



New Reporting Requirements For Foreign Travel and Foreign Contacts by Government Contractors

July 17, 2017

With the summer travel season underway, private sector government contractors and subcontractors should remember that the Director of National Intelligence (DNI) has established new reporting requirements regarding foreign travel and foreign contacts for those who have been granted access to classified information, or who occupy “a sensitive position.”

Effective June 12, 2017, the DNI issued Security Executive Agent (“SecEA”) Directive 3 (“Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position”). The Directive establishes reporting requirements for “covered individuals” who have access to classified information or hold “a sensitive position.”

- “Covered individuals” include all government employees (with certain exceptions) and “contractors, subcontractors, licensees, certificate holders, grantees, experts, and consultants.”
- “Sensitive position” is defined as “any position within or in support of an agency in which the occupant could bring about, by virtue of the position, a material adverse effect on national security regardless of whether the

occupant has access to classified information and regardless of whether the occupant is an employee, military service member, or contractor.”

- “Sensitive positions” are specifically designated by departments and agencies in accordance with 5 C.F.R. Part 1400. Note that, although there is a correlation between “sensitive position” designations and positions requiring a personnel security clearance (“PCL”), that may not always be the case. If it is unclear whether you hold a sensitive position or not, you should consult with your security officer.

The Directive requires covered individuals to report any planned or actual foreign travel or foreign contacts to the agency head or designee. Heads of agencies will retain authority to establish procedures regarding official foreign travel, but for unofficial travel, the Directive requires covered individuals to submit an itinerary to their agency and receive approval prior to engaging in the foreign travel. Deviations from approved travel itineraries are “discouraged,” and must be reported within five business days of return. Permission for such travel may be denied if the agency determines that it presents an unacceptable security risk.

Regarding foreign contacts, agencies can determine requirements as part of a covered individual's official duties. Unofficial contacts with a known or suspected foreign intelligence entity must be reported, along with any "continuing association with known foreign nationals that involve[s] bonds of affection, personal obligation, or intimate contact; or any contact with a foreign national that involves the exchange of personal information."

Covered individuals also are required to report the activities of *other* covered individuals that may be of potential security or counterintelligence concern. Such activities include (i) an unwillingness to comply with rules, regulations, or security requirements, (ii) unexplained affluence or excessive indebtedness, (iii) alcohol abuse or illegal drug use/activity, (iv) apparent or suspected mental health issues, (v) criminal conduct, (vi) misuse of Government property or information systems, or (vii) any activity that raises doubt as to whether another covered individual's eligibility to access classified information or hold a sensitive position is "clearly consistent with the interests of national security."

Depending on the level of a covered individual's PCL, there are reporting requirements in addition to those described above. For persons with Secret PCLs and non-critical sensitive positions, additional requirements include, among others, (i) application for foreign citizenship or application for/use of foreign passports or identity cards, (ii) arrests, bankruptcies or drug- or alcohol-related treatment, (iii) attempts at blackmail or coercion to obtain classified information, or media attempts to obtain the same. For individuals with Top Secret PCLs or critical/special sensitive positions, there are additional requirements with respect to (i) foreign activities such as direct involvement in foreign businesses, bank accounts, property ownership, and adoption of foreign children, (ii) financial anomalies, such as those described above,

as well as any "infusion of assets greater than \$10,000" such as an inheritance or winnings, and (iii) marriage, co-habitation or having a foreign national as a roommate for more than 30 days.

Although SecEA Directive 3 is intended to combat insider threats, its effectiveness at the beginning of the peak travel season appears designed. It brings to mind other security considerations unique to travel.

Any individual holding a PCL, or with access to sensitive or proprietary information, should always remain aware of their surroundings as a traveler and as a local in areas with high levels of tourism. Economic espionage is a persistent threat that requires vigilance to resist. Also, any employees of cleared contractors are required to submit suspicious contact reports to their security officer anytime (1) an individual, regardless of nationality, tries to obtain access to classified information or compromise any employee holding a PCL; (2) an employee holding a PCL is contacted by a known or suspected foreign intelligence officer; or (3) any contact suggesting that an employee holding a PCL is the target of an exploitation attempt by foreign intelligence services.

For More Information

[Chris Griner](#)

202.739.2850

cgriner@stroock.com

[Seamus Curley](#)

202.739.2889

scurley@stroock.com

[Anne W. Salladin](#)

202.739.2855

asalladin@stroock.com

[Erin Bruce Iacobucci](#)

202.739.2815

ebruce@stroock.com

[Greg Jaeger](#)

202.739.2820

gjaeger@stroock.com

[Christopher R. Brewster](#)

202.739.2880

cbrewster@stroock.com

[Shannon Reaves](#)

202.739.2882

sreaves@stroock.com

New York

180 Maiden Lane
New York, NY 10038-4982
Tel: 212.806.5400
Fax: 212.806.6006

Los Angeles

2029 Century Park East
Los Angeles, CA 90067-3086
Tel: 310.556.5800
Fax: 310.556.5959

Miami

Southeast Financial Center
200 South Biscayne Boulevard, Suite 3100
Miami, FL 33131-5323
Tel: 305.789.9300
Fax: 305.789.9302

Washington, DC

1875 K Street NW, Suite 800
Washington, DC 20006-1253
Tel: 202.739.2800
Fax: 202.739.2895

www.stroock.com

This *Stroock Special Bulletin* is a publication of Stroock & Stroock & Lavan LLP © 2017 Stroock & Stroock & Lavan LLP. All rights reserved. Quotation with attribution is permitted. This Stroock publication offers general information and should not be taken or used as legal advice for specific situations, which depend on the evaluation of precise factual circumstances. Please note that Stroock does not undertake to update its publications after their publication date to reflect subsequent developments. This Stroock publication may contain attorney advertising. Prior results do not guarantee a similar outcome.

emphasis on excellence and innovation has enabled us to maintain long-term relationships with our clients and made us one of the nation's leading law firms for almost 140 years.

For further information about *Stroock Special Bulletins*, or other Stroock publications, please contact Richard Fortmann, Senior Director-Legal Publications, at 212.806.5522.

Stroock & Stroock & Lavan LLP, with more than 300 attorneys in New York, Los Angeles, Miami and Washington, DC, is a law firm providing transactional, regulatory and litigation guidance to leading financial institutions, multinational corporations, investment funds and entrepreneurs in the U.S. and abroad. Our