

## **STANDARD OPERATING PROCEDURE**

A-04

Revised: 9/2007

Approved: 10/2007

### **Waivers of the Five-Year and Eight-Year Limits On Continuous Domestic Service**

**I. PURPOSE** The Foreign Service Act of 1980, as amended, 22 U.S.C. § 3901 *et seq.*, requires all Foreign Service employees to serve a substantial portion of their careers overseas, and limits the number of years Foreign Service employees can spend in continuous domestic service. The purpose of this SOP is to establish procedures and criteria for considering requests for waivers of the requirement for overseas service, (1) after five years of continuous domestic service, and (2) after eight years of continuous domestic service.

**II. AUTHORITIES:** Foreign Service Act of 1980, as amended, 22 U.S.C. § 3901 *et seq.*, at § 504 (22 U.S.C. § 3984).

Foreign Affairs Manual (“FAM”) at 3 FAM 2400 (Foreign Service Career Development, Assignments, and Transfers).

Foreign Affairs Handbook (“FAH”) at 3 FAH-1 H-2423.2

### **III. DEFINITIONS:**

**A. The Five-Year Rule.** The Five-Year Rule is set forth at 3 FAH-1 H-2423.2, which states that continuous domestic service may not exceed five years without a waiver from the Director General. The Director General has delegated the authority to grant such a waiver to the Director of HR/CDA (Bureau of Human Resources, Office of Career Development and Assignments), by memorandum dated August 8, 2005. In exceptional or precedent-setting cases, the Director General reserves the right to make the final decision on waivers of the five-year rule.

**B. The Eight-Year Rule.** The Eight-Year Rule is set forth in the Foreign Service Act at § 504, 22 U.S.C. § 3984, which states, “A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.” The authority to approve waivers of this rule has been delegated by the Secretary to the Under Secretary for Management in Delegation No. 198, and by the Under Secretary to the Director General in Delegation of Authority No. 221-7, dated March 30, 2005.

**C. Continuous Domestic Service.** For purposes of this SOP, in order to restart the period of continuous domestic service an employee must have satisfied the requirements for a completed assignment overseas, as specified in 3 FAH-1 H 2423(c):

- (1) 10 months for a one-year Tour of Duty (TOD);
- (2) 20 months for a two-year TOD; or
- (3) 30 months for a TOD of 3 years or more.

For non-standard TODs overseas, the minimum continuous service requirement will be at least 83% of the period of assignment. Note: Negotiated tours of 12-month duration do **not** meet the criteria of a completed assignment overseas.

**D. The Five/Eight-Year Rule Committee.** Consistent with this SOP, the Five/Eight-Year Rule Committee within HR/CDA considers requests for waivers of the five- and eight-year rules and reports its recommendations in writing to the Director of HR/CDA or the Director General, as appropriate, for final decision.

**E. Employees who began domestic service in 2004 or before.** Per agreement between the Director General and the American Foreign Service Association, an employee who began continuous domestic service in 2004 will be “grandfathered” under the previous rules on continuous domestic service, and will not require a waiver until he or she seeks a domestic assignment beyond **six** years of continuous domestic service.

#### **IV. WAIVER REQUEST PROCEDURES:**

##### **A. Identification of Those Subject to Five- or Eight-Year Rule.**

As part of their preparations for an upcoming assignment cycle, Career Development Officers (CDOs) will identify any clients with transfer dates during that cycle who will be unable to serve a full two-year domestic onward assignment due to the limitations of the five-year or eight-year rule.

The CDO will then notify each client so identified that he/she may not be assigned to, or extended in, a domestic position with a tour of duty that would extend the continuous domestic service beyond five years without a waiver. CDOs should provide their clients with a copy of this SOP and with all information about deadlines for submission of waiver requests.

**B. Making a Request for a Waiver.** Those employees who are subject to the five- or eight-year rule must make a request for a waiver by completing the attached 5/8 waiver request form. **Employees may request a waiver only at the time they are bidding.** Such requests should be submitted no later than 30 days prior to the bid due date. The waiver request should be sent to the CDO, who will forward it to the Five/Eight-Year Rule Committee.

Requests for a 5/8 waiver where neither the employee nor family member has any special physical or mental health condition that would require M/MED (Office of the Medical Director) expertise may be considered by the Committee without MED input. Examples include the need to spend time with otherwise healthy children; to assist their readjustment to new living circumstances; to complete an adoption; to assist the career or personal needs of a non-tandem spouse; or other similar circumstances. Where a particular physical or mental health condition, or extraordinary stress, or similar circumstances are presented as the justification for a 5/8 waiver, MED or an outside professional must confirm the basis for the request. The Committee reserves the right to seek MED's opinion when it deems such opinion is necessary for proper adjudication of the request (see Section C below), consistent with the Health Insurance Portability and Accountability Act (HIPAA) and implementing regulations at 45 C.F.R. Parts 160 and 164. The point of contact in MED is the Director of Domestic Programs, who will relay the request to the appropriate office or person in MED and return a formal recommendation to the CDO or Committee, as appropriate.

**C. Treatment of Confidential Medical Information.** Many waiver requests include confidential medical or mental health information regarding the requesting employee and/or members of the employee's family. Such information should be provided directly to the Director of Domestic Programs in the Office of Medical Services, instead of to the CDO. The requesting employee and/or any family members whose medical conditions are at issue must sign the attached Authorization for Release of Medical Information form (dependent minors should have a parent or legal guardian sign on their behalf in accordance with 45 C.F.R. § 164.502(g)). This release of medical information will enable the MED representative to communicate pertinent information to the Committee, the Director of HR/CDA, and/or the Director General, as appropriate. Such information will not be discussed with any other Department personnel, and no one other than members of the Five/Eight-Year Rule Committee may participate in discussions involving the medical information. Only MED will retain a written copy of the medical information provided. All other copies must be destroyed.

**D. Composition of the Five/Eight-Year Rule Committee.** The Five/Eight-Year Rule Committee consists of one representative from each of the divisions within HR/CDA, plus the Continuity Counselor. All are voting members of the committee. The Deputy Director of HR/CDA chairs the committee, but does not vote except as needed to break a tie. A representative from MED may be present at the Committee meetings if a request involves medical information, but MED will maintain a strictly advisory role to the Committee. The requesting employee's CDO and/or a representative from the Office of the Legal Adviser (L) may also be present during discussion of an employee's request and may offer advice to the Committee.

**E. Deliberations of the Five/Eight-Year Rule Committee.** The Committee will meet approximately once per month, although it can meet more or less often depending upon the volume of waiver requests. HR/CDA will keep records noting the specific individuals who have attended each meeting of the Committee on each date. The Committee will consider each request in strict accordance with the criteria set forth in Section V below.

**F. Reporting the Findings of the Committee.** The Committee will make a finding and recommendation on each waiver request up to eight

years and forward its recommendation to the Director of HR/CDA. If the request is for a waiver of the eight-year rule, the committee will forward the case through the Director of HR/CDA to the Director General. Any request for more than 10 years of continuous domestic service will be forwarded through the Director of HR/CDA to the Director General without a recommendation. Committee recommendations are not disclosed to anyone outside the Committee, HR/CDA, and M/DGHR, unless advice is needed from L. CDOs inform their clients of final disposition/adjudication by the Director of HR/CDA or the Director General.

**G. One-Year versus Two-Year Waivers.** Waivers generally will be granted in increments of one year, and will not be considered more than one year (or assignment cycle) in advance of the original TED. A two-year waiver may be approved in cases in which MED determines that the employee may not be assigned overseas due to a Class 5 medical clearance issued to the employee or employee's eligible family member. In the interests of the needs of the Service, the Director General may also grant a two-year waiver in cases not involving a class 5 medical clearance.

**H. Extensions.** Extensions of current tours of duty that would lead to continuous domestic service beyond the 5/8-year limits may not be approved without a waiver.

**I. Appeals.** If the Director of HR/CDA decides not to approve a waiver request, the employee is so notified by his/her CDO. The employee may formally request reconsideration by the Director General within 10 working days from the date the employee is notified of the decision. There is no appeal from a decision by the Director General.

**J. Effect on Pending Assignments.** Assignments requiring a waiver of the 5/8-year limits may not be approved at panel, nor may they be paneled in principle, unless a waiver has been granted.

## **V. CRITERIA FOR CONSIDERATION OF WAIVER REQUESTS:**

**A. Normal Criteria:** In making decisions on whether to recommend approval of waivers of the Five/Eight-Year Rule, the Director General, the Director of HR/CDA, and the Five/Eight-Year Rule Committee normally will consider the following factors. The Director General may also grant a waiver in especially compelling cases that do not necessarily meet

one of these normal criteria. Since the eight-year limit is statutory, a higher standard of approval will be applied, and waivers that would extend continuous domestic service beyond 10 years generally will not be approved.

**1. Is the employee serving in an indefinite tour of duty at the Deputy Assistant Secretary or equivalent level, or above?**

Because of the crucial nature of duties involving major policy formulation and senior management functions, employees at the rank of Deputy Assistant Secretary or its equivalent, or above, serve at the pleasure of the Secretary and are usually assigned to indefinite tours of duty. Employees serving in these positions are not subject to the application requirement for waivers of the five-year rule and are granted waivers automatically. A formal waiver is required for these employees for continuous domestic service exceeding eight years.

**2. Is the employee's service in a position required as a critical need?**

On an exceptional basis, bureaus may request a waiver on behalf of an employee if the employee is in a position of critical need. Waiver requests of this nature must state why another qualified employee who is not subject to the 5/8-year limit could not be selected for the position, and should describe unique circumstances involving specialized qualifications. Waivers will not be recommended in instances where the employee simply knows the job best because of experience gained in his/her recent incumbency.

**3. Is the employee's or employee's family member's limited medical clearance causing difficulty in obtaining an overseas assignment?**

A waiver may be warranted where the employee or an eligible family member cannot receive a medical clearance for all of the overseas posts where there are available positions for which the employee is qualified during the bid cycle. The Committee will request a current determination by MED. The employee and/or any eligible family members (EFMs) with medical clearance issues must sign the attached Authorization for Release of Medical Information in order to receive consideration of a waiver request based on this criterion. The employee may sign the authorization for a minor in accordance with 45 C.F.R. § 164.502 (g).

In cases in which an employee cannot be cleared for duty at any overseas post (Class 5), the Committee coordinator may forward the request directly to the Director of HR/CDA or through the Director of HR/CDA to the Director General; consideration by the full Committee is not required. In such cases the written documentation from MED should state whether its recommendation is for one or two years.

Waiver requests in cases in which an EFM cannot be cleared for duty at any overseas post (Class 5) will be considered by the Committee. In such cases, the employee must also submit a statement addressing the possibility of serving abroad unaccompanied by the Class 5 EFM. MED will be asked to comment on the statement and should state whether its recommendation is for one or two years.

Waiver requests in cases in which an employee or EFM can be cleared for some, but not all, overseas posts (Class 2 limited clearance) will not be considered prior to the start of “stretch season.” In such cases, the CDO will inform MED of all of the overseas posts at which there are still positions available for which the employee is qualified. The employee must also submit a statement addressing the possibility of serving abroad unaccompanied by the Class 2 EFM. MED will be asked comment on the statement.

**4. Is HR/CDA unable to identify a position abroad for which the employee is qualified?**

In reviewing such cases, the Committee takes into account any secondary or tertiary skill codes the employee might possess when a position for his or her primary skill is lacking. The Committee will review the employee's bid list to determine whether reasonable bids have been submitted before recommending waivers under this criterion.

**5. Is the employee unable to serve two full years under one or more of the following conditions?**

- i. The employee would be unable to serve two full years overseas if not promoted because of applicable time-in-class (TIC) rules.

- ii. The employee would be unable to serve two full years overseas because of applicable time-in-service (TIS) rules.
- iii. The employee would be unable to serve two full years overseas because the employee has less than two years until reaching mandatory retirement age.

The “grace” period of up to one year that may be granted at the discretion of the Director General under some of the circumstances above is not considered when assessing the possibility of “two full years” overseas.

In light of the growing number of overseas positions with a tour of duty of less than two years, especially at unaccompanied posts, requests based on this criterion from employees whose TIC, TIS, or mandatory retirement date is more than one year away must address why the employee is unable to serve in an overseas position where the tour of duty ends less than three months prior to the TIC, TIS, or mandatory retirement date. A list of all vacant positions for which the employee is qualified having a TOD that ends not less than three months prior to the TIC, TIS, or mandatory retirement date must accompany the request. The committee generally will not recommend approval of a waiver request in cases in which it appears the employee is qualified and able to serve in such a position.

The Committee chair may forward waiver requests from employees whose TIC, TIS, or mandatory retirement date is less than one year away directly to the Director of HR/CDA or through the Director of HR/CDA to the Director General. Consideration by the full Committee is not required.

**6. Are there compassionate grounds for granting a waiver?**

A waiver request may be based on a variety of personal, professional, and family circumstances that affect an employee’s career decisions. In such cases, the employee must submit sufficient information to provide an adequate basis for evaluation of the request. Confidential medical or mental health information should be provided directly to the Director of Domestic Programs in the Office of Medical Services (M/MED), and must be accompanied by a signed Authorization for Release of Medical Information.

The decision regarding the waiver and its duration will be made on a case-by-case basis.



Although the following is not an inclusive list, a waiver of the five-year rule may be granted for any of the following reasons:

- An employee has a dependent child who will be in the senior year of high school.

- Under certain circumstances, a waiver may be granted based on the need to make provisions for the care of an elderly parent (see *Guidelines for Consideration of Elderly Parent-Based 5/8 Waiver Requests* at the end of this SOP). Only one waiver may be approved to provide for the care of an elderly parent, and such waivers are granted for only one year, during which time suitable arrangements should be made for the continuing care of the parent after the Foreign Service member returns to overseas service.

- A waiver may be granted when the request is in connection with child custody issues.

**7. Would granting a waiver bring the Service a clearly identifiable benefit?**

An employee may request a waiver on the grounds that additional continuous domestic service would be primarily of benefit or importance to an employee or his or her dependents, but with some benefit to the Service. Such requests are recommended to the Director of HR/CDA or the Director General for approval only if the Committee finds that they would result in a clearly identifiable benefit to the Foreign Service. This includes service in a domestic hard-to-fill position in the sixth year.

**a. Are there suitability or security questions pending resolution?**

In especially sensitive cases, the requesting employee or his/her CDO may submit a waiver request directly to the Director General or the Director of HR/CDA.

**B. Other Miscellaneous Issues:**

- 1. Significance of domestic LWOP.** Periods of domestic LWOP may not be counted in the calculation of time passed since the last return from an overseas assignment, e.g., if an employee serves four years of domestic service followed by

a year of LWOP, this still counts as only four years of continuous domestic service.

- 2. Significance of overseas LWOP.** Periods of LWOP taken overseas in order to accompany a tandem spouse are considered to be neither domestic nor overseas service. Examples are situations in which there is no job available for one of the members of the tandem, or if one member is assigned to a Chief of Mission or Deputy Chief of Mission position and it is not possible for the spouse to be employed at post.
- 3. Service at USUN.** Service at USUN is not counted as domestic service for purposes of the five-year rule. It is, however, counted as domestic service for purposes of the eight-year rule.
- 4. Training linked to assignment abroad.** An assignment abroad linked to a specific period of training, including language training or university studies, is considered to fulfill the commitment to return abroad even though the training may take place during a period that would otherwise require a waiver.
- 5. Rovers and other overseas TDY positions.** Service of ten months or more of any one-year period in a rover position, or overseas with a U.S. delegation, or on an overseas TDY assignment is considered to be overseas service and restarts the five-year-rule clock.
- 6. Assignments to international organizations.** Assignments to international organizations abroad are counted as overseas service.

**C. Continuous Domestic Service for 10 Years or More:**

Waivers that would extend domestic service beyond 10 years will not be approved except when consistent with the clear needs of the Service and under the most exceptionally compelling circumstances (e.g., inability to serve abroad due to a service-related injury), and may only be granted by the Director General in one-year increments.

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**5/8 Waiver Request Form**

**CDO Instructions: 1) Save this page as a Word document. 2) Fill in the blanks. 3) E-mail document to HR/CDA 5/8 Committee Coordinator 4) Send **original** and **seven** copies (=8) of form, supporting documents and Employee Profile to 5/8 Committee Coordinator. Thanks.**

Date:

CDO:

Requesting Waiver of \_\_\_\_ Five-Year Rule or \_\_\_\_ Eight-Year Rule

Applicant's Name:

Last 4 Digits of SSN:

Grade/Skill Code:

Transfer Eligibility Date (Mo/Yr):

Beginning of Continuous Domestic Service (MO/YR):

Request Waiver to Permit Continuous Domestic Service until (MO/YR):

Basis of Waiver – Criterion (a) Number (see attached HR/CDA SOP A-4, Sect. V):

Narrative Justification, Including List of Attached Supporting Documents. If Applicable, sensitive medical information should be provided directly to MED – Director of Domestic Programs along with a signed copy of the attached Authorization for Release of Medical Information.

**AUTHORIZATION FOR  
RELEASE OF MEDICAL INFORMATION**

I, \_\_\_\_\_, authorize the Office of Medical Services (MED) at the U.S. Department of State, to discuss and/or release to the Office of Career Development and Assignments, Bureau of Human Resources (HR/CDA), any or all information from medical records related to me. I grant permission for any and all information from my medical records to be considered by the Five/Eight-Year Rule Committee within HR/CDA, the Director of HR/CDA, and the Director General of the Foreign Service or his or her delegate, in making a decision on my request for a waiver of the Department's limits on continuous domestic service. I understand that the Five/Eight Year Rule Committee may solicit advice from my Career Development Officer (CDO), the Office of the Legal Adviser (L), MED, and/or the Director General of the Foreign Service or his or her delegate pertaining to my request. I grant permission for any and all information from my medical records to be reviewed and discussed among HR/CDA personnel and with said parties outside of HR/CDA in conjunction with my request.

If I choose to appeal a determination made on my waiver request, I grant permission to whomever I send my appeal, to review and discuss my medical records with HR/CDA, L, or MED personnel, or the Director General of the Foreign Service or his or her delegate, as appropriate.

I understand that I may revoke this authorization at any time, except to the extent that the U.S. Department of State has already taken action in reliance thereon. Revocation of this authorization must be in writing, and should be addressed to the Director of MED.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### Guidelines for Consideration of Elderly Parent-Based 5/8 Waiver Requests

Difficult issues regarding the care of elderly parents and the appropriate management of their financial and other affairs face many Foreign Service members at some point in their careers. When this happens, some members may find it difficult to leave the United States for assignment abroad. When these members approach the domestic service limits, their reluctance to go abroad becomes a matter for the 5/8 Committee.

Waivers of the 5/8-year rules can be granted on "compassionate grounds" (criterion 6). However, as many members of the Foreign Service have aging parents, as a rule waivers will only be granted in cases in which the Foreign Service member personally exercises significant responsibility for the care of the parent, and the request has the support of MED's Employee Consultation Service (ECS). Moreover, such waivers are granted for only one year, during which time suitable arrangements should be made for the continuing care of the parent after the Foreign Service member returns to overseas service. For some members, this may be a matter of making arrangements with siblings, relatives, or family friends for the parent's care, and for others it may mean placing the parent in a long-term care facility.

In considering waiver requests of employees who are reluctant to be assigned abroad because of concerns about the welfare of an aging parent, the Committee endeavors to assess the degree of hardship that will result from such an assignment. When it is established that an assignment abroad would result in severe hardship, the Committee may recommend a waiver allowing the employee to extend domestic service by one year.

In counseling clients who seek extensions to the domestic service limits on this basis, CDOs should advise them to obtain the following information and present it in writing to MED's Employee Consultation Service (ECS). This statement should address any Service need implications (e.g., the breaking of an overseas assignment).

- What is the extent of the client's personal responsibility for and involvement in the care of the aging parent?
- Where does the parent reside?

- What is the parent's medical/emotional condition that requires the presence of a family member? If appropriate, a doctor's statement should be provided.
- Does the parent live alone, and if so, to what extent is the parent self-sufficient? For example, does the parent drive, shop, and carry out the routine duties of life?
- What is the nature of the client's personal involvement in the parent's affairs? (Periodic telephone calls and visits as opposed to direct involvement?)
- Has the client considered having the parent join him or her abroad?
- Does the client care for the parent at home and/or is the parent dependent on the client to manage his/her finances?
- If the parent is partially or totally dependent on the care of others, who are they? (Siblings, relatives, family friends, others?)

CDOs should ensure that their clients understand that if a waiver is granted, the client should do the following:

- The client should understand that s/he should expect to be assigned abroad at the end of the waiver period.
- The client should make plans for the care of the parent following the end of the waiver period.
- The client should investigate alternative care for the parent with siblings, relatives, and family friends.

Clients should also be informed of the services provided by MED's Employee Consultation Service (ECS).

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### **3 FAH-1 H-2423.2 Continuous Service in the United States (SOP A-4)**

*(CT:POH-115; 08-31-2005)*

*(State only)*

*(Applies to Foreign Services employees)*

- a. You may not serve continuously longer than five years in the United States without a waiver from the DG. Such a waiver will only be issued in certain special circumstances. The waiver will be issued for one or two years, depending on the reason.
- b. The DG will only consider an extension beyond eight years of domestic service under special circumstances.
- c. For purposes of application of the five- and eight-year rules, you must have **satisfied the requirements for a completed assignment overseas, as specified in [3 FAH-1 H-2423 \(c\)](#).**

### **3 FAM 2424.2 Foreign Service Assignment**

*(CT:PER-564; 08-31-2005)*

- a. *An "assignment" to a Foreign Service position ([22 U.S.C. 3985](#)) will be for any period of more than six months.*
- b. *You are expected to serve abroad for a substantial portion of your career in the Foreign Service. You may not serve continuously in the United States for more than five years (by regulation) or eight years (by law, [22 U.S.C. 3984](#)) without, in either case, an extension granted by the Director General.*
- c. *We will also, in general, assign you to a domestic position at least once during each 15 years ([22 U.S.C. 3984](#)).*