



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

DIRECTOR'S ORDER NO. 134

Subject: Settlement Agreements Resulting from Equal Employment Opportunity Actions, Personnel Actions, and the Conflict Resolution (CORE) Program

Sec. 1 What is the purpose of this Order? This Order provides policy and implementation procedures for approving settlement agreements resulting from EEO actions (at both the informal and formal stages), personnel actions (performance-based, adverse actions, or administrative grievances), and the CORE Program. We have revised Sections 8 and 9 to clarify restrictions on re delegating signature authority. This Order supersedes Director's Order No. 134, March 15, 2002.

Sec. 2 What is the scope of this Order? This Order applies to individuals who prepare, negotiate, review, and approve EEO, CORE, or personnel action settlement agreements for the Service.

Sec. 3 Does this Order apply when the U.S. Attorney's Office or the Department of Justice handles cases going to Federal Court? Yes. However, the Department of Justice (DOJ) has broad authority to conduct litigation, including settlements, in which the United States is a party or has an interest. The DOJ usually seeks the views of the Agency prior to entering into a settlement. To ensure that the Director is aware of any settlement activity, the Solicitor's Office (SOL) attorney assigned the case by that Office should discuss settlement options with the Assistant Director - Budget, Planning and Human Resources prior to settlement conferences. When bringing settlement options to the attention of the SOL, make sure that the SOL is aware of Director's Order 134.

Sec. 4 Does this Order apply when the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), or the courts issue a judgment and only the amount of attorneys' fees is in question? No. SOL will handle all negotiations involving the payment of attorneys' fees in these situations.

Sec. 5 Does this Order apply to settlements facilitated by Alternative Dispute Resolution, or to MSPB- or EEOC-mandated settlement discussions? Yes. Whether the settlement method is mediation, factfinding, or more traditional negotiations, advance approval regarding bargaining parameters must be obtained. In the event of mediation, advance approval regarding bargaining parameters must be obtained prior to the mediation date. In the event of an MSPB- or EEOC-mandated settlement conference, advance approval regarding bargaining parameters must be obtained prior to the settlement conference.

Sec. 6 Who has the authority to approve settlement agreements resulting from EEO actions, personnel actions, and the CORE Program?

a. All settlement agreements that include attorneys' fees must be approved first by the Assistant Director - Budget, Planning and Human Resources and then by the SOL prior to payment, regardless of the amount. The purpose for this requirement is to ensure the appropriateness of the amount of attorneys' fees to be paid.

b. Approval of all EEO settlement agreements in excess of \$40,000 or EEO settlement agreements that involve more than \$20,000 in back pay, interest, compensatory damages, or attorneys' fees is reserved to the Director, Office for Equal Opportunity, Department of the Interior, but first must be cleared with the Assistant Director - Budget, Planning, and Human Resources. In addition, if the SOL is representing the Service, approval must also be obtained from that Office.

c. All EEO, CORE, or personnel-based settlement agreements involving any cash payment must be approved by the Assistant Director - Budget, Planning and Human Resources. "Cash payment" includes monetary payment of any kind that goes directly to the employee (e.g., lump sum payments of any nature, backpay, interest, pecuniary and non-pecuniary compensatory damages). It does not include things such as paying for training, purchasing equipment for a reasonable accommodation, promoting someone, or agreeing to pay for future psychological counseling sessions.

d. Approval need not be obtained from the Assistant Director - Budget, Planning, and Human Resources when: (1) subparagraph 6a, b, or c do not apply; (2) if it is an EEO action, the EEO matter is not at the formal stage; and (3) if it is an MSPB, Office of Hearings and Appeals, or Office of Special Counsel matter, the matter is pre-decisional (prior to a deciding official issuing a grievance, adverse action, or performance action). The Directorate member under whose line authority the complaint arose, or his or her designee, has final approval authority on settlements described in this subparagraph.

Sec. 7 Who reviews settlement requests?

a. Forward all requests for approval of EEO settlement agreements and mixed EEO/Personnel agreements to the Complaints Chief, Branch of Diversity and Civil Rights, who will turn forward them to the Assistant Director - Budget, Planning and Human Resources for clearance or approval, as applicable.

b. Forward all requests for approval of personnel and CORE settlements to the Chief, Branch of Policy and Field Liaison, who will in turn forward them to the Assistant Director - Budget, Planning and Human Resources for clearance or approval, as applicable.

Sec. 8 Who has signature authority on settlement agreements described in Section 6? The Assistant Director - Budget, Planning and Human Resources has signature authority on settlements described in subparagraphs 6a and c. The Directorate member under whose line authority the complaint arose has signature authority on settlements described in subparagraph 6d. The Assistant Director - Budget, Planning and

Human Resources or Directorate member may delegate this signature authority to someone else. No further redelegations of signature authority are permitted.

Sec. 9 What should I include in a request for approval of the settlement? Include, at minimum:

- a. Statement of the facts and issue(s), a recitation of the evidence gathered to date in the case, and any other pertinent background information.
- b. Copy of proposed settlement agreement, or a list of proposed settlement terms.
- c. The pros and cons of the proposed settlement.
- d. The name of the individual who you are requesting be designated as the Service representative during the negotiations. If the Assistant Director - Budget, Planning and Human Resources grants authority for a particular individual to act as Service representative during negotiations, that individual may not further redelegate this authority.
- e. If you are requesting signature authority per Section 8, the name of the person who you are requesting be delegated signature authority on the settlement agreement. See Section 8 for restrictions on redelegation of signature authority.

Sec. 10 What are the procedures for reporting settlement discussions? By the 1st of each month, one designee from each Region will forward a list of anticipated or ongoing settlement discussions related to CORE and personnel actions to the Assistant Director - Budget, Planning and Human Resources, through the Chief, Branch of Policy and Field Liaison. One designee from each Region will forward a list of anticipated or ongoing settlement discussions related to EEO actions to the Assistant Director - Budget, Planning and Human Resources, through the Complaints Chief, Branch of Diversity and Civil Rights.

Sec. 11 What should I include in the settlement report required in Section 10? Include, at minimum:

- a. Aggrieved's name.
- b. Complaint number, if applicable.
- c. Whether the matter has been resolved or is unresolved.
- d. If it is unresolved, whether or not there are ongoing discussions.
- e. Date of settlement, if applicable.
- f. Amount of monetary payment, if applicable.
- g. Other settlement terms, if applicable.
- h. A description of the nature and stage of discussions, if ongoing.

Sec. 12 What is the effective date of this Order? This Order is effective immediately. We will incorporate its contents into the Fish and Wildlife Service Manual.

Sec. 13 When does this Order expire? Its provisions will remain in effect until June 30, 2003, unless amended, superseded, or revoked.


Deputy
DIRECTOR

Date: May 29, 2002