken by the end of the contract, will be forfeited. However, to prevent forfeiture of AL, the Contracting Officer may approve the contractor taking AL during the concluding weeks of the contractor's period of performance.

(ii) As an exception to 3(i) above, the contractor may receive a lump-sum payment for leave not taken. To approve this exception, the contractor's supervisor must provide the Contracting Officer with a signed, written Determination and Findings (D&F). The D&F must set out the facts and circumstances that prevented the contractor from taking AL, and the Contracting Officer must find that these facts and circumstances were not caused by, or were beyond the control of, the contractor. This leave payment must not exceed

the number of days which could be earned by the contractor during a twelve-month period.

(4) With the approval of the Mission Director or cognizant AA, as appropriate, and if the circumstances warrant, a Contracting Officer may grant the contractor advance AL in excess of the amount earned, but in no case may the Contracting Officer grant advance AL in excess of the amount earned in one year or over the life of the contract, whichever is less. The contractor agrees to reimburse USAID for any outstanding balance of advance AL provided during the contractor's assignment under the contract.

(5) Applicants for PSC positions will provide evidence of their PSC and/or USG direct-hire service - civilian and/or military experience, as applicable, on their signed and dated application form required under USAID policy. By signing the appropriate form, the applicant attests to the accuracy of the information provided. Any applicant providing incorrect information is subject to the penalty provisions in the form. If required to satisfy due diligence requirements on behalf of the Contracting Officer, the contractor may be required to furnish evidence that verifies length of service, e.g., SF 50, DD Form 214, and/or signed contracts.

(b) Sick Leave. The contractor may use sick leave on the same basis and for the same purposes as USAID U.S. direct hire employees. Sick leave is earned at a rate not to exceed four (4) hours every two (2) weeks for a total of 13 work-days per year. Unused sick leave may be carried over under an extension or renewal of this contract with the same individual for the same work. Otherwise, sick leave will not be carried over from one post to another or from one contract to another. The contractor will not be compensated for unused sick leave upon completion of this contract.

(c) Home Leave.

(1) Home leave is leave earned for service abroad for use only in the U.S., its commonwealths, possessions and territories.

(2) A USPSC who has served at least two years overseas at the same USAID Mission, under the same contract, as defined in paragraph (c)(4) below, and has not taken more than 30 work days leave (annual, sick or LWOP) in the U.S. may be granted home leave in accordance with the following:

(i) if the USPSC returns to the same overseas post upon completion of home leave for an additional two (2) years under the same contract, the USPSC will receive home leave, to be taken at one time, for a period of 30 work days; or
if the USPSC returns to the same overseas post upon completion of home leave for such shorter period of not less than one year, as approved in writing by the Mission Director prior to the USPSC's departure on home leave, the USPSC will receive home leave, to be taken at one time, for a period of 30 work days.

(ii) if the USPSC is returning to a different USAID Mission under a USAID personal services contract immediately following completion of the USPSC's home leave, for an additional two (2) years under contract, or for such shorter period of not less than one (1)

year, as approved by the Mission Directors of the "losing" and "gaining" Missions, the contractor will receive home leave, to be taken at one time, for a period of not more than 20 work days. When the PSC is returning to a different USAID Mission, the former Mission will pay for the home leave regardless of what country the PSC will be working in following the home leave;

(iii) if home leave eligibility is based on (c)(2)(ii) above, the USPSC must submit written verification to the losing Mission at the time home leave is requested that the USPSC has accepted a USAID personal services contract at another USAID Mission following completion of the home leave;

(iv) travel time by the most direct route is authorized in addition to the number of work days authorized for home leave;

(v) home leave must be taken in the U.S., its commonwealths, possessions or territories, and any days spent elsewhere will be charged to annual leave (AL.) If the PSC does not have accrued AL, the PSC will be placed on LWOP.

(vi) if the PSC does not complete the additional service required under (c)(2)(i) or (ii) (that the Contracting Officer finds are other than for reasons beyond the PSC's control), the cost of home leave, travel and transportation and any other related costs must be repaid by the PSC to the Government.

(3) Notwithstanding the requirement in paragraph (c)(2) above, that the USPSC must have served two (2) years overseas under personal services contract with the same Mission to be eligible for home leave, the USPSC may be granted advance home leave subject to all of the following conditions:

(i) Granting of advanced home leave would in each case serve to advance the attainment of the objectives of this contract; and

(ii) The USPSC has served a minimum of 18 months in the Cooperating Country under this contract; and

(iii) The USPSC agrees to return to the Cooperating Country to serve out the remaining time necessary to meet two (2) years of service overseas, plus an additional two (2) years under the current contract or under a new contract for the same or similar services at the same Mission. If approved in advance by the Mission Director, the USPSC may return to serve out any remainder of the two (2) year requirement for service overseas, plus an additional period of not less than one (1) year under the current contract or under a new contract for the same or similar services at the same Mission.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, will include the actual days in orientation in the U.S. (less language training). The actual days overseas begin on the date of arrival in the cooperating country inclusive of authorized delays enroute. Allowable annual and sick leave taken while overseas, but not LWOP, shall be included in the required period of service overseas. An amount equal to the number of days of annual and sick leave taken in the U.S., its commonwealths, possessions or territories will be added to the required period of service overseas.

(5) Salary during the travel to and from the U.S., for home leave will be limited to the time required for travel by the most expeditious air route. Except for reasons beyond the USPSC's control as determined by the Contracting Officer, the USPSC must return to duty after home leave and complete the additional required service or be responsible for reimbursing USAID for payments made during home leave. Unused home leave is not reimbursable under this contract, nor can it be taken incrementally in separate time periods.

(6) Home leave must be taken at one time, and to the extent deemed necessary by the Contracting Officer, an USPSC in the U.S., on home leave may be authorized to spend not more than five (5) days in work status for consultation at USAID/Washington before returning to post. Consultation at locations other than USAID/Washington as well as any time in excess of five (5) days spent for consultation must be approved by the Mission Director or the Contracting Officer.

(d) Home Leave for Qualifying Posts (HLQP). USPSCs who ordinarily qualify for home leave and have completed a 12-month assignment at one of the USAID qualifying posts (currently Iraq, Afghanistan and Pakistan) are entitled to take ten (10) workdays of leave in addition to the home leave an USPSC is normally entitled to under the contract in accordance with sub-paragraphs (c)(1) - (6) above. This additional home leave is provided pursuant to an amendment to the Foreign Service Act of 1980 signed by the President on June 15, 2006.

There is no requirement that an eligible USPSC take this additional leave; it is for optional use by the USPSC. If an eligible USPSC elects to take HLQP, the USPSC must take ten (10) workdays of home leave. If the USPSC is returning to the United States and not returning overseas to the same or different USAID Mission, HLQP will not apply.

This new home leave policy is also extended to qualifying **Third-Country National PSCs (TCNPSCs)** who have an approved exception under AIDAR Appendix J, sec. 4(c)(2)(ii)(B), to apply specific provisions from AIDAR Appendix D, and whose contract includes this General Provision. However, TCNPSCs will be granted "country leave" vice home leave. The application, requirements, and restrictions will be the same as for USPSCs, but the time taken by a TCNPSC will be taken in the TCNPSC's home country or country of recruitment rather than in the United States, its commonwealths and territories.

(e) Holidays and Excused Absences. The contractor shall be entitled to all holidays and or excused absences granted by the USAID to U.S. direct-hire employees.

(f) Military Leave. Military leave of not more than 15 calendar days in any calendar year may be granted to a contractor who is a reservist of the U.S. Armed Forces. The contractor must provide advance notice of the pending military leave to the Contracting Officer or the Mission Director as soon as known. A copy of any such notice must be part of the contract file.

(g) Leave Without Pay (LWOP). LWOP may be granted only with the written approval of the Contracting Officer or Mission Director, unless a USPSC is requesting for such leave for family and leave purposes under paragraph (i) below.

(h) Compensatory Time. Compensatory time leave may be granted only with the written approval of the Contracting Officer or Mission Director in rare instances when it has been

determined absolutely essential and used under those guidelines which apply to USAID U.S. direct-hire employees.

(i) Family and Medical Leave (FML)

- (1) USAID provides family and medical leave (FML) for eligible USPSCs working within the U.S., or any Territories or possession of the United States, in accordance with Title I of the Family and Medical Leave Act of 1993, as amended, and as administered by the Department of Labor under [29 CFR 825](#). USAID is also extending FML to eligible USPSCs working outside the U.S., or any Territories or possession of the U.S., in accordance with this paragraph (i) as a matter of policy discretion.
- (2) FML only applies to USPSCs, not any other type of PSC.
- (3) To be eligible for FML, a USPSC must have been contracted (i) for at least 12 months by USAID; and (ii) for at least 1,250 hours of service with USAID during the previous 12-month period. The specific eligibility criteria and requirements are provided in USAID policy.
- (4) In accordance with [29 CFR 825.200\(a\)](#) and USAID policy, an eligible USPSC may take up to 12 workweeks of leave under FMLA, Title I, in any 12-month period for the following reasons:
 - (a) The care of the USPSC's newborn child.
 - (b) The care of the USPSC's newly placed adopted or foster care child.
 - (c) The care of the USPSC's spouse, child or parent with a serious health condition.
 - (d) The USPSC's own serious health condition.
 - (e) A qualifying exigency arising from the USPSC's spouse, child or parent in active duty military status.
 - (f) Other qualifying exigencies as determined by the Department of Labor.
- (5) In accordance with 29 CFR Part 825.207, the USPSC may take LWOP for FML purposes. However, the USPSC may choose to substitute LWOP with accrued paid leave, including accrued annual or sick leave, or compensatory time earned under this contract. If the USPSC does not choose to substitute accrued paid leave, the CO, in consultation with the USPSC's supervisor, may require the USPSC to substitute accrued paid leave for LWOP. The CO must verify the accuracy of the USPSC's accrued paid leave request and obtain the required certifications for approval of FML in accordance with the stated USAID policy.
- (6) FML is not authorized for any period beyond the completion date of this contract.
- (7) When requesting FML, the USPSC must demonstrate eligibility to the USPSC's supervisor by completing USAID's FML request forms, including certifications and other supporting documents required by USAID policy.
- (8) The U.S. Department of Labor's (DOL's) [Wage and Hour Division \(WHD\) Publication 1420](#) explains the FMLA's provisions and provides information concerning procedures for filing complaints for violations of the Act.

(j) Leave Records. The contractor shall maintain current leave records for himself/herself and make them available, as requested by the Mission Director or the Contracting Officer.

[END PROVISION]

ATTACHMENT 2

FAMILY AND MEDICAL LEAVE (FML) POLICY FOR USPSCs

1 Entitlement to FML

The Family and Medical Leave Act (FMLA) was enacted in 1993, and later amended, to allow employees to balance work and family life by protecting their employment and benefits status when taking reasonable leave for medical reasons, including child birth, adoption or care, or care for a spouse, parent or oneself in the event of a serious health condition.

Title I of the Family Medical and Leave Act applies to USPSCs working within the U.S. As a matter of policy and to maintain consistency, USAID is also extending family and medical leave to USPSCs working outside the U.S. The Department of Labor, not OPM, is responsible for implementing regulations for FMLA Title I. The Department of Labor has issued regulations that implement FMLA Title I at [29 CFR Part 825](#).

Under FMLA Title I, an “eligible employee” is defined as an employee who has been employed:

- For at least 12 months by the employer with respect to whom leave is requested; and
- For at least 1,250 hours of service with such employer during the previous 12-month period.

As such, a USPSC who has been working for USAID for at least a total of 12 months and who has performed work in on-duty status amounting to at least 1,250 hours during the previous 12-months immediately preceding the leave will be eligible for this coverage. [29 CFR 825.110\(b\)](#) states that the 12 months an employee must have been employed by the employer need not be consecutive months; it allows for separations or other breaks in service of up to seven years. Under limited circumstances – military service or union agreement allowing re-employment – a break in service of more than seven years is allowed to be counted.

In accordance with [29 CFR 825.200\(a\)](#), an eligible USPSC may take leave under FMLA Title I for the following reasons:

- (a) The care of the USPSC’s newborn child.
- (b) The care of the USPSC’s newly placed adopted or foster care child.
- (c) The care of the USPSC’s spouse, child or parent with a serious health condition.
- (d) The USPSC’s own serious health condition.
- (e) A qualifying exigency arising from the USPSC’s spouse, child or parent in active duty military status.
- (f) Other qualifying exigencies as determined by the Department of Labor.

Consistent with [29 CFR 825.200](#), the 12-month period in which the 12 weeks of leave entitlement occurs is based on the 12-month period measured forward from the first date when the USPSC’s FMLA leave begins. Except in the case of care for a covered service member with a serious injury or illness, the USPSC’s FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the above-listed reasons.

As stated in 29 CFR 825.200(h), for purposes of determining the amount of leave used by a USPSC, the fact that a holiday may occur within a week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if the USPSC is using FML in increments of less than one week, the holiday will not count against the USPSC's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

For details of the FMLA's provisions and information concerning the procedures for filing complaints of violations of the Act with the Department of Labor's Wage and Hour Division, see [WHD Publication 1420](#).

2 Duration of Family and Medical Leave

The USPSC's supervisor must authorize only the amount of FML that is necessary to manage the circumstances that prompted the need for the leave. **FMLA is not authorized for any period beyond the completion date of the USPSC award**

3 FML LWOP and substitution of Paid Leave

In accordance with [29 CFR 825.207](#), generally FMLA leave is unpaid leave. However, the USPSC may choose to substitute LWOP with accrued paid leave, including accrued annual or sick leave, or compensatory time earned under the contract. If the USPSC does not choose to substitute accrued paid leave, the CO, in consultation with the USPSC's supervisor, may require the USPSC to substitute accrued paid leave for FML LWOP. The CO must verify the accuracy of the USPSC's accrued paid leave request and obtain the required certifications for approval of FML in accordance with this USAID policy.

4 Notice of Intent to Invoke Entitlement to FML

(a) The USPSC's supervisor must confirm that the USPSC meets FML eligibility requirements as follows:

(1) As of the date on which any FML is to commence, the USPSC must have been under a personal services contract for work with USAID for a total of at least 12 months within the previous seven years, UNLESS: a break in service and period of absence from work is due to, or necessitated by, the USPSC's fulfillment of a service obligation covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq. Such USERRA-covered service must be counted in determining whether the USPSC has been under contract for work with USAID for at least 12 months. Note however that USAID's FML does not provide any greater entitlement than may be available to the USPSC under the USERRA.

(2) As of the date on which any FML is to commence, the USPSC must have met the hours of service requirement by having been employed under a USAID personal service contract for at least 1,250 hours during the immediately previous 12-month period, EXCEPT THAT:

(i) A USPSC returning from fulfilling his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed, but for the period of absence from work due to or necessitated by USERRA-covered service in determining whether the USPSC met the hours of service requirement; and

(ii) To determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the USPSC's pre-service work schedule can generally be used for calculations. See also [29 CFR 825.110\(c\)\(2\)-\(3\)](#) additional for details.

(b) When the USPSC invokes the intent to take FML, the USPSC's supervisor must adhere to the notification and certification requirements detailed in this **section 4** as well as **sections 5** and **6**. A USPSC who meets the eligibility requirements and has complied with the requirements and obligations of this guidance will not be denied FML.

(c) When the USPSC intends to take FML, the USPSC must complete a [Family and Medical Leave Application Request, Form AID 481-1](#). The USPSC's supervisor must review the information and confirm that the request meets USAID's FML requirements.

(d) The approved application form, medical certificate, and other related documents must be retained in the USPSC's contract file.

(e) Foreseeable and Unforeseeable FML

(1) If the need for family and medical leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the USPSC must provide not less than 30 days' notice of the USPSC's intent to take FML, before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 days, the USPSC must provide such notice as soon as is practicable.

(2) If the need for leave is foreseeable and the USPSC fails to give 30 days' notice with no reasonable excuse for the delay of notification, the Agency has the right to delay the taking of family and medical leave until at least 30 days after the date the USPSC provides official notice of intent to take FML.

(3) If the need for family and medical leave is unforeseeable for such reasons as a medical emergency or the unexpected availability of a child for adoption or foster care, and the USPSC cannot provide 30 days advance notice, the USPSC or personal representative (e.g., a family member) must provide notice within a reasonable period of time appropriate to the circumstances involved. (Note: if an USPSC and the USPSC's personal representative are physically or mentally incapable of invoking the USPSC's entitlement to FMLA leave *during the entire period* in which the USPSC is absent from work for an FMLA-qualifying purpose, the USPSC may retroactively invoke the entitlement to FMLA leave within a reasonable period after returning to work. In such cases, the incapacity of the USPSC must be documented by a written medical certification from a health care provider. In addition, the USPSC must provide a brief memo to the USPSC's supervisor explaining that the USPSC's personal representative was unable or was unaware of the requirement to contact the agency and invoke the USPSC's entitlement to FMLA leave during the entire period in which the USPSC was absent from work for an FMLA-qualifying purpose.)

4 Intermittent Leave or Reduced Leave Schedule

An USPSC may take FML on an intermittent basis or on a reduced leave schedule under certain circumstances in accordance with [29 CFR 825.202 and 203](#). All intermittent or reduced schedule leave is subject to the limits on the duration of FML under **section 2** of this policy.

5 Certification for Birth, Adoption, or Foster Care

The USPSC's supervisor must obtain the USPSC's certificate or other administratively acceptable evidence in support of the [Family and Medical Leave Application Request, Form AID 481-1](#) for the birth of a child or placement of a child for adoption or foster care.

6 Medical Certification

When a USPSC requests FML for the USPSC's own serious health condition, or for care of an eligible family member with a serious health condition, the USPSC's supervisor must obtain a written medical certification issued by the USPSC's health care provider or the health care provider of the eligible family member as appropriate, using the [Family and Medical Leave Application Request, Form AID 481-1](#)

The USPSC may use the U.S. Department of Labor [Form WH-380E, Certification of Health Care Provider for Employee's Serious Health Condition](#), and [WH-380F, Certification of Health Care Provider for Family Member's Serious Health Condition](#) to obtain written medical certification. The USPSC's supervisor may also accept a statement from the USPSC's health care provider as a substitute for the forms as long as the statement contains the same basic information. In all instances, the information on the forms must relate only to the serious health condition for which the *current need for leave* exists.

For family and medical leave for a USPSC with a serious health condition, the health care provider's statement must confirm that the USPSC is unable to perform the essential functions of the USPSC's position. Note: The statement of the essential functions of the USPSC's position is based on written information provided by the USPSC's supervisor or, if not provided, on discussion between the health care provider and the USPSC.

For family and medical leave for the care of an eligible family member with a serious health condition, the following is also required:

- (a) A statement from the health care provider that the eligible family member requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the USPSC's care or presence;
- (b) A statement from the USPSC on the care the USPSC will provide and an estimate of the amount of time needed to care for the eligible family member; and
- (c) Medical certification for intermittent leave or leave on a reduced leave schedule to care for a family member or to receive medical care must include the dates on which such treatment is expected to be given and the duration such treatment is required.

All medical information must be protected under the provisions of the Privacy Act (see [ADS 508, Privacy Program](#)) and released only to those who have a need to know.

6.1 Second Opinion

A USPSC's supervisor has the right to request that the USPSC obtain an opinion of a second health care provider, subject to approval by the Agency, in cases where the validity of the original medical certification concerning the USPSC or a family member is questioned or doubted. The Agency will reimburse the USPSC, upon submission of written proof of payment, for the cost of obtaining a second opinion.

6.2 Third Opinion

If the opinion of the second health care provider differs from the original certification, the supervisor has the right to require, at Agency expense, that the contractor obtain the opinion of a third health care provider designated or approved jointly by the Agency and the contractor. The opinion of the third health care provider shall be binding on the Agency and the contractor.

6.3 Medical Recertification

While a USPSC is on family and medical leave, the USPSC's supervisor has the right to obtain from the USPSC subsequent medical recertification on a periodic basis, not more often than every 30 calendar days. However, the USPSC's supervisor has the right to require more frequent medical recertification if the USPSC requests that the original leave period be extended; the circumstances described in the original medical certification have changed significantly; or if the Agency receives information that casts doubt upon the continuing validity of the medical certification. The Agency will reimburse a USPSC, upon submittal of written proof of payment, for the cost of the medical recertification.

6.4 Medical Certification to Return to Work

If a USPSC subject to a medical evaluation program (overseas USPSCs) is approved for leave because of a serious health condition that renders the USPSC unable to perform the essential functions of the USPSC's position, that USPSC will be required to provide written medical certification from the health care provider that the USPSC is able to perform these functions prior to return to duty. USPSCs will be informed of this requirement before FML commences, or to the extent practicable in emergency medical situations. The Agency will reimburse a USPSC, upon submission of written proof of payment, for the cost of the required medical certification.

7 Protection of Employment and Benefits

When the eligible USPSC takes FML during the period of performance of the USPSC contract, the USPSC is entitled, upon return to contract performance, to be restored to the same USPSC position held by the USPSC when the leave commenced provided that the contract period of performance has not expired. Leave under FML and the entitlement to return to the position must not, and cannot, exceed the completion date of the contract in accordance with the funding limitations under **FAR 43.105**.

8 Continuation of Health Benefits

A USPSC who takes LWOP under FML will have the option to continue their health insurance enrollment by agreeing to pay 100% of the premium cost for the time that they are on unpaid leave. Such payment can be made either during the time of unpaid leave or upon returning to duty. The USPSC award requires the USPSC to contact their health insurance provider about continuing coverage under FML status.

Note: The USPSC’s supervisor must ensure that if the USPSC elects LWOP FML, the USPSC indicates on the [Family and Medical Leave Application Request, Form AID 481-1](#) whether or not the USPSC will continue health insurance coverage while the USPSC is in LWOP status. The USPSC’s supervisor must strike the term “health benefit” and substitute “insurance coverage” on this form.

9 Contract File Record

The USPSC’s supervisor must provide a log to the Contracting Officer for the contract file to track and record the use of leave under this FML policy.

10 Mandatory Forms

- (a) [AID 481-1 \(Family and Medical Leave Request Application\)](#)
- (b) [WH-380E, Certification of Health Care Provider for Employee’s Serious Health Condition](#)
- (c). [WH380F, Certification of Health Care Provider for Family Member’s Serious Health Condition](#)