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# Foreign Service Retirement and Disability System

A Mandatory Reference for ADS 414

(Formerly Handbook 30, Chapter 3)

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## **FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM**

### 3A Purpose

Chapter 3 outlines requirements which pertain to AID participants in the Foreign Service Retirement and Disability System (FSRDS).

Supplement 3C sets forth 3 FAM 670, the regulations of the FSRDS.

### 3B AID Employee Coverage

1. The following members of the Service (as defined in Section 103 of the Foreign Service Act (FSA) of 1980, as amended), are participants entitled to the benefits of the FSRDS:

a. Every member serving under a career appointment or as a career candidate:

(1) in the Senior Foreign Service, or

(2) assigned to a salary class in the Foreign Service Schedule.

b. Every chief of mission who is not a participant under 1a (1) who:

(1) has served as chief of mission for an aggregate period of 20 years or more and

(2) has paid into the Fund a special contribution for each year of such service in accordance with FSA Section 805.

c. In addition to the above participants, any individual who was appointed as a Binational Center Grantee and who completed, prior to February 15, 1981, at least 5 years of satisfactory service as such a grantee or under any other appointment under the Foreign Service Act of 1946, may become a participant in the System, and shall receive credit for such service if an appropriate special contribution is made to the Fund in accordance with 3 FAM 671.4, in attached Supplement 3C.

d. 3 FAM 671.3, in attached Supplement 3C, provides for participation by individuals who transfer to public international organizations, or who are converted under FSA Section 2104 to the competitive service and are

employed in an agency which is authorized to use the Foreign Service Personnel System.

2. Any otherwise eligible member of the Service who is appointed to a position in the Executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

### 3C. Mandatory Participation

Since enactment of the Foreign Service Act of 1980, the Foreign Service Retirement and Disability System, administered by the Secretary of State, is the sole and exclusive retirement and disability system provided for the eligible Foreign Service personnel described in subchapter 3B, above (An employee may also, however, be eligible for certain job-related injury or illness compensation or disability benefits as provided under 5 U.S.C., Chapter 81. See also FSA Section 808; AID Handbook 29, Chapter 1G; 3 FAM 689; and paragraph 3K of this chapter.)

### 3D. Responsibility

#### 1. Retirement Officer

The Chief of the Employee Relations Branch (M/PM/ERS) or designee is the AID Retirement Officer and serves as the AID representative to the Department of State on retirement matters. This officer is available for counsel and advice to individual employees regarding their rights, benefits, and obligations under the law, and for assistance to claimants and survivors of deceased employees. Any questions on retirement matters should be directed to the Retirement Officer.

#### 2. Liaison Office

The Office of Financial Management, Employee Services Division (M/FM/ESD) is the AID liaison with the Department of State on retirement accounting matters.

### 3E. Retirement Eligibility

#### 1. Voluntary Retirement

a. Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit towards retirement under the FSRDS (excluding military and naval service) may, on his or her own application and with the consent of the Director, Office of Personnel Management (M/PM/OD), or designee, be retired from the Service and receive retirement benefits (Foreign Service Act of 1980 as amended, Section 811).

b. A participant who meets the requirements in 1a above, and who wishes to retire under Section 811 of the Act, should submit Form OF-136 (formerly JF-32), Application for Retirement, to M/PM/ERS for approval by M/PM/OD, at least 3 months prior to the anticipated separation date.

c. The employee should propose a preferred retirement date. The Director, Office of Personnel Management, or designee, may concur in the proposed date and the approved application shall then constitute a retirement agreement between the Agency and the applicant.

d. The Director, Office of Personnel Management, or designee, may establish a retirement date other than that proposed by the applicant when one or more of the following conditions obtain:

(1) Applicant is the subject of a separation for cause action, or

(2) An Assistant Administrator, Office Director or comparable senior Agency official requests in writing that the applicant's services be extended to meet an urgent operational demand which may include but is not limited to conditions such as:

(a) Completion of a specific operational task,

(b) Maintenance of services pending identification of a replacement, or

(c) Emergency conditions at post, such as natural disaster or hostile action.

(3) Applicant has not completed at least one half of present overseas tour of duty or twelve months, whichever is less. If the

e. When the Director (or designee) selects a retirement date other than that proposed by the applicant:

(1) Such date will normally be no more than 120 days from the date requested by the applicant,

(2) The date will be such that the applicant will be able to retire with an immediate annuity, and

(3) No more than one extension shall be imposed except with the written concurrence of the applicant.

f. When the Director (or designee) receives the retirement application but does not agree to the proposed effective date, the applicant shall be promptly advised

of an alternative date acceptable to the Director. Upon receipt of such advice, the applicant may withdraw the retirement application, propose a different date for consideration, or confirm in writing or by cable his/her concurrence in the Director's alternative date. The voluntary retirement application shall be processed to be effective as of the mutually agreed upon date. Unless subsequently extended by the Director per subparagraph 1e(3) above, the concurred in application shall constitute a retirement agreement between the Agency and the applicant.

g. When the Director (or designee) does not approve the retirement application, the employee shall be notified in writing and advised of the reason(s) for the disapproval. The disapproval may be grieved in accordance with Handbook 29, Chapter 4.

## 2. Discontinued Service

Any participant who is not eligible for an immediate annuity and who voluntarily separates from the Service after obtaining at least 5 years of service credit towards retirement (excluding military or naval service) may, upon separation from the Service or at any time prior to becoming eligible for an annuity, elect: (a) to have contributions refunded, or (b) to leave such contributions in the Fund and receive a deferred annuity commencing at age 60. (See FSA Section 610(b) for exception.)

## 3. Mandatory Retirement\*

The Foreign Service Act of 1980, Section 812, provides as follows: \*Supplement 3A to this Chapter (Reserved) will contain regulations dealing with mandatory retirement for expiration of time in class (FSA Sections 601(c) (1) and 607). Supplement 3B hereto covers mandatory retirement based on relative performance.

(a) "Except as provided in subSection (b), any participant shall be retired from the Service at the end of the month in which the participant has reached age 65 and has at least 5 years of service credit towards retirement under the System (excluding military and naval service), and shall receive retirement benefits in accordance with Section 806.

(b) (1) Any participant who is otherwise required to retire under subSection (a) while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated."

### a. Extension of Service Beyond Mandatory Retirement Age

Whenever the Director, Office of Personnel Management, determines it to be in the public interest, any participant who is otherwise required to retire for the reasons set

forth of Section 812(a) of the Foreign Service Act of 1980, may be retained on active service for a period not to exceed 5 years.

#### 4. Retirement for Disability or Incapacity

##### a. The Foreign Service Act of 1980, Section 808(a), provides:

"Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habit, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in Section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 65."

b. FSA, Sections 808(b) through 808(f) and 3 FAM 672.2, appearing as Supplement C to this Chapter, further outline requirements and procedures for disability or incapacity retirement under the FSRDS. Interested employees should pay particular attention to: requirements relating to medical examinations; reemployment procedures or options and benefit payments if retired annuitant recovers from the condition; and the possible adjustment payments under the FSRDS if the original injury or condition was work-related and eligible for Federal Workman's Compensation.

Particular note should be made of FSA Section 808(f) regarding the Filing of a claim for disability or incapacity retirement under the FSRDS:

"A claim may be allowed under this Section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier."

##### (1) Application Filed by the Participant

(a) Participants who meet the requirements of 4a above should submit to M/PM/ERS, Form OF-136 (formerly JF-32), Application for Retirement, along with a description of their disability and the effect it has on the performance of their duties.

If available, they should also enclose a statement from their private physician. If the participant has been judged mentally incompetent, his/her guardian may apply. In addition, the employee's supervisor completes a Form JF-32a, Superior Officer's Statement in Connection with Disability Retirement, and attaches it to the material to be forwarded to M/PM/ERS.

(b) Before being retired for disability, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 65. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service with 1 year from the date recovery is determined

(c) M/PM/ERS forwards the employee's application and statements to the State Department Retirement Branch (PER/ER/RET) and M/MED sends medical examination reports to the Director General of the Foreign Service, Department of State, for processing and approval.

## (2) Application Filed by the Agency

When M/PM determines that an employee's performance does not constitute "useful and efficient service" and may be caused by possible health problems, it may file the application or Disability Retirement. The general procedures to be used are as follows:

(a) M/PM counsels the employee concerning possible alternative action and his/her right to designate a representative to advise and assist in connection with the proposed action, and advises that a fitness for duty medical examination may be required.

(b) If after counseling the employee refuses to apply for disability retirement, M/PM advises the employee and/or his/her representative in writing of the reasons for the determination; the right to have a designated licensed physician review the case; the right to a medical examination if a fitness for duty examination has not been performed; and the right to reply within 15 days orally and/or in writing and to submit affidavits and/or other documentary evidence.

(c) Reasons and findings that are given to an employee are to be specific and detailed, except when they relate to a physical or mental condition about which a prudent physician would hesitate to inform the employee. In such cases, only general reasons and findings will be given. However, a full report of the medical

evidence will be made available to a licensed physician who is designated in writing by the employee and/or his/her representative.

(d) If the employee refuses to submit to an examination, he/she should decline in writing. When it appears to be the result of a mental, emotional, or nervous condition, M/PM may continue to process the application for retirement.

(e) If the employee is found to be medically unfit for duty, i.e., useful and efficient service, on the basis of a medical examination conducted under the direction of M/MED, a Board of Medical Examiners is convened. The Board is composed of three qualified physicians and/or surgeons. M/MED designates two members, one of whom must be an expert or consultant who is not a full-time officer or employee of the Federal Government. The employee may designate the third member. Not more than one member may be a full-time employee of M/MED.

(f) The Board submits a report along with a statement of opinion to the Director General of the Foreign Service, Department of State, through PER/ER/RET, For review and decision.

(g) The Director General of the Foreign Service, Department of State, notifies the employee of the determination.

(h) Appeals

An employee who is dissatisfied with the determination made may request that it be reconsidered by submitting an appeal to the Deputy Under Secretary for Management, Department of State. The appeal should be submitted within 30 days following the date of receipt of notification from the Director General. The Deputy Under Secretary for Management reviews all the information available, along with any new evidence submitted, and makes a final determination in the case.

## 5. Reduction in Force

Participants who have completed at least 5 years of service credit toward retirement under the FSRDS, are at least age 60 and are separated as a result of a reduction in force, may elect to retire, since they are considered to have "voluntarily separated" for purposes of retirement. If they have not reached age 60, they may elect to receive a deferred annuity upon reaching that age.

## 3F. Creditable Service

1. With certain exceptions and/or contribution requirements, full-time civilian and active military service performed for the Federal Government is creditable. There are certain exceptions when full-time credit is allowed. Details on what constitutes creditable service may be obtained from M/PM.

2. Service at Unhealthy Posts

a. Participants in the Foreign Service Retirement and Disability System (FSRDS) assigned to unhealthy posts automatically receive post differential pay if it is prescribed for the post, or they may elect to receive extra service credit (ESC) toward retirement instead of post differential pay. All participants receive ESC while serving at an unhealthy post where no post differential is paid, effective on date of arrival at post.

b. ESC is granted in an amount equal to one-half the time spent at an unhealthy post exclusive of time away from post on temporary duty, consultation, or detail at other locations not classified as unhealthy. ESC is available only to FSRDS participants.

c. If participants desire to receive ESC for service at an unhealthy post, Optional Form 140 (OF-140), Election to Receive Extra Credit Towards Retirement (or revocation thereof), is completed and submitted to the Mission and a copy must be forwarded to M/PM. ESC becomes effective on the date of arrival at post if OF-140 (see Supplement C) was completed upon initial arrival at post or the first day of the pay period following the date the election is made or changed. The election to receive ESC is irrevocable for the duration of the participant's assignment to that post, except that whenever there is a change by the Department in pay or benefits such as a raise in the pay ceiling or an increase or decrease in post differential, an election may be revoked within 60 days of such change. Cancellation of an election may be made only if there is a change in post differential, if the pay ceiling is raised or if the assignment is terminated. For this purpose, an assignment would be terminated by travel to the U.S. for home leave. Returning to the same post would constitute a new assignment, thereby permitting a new election. The completed original OF-140 must be submitted to M/PM by the Mission after the participant's departure from post.

d. ESC is earned while on home leave if, at the end of the home leave from an unhealthy post, the employee returns to that same post or transfers to another unhealthy post and elects ESC. If there is a transfer to a healthy post, the participant will receive ESC up to the date that service at the unhealthy post is terminated. ESC need not be terminated on departure for home leave.

e. Participants may be eligible for extra credit for prior service as non-participants employed by the U.S. Government at unhealthy posts if they made full contributions to the fund for such periods and received no post differential (see Supplement C, 3 FAM 673.3-1b for alternative deduction from annuity in lieu of full contribution). In such cases, the employee is to advise M/PM in writing identifying the post(s) and dates of service involved and the reasons why post differential was not received. After a review of personnel and payroll, the employee will be advised of the findings. It is not possible, under any circumstances, for an employee to refund the post differential received for prior service at an unhealthy post in order to obtain

extra credit for such service. A non-participant may not waive the post differential in the hope of later becoming an FSRDS participant and then receiving the ESC.

f. ESC is creditable for the purpose of meeting the minimum length of service required for retirement eligibility, also for eligibility to continue health and life insurance coverage into retirement, if all other requirements have been met. However, it cannot be added in computing the employee's high-3 average salary for annuity purposes. Neither annual nor sick leave used while assigned to an unhealthful post is deducted in computing the ESC allowance.

### 3. Unused Sick Leave

The service of an employee who retires on immediate annuity or dies leaving a widow (or widower) entitled to a survivor annuity is increased by the days of unused sick leave to his/her credit. The days of unused sick leave are used only in counting the number of years and months of service for annuity computation purposes. They cannot be used in computing the employee's high-3 average salary or for meeting the minimum length of service required for retirement eligibility. However, unused sick leave may be credited without regard to the 35-year limitation indicated in 311b below. A separate employee entitled to a deferred annuity at age 60 is not entitled to retirement credit for unused sick leave if he/she attains age 60 more than one month after separation.

### 3G. Voluntary Contributions

An employee who wishes to obtain a larger retirement annuity than is otherwise provided may make voluntary contributions to the Retirement Fund to purchase additional annuity, subject to certain restrictions. Employees interested in making voluntary contributions should contact M/PM for detailed information.

### 3H. Creditable Service for Which Deductions Were Not Withheld (Deposit Time or Refunded (Redeposit Time)

1. Employees who have had creditable civilian service for which no retirement deductions were withheld (deposit time) may make special contributions to the Fund prior to retirement. If payment is not made the time of retirement, ten percent of the amount owed at that time is deducted from the employee's annuity per year.

2. Employees who have had creditable civilian service for which retirement deductions were withheld and refunded, must make a special contribution to the Fund prior to retirement in order to receive credit for that service.

M/PM/ERS will advise employees on this subject when they become members \ of the FSRDS.

### 3I. Computation of Annuity

#### 1. General Formula

A rough estimate of the annual amount of annuity\* may be obtained by:

- a. Determining average basic annual salary for the high-3 consecutive years of service;
- b. Multiplying two percent of the above figure by the number of creditable years of service, not exceeding 35. Only 35 years of creditable service may be counted in the computation of annuity.

\*If the retiree works for the Agency as a reemployed annuitant, the annuity payable in any year may be subject to deferral or reduction. See Handbook 25, Chapter 5, for further information.

However, sick leave may be counted without regard to the 35-year limitation.

The above formula gives an estimate. M/PM/ERS will provide a more precise estimate when requested by an employee who is considering retirement.

#### 2. Death Benefits

Death benefits are of two kinds: survivor annuity and lump-sum payment. Survivor annuities may be payable to the spouse and children upon the death of an employee. A lump-sum benefit may be payable upon the death of an employee if there is no spouse or children entitled to a survivor annuity, or if the survivor annuity is payable after the right of the last person entitled thereto has terminated. Information on conditions to be met and amounts payable may be obtained from M/PM/ERS.

### 3J. Refunds

A refund is payable under the following circumstances:

1. When a participant is separated voluntarily or involuntarily from the Service and is ineligible for a deferred annuity at age 60 because he/she has less than 5 years of creditable civilian service.
2. When a participant is separated from the Service and is entitled to a deferred annuity at age 60, but before reaching that age elects to have the refund instead of an annuity.

3. When a participant transfers to employment in which he/she is subject to another Federal civilian retirement system.

4. When a participant elects, either at the time of retirement or separation for reasons other than retirement, to receive his/her voluntary contributions in the form of a lump sum.

### 3K. Applying for Retirement Annuity When Receiving Compensation for Work Injuries

Even though the employee elects to receive compensation for work injuries, the employee should also apply for an annuity upon separation. The annuity payment is suspended during the period he/she is receiving workmen's compensation. By so applying, the employee protects annuity rights and whatever survivor rights he/she has should compensation for work injuries be discontinued. If the employee desires to apply for a refund, he/she may do so. However, by so doing the employee forfeits the right to his/her annuity.

### 3L. Recognition at Time of Retirement

#### 1. Retirement Plaque

A Retirement Plaque is presented each retiring employee in the presence of suitable ranking staff and the retiring employee's colleagues. The plaques are requisitioned by M/PM/FSP from the Office of Management Operations (M/SER/MO) on Form AID 5-7, Supplies/Equipment Services Requisition. The name of the retiring employee, retirement date, and length of service computed to the closest year, is provided by M/PM/ERS. The mission advises M/PM/FSP when the plaque is to be sent to the mission or, in unusual circumstances, mailed directly to the employee's separation residence.

#### 2. Commendation

In addition to the plaque, it may be desirable to present a letter of commendation. It is the responsibility of the following officials, or their designees, to sign and present the letter:

a. The Administrator, for Section 624(a) statutory officers, 625(b) supergrade employees, 631(b) Mission Chiefs, Deputy Mission Chiefs and AID Representatives, and SFS members.

b. Mission Chiefs and AID Representatives for employees retiring at post.

c. Assistant Administrators and Head of Offices or Staffs for all other employees.

Supplement 3A -Mandatory Retirement for Expiration of Time in Class (Reserved)

Supplement 3B -Mandatory Retirement Based on Relative Performance

Supplement 3C -3 FAM 670

## SUPPLEMENT 3A

### MANDATORY RETIREMENT FOR EXPIRATION OF TIME IN CLASS (TIC)

#### 1. Purpose

This supplement provides the policies and the procedures dealing with mandatory retirement due to TIC limitations.

#### 2. Applicability

This supplement applies to all direct-hire, U.S. citizen employees of the Senior Foreign Service (SFS) and career Foreign Service (FS) subject to the Agency's TIC limitations required by the Foreign Service Act of 1980.

#### 3. Authorities and References

a. Foreign Service Act of 1980, as amended, Sec.607, 609, 806, 811-813,2102, 2103, 2106.

b. HB 25, Ch. 37 & 38; HB 30, Ch. 3.

See HB 25, Ch. 37H1 for the transition provisions covering implementation of this policy for classes FS-01 and below.

#### 4. Policy

It is Agency policy to mandatorily retire members of the SFS and career FS employees upon expiration of TIC limitations established in accordance with the authorities and administrative regulations cited above.

#### 5. Responsibilities

a. Foreign Service Personnel Division (PFM/PM/FSP)

Establishes and manages the necessary system(s) to identify and track TIC dates for all FS employees serving in career appointments under its jurisdiction, and notifies individual employees in writing of the actual TIC date established and again at least six months in advance of the actual TIC expiration date. TIC limitations of FS employees in BS-08 (Auditors and inspectors) are managed by IG/ADM as provided in 5c.

b. Executive Personnel Management Staff (PFM/PM/EPM)

Establishes and manages the necessary system(s) to identify and track TIC expiration dates for all FS employees under its jurisdiction, and notifies individual employees in writing of the TIC date established. In the event an SFS employee is not offered a Limited Career Extension (LCE), EPM will notify the individual of the impending TIC expiration at least six months in advance. See HB 25 Ch.38 for information on LECs.

c. Office of Administration Office of the Inspector General (IG/ADM)

Establishes and manages the necessary system to identify and track TIC expiration dates for FS and SFS employees under its jurisdiction (BS-08, Auditors and Inspectors), and notifies individual employees in writing of the actual TIC date established and again at least six months in advance of the actual TIC expiration date.

d. FS Career Employees

Verify the accuracy of the TIC date established for them by their respective employing offices

6. Procedures

a. The effective date of retirement will be set by the Agency, and will be within the six-month period immediately following the TIC expiration date, including members covered under HB 25, Ch. 38Jb(5). The administrator may extend the effective date of retirement up to one year in the public interest; further extensions will not be available.

b SFS employees and FS employees of class FS-01 who are promoted prior to the effective date of their mandatory retirement due to TIC expiration will have their TIC date recomputed by the responsible office. The recomputed date will become the new TIC date for purposes of this supplement.

c. SFS and FS employees whose TIC expires after the convening of the Selection Board reviewing their file will remain eligible for promotion consideration. SFS and FS employees whose TIC expires prior to the convening of their respective Selection Boards will not be eligible for promotion consideration.

d. FS employees who have reached their maximum time in class or LCE, but who are serving in positions to which they were appointed by the President with the advice and consent of the Senate, will be extended until the appointments to such positions are terminated.

Attachment 3B2 to Supplement 3B, HB 30

## 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 AID'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 Overseas Division (M/PM/OS) Office of Personnel Management, 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 Section 4.j of Supplement 3B\*\* to this chapter for guidance 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 HB 30, Supp. 3B\*\*. 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 HB 30, Supp. 3B\*\* 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 AID official or have served within the last two years in

any capacity representing AID'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 HB 30, Supp. 3B, the appellant has the right to the following:

a. Access to AID's communications facilities for transmission of messages relevant to the appeal.

b. Access to any AID 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 AID record to the SRB or an appellant is not required where the Administrator of AID or his deputy determines in writing that such disclosure is not in accordance with the Privacy Act or the Freedom of Information Act 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 AID. 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/PM/OS (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 wishes to have testify at the hearing;

(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 AID 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 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. AID 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, AID 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 Personnel Management 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. Cross reference this document to HB 25, Ch. 10.

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

3 FAM 670: RETIREMENT  
HAS BEEN MOVED TO THE SUPPLEMENTAL REFERENCES DATASET