

10688 Reports and Administrative Matters**10688.1 Responsibility of the Compliance Officer**

It is the administrative responsibility of the Compliance Officer to maintain records of compliance cases, to accurately report compliance actions, to uphold Agency operational goals and to complete informal and formal compliance case closing reports.

10688.2 Recording and Monitoring Compliance Cases

Compliance case management begins when the Region approves an informal settlement agreement or issues a complaint. The Compliance Officer is responsible for achieving compliance with remedial provisions of settlement agreements, Board orders and court judgments, for reporting compliance actions in the compliance file and for recommending to the Regional Director that the case be closed or that other action be undertaken as appropriate. As the case progresses, the Compliance Officer should record for the case file all steps taken in compliance so that with a minimum of oral briefing, the compliance aspects of the case could be transferred to another Board agent for handling. The Region should ensure that all compliance information is timely and accurately entered in the Case Activity Tracking Systems (CATS). Note also that data-management computer programs may also provide an appropriate means of recording compliance cases. Under any inventory system, the Compliance Officer should have a method to ensure prompt follow-up actions.

10688.3 Recording Receipt of Backpay or Remedial Reimbursement

In order for the Agency to meet its obligations under The Accountability of Tax Dollars Act of 2002, Regions are required to maintain uniform records describing the receipt and disbursement of checks involving backpay or remedial reimbursement. See Section 10576.2 for full discussion on requirements the Region is required to meet.

10690 Compliance With Informal Settlements

Upon approval of the informal settlement agreement, respondent should be asked in writing to take steps to comply with the settlement agreement, including, but not limited to posting the Notice to Employees, offering reinstatement, expunging files, etc. The Compliance Officer should record for the case file all steps taken in compliance. When the Compliance Officer is confident that full compliance with the settlement agreement has been achieved, steps should be taken to close the case. Closing action should be in accord with the requirements of Section 10594.11.

10692 Stage**10692.1 Overview**

To seek timely compliance, the Agency has established a series of operational goals regarding actions to be taken on Board orders and court judgments and a system for reporting on the status of cases in which those goals have not been met. The basic operational goal is for Regions to complete compliance actions, with the exception of completing the posting period, within the following number of days from receipt of the Board order (Stage 1) or court judgment (Stage 2):

Category III	91 days
Category II	119 days
Category I	147 days

The following sections define Stage 1 and 2 cases and the application of the above-operational goals.

10692.2 Board Order Stage (Stage 1)

Cases in this stage are defined as those following the issuance and receipt of a Board order or supplemental Board order that upholds the complaint or compliance specification in whole or in part. Regions should not await entry of a Board order to commence compliance efforts in cases in which exceptions to the administrative law judge's decision are not filed and a Board order will automatically issue. Such efforts should be undertaken immediately on expiration of the period within which to file exceptions. The receipt of an administrative law judge decision or the expiration of the exceptions period does not trigger the running of time for operational goals and such cases do not enter Stage 1 until the receipt of the Board order.

A Board order case is removed from Stage 1 when enforcement is recommended or a petition for review is filed, a compliance specification issues or the case closes. Execution and approval of a stipulation waiving enforcement proceedings and providing for the issuance of a compliance specification does not itself toll the running of the time period. If a Board order case that has been submitted for enforcement is referred back to the Region by memorandum from the Division of Enforcement Litigation, the case reverts to a Stage 1 case.

A petition for rehearing or a motion to amend the Board order removes the case from Stage 1 and suspends the running of time for meeting operational goals until the Board issues its ruling. The running of time is also suspended after a case has been referred to the Division of Operations-Management for advice or other clearance. When the case is returned to the Region, for purposes of meeting operational goals, the time will continue to accrue from the date the order was initially received, with the period during which the case was before Operations-Management deducted.

10692.3 Court Judgment (Stage 2)

Cases in this stage are defined as those following the issuance and receipt of a court of appeals enforcement judgment, a contempt judgment or a Supreme Court judgment. In cases in which the Board's order was only partially enforced, this stage begins with the date that the Region receives notification that the Board will not seek certiorari on that portion of the order that was not enforced. If no stay is granted and respondent refuses to comply, the case should be submitted to the Contempt Litigation Compliance Branch, with a copy to the Division of Operations-Management, to initiate contempt proceedings. See also Section 10614. The Region should not wait for the issuance of the Mandate before initiating compliance. If no stay of Mandate has been granted, the case remains in Stage 2 and compliance should be sought, notwithstanding the respondent's petition for certiorari.

Court judgment cases shall be removed from Stage 2 on the issuance of a compliance specification, on a recommendation for contempt or on the closing of the

case. If contempt is recommended, the case reverts to a Stage 2 case if it is referred by memorandum from the Contempt Litigation & Compliance Branch back to the Region for appropriate action. Following the issuance of a contempt decree, the case shall again enter Stage 2 on receipt of the decree by the Region and a new time period shall begin. The case is removed from Stage 2 if the respondent has obtained a stay of Mandate for purposes of a petition for certiorari in the Supreme Court, until the 90-day period for such filing has passed or the respondent announces abandonment of its petition, whichever is earlier, or until the Supreme Court rules on the petition for certiorari.

The running of time for meeting operational goals for cases in Stage 2 is suspended for the period in which a court judgment is in the Division of Operations-Management for advice or other clearance or following a recommendation for contempt. On the return of the case to the Region, the time period will continue to accrue from the date of the receipt of the court judgment, with a deduction for those days while the case was in Operations-Management or the Contempt Litigation & Compliance Branch. When a stay of Mandate has been granted, it shall accrue from the date of receipt of the ruling on the petition for certiorari or the expiration date of the 90-day appeal period, or of the respondent's announced abandonment of intent to file.

10692.4 Holding Cases Open

If the Region elects to retain a court judgment case in open status because other unfair labor practice charges have been filed that may be enforceable under the judgment, the case remains in Stage 2.

10694 Impact Analysis Category

A compliance case should be given an impact analysis category within seven (7) days. The initial categorization is based upon what is known at the time and is subject to change in face of future developments:

10694.1(a) Category III Compliance Cases

Category III compliance cases involve the most central provisions under the Act. They include:

A. Cases whose resolution could impact upon the status of a collective-bargaining representative. Special attention should be given cases involving bad-faith bargaining allegations during initial contract negotiations. For example, these would include the following:

- test of certification cases,
- *Gissell* bargaining orders,
- *Burns* successorship situations,
- withdrawal of recognition cases,
- blocking charges,
- surface bargaining, and

- information cases or unilateral changes that imperil the ability to properly bargain.

B. Cases whose resolution may affect the employment rights of a large number of individuals or which involve reinstatement of one or more employees. For example, these would include the following:

- Cases resolving whether a strike is an economic or ULP strike.
- Cases involving whether a strike is protected or unprotected (including 8(g) cases).
- Cases in which discriminatees desire reinstatement to a viable employer (however, see footnote below with respect to “salting cases”).²⁴²
- Hiring hall cases involving systemic abuses.

C. Cases in which the alleged misconduct is continuing or repetitive, including:

- Cases involving recidivist violators.
- Cases where backpay or other financial obligation is continuing and there is legitimate concern about the ability of the respondent to comply with an increasing award.
- Cases in which immediate action is appropriate to avoid dissipation of assets.

D. Cases that revise or refine a legal principle potentially affecting the future rights of undetermined numbers of employees (for example, if the Board were to issue a decision revising the reinstatement rights and backpay eligibility of undocumented workers).

10694.1(b) Category II Compliance Cases

Category II compliance cases involve core rights under the Act that would not otherwise be classified as Category III or I.

- Category II will include most 8(a)(3) orders and judgments where there is no reinstatement remedy, where the discriminatee or discriminatees no longer desire reinstatement or where valid offers of reinstatement have been tendered, as well as those 8(a)(5) cases which do not fall in Category III.²⁴³

The following scenarios would be classified as Category II:

- Bargaining orders requiring negotiations on specific defined subjects (for example, bargaining over isolated changes in work rules that do not threaten the continuation of a Union’s 9(a) representational status). Included in this group would be narrow 8(a)(5) unilateral change cases that affect groups of

²⁴² While recognizing that all cases involving unresolved reinstatement requests warrant high priority, it is also recognized that “salting cases” are a separate subset and can often involve large numbers of ongoing organizing campaign discriminatees. With this in mind, and recognizing the potential resource implications presented by such situations, salting cases involving Section 8(a)(3) reinstatement issues may normally be placed in Category II, with the Regions having discretion to elevate them to Category III. The exception would be where there is an ongoing organizing campaign, in which circumstances the case should be placed in Category III.

²⁴³ Cases involving unlawful 8(a)(5) unilateral changes that affect bargaining or imperil the bargaining relationship would normally be classified as Category III.

employees and which are to be remedied with a return to status quo ante and a make-whole order.

- Remedies involving requests for information that do not affect the course and conduct of bargaining are also considered Category II for compliance purposes.
- 8(b)(1)(A) and (8(b)(2) hiring hall cases where action has been taken to toll the financial liability or where the violation is no longer continuing.

10694.1(c) Category I Compliance Cases

Category I compliance cases are those which require only the posting of a notice or which involve only monetary remedies of a very limited nature. As noted above, cases involving other remedial requirements (for example, substantial amounts of backpay, reinstatement rights, bargaining obligations, and dues reimbursement) will be categorized either as Category II or III.

Category I would exclude cases which:

- impact upon organizing or bargaining activities,
- involve the undermining of the representational status of a collective-bargaining representative, and
- involve respondents with a significant recidivist history.

A determination of what constitutes “monetary remedies of very limited nature” will, of course, depend on a case-by-case analysis; however, among the criteria that should be considered are the amount of money involved and the number of persons or parties entitled to share in the monetary award. It is anticipated that a backpay case classified as Category I would normally involve only a single individual or a very limited number of affected persons and a monetary remedy of less than \$2500 for an individual or an aggregate remedy of \$5000 or less.

10694.2 Guidelines For Applying Impact Analysis Where a Respondent Has Filed for Bankruptcy

As a general rule, the filing of a bankruptcy petition in a pending unfair labor practice case requires that high priority be given to promptly analyzing the elements of the potential remedies involved (for example, backpay, reinstatement, and bargaining order) and the likelihood of obtaining meaningful relief through, or following the conclusion of the bankruptcy case. See Section 10670. If there appears to be a reasonable possibility of obtaining compliance with bargaining order or reinstatement obligations (for example, in a Chapter 11 reorganization case) or of achieving payment of a significant amount of backpay, the case should be classified as Category III, at least until such time as the Region has taken all appropriate steps to protect the Board’s interest.²⁴⁴

Regional analysis regarding the classification of cases in which bankruptcy petitions have been filed will normally consider at least the following factors:

²⁴⁴ If the Region determines, following any necessary investigation, that it is unlikely that a meaningful remedy can be obtained, the case should be reclassified as Category I or II, as appropriate.

A. The type and stage of the bankruptcy proceedings. A Chapter 11 reorganization will often provide a vehicle for obtaining meaningful remedies for violations of the Act. Thus, at least initially, such cases should be accorded a high priority. Generally, the further along the bankruptcy proceeding is, the higher should be the impact analysis classification since immediate action and liquidation of the potential remedies may be required to protect the Board's interests.

B. The amount of money at stake and the probability of a distribution from the bankruptcy estate or of obtaining postbankruptcy compliance. While the ultimate monetary recovery from an entity or individual in bankruptcy may be lower than one not in bankruptcy, the tendency to automatically place bankruptcy cases in a lower category should be avoided. This is because a delay in processing a Board case in which a bankruptcy petition has been filed will likely have a greater negative impact on the chance of recovery than in a nonbankruptcy case. In assessing the possibilities of obtaining substantial remedial action from individuals or entities that have filed for bankruptcy, Regions should make liberal use of the discovery rights available to creditors under Bankruptcy Rule 2004, particularly in situations in which a Region has unanswered questions or doubts concerning the accuracy of the debtor's financial schedules. These discovery rights may also be utilized as a mechanism to explore the possibility of identifying other entities or individuals that may be held derivatively liable for compliance with Board orders.

C. The stage of the Board's proceedings. If questions of liability or of the amount of monetary remedies have not yet been resolved, Regions should take all steps necessary to expeditiously resolve such issues (by stipulation, by issuance of a compliance specification, or by Board decision) prior to the Bankruptcy Court's consideration of a plan of reorganization or liquidation. In such circumstances, particularly where there is a chance of obtaining meaningful remedial action, cases should be accorded a higher priority.

D. The priority of the Board's claim. The Board's claim will either have an administrative priority (11 U.S.C. 507(a)(2)), a wage claim priority (11 U.S.C. 507(a)(4)), benefit fund priority (11 U.S.C. 507(a)(5)), be a secured claim, be a general unsecured claim or be a combination of these alternatives. If the Board's claim is secured or has a significant chance of achieving priority treatment, the chances of a significant distribution are improved and will militate toward a higher impact analysis classification.

10694.3 Internal Regional Operational Goals

In recognition of the need for prompt categorization of compliance work, the following interim time goals will apply with respect to compliance cases. It should be emphasized that these are goals and not time standards by which the Regions will be measured or evaluated. All dates are from receipt of a Board order or court judgment.

10694.3(a) Offer of Reinstatement and Expungement

The respondent (where applicable) should offer reinstatement and expunge records within 14 days.

10694.3(b) Initial Compliance Letter

Regions should normally send their initial compliance letter seeking payroll information and transmitting notices for posting within (14) fourteen days. The Certification of Compliance should be part of this package.

10694.3(c) Notice Posted and Payroll Information Provided

Notices should be posted and payroll information supplied within 14 days of the Region's initial letter.

10694.3(d) Certification of Compliance

Certification of compliance forms are due within 21 days of the Region's initial letter.

10694.4 Recommendations for Enforcement or Contempt

Where compliance is not obtained, Regions are to make the appropriate submissions to the Appellate Court Branch or the Contempt Litigation & Compliance Branch within 49 days of receipt of the Board's order or court judgment. However, in cases where the respondent demonstrates a clear failure or refusal to comply, it is expected that recommendations for enforcement (or in post judgment cases, recommendations for contempt) should be submitted as soon as possible.²⁴⁵ This is especially true in summary judgment 8(a)(5) test of certification cases. In these cases, enforcement or contempt should be recommended within seven (7) days of receipt of the Board order or court judgment respectively. Section 10608.3.

10694.5 Closing of Case on Compliance

If compliance has been obtained and no further legal action is warranted, cases should be closed and closed case reports submitted within the appropriate time period following entry of the case into Stage 1 or 2. Section 10692.

10694.6 Closing of Case on Noncompliance

When the Region's investigation has established that the respondent is without any means of making any payment of backpay or other monetary liabilities required by a Board order that has not been enforced, the Region should solicit the charging party's position regarding further compliance efforts. If the charging party identifies leads, the Region should investigate them. Thereafter, if the Region determines that compliance cannot be achieved, it may, without approval, close the case without further proceedings. If the case involves an enforced Board Order, the Region should submit a memorandum to the Contempt Litigation & Compliance Branch, with a copy to the Division of Operations-Management, requesting authorization to close. If a judgment lien should be recorded before closing the case, see Section 10680.1

The Region's memorandum should reflect the charging party's position and address such issues as the background of the underlying unfair labor practice; the amount owed; the current status of the respondent's operations and the likelihood of their future resumption; the disposition of the respondent's assets; a description of liens and

²⁴⁵ It is not anticipated that compliance will be obtained with all bargaining order remedies within this 49-day period. Rather, appropriate steps toward compliance must be undertaken within this period. For example, it is expected that within this period respondents will have posted the notice and returned the Certification of Compliance as required under *Indian Hills Care Center*, 321 NLRB 144 (1996), and that negotiations will have commenced, if a timely demand for bargaining has been made.

judgments against the respondent; whether the corporate charter or business licenses have been revoked; whether there are related entities, such as parent or subsidiary corporations, which may be held liable for backpay; whether there is evidence to establish derivative liability through determination of alter ego, successorship, or individual liability of corporate officers or owners; and an assessment as to whether those for whom there may be derivative liability have the financial means to make payment of the monetary remedy. If subsequent events in such a case reveal that compliance could then be achieved, it can be reopened.

10696 Monthly Compliance Status Report

Regions are responsible for ensuring the accuracy and completeness of their CATS data prior to the generation of the monthly statistical reports. By the fifth (5th) working day of each month, the Region should review and update the Overage Compliance Situation Report in CATS. In the event a region finds it will not be able to enter and/or review its data by the tenth (10th) working day, the Region should notify the Division of Operations-Management as soon as possible (preferably at least three (3) days prior to the due date) that the Region's information will not be complete. Operations will then determine whether to proceed with the national reports or wait until the Region's data is complete. On the tenth (10th) working day of the month, the Region's statistical report will be generated. Regions wishing to make corrections in the monthly reports should do so within five (5) working days after receiving the "official" reports from Headquarters.

The report generated in CATS contains three sections.

Section I, Overage Compliance Situations Stage, lists all open Stage 1 and 2 cases that are outside the operational goals as set forth in Section 10692.1. This section sets forth the Region's overage individual grouped compliance cases, i.e., those in the "Same Situation";²⁴⁶ the impact analysis category assigned to the case or group at the compliance stage; the Region's report as to whether the case or group should be excused; and the determination of the Divisions of Operation-Management.

Section II, Compliance Situations Within Operations Goals, lists of all Stage 1 and 2 cases currently active in the Region that are still within the Operational Goals set forth in Section 10692.1 above. This section sets forth the Region's active individual and grouped compliance cases that are within Operational Goals.

Section III(a) contains all individual and grouped compliance cases that are pending before enforcement or Supreme Court proceedings. Section III(b) includes individual and grouped compliance cases that have been submitted to the Contempt Litigation & Compliance Branch, the Division of Advice, or in which the Region has issued a compliance specification.

²⁴⁶ All compliance cases in a "Same Situation" group are listed together with a single "Group ID" number to ensure an accurate count.

10698 REGIONAL PERFORMANCE AND EXCUSABLE OVERAGE SITUATIONS

10698 Regional Performance and Excusable Overage Situations

Regional compliance performance is evaluated in part on the basis of the number of unexcused overage cases as a percentage of the total number of compliance cases in Stages 1 or 2.

The explanation provided in a footnote for each case in the monthly compliance status report should provide sufficient information to allow for an informed determination by the Division of Operations-Management as to whether an excuse is warranted. The footnotes in each monthly report should be reviewed and updated to reflect actions taken to achieve compliance during that month.

The following explanations generally constitute a basis for excusing an overage case:

Abeyance—A case may be held in abeyance based on authorization from Washington. Generally, this excuse is used when a Region is authorized by a Headquarter’s division to hold a case in abeyance for policy reasons. The Region should include in the footnote the Headquarter’s division that authorized the case to be held in abeyance and the date such authorization was granted. When a case is being held in abeyance because of a factually related Board or court proceeding, the Region should use the pending related action excuse discussed below.

Alter ego²⁴⁷—This excuse may be used when a Region is actively engaged in an ongoing investigation to determine whether a respondent is operating through an alter ego, single employer, joint employer, or successorship or to determine whether there has been a fraudulent transfer, but the Region has not yet issued subpoenas. The Region should supply the date that the Region’s investigation began and list the most recent steps taken in furtherance of the investigation.

Bankruptcy—This excuse should identify any recent bankruptcy case developments bearing upon the Board’s claim or status. Utilizing Pacer, Regions should review the status of each bankruptcy case at least every 30 days. When actions being taken in the bankruptcy case may impact the Region’s claim, the Region should check the bankruptcy records more frequently. All Regions have access to the PACER system which allows the dockets in most bankruptcy and district courts to be checked “on-line.” The Region should state that the required request for notification, notice of pendency of unfair labor practice proceeding (if applicable), and request for disclosure statement and plan in chapter 11 cases have been filed; if the Region has filed a Proof of Claim, that information should also be noted, with the date of filing.

Installment Payments—To utilize this excuse, the respondent must have agreed in writing to a specific installment plan. A case will not be excused if the Region is making arrangements for installment payments. Monthly status report for this excuse should state whether the respondent has been making payments on schedule and when the next payment is due, when the final payment is due or, if payments have not been made, what steps the Region is taking to address the situation.

²⁴⁷ This excuse is intended to cover alter egos, single employers, joint employers, successorship situations, and fraudulent transfer theories.

Missing Discriminatees—This excuse is applicable when compliance is complete, backpay has been calculated and paid by respondent, but one or more discriminatee cannot be located for the payment of backpay. Absent unusual circumstances, Regions should be seeking to locate missing discriminatees for not longer than a year following the date that the payment is received. (Section 10584.) The excuse should state the actions taken by the Region to locate the discriminatees.

New Charge (including Appeal)—This excuse may be used when a new charge is filed and is pending investigation. The Region should briefly describe the allegations of the new charge (s) and its impact on the handling of the compliance case. This excuse is available only for the period of time provided to investigate and decide the new charge. If the charge is dismissed, this excuse is available for the additional time necessary to await appeal and, if appealed, while on appeal.

If the new charge is meritorious and is settled or litigated and processing of the new case prevents or impedes completion of the reported compliance case until the new charge can be resolved, use of the pending related action excuse below, is the more appropriate choice.

Ongoing Bargaining—When using this excuse, Regions should specify the number of sessions already held, dates if available, and the dates on which future bargaining sessions are scheduled to be held. Some Regions utilize a regular update system for such cases; the Regions should note in the footnote when it next plans to update its status check.

Only Posting Remains—This excuse may be claimed for not more than 60 days.

Other—Different matters may be raised under this excuse, such as, situations raising unusual circumstances not covered by the traditional excuses in which the Region wishes to present to the Division of Operations-Management for consideration of an excuse. Generally, Regions will be allowed to report this excuse for not longer than two (2) consecutive months.

Pending Related Action—This excuse includes pending Board cases as well as outside litigation, such as an ERISA collection action. Division of Operations-Management authorization is required to suspend a case until action is taken by another Federal or state agency/court or based on a related Board proceeding. The excuse should note the authorization date and the authorizing branch.

Schedule of Action Submitted—A Region may report an excuse based on the submission of a schedule of action to achieve compliance. Section 10700. The Region's footnote for this excuse should state when the schedule of action is to be completed. Once the schedule has been approved, the Region should adhere to it in order to have the case continued to be excused. The plan can be modified based on new circumstances; however, if a Region has adequate resources and does not adhere to the schedule then the case generally will not be excused. If the Region believes it does not have adequate resources to adhere to the schedule of action that the Region developed, then the Region should contact the Division of Operations-Management for assistance.

Search for Respondent/Assets—This excuse should be utilized when a Region is taking active steps to locate a respondent or to uncover assets of a respondent that may be

10700 REPORT ON SCHEDULED ACTION IN COMPLEX OVERTAGE COMPLIANCE CASES

attached. When a Region wishes to use this excuse, the Region should supply the date that the Region's investigation began and list the most recent steps taken in furtherance of the investigation.

Subpoenas/Debt Collection—This excuse may be used when subpoenas have been issued to investigate the possible derivative liability of previously unnamed parties, or when the Region has initiated or is pursuing an ongoing debt collection action. If the Region is reporting this excuse because it has issued subpoenas, but the subpoenas have not yet been complied with, the date on which the subpoenas issued and the return date of the subpoenas should be set forth as part of the excuse. If the return date has passed without compliance with the subpoenas, the Region should be actively seeking court enforcement of the subpoenas and the excuse should set forth the status of such enforcement proceedings. If the Region is reporting this excuse because of debt collection proceedings, the explanation should specify the type of collection proceedings involved (for example, garnishment or execution), the stage of the proceedings (for example, FDCPA, garnishment application filed or obtained, disbursement order submitted and pending), and, if known, the remaining steps necessary to complete the collection process.

10700 Report on Scheduled Action in Complex Overage Compliance Cases

Concurrently with the transmission of the Overage Compliance Report, Regions should submit to the Division of Operations-Management a schedule of proposed action for cases which cannot be completed within the appropriate time period because of extraordinary and involved problems. Section 10692.1. Although the schedule of action must be tailored to the requirements of each case, the Region should initially state the circumstances distinguishing the case as extraordinary and involved and the actions taken thus far to achieve compliance. The schedule should include at least the following steps.

Backpay and Reinstatement Cases:

- date reinstatement will be offered,
- date gross backpay computation will be completed,
- date interim earnings computation will be completed,
- date backpay will be received,
- date backpay specification will be completed,
- date further legal action will be recommended (enforcement, contempt, FDCPA), and
- additional steps the Region intends to take to obtain compliance.

Collective-Bargaining Cases:

- dates of inquires to be made of the parties concerning status of negotiations,
- date for closing the case or recommending further legal action, and
- any additional or interim steps, including timeframes, which Region intends to take to achieve compliance.

Appropriate schedules of actions should be submitted for other cases involving complex and extraordinary problems, such as hiring hall discrimination cases. In any case, the memo should be revised each month to reflect the actions completed and compliance achieved during the month or the additional steps taken to meet the proposed schedule within the established timeframe.

Such cases will generally be excused during the period that compliance proceedings are progressing within the proposed schedule of action.

10702 Assistance With Compliance Problems

The Regional Director should seek assistance with problems encountered while obtaining compliance. Although the responsibility for a decision to seek assistance rests with the Director, disagreement with the Region's position by one of the parties or disagreement between the Regional Attorney or the Assistant Regional Director and the Regional Director may be an indicator that assistance should be sought. Check Section 10704 for areas in which Regions must obtain authorization or clearance, submit, notify, or consult with Headquarters.

Initial contact may be by telephone. If necessary, a written request for assistance on compliance may be submitted and should contain a full statement of the circumstances, the positions of the parties, and the recommendation of the Regional Director.

Requests for assistance concerning novel substantive legal issues arising in prejudgment matters should be submitted to the Division of Advice, with a copy to the Division of Operations-Management.

Requests for assistance concerning techniques, procedures, internal policy, and other issues in prejudgment matters should be submitted to the Division of Operations-Management.

Requests for assistance or clearance concerning contempt issues arising in post judgment cases, should be submitted to the Contempt Litigation & Compliance Branch.

Requests for assistance concerning the following defensive bankruptcy issues should be submitted to the Special Litigation Branch:

- injunction/stays of unfair labor practice and representation cases (e.g., Section 362 automatic stay; Section 105 "inherent power" injunction),
- Section 1113 rejection of collective-bargaining agreement issues that involve Board jurisdiction (e.g., retroactive rejection),
- objections to the Board's claim,
- estimation proceedings under Section 502(c),
- Section 503 and 507 claim priority issues, or
- objections to disclosure statements and plans which implicate the Board's jurisdiction (e.g., where a plan or disclosure statement effectively determines liability under the NLRA and liquidates the Board's claim).

Requests for assistance concerning the following offensive bankruptcy issues should be submitted to the Contempt Litigation & Compliance Branch:

- Section 363 “free and clear” sales,
- all asset-hiding cases, including piercing the corporate veil, objections to discharge under Sections 523, 727 and other Code sections, discovery involving alter egos/single employers, sources of backpay, and objections to the homestead exemption,
- issues concerning voluntary or involuntary conversion from Chapter 11 to Chapter 7,
- issues that involve requiring the debtor to make proper distributions under the bankruptcy plan,
- objections to disclosure statements and plans based on financial criteria (e.g., inadequate financial data, challenges to feasibility of plan, inequitable distributions in plan), or
- offensive use of equitable subordination under Section 510.

If the Region is uncertain whether the issue is “offensive” or “defensive,” it should immediately contact either the Special Litigation Branch or the Contempt Litigation & Compliance Branch to determine which branch should handle the issue.

10704 AUTHORIZATION OR CLEARANCE, SUBMISSION, NOTIFICATION, OR CONSULT SITUATIONS

10704 Authorization or Clearance, Submission, Notification, or Consult Situations

Clearance or assistance should generally be obtained from the Division of Operations-Management before settling or closing a compliance case that involves a novel issue or compliance on terms not in conformity with standard requirements of remedial provisions. In post judgment cases, Regions should consult with the Contempt Litigation & Compliance Branch.

Below is a summary of all directives set forth herein. In addition, the following are situations in which a Region should:

- Obtain authorization or clearance.
- Submit. Regions should take no action until issue is submitted to appropriate office and guidance is provided.
- Consult. Region should talk with appropriate office about issue and should make a decision keeping the advice in mind.
- Notify. Regions should inform the appropriate office of action that has been taken.

10704.1 Division of Operations-Management

Obtain Authorization or Clearance:

1. Before demanding compliance with a judgment when certiorari has been sought and there has been a stay of the Mandate of the court of appeals. Section 10506.9.

2. Before retaining an accountant to examine books and records, or evaluate a respondent's professed inability to pay full liabilities. Section 10508.6.

3. Before issuing an investigative subpoena in a case if there are questions about the propriety or enforceability of the subpoena. Sections 10508.7.

4. Before allowing respondent counsel to interview a discriminatee concerning mitigation issues. Sections 10558.2 and 10592.7.

5. Before submitting a request to IRS to forward letters to more than 50 missing discriminatees. Section 10562.2.

6. Before accepting a settlement in which any of the criteria set forth in Section 10592.1 are not met, including settlements in which backpay represents less than 80 percent of what full backpay has been determined to be. Sections 10592.2 and 10592.4.

7. Before accepting a settlement providing more than 100 percent of backpay as an inducement to discriminatees to waive reinstatement or before accepting a settlement in lieu of reinstatement when there is convincing evidence of unsuitability for reinstatement. Section 10592.8.

8. Before issuing subpoenas in postcomplaint cases where a serious claim of privilege is likely to be raised. Section 10618.1.

10704 AUTHORIZATION OR CLEARANCE, SUBMISSION, NOTIFICATION, OR CONSULT SITUATIONS

9. Before withdrawing a compliance settlement where Division of Operations-Management authorization was required before the Region could accept the settlement. Section 10656.1.

10. Before paying special fees for expert testimony. Section 10660.6.

11. When there is a likelihood that collection proceedings could result in substantial cost to the agency (for example, where execution could cause the Agency to be responsible for maintaining property). Section 10678.3.

12. Generally, before settling or closing a compliance case involving a novel issue or compliance on terms not in conformity with standard requirements of remedial provisions. Sections 10508.3 and 10702.

Submit

1. Copies of compliance specifications involving novel or complex issues. Section 10508.3.

2. A copy of the Region's contempt recommendation where the amount of backpay may depend on whether there has been proper reinstatement and when the Board order requires reinstatement. Section 10530.7.

3. Quarterly reports showing the name and social security number for all individuals for whom reports were requested from the Social Security Administration. Section 10562.2.

4. Regarding obtaining funds for newspaper advertising to seek missing discriminatees. Section 10562.2.

5. A copy of any IRS lien or levy served on the Regional Director or other Regional staff member. Section 10576.10

6. A copy of the closed case report with a copy of any memorandum issued by the Division of Operations-Management authorizing settlement or closure of a case in which the settlement falls between 80 and 100 percent but represents more than minor concessions. Section 10592.4.

7. A copy of any submission to the Contempt Litigation & Compliance Branch regarding cases where respondent seeks certiorari but no stay is granted and respondent refuses to comply. Section 10614 and 10692.3.

8. A copy of any recommendation that a protective order or 10(e) injunctive relief be sought. Section 10674.5.

9. A copy of any submission to the Contempt Litigation & Compliance Branch regarding a respondent that is not complying and all reasonable efforts to achieve voluntary and expeditious compliance have failed. Sections 10616.1 and 10620.

10. A copy of any submission to the Contempt Litigation & Compliance Branch regarding refusal to comply with a court judgment, meritorious complaints of non-compliance with a court judgment or meritorious new unfair labor practice allegations that may constitute contempt of a court judgment. Sections 10616.1, 10616.4, 10616.5, and 10632.1.

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11. A log containing details regarding the issuance of investigative subpoenas. Section 10618.1.

12. A copy of any submission to the Contempt Litigation & Compliance Branch regarding a respondent not complying and all reasonable efforts to achieve voluntary and expeditious compliance have failed. Section 10620.

13. A copy of any submission to the Contempt Litigation & Compliance Branch regarding any conduct that arguably violates an outstanding judgment. Section 10622.

14. A copy of a request to close a case on noncompliance, when investigation has revealed that the respondent, or any entity with potential derivative liability is without means of satisfying the outstanding liabilities. Sections 10624.2, 10626.2, and 10694.6.

15. A copy of any submission to the Contempt Litigation & Compliance Branch regarding allegations of noncompliance involving a reinstatement issue. Section 10628.

16. Cases in which respondent refuses to comply with either the affirmative or negative provisions of a court judgment or when the Region concludes that new charges allege conduct arguably encompassed by the provisions of a court judgment have merit, with a recommendation whether contempt proceedings are warranted. Section 10632.1.

17. A copy of a submission to the Contempt Litigation & Compliance Branch of any contempt proceeding initiated by a private party concerning a case in which a court judgment has enforced a Board order. Section 10632.2.

18. The Region's determination that a new unfair labor practice charge lacks merit, when the charge has been filed against a respondent to a court judgment case. Section 10632.4.

19. A copy of any submission to the Contempt Litigation & Compliance Branch regarding a new charge being filed against the same respondent or a related party or whenever contempt or other ancillary proceedings have been recommended or are pending. Section 10632.4.

20. A copy of an executed formal settlement stipulation and security agreement, with cover memorandum recommending it, submitted to the Board for approval. Section 10634.2.

21. A copy of a unilateral formal settlement stipulation sent to the Division of Advice for approval. Section 10636.

22. Novel or complex issues concerning combination of compliance proceedings with unfair labor practice proceedings. Section 10646.3.

23. A copy of submission to the Division of Advice concerning cases in which the Region is considering or has issued complaint against an individual that has been discharged in bankruptcy. Section 10670.3(a).

24. A copy of submissions to any Washington branch recommending protective order relief. Section 10674.5.

25. A copy of a submission to the Contempt Litigation & Compliance Branch requesting authorization, in post judgment situations, before failing to provide notice of

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Board or related proceedings to a third party involved in significant asset transactions with a respondent. Section 10674.8.

26. A copy of a submission to the Contempt Litigation & Compliance Branch of any threat by a respondent or third party to initiate litigation against the Board on the basis of notice given to potential successors of the pendency of unfair labor practice proceedings. Section 10674.8.

27. A schedule of proposed action for each Stage 1 or 2 case that cannot be completed within the appropriate time period because of extraordinary and involved problems. Section 10700.

28. A request for assistance concerning techniques, procedures, internal policy, and other issues in prejudgment matters. Section 10702.

29. A copy of a request for advice submitted to the Division of Advice concerning substantive legal issues in prejudgment matters. Section 10702.

30. A copy of the Region's Closed Case Report (Form NLRB-4582), at the time a case is closed. Sections 10706.2.

Consult

1. With respect to the Region's response to a customer's motion, pursuant to the Right to Financial Privacy Act, to quash a subpoena. Section 10508.7.

2. With respect to cases in which reservation language is included in settlement agreements. Section 10594.7.

3. When merit is found to an unfair labor practice charge that may constitute non-compliance with an unenforced Board order, a memorandum containing a recommendation as to whether enforcement proceedings should be initiated with respect to the existing Board order. Section 10604.2.

4. Before issuing complaint or settling allegations of a charge that may constitute noncompliance with a Board order that originated in another Region. Section 10604.4.

5. In situations where it may be more beneficial to proceed to a compliance hearing before obtaining enforcement of a Board order. Section 10606.1.

6. Prior to a contempt recommendation, cases in which unusual circumstances or problems would militate against notifying a purchaser with written notice of its potential liability. Section 10632.10.

Notify

1. Of any problem enforcing an investigative subpoena. Section 10618.1.

2. Of the Region's determination that a new unfair labor practice charge lacks merit, when the charge has been filed against a respondent to a court judgment case which the Region has submitted to the Contempt Litigation & Compliance Branch, recommending contempt proceedings. Section 10632.4.

3. Of cases in which the respondent is in liquidation proceedings under bankruptcy, and where the Region has concluded that further unfair labor practice proceedings would not effectuate the purposes of the Act. Section 10670.3(a).

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4. Of cases where a corporation or partnership has been liquidated in bankruptcy and the Region intends to commence or continue prosecution of an unfair labor practice case. Section 10670.2(a).

10704.2 Contempt Litigation & Compliance Branch

Obtain authorization:

1. Before accepting a settlement that does not provide for employment due to a discriminatee's unsuitability for employment after the issuance of a court judgment. Section 10592.8.

2. Before closing a case on noncompliance, when investigation has revealed that the respondent, or any entity with potential derivative liability is without means of satisfying the outstanding liabilities. Sections 10624.2, 10626.2, and 10694.6.

3. Before closing a court judgment case on compliance where contempt proceedings have been initiated or were under consideration. Section 10632.11.

4. Before issuing a compliance specification when reinstatement issues are involved. Section 10646.6.

5. Before initiating a nondischargeability action under Section 523 of the Bankruptcy Code. Section 10670.2.

6. In post judgment situations, before failing to provide notice of Board or related proceedings to a third party involved in significant asset transactions with a respondent. Section 10674.8.

7. In post judgment situations, to close a case administratively (that is, without notification to the parties). Section 10694.6.

Submit

1. Cases where the amount of backpay may depend on whether there has been proper reinstatement and when the Board order requires reinstatement, with a recommendation whether contempt proceedings are warranted. Section 10530.7.

2. Cases where a respondent refuses to comply with any provision of a court judgment, where there is a meritorious allegation of noncompliance with a court judgment, or where a meritorious new unfair labor practice charge has been filed in which the allegations may constitute contempt of a court judgment, with a recommendation regarding whether contempt proceedings are warranted. Sections 10504.7, 10616.1, 10616.2, 10616.3, 10616.4, and 10616.5.

3. Cases where respondent seeks certiorari but no stay is granted and respondent refuses to comply. Sections 10614 and 10692.3.

4. Cases where respondent is not complying and all reasonable efforts to achieve voluntary and expeditious compliance have failed. Sections 10616.1 and 10620.

5. A copy of submission to Division of Operations-Management concerning subpoena enforcement problems. Section 10618.1.

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6. Cases where respondent's conduct could arguably violate an outstanding judgment, with a recommendation whether contempt proceedings are warranted. Section 10622.

7. Cases in which there is an allegation of noncompliance involving a reinstatement issue, with a recommendation whether contempt proceedings are warranted. Section 10628.

8. Cases in which respondent fails or refuses to comply with either the affirmative or nonaffirmative provisions of a court judgment or when the Region concludes that new charges allege conduct arguably encompassed by the provisions of a court judgment have merit, with a recommendation whether contempt proceedings are warranted. Section 10632.1.

9. The Region's determination that a new unfair labor practice charge lacks merit, when the charge has been filed against a respondent to a court judgment case. Section 10632.4.

10. In cases that the Region has referred to the Contempt Litigation & Compliance Branch; requests by a charging party for a written statement as to why contempt proceedings were not authorized. Section 10632.7.

11. Written requests for reasons for a decision not to seek contempt. Section 10632.7.

12. Any bankruptcy case involving contested matters or adversary proceedings. Section 10670.2

13. Any bankruptcy case involving contested matters or adversary proceedings. Section 10670.2.

Consult

1. Before issuing subpoenas, in post judgment situations, for bank records of entities covered by the Right to Financial Privacy Act. Section 10508.7.

2. With respect to the Region's response to an entity's motion, pursuant to the Right to Financial Privacy Act, to quash a subpoena. Section 10508.7.

3. With respect to backpay held from a bankruptcy distribution for a missing discriminatee. Section 10587.

4. Before closing an escrow account by returning money to a respondent or redistributing money to discriminatees when backpay was obtained from a bankrupt respondent. Sections 10588 and 10670.6.

5. When the Region has reason to believe that a respondent is siphoning assets, not reporting income, or is otherwise acting to evade liabilities. Sections 10508.4 and 10592.12.

6. Regarding meritorious allegations of noncompliance with affirmative provisions that are not resolved voluntarily and expeditiously. Sections 10508.6 and 10616.1.

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7. After issuance of a court judgment, when the charging party seeks to withdraw a charge that is arguably meritorious. Section 10616.4.

8. When considering issuance of an investigative subpoena: whether particular conduct is the subject of a judgment. Section 10618.1.

9. Before issuing an investigative subpoena for records that may be covered by requirements of the Right to Financial Privacy Act. Section 10618.1.

10. After a contempt recommendation, cases in which unusual circumstances or problems would militate against notifying a purchaser with written notice of its potential liability. Section 10632.10.

11. Concerning requirements under state law for filing and perfecting a lien. Section 10636.

12. Bankruptcy Code Section 363 “free and clear” sales. Sections 10670.1, 10670.2, and 10702.

13. All asset-hiding cases including piercing the corporate veil, objections to discharge under Section 523, 727, and other Code sections, discovery involving alter egos/single employers, sources of backpay and objections to the homestead exemption. Sections 10670.1, 10670.2, and 10702.

14. Issues concerning voluntary or involuntary conversion from Chapter 11 to Chapter 7. Sections 10670.1 and 10702.

15. Issues requiring the debtor to make proper distributions under the bankruptcy plan. Sections 10670.1 and 10702.

16. Before participating in person in any bankruptcy court hearing or before filing a pleading in any contested or adversary proceeding in Bankruptcy Court. Section 10670.

17. Offensive use of equitable subordination under Section 510. Sections 10670.1 and 10702.

18. Objections to disclosure statements and plans based on financial criteria (for example, inadequate financial data, challenge to feasibility of plan and inequitable distributions in plan). Sections 10670.1, 10670.2, and 10702.

19. Cases involving the automatic stay provisions of the Bankruptcy Code. Section 10674.4.

20. Recommendation that a protective restraining order or 10(e) injunctive relief be sought after a court judgment. Section 10674.5.

21. Of any threat by a respondent or third party to initiate litigation against the Board on the basis of notice given to potential successors of the pendency of unfair labor practice proceedings. Section 10674.8.

22. Prior to initiating any Federal Debt Collection Procedure Act prejudgment proceeding or action. Section 10674.9.

23. Regarding collection proceedings pursuant to a court judgment. Section 10678.3.

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24. Prior to initiating a post judgment FDCPA action involving execution, an installment payment order, before initiating a proceeding in which a new party is being implied for the purpose of establishing the derivative liability of such a party, or where interim pendente lite relief is being sought. Sections 10678.3, 10678.6, and 10678.7.

25. Questions arising from the Right to Financial Privacy Act. Section 10686.

26. Concerning contempt issues generally. Section 10702.

Notify

1. Of additional parties that may be liable for backpay in court judgment cases. Section 10626.4.

2. Of any contempt proceeding initiated by a private party concerning cases in which a court judgment has enforced a Board order. Section 10632.2.

3. Of significant developments or progress in achieving compliance with a court judgment when the case has been referred for contempt proceedings. Section 10632.4.

4. When contempt or other ancillary proceedings have been recommended or are pending; the filing of a new charge against the same respondent or a related party. Section 10632.4.

5. Nontraditional remedies that may be available to satisfy the Board's Proof of Claim in a bankruptcy proceeding. Section 10670.5.

6. If a United States district court refuses to register a backpay judgment. Section 10680.2.

10704.3 Special Litigation Branch

Submit

1. Immediately, on notice of any objection filed to the Region's Proof of Claim. Copies of the objections and supporting papers to both the claim and objection should be forwarded as soon as possible. Sections 10670.3(a).

2. Motion or petition in bankruptcy proceeding to estimate a Board claim. Section 10610.4(c).

3. A copy of a disclosure statement and proposed plan of reorganization, together with the Region's Proof of Claim when the Region determines it is necessary to object or has any question concerning whether it should object to it. Recommendation should also be submitted. Section 10670.2.

4. A copy of an objection filed to the Region's Proof of Claim. Copies of the objections and supporting papers to both the claim and objection should be forwarded as soon as possible. Sections 10670.3(a) and 10670.3(f).

5. Immediately, complaint, motion or other pleading seeking to enjoin a Board proceeding on any basis, or claim that a Board proceeding is subject to the automatic stay provisions of the Bankruptcy Code, if the Region is not able to resolve the claim promptly. Section 10670.1.

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6. Any bankruptcy case involving contested matters or adversary proceedings. Section 10670.2.

Consult

1. Protective orders or injunctive relief against respondents involved in bankruptcy proceedings. Section 10674.4.

2. Injunctions/stays of unfair labor practice and representation cases (for example, Code Section 362 automatic stay and Code Section 105 “inherent power” injunction) involving bankruptcy proceedings. Sections 10670.1 and 10702.

3. Code Section 1113 rejection of collective-bargaining agreement issues that involve Board jurisdiction (for example, retroactive rejection). Sections 10670.1 and 10702.

4. Objections to the Board’s claim. Sections 10670.1, 10670.3, and 10702.

5. Estimation proceedings under Code Section 502(c). Sections 10670.1, 10670.3(d), and 10702.

6. Objections to disclosure statements and plans which implicate the Board’s jurisdiction (for example, where a plan or disclosure statement effectively determines liability under the NLRA and liquidates the Board’s claim) or provides the court with the ability to determine or enjoin the Board case after confirmation of the plan. Sections 10670.1, 10670.2, and 10702.

7. Before participating in person in any bankruptcy court hearing or before filing a pleading in any contested or adversary proceeding in bankruptcy court. Section 10670.2

Notify

1. Of an action to lien or levy a backpay award, if the initiator of the action does not agree to withdraw it. Section 10576.9.

2. If the Region receives an IRS notice of levy or learns that a respondent employer or union has been served with an IRS notice of levy. Section 10576.9.

3. If the Region receives a telephone inquiry from the IRS regarding the service of a notice of levy in a Board case that is not pending in the Region. Section 10576.9.

4. Of submission to the Division of Operations-Management concerning subpoena enforcement problems. Section 10618.1.

5. Of injunction proceedings filed against the Board. Section 10670.1.

6. Of nontraditional remedies that may be available to satisfy the Board’s Proof of Claim in a bankruptcy proceeding. Section 10670.5.

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10704.4 Appellate Court Branch

Submit

1. A recommendation that a protective order or 10(e) injunctive relief be sought after the issuance of a Board order but prior to entry of a court judgment. Sections 10608.4 and 10674.5.

2. Duplicate exhibits from underlying unfair labor practice proceedings, when a case is being recommended for initiation for enforcement proceedings. Section 10608.1.

3. R-case transcripts, original exhibits, and the Region's case file, without witness affidavits, when submitting a case for enforcement proceedings in a test of certification. Section 10608.1.

Consult

1. In situations where, despite the presence of some factors that would militate in favor of proceeding to a compliance hearing before obtaining enforcement of a Board order, the Region believes, after consultation with the Division of Operations-Management, that a case should be submitted for enforcement. Section 10606.1.

2. When settlement discussions are continuing on a case referred for enforcement but not in court mediation. Section 10610.

Notify

1. When a respondent has filed a motion for reconsideration with the Board after the Region has recommended enforcement proceedings. Section 10608.5.

2. When parties attempt to pursue settlement discussions in cases that are in court mediation. Section 10610.

10704.5 Division of Advice

Submit

1. Difficult and/or unusual issues involving side notices. Section 10518.6.

2. Situations involving compensatory damage issues. Section 10536.1.

3. Cases which present the question of whether a respondent may rely on an USCIS determination concerning the legal status of a discriminatee in establishing remedial reinstatement rights, when that determination has been appealed. Section 10560.7.

4. Cases where the respondent contends that a discriminatee has submitted fraudulent documentation of immigration status. Section 10560.7.

5. Issues concerning a discriminatee's failure to seek or obtain interim employment because of an inability to provide required documentation of immigration status. Section 10560.7.

6. Unilateral formal settlement stipulation: before approval, the settlement should be submitted to Advice with a detailed transmittal memorandum giving details of the settlement. Section 10636.

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7. Cases in which the Region is considering issuing or has issued complaint against an individual or entity that has been discharged in bankruptcy. Section 10670.3(a).

8. Cases where the Region is recommending enforcement proceedings against a respondent that is liquidating its operations in a bankruptcy proceeding. Section 10670.3(a).

9. A recommendation that a protective order or injunctive relief be sought in a case at any time after the Region's issuance of complaint until the issuance of a Board order. Section 10674.5.

10. A request for advice regarding substantive legal issues arising out of prejudgment matters. Section 10702.

11. Contempt of 10(j) or 10(l) court order.

12. Cases involving novel legal theories or remedies where there is no extant Board law or where there are conflicting lines of Board precedent.

13. Cases where Region wishes to overturn precedent, including a request for extraordinary remedies.

14. Cases involving interpretation of other statutes, for example, ERISA, ADA, RICO, LMRDA, ADEA.

15. Cases presenting issues involving undocumented workers left unanswered by GC 98-15 and GC Memo 02-06.

16. Cases involving a Board notice to parties for a response following a remand from the Court of Appeals.

17. Cases where the Region is considering approval of a settlement agreement which is based on new or novel remedies or where the notice posting is waived or is for less than 60 days.

18. Cases involving the issuance of an investigative, trial, or hearing subpoena where a serious claim of privilege is likely to be raised.

19. Cases where, following issuance of any subpoena, intervening circumstances present enforcement problems.

20. Cases where the Region is considering denying the request of a private party for enforcement of a subpoena.

Consult

1. Cases in which reservation language is included in settlement agreements. Section 10594.7.

10704.6 Finance Branch

Submit

1. A copy of an IRS lien or levy served on the Regional Director or other Regional staff member. Section 10576.10.

2. Backpay checks, Forms NLRB-5472 and NLRB-5473 and transmittal memorandum when opening an Agency escrow account. Section 10580.3.

3. Requests to disburse money held in escrow accounts. Section 10582.

4. Request to close escrow accounts and disburse remaining amounts. Section 10588.

10704.7 Office of Appeals

Submit

1. A copy of any compliance determination issued. Section 10602.

2. The Region's compliance file, on receipt of a copy of an appeal from the Region's compliance determination or a letter from the Office of Appeals acknowledging an appeal. Section 10602.1.

10704.9 Library and Records Management Branch

Submit: Requests for a Dun and Bradstreet report. Section 10508.6.

10706 Closing Cases on Compliance

10706.1 Compliance With Informal Settlements

Report of the Compliance Officer in cases of informal settlement should be submitted with appropriate recommendations to the Regional Director. ULP Manual Section 10146. Closing action should be in accord with the requirements of ULP Manual Section 10148.4.

10706.2 Standard Case-Closing Procedures

The following procedures to close and report a compliance case are to be used when:

- The Regional Director is satisfied that compliance in accordance with outstanding policies and instructions has been achieved,
- Division of Operations-Management authorization was obtained prior to accepting a settlement, or
- An appeal and a request for review of a compliance determination have been denied, or time periods in which either may have been filed has lapsed.

Closed Case Report: The Region should complete a Closed Case Report, Form NLRB-4582. Entries into fields showing the amount paid by the company or union should reflect amounts actually paid. Entries into the fields showing the total amount due, however, should reflect the full remedial backpay and interest or refunds due, based on the violations at issue and following established methods of determining backpay liabilities. The remarks section of Form NLRB-4582 may be used to explain any unusual circumstance or any other action not fully reported in other sections of the form. This procedure should be following in every case where a closed case report is prepared, i.e., for non-Board settlements, informal settlements, formal settlements, and backpay collected as the result of compliance proceedings.

Recording: The Region and the Case Records Unit shall record the case as closed as of the date on the Region's Closed Case Report.

Notification: Normally, on the same date, that the Region's Closed Case Report is prepared and submitted, the Regional Director will notify the parties by letter of the closing of the case, cautioning that the closing is conditioned on continued observance of the remedy obtained and that subsequent violations may become the basis of further proceedings.

Exception: When backpay has been deposited in escrow, notification of case closing to the parties should be held in abeyance pending disbursement of all backpay.

10706.3 Formal Settlement Stipulation Cases

In cases where a formal settlement stipulation provides for a Board order and consent court judgment, the case should not be closed after full compliance, but only after the decree has also been entered.

10706.4 Procedures for Closing a Case on Compliance When Division of Operations-Management Authorization is Required

Section 10704 discusses situations in which the Division of Operations-Management authorization is required to close a case on compliance.

If the Division of Operations-Management authorization to accept a settlement of compliance issues has been obtained, there is no need to submit the case again for authorization at the time of closing.

See Sections 10632.11, 10694.6, and 10706.5 regarding situations when authorization from the Contempt Litigation & Compliance Branch is required prior to closing.

If the Division of Operations-Management authorization to accept a settlement of compliance issues is still to be obtained, the Region should submit the case for authorization as follows:

Closed Case Report: The region should prepare and submit to the Division of Operations-Management the Region's Closed Case Report, Form NLRB-4582, indicating that authorization is being requested by checking the appropriate box in the upper right corner of the form. The Region should also prepare and attach to the form a memorandum, setting forth the pertinent facts of the case and the reason the Region is requesting authorization to close it.

See Section 10694 regarding authorization requests to close a case based on respondent inability to pay remedial liabilities.

Recording: Cases requiring authorization will be closed on Case Records Unit and Regional records as of the date of authorization from the Division of Operations-Management.

Notification: After receiving authorization from the Division of Operations-Management, the Region will notify the parties of the closing of the case, with the standard caution that the closing is conditioned on continued observance of the remedy obtained and that subsequent violations may become the basis of further proceedings.

10706.5 Closing Case Administratively

In certain situations, the Region may determine closure of a case is appropriate because there is no reasonable likelihood of collection from a respondent or any derivatively liable entity, or where the case was otherwise appropriate for closing. Section 10694.6. The Region is authorized to close Board order compliance cases administratively, that is, without notification to the parties, without obtaining prior approval. However, the closing of court judgment compliance cases requires authorization from the Contempt Litigation & Compliance Branch. The Region's Closed Case Report should be submitted, as in a standard case closing, accompanied by a memorandum setting forth the basis for the request.

When there are other cases pending against the respondent, but it is otherwise appropriate to close the case on compliance, the Region is not required to obtain authorization to close a case administratively.

The case will be recorded in the Case Records Unit and in the Region as closed on the date the Region's Closed Case Report is prepared.

In the event of changed circumstances that make it advisable to notify the parties of the closing of the case, the Regional Director should notify the parties by sending the usual closing letter.

See Sections 10632.11, 10694.6, and 10706.5 regarding other situations when authorization from the Contempt Litigation & Compliance Branch is required before closing a case.

Recording: If the case required authorization from the Division of Operations-Management, it will be closed on Washington and Case Records Unit records as of the date of authorization.

Notification: After receiving authorization from the Division of Operations-Management, the Region will notify the parties of the closing of the case, with the standard caution that the closing is conditioned on continued observance of the remedy obtained and that subsequent violations may become the basis of further proceedings.