



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices, establish Transportation Security Administration (TSA) policy and must be applied accordingly

REVISION: This revised directive supersedes TSA MD 1100.55-9, *Settlement Agreements*, dated April 7, 2009.

SUMMARY OF CHANGES: Section 3, Authorities, revised authorities; Section 4, Definitions, Pay or Incentives added; references to Peer Review Program revised as National Resolution Center throughout; and language regarding Executive Resources Council positions has been added throughout.

1. **PURPOSE:** This directive provides TSA policy and procedures for processing settlement agreements resolving various TSA employment matters in accordance with agreed upon actions which are in compliance with the legal authority and policies of TSA.
2. **SCOPE:** This directive applies to all TSA employees, applicants for TSA employment, and former TSA employees who were employed as of the effective date of this directive.
3. **AUTHORITIES:**
 - A. The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
 - B. Title 5, Code of Federal Regulations, Chapter II, Merit Systems Protection Board
 - C. Title 29, Code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity
4. **DEFINITIONS:**
 - A. Authorized Management Officials: TSA officials who have been delegated authority to enter into settlement agreements with employees on behalf of TSA. This authority is delegated to specific officials in the Office of the Chief Counsel (OCC) and specific management officials.
 - B. Back Pay: Payment awarded by an appropriate authority for pay and incentives lost by an employee due to an unwarranted or unjustified personnel action, or to resolve a matter in a settlement agreement.
 - C. Cancellation: Setting aside an action and returning an employee to the same status he or she was in before the action was taken.

- D. Employee: A TSA employee, applicant for TSA employment, or former TSA employee who was employed as of the effective date of this directive, who enters into a settlement agreement with TSA.
- E. Expungement: Removal and destruction of specified records from personnel files and/or return of documents to affected employees in accordance with the terms of a settlement.
- F. Pay or Incentives: The pay, leave, and other monetary employment benefits an employee is entitled to by statute, regulation, or TSA policy and which are payable by TSA during periods of TSA employment.
- G. Reinstatement: Returning a TSA employee to active employment status as provided in a settlement agreement.
- H. Settlement Agreement: A voluntary agreement between TSA and an employee resolving an employment matter, such as a complaint, grievance, appeal, or litigation. Settlement agreements resolve issues without resorting to further litigation or other administrative procedures. The settlement agreement does not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of TSA or its officials with respect to the subject matter of the underlying controversy.

5. RESPONSIBILITIES:

- A. Offices engaging in the settlement process, as delegated by OCC, are responsible for:
 - (1) Participating and negotiating in the settlement process in good faith;
 - (2) Ensuring that the appropriate officials with delegated authority are consulted to approve the agreement;
 - (3) Obtaining legal review of any proposed settlement agreement terms reached between the parties;
 - (4) Consulting relevant officials required to perform a function with respect to the settlement agreement, and offices, such as OCC and the Office of Human Capital (OHC), to ensure that the proposed terms can be effectively and timely implemented; and
 - (5) Implementing in a timely manner the terms of any settlement agreement reached.
- B. OCC is responsible for:
 - (1) Delegating authority to negotiate personnel litigation and disputes, including informal and formal Equal Employment Opportunity (EEO) complaints, to designated management officials;
 - (2) Coordinating and advising on legal aspects of settlement agreements;
 - (3) Handling related legal matters in administrative and federal litigation;

- (4) Drafting and negotiating settlement agreements, as appropriate;
- (5) Reviewing all proposed settlement agreements ;
- (6) Coordinating with OHC and, when applicable, the Civil Rights Division (CRD) within TSA to review settlement agreements, as necessary, in advance of OHC processing required actions;
- (7) Coordinating settlement agreements with the Executive Resources Division (ERD) within OHC and the Executive Resources Council (ERC) involving Transportation Security Executive Service (TSES) and Executive positions; and.
- (8) Advising on, and/or coordinating the processing of any breach allegations that may arise.

C. CRD is responsible for:

- (1) Receiving, processing and coordinating settlement agreements reached during the EEO process;
- (2) Coordinating settlement agreements with ERD and ERC involving TSES and Executive positions;
- (3) Monitoring compliance and coordinating implementation of settlement agreements reached during the EEO process; and
- (4) Processing breach allegations in accordance with Equal Employment Opportunity Commission (EEOC) regulations.

D. OHC is responsible for:

- (1) Coordinating with OCC and CRD, and NRC, as necessary, prior to processing actions required under settlement agreements;
- (2) Contacting the U.S. Office of Personnel Management (OPM), as needed, to ensure that settlements are processed consistently with applicable Federal personnel laws, particularly civil service benefits laws that are OPM's responsibility (e.g., retirement);
- (3) Processing [TSA Form 1155-1, Back Pay Notification and Benefits Options Checklist](#), security forms, direct deposit form, and other related benefits forms;
- (4) Coordinating and effecting all personnel and payroll related actions resulting from finalized settlement agreements, including, but not limited to:
 - (a) Back pay calculations;
 - (b) Benefits changes or adjustments;
 - (c) Expungement of records from the employee's electronic Official Personnel Folder (eOPF);

- (d) Promotion actions;
 - (e) Reinstatement actions;
 - (f) Leave adjustments;
 - (g) Cancellation of actions;
 - (h) Retirement contributions and annuities (including Thrift Savings Plan contributions), processing; and
 - (i) Debt establishment, when applicable due to benefits choices made by the employee, with appropriate notification to the employee.
- (5) OHC Operational Services Division, Benefits is responsible for providing prompt notification and any required documentation to TSA's payroll provider and/or the Office of Finance and Administration (OFA) for the processing of all payments, which may be due to employees based on implementation of an approved settlement agreement.
- E. ERD is responsible for coordinating with ERC, as necessary, prior to processing actions required under settlement agreements for employees in the TSES or Executive positions.
- F. The National Resolution Center (NRC) within OHC is responsible for:
- (1) Arranging for a mediator, if both parties voluntarily agree to mediate an issue, which may result in a settlement agreement;
 - (2) Coordinating with OCC to ensure legal review of proposed settlement agreements reached through mediation; and
 - (3) Ensuring that when mediation does not result in resolution, employees are informed of options for pursuing the issue, in accordance with TSA policy.
- F. OFA is responsible for processing lump sum payments required by a settlement agreement (e.g., for payment of attorney's fees).

NOTE: In addition to the technical responsibilities described above for OCC, CRD, and OHC, each office will be responsible for miscellaneous responsibilities required by specific provisions of the settlement agreement, and for raising any concerns or questions about the settlement agreement.

6. POLICY:

- A. Settlement agreements may be negotiated between TSA officials who have been delegated such authority by OCC and any TSA employee.

- B. When appropriate and mutually agreeable, TSA shall seek to resolve employee disputes such as complaints, grievances, appeals, litigation, and other such actions through negotiated settlements with employees.
- C. Proposed settlement agreements shall be reviewed by OCC, OHC, and CRD, if applicable, prior to finalization and implementation to ensure that agreed upon actions and conditions are within the authority granted to TSA by law and regulations.
- D. ERC shall be consulted on any settlement agreement that involves a position under its purview (e.g., a position in the TSES or an Executive position). Executive positions are L/M bands, TSA Representatives in the Office of Global Strategies (OGS), Deputy Director of International Operations (OGS), Regional Managers (OGS), Supervisory Air Marshals in Charge, non-TSES Federal Security Directors, and non-TSES Deputy Assistant Administrators. The list of ERC positions may change from time to time; contact the OHC Executive Resources Division for a current list.
- E. ERC has the sole authority to establish new positions under its purview and assign personnel to an ERC position.
- F. A settlement agreement entered into by TSA shall not be interpreted as a finding of wrongdoing, and shall not represent an admission, concession, evidence of fault or misrepresentation, or act of omission by either party to the agreement, with respect to the subject matter of the underlying controversy.
- G. An approved and signed settlement agreement between TSA and an employee shall constitute the final resolution of the matter(s) at issue. Settlement agreements shall be regarded as binding on both TSA and the employee(s) who enter into them.

7. PROCEDURES:

- A. Employees and TSA management officials, and their representatives, if applicable, will reduce the agreed-upon terms of a settlement to writing. This writing constitutes a proposed settlement agreement.
- B. TSA management officials will obtain a legal review of the proposed agreement from OCC, and if necessary, obtain concurrence from an official with delegated authority to approve the specific terms of the agreement.
- C. Proposed settlement agreements negotiated by management officials with delegated authority will also be reviewed and approved by CRD, if applicable.
- D. In regards to settlement agreements related to employees in the TSES or Executive positions, TSA management officials, and OCC will obtain review of the proposed agreement from OHC, ERD, and if necessary, obtain concurrence from ERC.
- E. If the settlement agreement includes provisions for implementing or processing certain actions for which the employee must provide relevant information, such as back pay, benefits or actions requiring complex calculations, by a specific date or within a specific timeframe, the

agreement should include a provision that makes TSA's responsibility for implementing the provision dependent on receiving the relevant information from the employee.

- F. OCC and OHC, as well as CRD, and NRC, if applicable, will review the provisions of proposed settlement agreements to ensure that they are in compliance with applicable laws, regulations, and policies and that the provisions can be implemented by the parties named in the settlement agreement within any stated time limits. The settlement agreement will also be reviewed for any ambiguity that could affect appropriate and timely implementation of the settlement agreement.
 - G. Based on the type of process that produced a settlement agreement, when the office(s) charged with reviewing a proposed settlement agreement specify that changes are required, the parties to the settlement agreement will be notified and must make the required changes. The revised settlement agreement must be resubmitted for review and approval, as required under the applicable process.
 - H. When all provisions of a settlement agreement are found to be in compliance with applicable law, regulations, and policies, the parties to the proposed agreement will be notified by OHC that it has been approved.
 - I. The authorized TSA official will finalize and ensure implementation of specified provisions in approved settlement agreements, including taking the following actions:
 - (1) Submitting the settlement agreement to CRD or NRC, if applicable.
 - (2) Submitting to OHC Operational Services Division, Benefits any documentation required to process personnel actions related to implementation of the human resources provisions of the settlement agreement, together with a copy of the approved settlement agreement.
 - (3) Advising the employee(s), who are parties to the settlement agreement, to provide information needed to implement provisions of the settlement agreement (e.g., TSA Form 1155-1, which provides employee information used to determine benefits and back pay calculation) and the date by which the information must be provided.
 - J. Upon receipt of an approved settlement agreement and documentation to initiate personnel actions required to implement its provisions, OHC Operational Services Division, Benefits will expedite processing of the required actions, including correction, rescission, and/or expungement of records maintained in employees' electronic eOPFs.
 - K. OHC Operational Services Division, Benefits, will maintain secure files for each settlement agreement processed, including any expunged documents which are not held by CRD or required by the settlement agreement to be returned to the employee.
 - L. If breach of a settlement agreement is alleged, the parties will address the alleged breach according to applicable procedures which must be outlined in the agreement.
- 8. APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

APPROVAL

Signed

February 25, 2013

Sean J. Byrne
Assistant Administrator for Human Capital

Date

EFFECTIVE

Date

Distribution: Administrator, Deputy Administrator, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists

Point of Contact: Office of Human Capital – Policy, TSA-OHC-Policy@dhs.gov

ATTACHMENT

Guidance for OHC Use in Implementing Personnel Actions Required by a Settlement Agreement

Below is guidance offering a step-by-step process for ensuring that personnel actions required by a settlement agreement are properly taken, where a response of “No” is indicated by “N,” and where a response of “Yes” is indicated by “Y.” If a question is answered “N,” action to implement the personnel provisions of a settlement agreement must stop until the answer is “Y.”

<u>Steps</u>	<u>If “Y”</u>	<u>If “N”</u>	<u>Notes</u>
1. Has OHC received a copy of the final approved settlement agreement?	Continue to next step	Take no action, refer the submitting office to TSA MD 1100.55-9, <i>Settlement Agreement</i> , and request copy of final settlement agreement, when it is approved, from requesting office.	There should be evidence that the settlement agreement was reviewed and approved by OCC, OHC, and/or CRD, if applicable. It must also be signed by a TSA official with the appropriate delegated authority to do so. The approved settlement agreement provides the authority for taking HR actions. Therefore, a copy of it is needed for the file maintained by OHC Operational Services Division, Benefits.
2. Have specific personnel actions been identified in the settlement agreement?	Continue to next step.	Determine if the provisions of the settlement agreement require implementation of any personnel action.	The settlement terms should indicate the specific personnel actions that are required to implement the settlement agreement’s HR provisions. If the language is unclear, OHC Operational Services Division, Benefits will request clarification from the submitting office.
3. Does the settlement agreement specify a timeframe for actions?	Determine what needs to be done and what time limits are in place for accomplishing, then continue to next step.	Go to Question 4.	OHC Operational Services Division, Benefits tracks the actions to ensure specified settlement timeframe is met.
4. Does the	Continue to next	Go to Question 7.	OHC Operational Services

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<p>settlement agreement contain a provision for back pay?</p>	<p>step.</p>		<p>Division, Benefits verifies with the local office that the employee was given a copy of the Employee Notification and Benefits Option Checklist to complete. The employee must complete the form and return it to OHC, within an established timeframe, to provide information needed for calculating back pay.</p>
<p>5. Has the employee who is entitled to receive back pay completed and returned the Employee Notification and Benefits Options Checklist?</p>	<p>Continue to next step.</p>	<p>Determine how much time the employee has to submit the form. Go to question 7.</p>	<p>If the employee does not complete the Employee Notification and Benefits Options Checklist and return it to OHC in the allotted time, implementation of provisions relating back pay and/or other benefits may be delayed.</p>
<p>6. Has the amount of back pay been calculated?</p>	<p>Continue to next step.</p>	<p>Using the information provided by the employee on the Employee Notification and Benefits Options Checklist, calculate the back pay due to the employee, in accordance with TSA policies. Go to Question 7.</p>	<p>OHC must use the information provided by the employee to calculate the back pay due the employee as specified in the settlement agreement. OHC must ensure that the TSA payroll provider receives the necessary documentation to make payment, and that the employee shall receive a statement of the amount of back pay received and the appropriate deductions</p>
<p>7. Have attorney's fees been awarded?</p>	<p>Determine when payments are to be made and how they are to be made.</p>	<p>Continue to next step.</p>	<p>Verify whether payments will be made by OHC Operational Services Division, Benefits or another office. Payment of attorney's fees awarded in EEO cases is handled by CRD. When payments for other kinds of settlements are to be made by OHC, send a completed SF 1034,</p>

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			<p>Public Voucher for Purchases other than Personal, to the Chief Financial Officer (CFO) for processing. Send necessary paperwork authorizing payment to the appropriate payment office.</p>
<p>8. Does the settlement agreement specify that documents must be expunged from the employee eOPF and/or internal local files?</p>	<p>Remove the specified documents from the eOPF and any supervisory or local employee personnel files. Forward documents in EEO cases to CRD for appropriate disposition. For other cases, OHC Operational Services Division, Benefits will dispose of expunged documents by returning the documents to the employee, if provided by the settlement, or by keeping them in the settlement file. However, copies of all expunged documents will be retained in the settlement file for future reference should a breach allegation arise.</p>	<p>Go to Question 9.</p>	
<p>9. Have all personnel actions required by the settlement agreement been processed?</p>	<p>Ensure that documentation supporting the actions is retained and that the employee's eOPF is updated as appropriate.</p>	<p>Return to Question 2.</p>	