



DEPARTMENT OF DEFENSE
DEFENSE CIVILIAN PERSONNEL ADVISORY SERVICE
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ALEXANDRIA, VA 22350-1100

FOR: CIVILIAN PERSONNEL POLICY COUNCIL MEMBERS

FROM: Defense Civilian Personnel Advisory Service Director, Ms. Michelle LoweSolis

SUBJECT: Department of State's Domestic Employees Teleworking Overseas Policy Guidance

ACTION: Disseminate to Department of Defense (DoD) Human Resources Practitioners

REFERENCES:

- a. 3 FAM 2370, "Domestic Employees Teleworking Overseas," dated May 14, 2020
<https://fam.state.gov/fam/03fam/03fam2370.html>
- b. Department of State Executive Secretary Memorandum, "Requirements for Executive Branch Employees Teleworking in Foreign Locations," June 7, 2016 (attached)
- c. DoD Instruction 1035.01, "Telework Policy," dated April 4, 2012
<https://www.dcpas.osd.mil/Content/documents/OD/TeleworkDoDi2013.pdf>

BACKGROUND/INTENT: This notice is to reinforce the Department of State's 3 FAM 2370 Domestic Employee Teleworking Overseas Policy (reference a).

In accordance with reference (b), also known as a Domestic Employee Teleworking Overseas (DETO) arrangement, DETOs are defined as a U.S. government direct-hire employee assigned to a domestic position, teleworking from an overseas location for a limited period of time. This memorandum includes policy and DoS guidance on DETO agreement provisions that set forth minimum DETO requirements, which must be included in an agency's DETO policy. It applies to all Federal Executive Branch agencies considering DETO agreements for their agency employees.

In response to operating under COVID-19, there has been an increase in the number of inquiries of domestic assigned employees seeking to telework from a foreign location. Employees have no authorization to telework from a foreign location without an approved DETO Agreement. DETO arrangements are extremely rare in the Federal Government due to increased security concerns and costs to employing agencies. DoD agencies and components considering a DETO arrangement should do so on a case-by-case basis, considering costs for enforcement and administration. Employees may reach out to their telework coordinators for guidance on requesting DETO arrangements.

APPLICABILITY: All DoD employees are subject to the DoD telework policy (reference c). In addition, domestic employees desiring to telework overseas must follow the DoS policy (reference a).

POINTS OF CONTACT: Ms. Taiwana Smith, Director, Benefits, Wage and NAF Policy, 571-372-1642, Taiwana.R.Smith.civ@mail.mil, and Ms. Kisha Wilkins, Work-Life Program Branch Chief, Benefits, Wage and NAF Policy, 571-372-2238

201607203

**United States Department of State***Washington, D.C. 20520*

June 7, 2016

UNCLASSIFIED**MEMORANDUM FOR ALL DEPARTMENT AND
AGENCY EXECUTIVE SECRETARIES****SUBJECT: Requirements for Executive Branch Employees Teleworking in
Foreign Locations**

Executive Branch Agencies considering arrangements that will result in an employee, assigned to a domestic position, teleworking from a location that is outside of the United States, must meet additional requirements that apply to the conduct of official USG business in overseas locations. Among other things, these authorities address the Chief of Mission's (COM) authority over Executive Branch activities, operations and employees conducting official business in overseas locations and security responsibility for USG employees and accompanying dependents. These requirements are in addition to the requirements addressed in the Telework Enhancement Act, supporting OPM policy and respective agency policies. To properly address requirements for overseas telework, agencies will be responsible for additional costs that, in some cases, may be significant.

COM Authority and Responsibility

Pursuant to Presidential directive and legislation, under the direction of the President the COM has full responsibility for the direction, coordination, and supervision of all USG Executive Branch employees in the COM's country of assignment other than those under the command of a U.S. area military commander (Geographic Combatant Commander), on the staff of an international organization, or Voice of America correspondents on assignment. With these exceptions, the COM is in charge of all Executive Branch activities and operations in the relevant mission. The same directives and legislation require that USG Executive Branch agencies insure that their employees comply with all COM policies and directives and keep the COM fully informed of all current and planned activities. The authority of the COM is not limited to activities that affect the host country.

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The COM is also responsible for the security of all U.S. Government personnel on official duty abroad, other than those under the command of a U.S. area military commander (Geographic Combatant Commander), on the staff of an international organization, or Voice of America correspondents on assignment, and their accompanying dependents.

Domestic Employee Teleworking Overseas (DETO)

A DETO is a U.S. government direct-hire employee assigned to a domestic position, teleworking from an overseas location. A DETO may be sponsored or independent. A sponsored DETO is on the USG orders of a spouse or partner whereas an independent DETO is not on the orders of a USG spouse or partner. Due to the expanded risks of independent DETO arrangements, Department of State policy only allows sponsored DETOs arrangements for its employees. However, policies of other Executive Branch agencies may allow for both sponsored and independent DETO arrangements as long as they comply with requirements related to security standards, passports/visas, privileges and immunities, local labor and tax laws, contingency planning, and other issues elaborated below.

Approval Process for Overseas Telework Arrangements

The approval process varies depending on the duration of the overseas telework arrangement, as described below.

Less than one year: Agencies intending to establish an overseas telework arrangement for a period of less than 1 year must obtain COM approval through the country clearance process. Unclassified country clearance requests must be sent through the State Department's automated eCC (eCountry Clearance) system at <http://ecc.state.sbu>

Extensions of these arrangements such that the total duration of the telework arrangement would be more than one year will require a NSDD 38 request (see below).

One year or more: Activities that require or envision an executive branch employee conducting official business in a foreign country for one year or more are considered permanent. If an agency intends to establish a telework arrangement for one year or more, it must follow procedures outlined in the

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National Security Decision Directive 38 (NSDD 38). NSDD 38 requests must be submitted via the online application at <https://nsdd38.state.gov/>. Requests should be submitted by the agency official responsible for funding the arrangement, on behalf of the employee in the requesting agency.

Agencies must consult with the relevant State Department Regional Bureau's Executive Office prior to submission of NSDD 38 or eCC requests. Depending on the location, a briefing from Diplomatic Security, before arrival at the DETO location, may also be mandatory. Detailed guidance and procedures for the submission of NSDD 38 and eCC requests can be found in the attached Executive Secretary Memorandum from March 2015.

Agency Considerations for DETO

Agencies must carefully consider the implications of permitting an employee to conduct official USG business outside of the jurisdiction of the United States. At a minimum, agencies should address the following issues in NSDD 38 or eCC requests to the COM. Failure to address these issues will increase the likelihood that a request will be disapproved.

- **Security Requirements and Standards:** DETOs must follow required COM security policies and directives. COM directives may include specific policies on the protection of USG information systems, which apply to agencies operating under COM authority abroad. Costs associated with meeting security standards will be the responsibility of the agency and addressed through procedures laid out in the Foreign Affairs Handbook (6 FAH-5 H- 352). Agencies should explicitly confirm that the DETO will follow all COM security policies and directives and commit to funding all security costs related to the telework arrangement. Agencies should also confirm that the information systems that the employee will use meet all required security standards for use in foreign locations. In cases where required security standards cannot be met, the country clearance or NSDD 38 will be disapproved. For DETOs residing on DOD installations overseas, the employing agency must have a security and safety agreement with DOD in place. The security standards applicable to Executive Branch agencies under COM authority are laid out in the Overseas Security Policy Board Handbook (12 FAH-6).

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- **Passport/Visa Type:** Agencies must ensure that the DETO has the proper documentation, such as passports, visas or any additional work permits required to perform work in the foreign location. Copies of the relevant work visas must be sent to the post or relevant regional bureau for confirmation that the documents are accurate/correct. Independent DETOs cannot use diplomatic or official passports and the embassy is not required to assist with visas or extensions unless the sponsoring agency pays the relevant ICASS costs.
- **Privileges and Immunities (Ps&Is):** Traditionally, protections for employees and information are provided through bilateral or multilateral agreements. The USG does not have agreements with foreign governments that specifically address DETOs or the work that they perform. Sponsored DETOs may derive certain Ps & Is based on their relationship with their spouse or partner. Independent DETOs in foreign locations will rarely enjoy any Ps&Is based on their status as a U.S. government employee. In the case of an independent DETO, the DETO employee, physical work location, and work materials will be subject to host government laws. Agencies must confirm if the sponsored DETO will derive Ps&Is based on his/her spouse/partner or confirm the independent DETO will not have Ps&Is.
- **Local Labor and Tax Laws:** Local labor and tax laws may apply to the employee's work, and the agency and employee must ensure appropriate compliance. The agency should confirm whether or not local labor and/or tax laws apply and obtain necessary work visas, if required, before the COM will approve the NSDD 38 or eCC. Copies of the relevant work visas must be sent to the post or relevant regional bureau for confirmation that the documents are accurate/correct.
- **Allowances:** The Department of State Standardized Regulations (DSSR) govern allowances and benefits available to U.S. Government civilians in foreign areas. Under DSSR 031.8, DETOs are ineligible for allowances and differentials in their own right. Sponsored DETOs may be eligible for certain allowances and differentials through their spouse/partner. In accordance with DSSR 013, the head of an agency may issue such further implementing regulations as may be necessary, within the scope of the DSSR.

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- **Pay/Locality Pay:** The telework site is the work location for any employee covered by a telework agreement who does not report at least twice each biweekly pay period on a regular and recurring basis to the regular worksite. Locality pay is not authorized for any foreign location. Members of the Foreign Service working on a DETO arrangement receive Overseas Comparability Pay.

- **Contingency Planning:** Agencies should be prepared to address a number of problems that may arise with an overseas telework arrangement, including situations where the employee is no longer able or willing to work from the agreed upon overseas location, wants to terminate the telework arrangement and return to the U.S., or is ordered to depart the country by the COM. If the COM orders an employee to depart post, the Department of State will not be responsible for funding the employee's travel, unless the employee is a Department of State employee and paying such expenses is authorized consistent with Department travel rules and regulations. In all other cases, the travel costs will be borne by the employing agency or the employee. Agencies must confirm that they assume this responsibility prior to the COM approving the NSDD 38 or eCC request.

- **Medical Evacuation:** Independent DETOs and sponsored DETOs whose spouse or domestic partner works for a USG entity that does not fund medical evacuations must provide documentation of personal medical evacuation insurance to the post or relevant bureau before the COM will grant eCC or NSDD 38 approval.

- **Unaccompanied or Partially Unaccompanied Posts:** Overseas telework arrangements are prohibited at posts or countries that are unaccompanied or partially unaccompanied unless the prohibition is waived in accordance with procedures described in Waivers of Travel Prohibitions (3 FAM 3776). Telework from posts or countries where an authorized or ordered departure is in effect is prohibited without the formal approval of the Under Secretary for Management (M) in accordance with the procedures described under Waivers of Travel Prohibitions (3 FAM 3776).

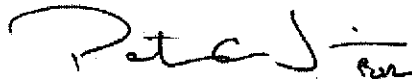
- **Nepotism:** A proposed DETO arrangement involving a DETO working from a country in which his/her relative is employed by the Department of State at post may require an anti-nepotism review.

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Interagency DETO Working Group: The Department of State's Office of Human Resources/Employee Relations (HR/ER) leads an interagency working group focused on developing a comprehensive interagency DETO policy. The group meets on an ad hoc basis. Agencies are encouraged to participate in this working group.

A handwritten signature in black ink, appearing to read "Joe Macmanus".

Joseph E. Macmanus
Executive Secretary

Attachment:

List of Addressees

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