

## **3 FAM 4360**

# **SEPARATION FOR CAUSE**

*(TL:PER-486; 10-28-2003)*  
*(Office of Origin: HR/ER/CSD)*

### **3 FAM 4361 GENERAL**

*(TL:PER-486; 10-28-2003)*  
*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*  
*(Applies to Foreign Service Only)*

a. It is the responsibility of the head of the agency, or his or her designee, to determine whether to propose separation and/or to separate an employee for cause under Section 610 of the Act (22 U.S.C. 4010). Except as provided in subsections (b)-(d) below, the head of the agency may not effect the separation of an employee for cause unless the Foreign Service Grievance Board (FSGB) has first determined that the agency has established cause for separation in a hearing before the Board.

b. If the agency's proposal to separate the employee for cause is based on misconduct, the employee has a right to a pre-termination hearing before the Board, and the Board will determine whether cause has been established at this hearing.

c. If the agency's proposal to separate an employee for cause is not based on misconduct, the employee is entitled to a pre-termination hearing before the Board only if the employee is serving under a career appointment. Employees serving under limited-career-candidate or noncareer appointments are not entitled to a hearing in this circumstance and the head of the agency or his or her designee will determine whether cause for separation has been established.

d. If the employee waives his or her right to a hearing before the Board, the head of the agency or his or her designee will determine whether cause for separation has been established.

e. If the agency's decision is to separate an employee for cause is based on a criminal conviction for which a sentence of imprisonment of more than one year may be imposed, the employee is not entitled to a pre-termination hearing before the Board and the head of the agency or his or her designee will determine whether cause for separation has been established. Conviction includes, but is not limited to, pleading guilty to a crime.

### **3 FAM 4362 PROPOSING OFFICIALS**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

The following officials are authorized to propose separation for cause against an employee:

<b>Agency</b>	<b>Proposing Official</b>
State	The Director General of the Foreign Service and Director of Human Resources
USAID	Director, Office of Human Resources (M/HR/OD) or Inspector General (for OIG employees)
BBG	Director of Personnel (M/P)
Agriculture	Foreign Agriculture Service: First line supervisor APHIS: Deputy Administrator (IS); Associate Deputy Administrator; Assistant Deputy Administrator; Director, Operational Support; Regional Directors; Director, Human Resources; Chief, Employee and Management Support
Commerce	Director General or equivalent official or designee

### **3 FAM 4363 ADVANCE NOTIFICATION OF UNSATISFACTORY PERFORMANCE OF DUTIES**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

a. Before separation for cause of an employee based on unsatisfactory performance of duties can be proposed, the supervisor must notify the employee in writing:

(1) Of the job requirements that the employee is failing to meet satisfactorily;

(2) That the employee has a 90-day period to bring performance to a satisfactory level;

(3) What the employee must do to bring performance to a satisfactory level within the 90-day period; and

(4) That the employee's performance will be reevaluated at the end of the 90-day period.

b. If there is evidence of inexcusable and/or egregious poor performance, the proposing official may waive the requirements of 3 FAM 4364, paragraph a.

c. Separations of career candidates for unsatisfactory performance are governed by 3 FAM 2248, 3 FAM 2256, or 3 FAM 2268 but not by 3 FAM 4360.

## **3 FAM 4364 PROPOSING SEPARATION FOR CAUSE**

### **3 FAM 4364.1 Initial Proposal**

*(TL:PER-486; 10-28 -2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

If after consideration of the report of inquiry or investigation and the factors specified in 3 FAM 4324.3, the proposing official decides to propose separation for cause, he or she shall notify the employee in writing:

- (1) Of the specific reasons for the proposal to separate for cause;
- (2) That the employee may respond orally and/or in writing and may submit written statements in support of that response to the proposing official;
- (3) That the employee's response will be fully considered by the proposing official;
- (4) That subject to 3 FAM 4325, the employee may have a representative of the employee's choosing;
- (5) Of any decision to exclude the employee from the workplace during the notice period in accordance with 3 FAM 4323;
- (6) That the employee shall be granted a reasonable amount of official time to:
  - (a) Review only the material relied on in proposing the action; and
  - (b) Prepare a response to the notice;
- (7) That the employee shall acknowledge receipt of the notice of proposed separation for cause as instructed in the notice;

(8) That if the agency recommends separation for cause, the employee shall be placed in a leave without pay status or remain in an absence without leave (AWOL) status pending final resolution. If the FSGB does not uphold the separation for cause, the employee will be entitled to receive back pay for the period during which he or she was in a leave without pay status reduced by any amounts earned from other employment. Employees who were in an AWOL status are not entitled to receive back pay; and

(9) That should the employee choose to designate a representative, such designation must be in writing.

### **3 FAM 4364.2 Employee's Response**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

a. An employee whose official duty station is outside the United States has 30 days from receipt of the proposal to separate for cause to respond in writing and/or orally to the proposing official.

b. An employee in the United States has 15 days from receipt of the proposal to separate for cause to respond in writing and/or orally to the proposing official.

c. The employee may submit a written request for an extension of the response deadline. The deciding official will approve the request if it is reasonable.

### **3 FAM 4364.3 Action by the Proposing Official**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

a. After reviewing the record on which the separation was based, and the employee's response, if any, the proposing official will decide to:

- (1) Withdraw the charges and close the case; or
- (2) Admonish the employee; or
- (3) Reprimand the employee; or
- (4) Suspend the employee for a specific period of time; or

(5) If the employee is entitled to a separation hearing and has not waived this right, submit to the Foreign Service Grievance Board a recommendation that the employee be separated for cause, along with the notice of proposed separation for cause, the employee's response, if any, and the record on which the proposal is based; or

(6) If the employee is not entitled to a separation hearing or has waived this right, submit to the head of agency or his or her designee a recommendation that the employee be separated for cause, along with the notice of proposed separation for cause, the employee's response, if any, and the record on which the proposal is based.

b. The proposing official will notify the employee of his or her decision, in writing.

c. If the decision is to reprimand or suspend, the notice shall contain the information provided in 3 FAM 4345, paragraph b or 3 FAM 4355, paragraph b, as appropriate.

d. If the decision is to recommend that the employee be separated for cause, the notice will indicate that the employee shall be placed in a LWOP status and the date when the LWOP becomes effective pending a decision by the FSGB pursuant to 3 FAM 4366 or a deciding official pursuant to 3 FAM 4368.

## **3 FAM 4365 HEARING BY THE FOREIGN SERVICE GRIEVANCE BOARD**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

a. A separation for cause hearing before the Foreign Service Grievance Board will be held under the procedures provided in 22 CFR Chapter IX (Foreign Service Grievance Board Regulations) for those employees who are entitled to and do not waive such a hearing.

b. Such a hearing shall be in lieu of any other administrative procedure authorized by the Act or any other law.

### **3 FAM 4366 DECISION BY FOREIGN SERVICE GRIEVANCE BOARD**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

a. After conducting a hearing on a proposed separation for cause, the Foreign Service Grievance Board shall issue a decision:

(1) Finding cause was established for separating the employee from the Service; or

(2) Finding cause was not established for separating the employee from the Service.

b. The decision shall include findings of fact and a statement of the reasons for the decision of the Board.

### **3 FAM 4367 DECIDING OFFICIAL**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/ Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

a. After considering the notice of proposed separation for cause, the employee's response, if any, the record on which the proposal to separate was based, and the Foreign Service Grievance Board's decision, if any, the head of agency or his or her designee, may decide to:

(1) Withdraw the charges and close the case; or

(2) Admonish the employee; or

(3) Reprimand the employee; or

(4) Suspend the employee for a specified period of time; or

(5) Separate the employee for cause in a case where a hearing is held before the Foreign Service Grievance Board, the employee may only be separated if the Board finds cause for separation pursuant to 610 of the Foreign Service Act.

b. The employee will be notified of the decision in writing.

c. If the decision is to separate the employee, the notice will:

(1) Advise the employee of the date the separation will become effective;

(2) Identify the specific charges in the proposal to separate for cause that have been sustained; and

(3) Make specific reference to the employee's right to obtain judicial review of the decision of the agency head under section 1110 of the Act (22 U.S.C. 4140).

d. If the decision is to separate the employee, a copy of the decision letter will be placed in the employee's Official Performance File when the separation becomes effective. If the decision is not to separate the employee, the employee will be entitled to back pay for the period during which he or she was in a leave without pay status, reduced by any amounts earned from other employment.

e. If the decision is to reprimand or suspend the employee, the notice will contain the information provided for in 3 FAM 4345, paragraph b or 3 FAM 4355, paragraph b, as appropriate.

### **3 FAM 4368 EFFECTS OF SEPARATION FOR CAUSE ON PARTICIPATION IN THE FOREIGN SERVICE, CIVIL SERVICE, OR OTHER GOVERNMENT RETIREMENT SYSTEM**

*(TL:PER-486; 10-28-2003)*

*(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)*

*(Applies to Foreign Service Only)*

Eligibility for retirement benefits under the Foreign Service, Civil Service, or other Government retirement system may be affected when an employee is separated for cause. Employees should consult the relevant statutes and regulations. For the Foreign Service retirement systems, these are section 610(b) of the Act and 3 FAM 6000.

### **3 FAM 4369 UNASSIGNED**