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SPECIAL REVIEW BOARDS (SRBs)

1. Implementing Regulations

a. Where a member is notified of both his/her designation for mandatory retirement by a PSB and an effective date for that retirement, the member may appeal the action to an SRB in accordance with this Section or may file a grievance under 3 FAM 4400. But, the member may not file both. When an effective date of retirement is not set, any issues the member wishes to raise in connection with the mandatory retirement designation may be grieved only in accordance with 3 FAM 4400. An appeal to an SRB does not preclude a proceeding under 5 USC, Chapter 12.

b. A written notice of appeal to an SRB must be submitted by the member to M/HR/LERPM within 20 work days after receiving notice of the PSB decision for mandatory retirement. M/HR/LERPM will convene an SRB to conduct an administrative review of the PSB decision and to uphold or overturn the decision.

c. SRBs shall be made up of three career Foreign Service members at or above the appellant's class and, to the extent possible, they should be senior in class to the appellant. They will be selected by the Director, M/HR in accordance with the Precepts for the Special Review Board. Also, each SRB shall be assisted by a procedural advisor who is not an official of USAID and who is experienced in hearings relating to adverse personnel actions. The procedural advisor will not vote or participate directly in the disposition of the appeal but will advise the SRB on procedures and rulings to assure administrative due process. The names of the proposed SRB members and the proposed procedural advisor shall be submitted to the exclusive bargaining representative for comments.

d. SRBs shall conduct a hearing to receive oral testimony and to consider all evidence concerning the member's performance that was available to the PSB. The appellant has the right to introduce evidence in writing or orally at the hearing. The SRB shall base any decision to overturn the PSB determination to retire the member mandatorily only on one or more of the following grounds:

- (1) Additional evidence clearly shows that the PSB's finding relied in determinative part on material that was erroneous, falsely prejudicial or inaccurate; or
- (2) The PSB failed to comply with its Precepts; or
- (3) Additional evidence indicates that severe or extraordinary circumstances beyond the control of the appellant temporarily affected adversely the appellant's performance, but are not expected to recur.

e. Appellants have the right to choose a representative who may be present during every stage of proceedings before an SRB. If the appellant is overseas and elects to be present during the proceedings, he/she shall be afforded one round trip and a reasonable number of days TDY in

USAID/Washington to do so.

f. The first hearing of an SRB shall not be sooner than 45 calendar days from the receipt of the PSB notice by the appellant, to allow a reasonable time to prepare the appellant's case before the SRB.

g. After reviewing all the evidence, the SRB shall decide by majority vote to sustain the PSBs decision or to overturn it. The SRB's decision shall be in writing to the Director, M/HR, with copies to the appellant.

h. If the SRB overturns the PSB decision, it may also recommend that the Director, M/HR, take further remedial action logically stemming from the decision such as expunging from the performance file any erroneous or falsely prejudicial or inaccurate material. The SRB may also recommend the inclusion of appropriate materials to make the record whole.

i. If the SRB overturns the PSB decision, the member may continue in the Service without prejudice, but the time-in-class limits will not be extended to make up for any period of Selection Board ineligibility resulting from the earlier PSB decision unless such extension is ordered as the result of a separate grievance action.

j. If the SRB upholds the PSB decision to retire a member mandatorily, the member may request, within 10 working days of the SRB decision, reconsideration of the case. The SRB may agree to reconsider a case if the member can show (a) specific error of fact or interpretation of fact in the SRB's original finding or (b) newly discovered or previously unavailable material evidence.

k. An SRB decision to uphold a PSB decision becomes final and binding following:

- (1) the expiration of 10 working days following the appellant's receipt of the SRB decision, if no written request for reconsideration is filed;
- (2) the denial of the appellants request for reconsideration; or
- (3) the reaffirmation by the SRB of its original decision. Such a decision constitutes final administrative action, and the Director of the Office of Human Resources will implement it in accordance with ADS 463.

PRECEPTS FOR THE SPECIAL REVIEW BOARD

1. Purpose

a. This document establishes the Precepts for the Special Review Board (SRB) which will be convened for any member of USAID's Foreign Service or Senior Foreign Service (the Service) who exercises the right of appeal from a Performance Standards Board's (PSB) designation for mandatory retirement for relative performance under Section 608 of the Foreign Service Act of 1980.

b. Members of the Service who wish to challenge a designation for mandatory retirement by a PSB must submit a written notice of appeal to a Special Review Board within twenty calendar

days of receiving notice of the PSB decision. The notice should be directed to the Personnel Operations Division (M/HR/POD) Office of Human Resources, U.S. Agency for International Development. The SRB will conduct an administrative review of the PSB decision to uphold or overturn that decision. An SRB decision to overturn a PSB decision is final and binding (see Implementing Regulations, paragraph j above, when the SRB upholds a PSB decision).

2. Applicable Regulations

The criteria and requirements in this document supplement the regulations governing the responsibilities, organization and operations of SRBs which are set out in the Implementing Regulations, paragraphs a through k above. SRBs will be guided in their activities and procedures by those regulations as augmented by these Precepts.

3. SRB Membership

The members of the SRB appointed under paragraph c above will, to the extent practicable, be experienced in varying Foreign Service areas and be knowledgeable about the occupational backstop of the appellant. If feasible, at least one SRB member will have had direct work experience in the appellant's occupational backstop. The name of the proposed procedural advisor to the SRB will be submitted to the employee representative for comment as well as the names of prospective SRB members which will be reviewed by the employee representative in accordance with existing collective bargaining agreements on the composition of Selection Boards. The procedural advisor shall not be a full-time USAID official or have served within the last two years in any capacity representing USAID's interest against an individual employee's claim or complaint. The procedural advisor will not recommend the ultimate disposition of any appeal.

4. Rights of Appellant

In addition to the rights specified in the Implementing Regulations above, the appellant has the right to the following:

- a. Access to USAID's communications facilities for transmission of messages relevant to the appeal.
- b. Access to any USAID record requested to substantiate the appeal which the SRB deems relevant to the proceeding. When deemed appropriate by the Agency or the Board, the appellant may receive only a summary or extract of classified material. Disclosure of any official USAID record to the SRB or an appellant is not required where the Administrator of USAID or his deputy determines in writing that such disclosure is not in accordance with the Privacy Act or the Freedom of Information or would adversely affect the foreign policy interests or national security of the United States. Access to the appellant's personal records shall be governed by HB 18, Ch. 12 or successor regulations.
- c. As approved by the supervisor, a reasonable amount of normal duty time to prepare his/her case. This applies equally to the appellant's representative if an employee of USAID. Official time may not be unreasonably withheld.
- d. Travel orders and subsistence (for appellant only) for temporary duty in the Washington, D.C. area. Washington subsistence may begin up to ten working days before the scheduled date of the

hearing.

5. Board Procedures

a. Documentary Material

Before the first pre-hearing conference, the Board and appellant will receive a list of and access to all material that was available to the Performance Standards Board including the Performance Standards Board precepts and a copy of the PSB's statement of justification for its mandatory retirement designation.

b. Schedule

The chairperson of the SRB will set a date for the appeal hearing which is not less than 45 days after the appellant's receipt of written notice. The appellant will be promptly notified of this date so that preparations for the appeal may be completed, if the appellant is overseas, travel to Washington, D.C. may be scheduled. If the appellant believes that the scheduled hearing date does not permit adequate time to complete preparations for the appeal, a request for extension of the date must be promptly submitted to M/HR/POD (by immediate cable, if overseas) explaining the reasons why additional time is required. The chairperson may reschedule the hearing for a later date, if satisfied that the delay is necessary to permit the appellant to complete preparations for the hearing, fairly and adequately.

c. Pre-Hearing Conference

(1) The Chairperson of the SRB and the procedural advisor will conduct one or more pre-hearing conferences with each appellant and representative to define and narrow the issues. The conferences are to address any procedural questions and to establish, insofar as possible, the scope of material the Board is to consider; the number and identity of witnesses; and the timing and content of interrogatories and to address procedural questions. If the appellant is overseas, the chairperson will seek relevant information by telephone or cable. A return conference will be held as promptly as possible after the return to Washington of the appellant for the hearing (see section 4d following).

(2) At the first conference, the Chairperson will set a deadline for the appellant to submit:

- (a) A list of witnesses the appellant wishes to have testify at the hearing;
- (b) Written interrogatories the appellant wants sent to persons likely unable to appear in person; and
- (c) Information on the evidence which each witness or interrogatory is expected to provide, when requested by the Board.

(3) Should the SRB wish to call any witnesses or prepare any interrogatories, or should it desire to include information for the record, it shall give the appellant reasonable advance notice and shall provide the appellant with an appropriate opportunity to respond to the information included, or to call further witnesses or submit interrogatories in response. The appellant may request up to 20 working days to prepare responses to information included by the SRB, and this request shall be granted.

(4) The appellant may present the texts of Foreign Service Grievance Board decisions to the Board to establish prior adjudication of relevant issues. Conversely, the Board shall ask USAID whether any documents or issues which the appellant wishes to contest in the appeal have received prior Grievance Board adjudication. The SRB shall recognize a decision of the Grievance Board as the definitive adjudication of all issues and contentions which the Grievance Board addressed (for example, the accuracy and validity of a performance appraisal report).

d. Conduct of the Hearing

(1) The appellant and representative are entitled to be present at the hearing. Only those who have the necessary security clearances may have access to classified material being presented or discussed. USAID will expedite security clearances whenever the Chairperson so requests in order to ensure a fair and prompt hearing before the SRB.

(2) Testimony at a hearing shall be given under oath or affirmation which any Board member or person designated by the Board shall have the authority to administer.

(3) The appellant may present to the Board such material as the appellant believes supports the appeal. Information which would normally be inadmissible in the appellant's evaluation report may be raised by an appellant before the SRB. The appellant and members of the SRB shall be entitled to examine and cross-examine witnesses at the hearing, and to serve interrogatories on other parties and have such interrogatories answered. The SRB may ask for justification of and rule on the relevance and materiality of the appellant's interrogatories. Any specific interrogatory presented must be complete and unexpurgated. If the Board approves requesting additional witnesses or interrogatories, the Chairperson may recess the hearing pending their availability.

(4) Upon request of the SRB, or upon a request of the appellant which is deemed relevant and material by the Board, USAID shall promptly make available at the hearing or by interrogatory at no cost to the appellant any witness under its control, supervision, or responsibility.

(5) During any hearings held by the SRB, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial or unduly repetitious evidence normally excluded in hearings conducted under the Administrative Procedures Act (5 U.S.C. 566).

(6) The appellant may present concluding arguments.

(7) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

e. Post-Hearing Brief

The appellant may present a post-hearing brief summarizing the testimony and arguments.

6. Decisions

a. Upon completion of the hearing, the Board shall expeditiously decide the appeal on the basis of all the oral and documentary evidence it has received in the course of the hearing and the entire written record thereof. The Board shall not consider any other material. The SRB's written

decision will include findings of fact and set forth the reasons for its decision. The decision will go to the Administrator with copies to the appellant and representative, if any. A dissenting opinion may accompany the SRB decision.

b. As authorized in the regulations, an SRB decision to overturn mandatory retirement based on relative performance may include supplementary recommendations for corrective action logically stemming from the decision, such as recommendations for expunctions from the performance file of erroneous or prejudicial material; insertion by the Director of Human Resources of a statement explaining, clarifying, or putting into perspective, performance evaluations; or recommendations for extension of time-in-class or other actions deemed necessary to correct any prejudice found. Any such board recommendations should be precisely framed to facilitate their implementation and should be supported by written justification. Such recommendations will not be binding, but if not implemented, the appellant may pursue such remedies as may be available through the normal grievance process.

7. Waiver

An appellant may waive the right to a hearing, present documentary evidence to the SRB and request that it rule on the case on this basis. Such a waiver must be in writing.

8. Oath of Office

All Board members will adhere to the following oath:

"I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform faithfully and to the best of my ability the duties of a member of a Special Review Board; that I will preserve the confidential character of the personnel records used by the Board; and that I will not reveal to any unauthorized person information concerning the deliberations, findings, and recommendations of the Board. So help me God."

9. Special Instructions

a. When this document is in conflict with any other regulation, this document shall prevail.