

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION	Number: DR 1521-001
SUBJECT: Legal Review and Execution of Settlement Agreements	DATE: January 4, 2018
	OPI: Office of the General Counsel

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1. PURPOSE

This Departmental Regulation (DR) establishes the United States Department of Agriculture (USDA) requirements for obtaining legal sufficiency review and concurrence for monetary settlement agreements above certain thresholds. This DR also sets forth the level of authority necessary for the execution of settlement agreements by USDA Mission Areas, agencies, and staff offices.

2. SPECIAL INSTRUCTIONS/CANCELLATIONS

None.

3. SCOPE

This DR applies to all USDA Mission Areas, agencies, and staff offices.

4. DEFINITIONS

- a. Agency. Organizational units of the Department, other than staff offices as defined in Section 4f, whose heads report to officials within the Office of the Secretary, Deputy Secretary, Under and Assistant Secretaries.
- b. Mission Area. A group of agencies with related functions that report to the same Under or Assistant Secretary. Research, Education, and Economics (REE) is an example of a mission area.
- c. Non-Personnel Settlement Agreement. Proposed monetary settlement terms and offers for resolution of claims and litigation except as covered by Section 4d.
- d. Personnel Settlement Agreement. Proposed monetary resolution terms, offers of resolution, or written agreements to resolve informal or formal Equal Employment Opportunity (EEO) complaints pending in the Department or at the Equal Employment Opportunity Commission (EEOC), matters pending before the Office of Special Counsel (OSC), or appeals pending before the Merit Systems Protection Board (MSPB).
- e. Resolving Official. A USDA employee at the Senior Executive Service (SES), Senior Level (SL), or Scientific and Professional level (ST) or higher level with delegated authority to resolve a matter or case on behalf of the Secretary and USDA. In personnel settlements, the Resolving Official (RO) should not be the responsible management official or an official directly involved in the facts of the case, as determined by the agency or staff office, and should be at the same organizational level or higher of the responsible management official. The Resolving Official may be someone from a different subcomponent of the agency or staff office involved.
- f. Staff Office. Departmental administrative offices whose heads report to officials within the Office of the Secretary.

5. POLICY

It is the policy of USDA that monetary settlement agreements be entered into by individuals within Mission Areas, agencies, and staff offices at sufficiently high levels of authority to ensure that the settlements are in the best interests of the Government. It also is the policy of USDA that monetary settlement agreements above certain thresholds be reviewed by and concurred in by the Office of the General Counsel (OGC).

It is the policy of USDA that, if after reviewing, OGC deems a draft monetary settlement agreement legally insufficient or otherwise does not concur, the settlement agreement shall not be entered into by the submitting USDA Mission Areas, agency, or staff office. OGC's legal sufficiency review and concurrence is in addition to existing processes that USDA Mission Areas, agencies, and staff offices use for negotiating and processing monetary settlement agreements.

a. Personnel Settlement Agreements

- (1) It is the policy of USDA to ensure that all personnel complaints, including informal and formal Equal Employment Opportunity (EEO), Office of Special Counsel (OSC), or Merit Systems Protection Board (MSPB) complaints, are resolved expeditiously, cost efficiently, and at the lowest level possible.
- (2) All personnel settlements, whether at the informal or formal stage, require a RO to resolve the matter on behalf of the Secretary and USDA.
- (3) If the RO must consult with another USDA official in accordance with this directive who is not present at the settlement discussion or alternative dispute resolution (ADR) efforts, such official must be immediately accessible to the RO during settlement discussions or other ADR efforts.
- (4) It is the policy of USDA that prior to making a settlement offer to, or agreeing to a settlement offer from, an opposing party for a personnel settlement agreement in an amount of \$50,000 or more, including attorneys' fees, all USDA Mission Areas, agencies and staff offices first submit the offer to OGC for legal sufficiency review and concurrence. This requirement applies to formal or informal settlements of EEO, OSC, and MSPB matters.
- (5) It is the policy of USDA that prior to making a settlement offer to, or agreeing to a settlement offer from, an opposing party for a personnel settlement agreement, all USDA Mission Areas, agencies and staff offices first submit the offer to OGC for legal sufficiency review and concurrence if the offer:
 - (a) Places a political appointee of USDA on a detail outside of USDA or on an Intergovernmental Personnel Act (IPA) agreement for one year or more; and
 - (b) USDA retains the obligation to pay the employee's salary and benefits during the duration of the detail or IPA agreement.

This requirement applies to formal or informal settlements of EEO, OSC, and MSPB matters.

b. Non-Personnel Settlement Agreements

- (1) It is the policy of USDA that prior to entering into a non-personnel settlement agreement in an amount of \$500,000 or more, including attorneys' fees, all USDA Mission Areas, agencies, and staff offices first submit the agreement to OGC for legal sufficiency review and concurrence.

- (2) The requirement for OGC review of and concurrence in non-personnel settlement agreements does not apply to any of the following:
 - (a) Settlements pursuant to the *Federal Tort Claims Act* (28 U.S.C. 2671-2680), which are processed in accordance with regulations of the Department of Justice and USDA [DR 2510-001](#), *Claims Against the United State* (June 4, 2015).
 - (b) Negotiation and settlement of or issuance of final contracting officer decisions related to requests for equitable adjustment or claims submitted by procurement contractors, which are processed by USDA procurement personnel in accordance with the *Contract Disputes Act* (41 U.S.C. 601 *et seq.*), the *Federal Acquisition Regulation* and the *Agriculture Acquisition Regulation*.
 - (c) USDA agency and staff office debt collection activities.

6. ROLES AND RESPONSIBILITIES

- a. The USDA General Counsel shall provide legal sufficiency review and concurrence/nonconcurrence for settlement agreements above certain thresholds as set forth in Section 5.
- b. USDA Mission Area Heads, Agency Heads, and Staff Officer Directors shall:
 - (1) Take the necessary steps to ensure awareness of and compliance with this directive within their organization, and to ensure that settlement agreements above the thresholds set forth in Section 5 above are provided to OGC for advice, required legal sufficiency review, and concurrence.
 - (2) Take the necessary steps to ensure that settlement agreements are approved by individuals with sufficient authority within the organization.
- c. Approving Official Levels for Non-Personnel Settlement Agreements:
 - (1) Non-personnel settlement agreements of less than \$100,000, inclusive of attorneys' fees, shall be approved by the Deputy Administrator for Management (or equivalent position) or higher.
 - (2) Non-personnel settlement agreements of \$100,000 to \$499,999, inclusive of attorneys' fees, shall be approved by an Agency Head, Staff Office Director or higher.
 - (3) Non-personnel settlement agreements of \$500,000 or more, inclusive of attorneys' fees, shall be approved by an Under Secretary, Assistant Secretary, or higher.

These agreements also require concurrence by OGC prior to execution, as set forth in Section 5.

d. Approving Official Levels for Personnel Settlement Agreements:

- (1) Personnel settlement agreements of less than \$5,000, inclusive of all compensatory damages and attorneys' fees, shall be approved by a RO at the SES, SL, or ST or higher level.
- (2) Personnel settlement agreements of \$5,001 to \$49,999, inclusive of all compensatory damages and attorneys' fees, shall be approved by the Agency Head or Staff Office Director or higher.
- (3) Personnel settlement agreements of \$50,000 or more, inclusive of all compensatory damages and attorneys' fees, shall be approved by an Under Secretary, Assistant Secretary, or higher. These agreements also require concurrence by OGC prior to execution, as set forth in Section 5.

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