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of the Global Fund

MEDIATION PROCESS ADOPTED FOR DISPUTES RELATED TO THE FINDINGS OF OIG AUDITS AND INVESTIGATIONS

Use of this process does not preclude seeking arbitration

The Global Fund has adopted a Voluntary Dispute Resolution Process (VDRP) for disputes arising from audits and investigations conducted by the Office of the Inspector General (OIG). As its name implies, the process is voluntary. Use of the VDRP does not preclude principal recipients (PRs) from seeking arbitration to resolve a dispute, as allowed for in grant agreements.

(GFO first reported on this development in its [Board decisions article](#) in Issue 167.)

The VDRP involves mediation. Once the audit or investigation is complete and the final report has been issued by the OIG, but prior to seeking arbitration, the PR may make use of the VDRP by filing a claim with an independent Dispute Resolutions Panel (which the Global Fund said it would establish). The Panel then provides a mediation process designed to try to get the two parties to resolve their dispute. The process is non-binding and confidential.

The Panel will consist of three permanent members and three alternate members who are independent of the Global Fund and who have expertise in audit, forensic accounting, legal investigations and adjudication. The Global Fund Board will appoint Panel members and alternates through its Audit and Ethics Committee, using an open and competitive process.

The dispute resolution process is a complicated one. The PR has 20 business days after the publication of the final report of an audit or investigation to file a claim with the Panel. The claim must contain a clear statement and basis of the claim, and reasoning and evidence to support the PR's rationale for disputing

the findings or recommendations of the OIG. The PR must attach to the claim all supporting evidence.

The Panel has the right to reject claims that it considers to be ambiguous or incomplete – or that, in the Panel’s view, do not “present a material challenge to the substantive findings of the report”; do not “present evidence for the claim”; do not “allege injury or seek relief”; or are “made in bad faith.” “Bad faith” is defined as follows:

“Bad faith may be determined through circumstantial evidence, including a reasonable belief of the submission of false statements, material omissions, grossly inaccurate information – or that the claim is made in retaliation for the audit or investigation exercise.”

The Panel may request additional information from the PR or the Global Fund during the screening process. If the claim is accepted by the Panel, the OIG then has 15 business days to file a response. Under the VDRP, the Panel then has 30 calendar days to review the documentation and determine whether to begin the mediation process. (The VDRP does not say what happens if the Panel, having already accepted the claim, decides not to begin the mediation process.)

The Panel may decide to conduct mediation meetings in Geneva or in the country of the PR. The Panel can also use videoconferences or teleconferences.

The VDRP had been under discussion for several months. Early drafts of the VDRP included procedures for dealing with complaints against staff of the Global Fund Secretariat. However, the Global Fund decided that this element would be removed and pursued separately.

Information for this article was taken from the Report of the FAC Sub-Committee on OIG Matters (Document GF/B25/15), available at www.theglobalfund.org/en/board/meetings/twentyfifth, and the OIG’s progress report for the period April-October 2011. The latter has been provided to Board delegations but is not available at the Global Fund website. The text of the VDRP is in Annex 5 of the OIG’s progress report.

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