



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 establishes Transportation Security Administration (TSA) policy and supersedes Federal Aviation Administration (FAA) orders, policies, guidance, bulletins regarding processing settlement agreements of employment matters issued under the FAA personnel management system. This directive is TSA policy and must be applied accordingly.

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
 - D. TSA MD 1100.75-5, Whistleblower Protections for Transportation Security Officers
 - E. TSA HCM Letter No. 771-3, *Peer Review*, September 16, 2008
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 and specific management officials.
 - B. Back Pay: Payment made by TSA for past wages and/or benefits lost by an employee due to an unwarranted or unjustified personnel action.
 - 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. Reinstatement: Returning a TSA employee to active status as provided in a settlement agreement.
- G. Settlement: 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 the Office of the Chief Counsel (OCC), are responsible for:
 - (1) Participating and negotiating in a settlement negotiation in good faith.
 - (2) Ensuring that the appropriate officials with delegated authority are consulted to approve the agreement.
 - (3) Obtaining a legal sufficiency review of any agreement terms reached between the parties.
 - (4) Implementing in a timely manner the terms of any agreement reached, which may include consulting with the Office of Human Capital (OHC) and OCC.
- B. The OCC is responsible for:
 - (1) Delegating authority to settle 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 agreements, as appropriate.
 - (5) Reviewing all settlement agreements for legal sufficiency.
 - (6) Coordinating with OHC and, when applicable, the Office of Civil Rights and Liberties (OCRL) or the Peer Review Program (PRP) Office, to review settlement agreements as necessary, in advance of OHC processing required actions.
- C. The Office of Civil Rights and Liberties (OCRL) is responsible for:
 - (1) Receiving, processing and coordinating settlement agreements resolved during the EEO process.

- (2) Monitoring compliance and coordinating implementation of agreements resolved during the EEO process.
- (3) Processing breach allegations in accordance with Equal Employment Opportunity Commission (EEOC) regulations.

D. The Peer Review Support Office (PRSO) within OHC is responsible for:

- (1) Arranging for a mediator, if both parties voluntarily agree to mediate an issue as a step prior to peer review, which may result in a settlement agreement.
- (2) In coordination with OCC, reviewing settlement agreements reached through mediation for legal sufficiency.
- (3) Ensuring that employees for whom mediation failed to result in resolution of an issue are informed of options for pursuing the issue, in accordance with TSA policy.

E. The Office of Human Capital (OHC) is responsible for:

- (1) Coordinating with OCC, OCRL, and the PRP Office, as necessary, prior to processing actions required under settlement agreements.
- (2) Contacting the 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) Uploading information from the 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 Official Personnel Folder (OPF);
 - (d) Promotion actions;
 - (e) Reinstatement actions;
 - (f) Leave adjustments;
 - (g) Cancellation of actions;
 - (h) Retirement contributions and annuities (including TSP contributions) processing; and

(i) Debt establishment, when applicable due to benefits choices made by the employee, with employee notification.

(5) The OHC Benefits and Worklife Programs Office 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 employees based on implementation of an approved settlement agreement.

F. OFA is responsible for processing lump sum payments required by a settlement agreement (e.g., for payment of attorney's fees).

G. In addition to the technical responsibilities described above for OCC, OCRL, 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 reached between TSA officials who have been delegated such authority by OCC and any TSA employee.

B. When appropriate and mutually agreeable, TSA will seek to resolve employee disputes such as complaints, grievances, appeals, litigation, and other such actions through negotiated settlements with employees.

C. As appropriate, settlement agreements will be reviewed by OCC and OCRL (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. 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.

E. 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, shall reduce the agreed-upon terms of a settlement to writing. This writing constitutes a proposed settlement agreement.

B. TSA management officials shall obtain a legal sufficiency review of the proposed agreement, and if necessary, obtain concurrence from an official with delegated authority to approve the specific terms of the agreement.

- C. Settlement agreements negotiated by management officials with delegated authority will be reviewed and approved by OCC and OCRL (if applicable). OHC will implement the human resources management provisions in the final settlement agreement.
- D. The OCC, OCRL (if applicable), and PRSO (if applicable) will review the provisions of proposed settlement agreements to ensure that they are in compliance with applicable laws, regulations, and policies.
 - (1) Based on the type of process which 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.
 - (2) 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 that it has been approved.
- E. 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 OCRL or PRSO, if applicable.
 - (2) Submitting to OHC, Benefits and Worklife Programs Office, 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).
- F. Upon receipt of an approved settlement agreement and documentation to initiate personnel actions required to implement its provisions, OHC, Benefits and Worklife Programs Office, will expedite processing of the required actions, including correction, rescission, and/or expungement of records maintained in employees' Official Personnel Folders (OPFs).
- G. OHC, Benefits and Worklife Programs Office, will maintain secure files for each settlement agreement processed, including any expunged documents which are not held by OCRL or required by the settlement agreement to be returned to the employee.
- H. If breach of a settlement agreement is alleged, the parties will address the alleged breach according to applicable procedures which may be outlined in the agreement.

8. **EFFECTIVE DATE AND IMPLEMENTATION:** This policy is effective immediately upon signature.

APPROVAL

Signed

4/7/2009

Richard A. Whitford
Assistant Administrator for Human Capital

Date

Distribution: Assistant Secretary, Deputy Assistant Secretary, Assistant Administrators, Office Directors, Area Directors, Senior Field Executives, Federal Security Directors, Special Agents in Charge, Administrative Officers, and TSA Affiliated HR Offices

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

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>Processing Settlements</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 OCRL, 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 Benefits and Worklife Programs Office.
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, Benefits and Worklife Programs Office, 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	Go to Question 4.	OHC, Benefits and Worklife Programs Office tracks the actions to ensure specified settlement timeframe is met.

**TSA MANAGEMENT DIRECTIVE No. 1100.55-9
SETTLEMENT AGREEMENTS**

	continue to next step.		
4. Does the settlement agreement contain a provision for back pay?	Continue to next step.	Go to Question 7.	OHC, Benefits and Worklife Programs Office, 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.
5. Has the employee who is entitled to receive back pay completed and returned the Employee Notification and Benefits Checklist?	Continue to next step.	Determine how much time the employee has to submit the form. Go to question 7.	If the employee does not complete the Employee Notification and Benefits Checklist and return it to OHC in the allotted time, the entitlement to back pay may be delayed.
6. Has the amount of back pay been calculated?	Continue to next step.	Using the information provided by the employee on the Employee Notification and Benefits Checklist, calculate the back pay due to the employee, in accordance with TSA policies. Go to Question 7.	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
7. Have attorney's fees been awarded?	Determine when payments are to be made and how they are to be made.	Continue to next step.	Verify whether payments will be made by OHC, Benefits and Worklife Programs Office, or another office. Payment of attorney's fees awarded in EEO cases is handled by OCRL. When payments for other kinds of

**TSA MANAGEMENT DIRECTIVE No. 1100.55-9
SETTLEMENT AGREEMENTS**

			settlements are to be made by OHC, send a completed SF 1034, 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.
8. Does the settlement agreement specify that documents must be expunged from the employee OPF and/or internal local files?	Remove the documentation specified. Forward documents in EEO cases to OCRL for disposition. Otherwise, OHC, Benefits and Worklife Programs Office, will dispose of expunged documents by returning them to the employee, if provided by the settlement, or by keeping them in the settlement file.	Go to Question 9.	
9. Have all personnel actions required by the settlement agreement been processed?	Ensure that documentation supporting the actions is retained and that the employee OPF is updated as appropriate.	Return to Question 2.	