

December 21, 2000

PATRICK R. DONAHOE  
SENIOR VICE PRESIDENT, HUMAN RESOURCES

MARY ANNE GIBBONS  
VICE PRESIDENT, GENERAL COUNSEL

SUBJECT: Transmittal of Audit Report - Equal Employment Opportunity Complaint  
Settlement Agreement (Report Number LB-AR-01-013)

This report presents the results of our review of allegations regarding the settlement of an Equal Employment Opportunity complaint involving the former [REDACTED], as the alleged discriminating official (Project Number 00JA002LB000). This audit was initiated as a result of an anonymous hotline complaint the Office of Inspector General (OIG) received regarding the settlement agreement.

This audit revealed that the Postal Service had no controls in place to ensure that the settlement agreement involving the [REDACTED], was reviewed and approved by a higher level official prior to execution. In discussions with Postal Service officials, we were informed that managers are given the authority to settle Equal Employment Opportunity complaints without approval from a higher level official even in cases where the manager is the alleged discriminating official. We recommended the senior vice president, Human Resources and the vice president, General Counsel develop policies and procedures requiring that a higher level official review and approve Equal Employment Opportunity complaint settlements involving officers and executives. Management agreed with our findings and recommendations. Management's comments and our evaluation of their comments are included in the report.

We appreciate the cooperation and courtesies provided by your staff during this review. If you have any questions, please contact Joyce Hansen, director, Labor Management-Rosslyn, or me at (703) 248-2300.

Ronald K. Stith  
Assistant Inspector General  
for Oversight and Business Evaluation

Attachment

cc: Yvonne D. Maquire  
John E. Potter  
Karen Barowski  
John R. Gunnels

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## EXECUTIVE SUMMARY

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### Introduction

We completed an audit of allegations regarding the settlement of an Equal Employment Opportunity complaint involving the ██████████ as the alleged discriminating official. Our objective was to determine if controls were in place and followed to ensure that the settlement agreement was reviewed and approved by a higher level official prior to execution. This audit was initiated as a result of an anonymous hotline complaint the Office of Inspector General (OIG) received regarding the settlement agreement.

### Results in Brief

The audit revealed that the Postal Service had no controls in place to ensure the settlement agreement involving the ██████████, was reviewed and approved by a higher level official prior to execution. In discussions with Postal Service officials, we were informed that managers have the authority to settle Equal Employment Opportunity complaints without approval from a higher authority, even in cases where the manager is the alleged discriminating official.

We benchmarked<sup>1</sup> with private sector companies and federal agencies, and found a variety of practices for handling Equal Employment Opportunity complaints involving high-ranking officials. These organizations had established policies and procedures that require approval by a higher level or a designated official when there is a potentially embarrassing situation, conflict of interest, or settlements over a certain monetary amount. Controls of this type help to mitigate the appearance of unethical behavior.

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<sup>1</sup> The American Productivity and Quality Center defines benchmarking as the process of improving performance by continuously identifying, understanding, and adapting outstanding practices and processes found inside and outside the organization.

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<b>Summary of Recommendation</b>	We recommend the senior vice president, Human Resources and the vice president, General Counsel, revise policies and procedures to require higher level officials to review proposed Equal Employment Opportunity settlements in instances involving allegations against officers and executives.
<b>Summary of Management's Comments</b>	Management concurred with our recommendation and stated that a policy statement consistent with the recommendation would be issued. Management suggested language be added clarifying that the approving official should be a level higher than the official against whom the allegation has been made. Management also suggested that the report be revised to include a statement that the settlement agreement received legal review prior to execution. These changes were made to the report.  Management's comments in their entirety are included in the Appendix B.
<b>Overall Evaluation of Management's Comments</b>	Management's comments are responsive to our recommendation and the planned action should correct the issues identified in this report.

## INTRODUCTION

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### Background

The OIG initiated this audit as a result of an anonymous hotline complaint regarding the settlement of an Equal Employment Opportunity complaint involving the [REDACTED].

The [REDACTED] was named as the alleged discriminating official in an Equal Employment Opportunity sexual harassment complaint filed on May 29, 1998. The primary allegation in the complaint was that an individual allegedly having a personal relationship with the [REDACTED] was selected for a management position in the Suncoast District over the complainant. The [REDACTED] was the selecting official for the position. The complaint was settled through mediation on January 11, 1999.<sup>2</sup> The alleged [REDACTED] [REDACTED] as part of the settlement agreement.

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### Objective, Scope, and Methodology

The overall objective of our audit was to determine if controls were in place to ensure that the settlement agreement involving the [REDACTED], was reviewed and approved by a higher level official prior to execution.

To accomplish this objective we reviewed the Equal Employment Opportunity case file, the settlement agreement in question, and related policies and procedures. We met with Postal Service officials at headquarters, the Southeast Area office, and the Suncoast and Mississippi Districts. We also interviewed the [REDACTED].

For the purposes of establishing best practices, we made inquiries and obtained data from three private companies and four federal agencies we judgementally selected, regarding handling of Equal Employment Opportunity complaints when the alleged discriminating official has a high level position within the organization. In addition, we reviewed benchmarking data provided by the Postal Service General Counsel and Human Resources offices on settlement authority within seven federal agencies and one quasi-federal agency.

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<sup>2</sup> The Equal Employment Opportunity complaint was settled through the Postal Service's alternative dispute resolution process, Resolve Employment Disputes Reach Equitable Solutions Swiftly (REDRESS).

This audit was conducted from May 2000, through December 2000, in accordance with generally accepted government auditing standards, and included such tests of internal controls, as were considered necessary under the circumstances. We discussed our conclusions and observations with appropriate management officials and included their comments, where appropriate.

## AUDIT RESULTS

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<b>Internal Controls for Settlement Agreements</b>	Our audit revealed the Postal Service had no controls in place to ensure that the settlement agreement [REDACTED], was reviewed and approved by a higher level official prior to execution. In this case, the settlement agreement did receive legal review and approval. In discussions with Postal Service officials, we were informed that managers have the authority to settle Equal Employment Opportunity complaints without approval from a higher authority even in cases where the manager is the alleged discriminating official. Settlement of complaints in this manner could lead to an appearance of unethical behavior.
Settlement Agreement Involving the Former Vice President of Operations	We found that the [REDACTED] did not obtain approval from a higher level official for the [REDACTED] settlement. Under Postal Service practices in place at the time, the [REDACTED] actions were considered acceptable.  The [REDACTED]. The chief operating officer stated that he was not aware of the settlement agreement until he read about the settlement in a national newspaper. He stated that he supported implementing checks and balances in these types of situations to protect the integrity of the Postal Service.
Benchmarking Data	We obtained data from four federal agencies and three private companies to determine best practices in situations where the alleged discriminating official is a high-ranking employee (See Appendix A). All of these organizations have policies and procedures in place when an alleged discriminating official is in a high level position. Specifically, all of the federal agencies and private companies required legal and top management reviews and approval for monetary settlements. Two of the four federal agencies we benchmarked with allowed senior managers who were the alleged discriminating officials to handle nonmonetary settlements. A third agency removed the senior manager who was named in the complaint from the settlement process, entirely. The fourth agency allowed the alleged

discriminating official to settle, but required legal review of agreements. None of the private companies allowed the alleged discriminating official to be involved in settlements.

In addition to the agencies and companies the OIG reviewed, Postal Service General Counsel and Human Resources offices conducted a telephone survey of eight federal agencies. Of the eight agencies, five required a higher level review and approval of settlements. The remaining three agencies did not require a higher level review or approval. Also, some agencies set dollar amounts that limited the monetary approval authority of alleged discriminating officials.

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**Recommendation**

We recommend the senior vice president, Human Resources and the vice president, General Counsel, revise policies and procedures to require higher level officials review of proposed Equal Employment Opportunity settlements in instances involving allegations against officers and executives.

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**Management's  
Comments**

Management concurred with our recommendation and stated they are preparing a policy statement to be issued. Management suggested a minor revision to the recommendation for clarification purposes. Specifically, they suggested the approving official should be a level higher than the official against whom the allegation has been made. Also, management suggested a statement be added to the report that the settlement agreement did receive legal review and approval.

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**Evaluation of  
Management's  
Comments**

Management's comments are responsive to our recommendations and the planned actions should correct the issues identified in this report. Changes requested by management were made to the report. Management's comments in their entirety, are included in Appendix B.

## APPENDIX A. BENCHMARKING DATA

### Federal Agencies

Question	Agency #1	Agency #2	Agency #3	Agency #4
1. How do you handle Equal Employment Opportunity (EEO) complaints where the alleged discriminating official (ADO) is a person in a higher level position?	An EEO counselor handles the fact-finding. If the ADO is a Deputy Director or above, that individual may be present at the mediation to give his/her version or his/her supervisor may assign another employee to represent him/her.	An EEO counselor handles the fact-finding. The agency uses internal and external investigators in the fact-finding activities for each case. The agency uses more care in selecting investigators when the ADO is a senior ranking employee.	If the ADO were a senior level employee, they would be kept totally out of the process. The allegations would be investigated to see if he/she violated the agency's Standards of Excellence.	Complaints are usually filed against the agency and not against a specific individual.
2. Do you have an alternative dispute resolution (ADR) process for handling EEO complaints? If so what is it and how, does it work?	Yes. EEO complaints are handled through an informal and a formal process. During the informal process, an EEO counselor identifies the issue to determine if it can be assumed in a class action suit. The employee is given the option to proceed as part of a class action or to seek mediation. If mediation is selected, the ADR unit (in the legal department) is contacted to contract with a mediator for settlement.  If the issue is not resolved, the complainant will receive an official document that gives him/her the right to file a formal complaint.	Yes. The informal process begins with counseling with an EEO counselor. The employee is given the option to attempt resolution through counseling or mediation. The employee can opt to use internal or external mediators.  Mediation is available to the complainant at all times, within Equal Employment Opportunity Commission's (EEOC's) regulations for processing EEO complaints.	No. The agency follows the mediation guidelines established by the EEOC. When a complaint is filed, it goes through the following steps: (1) the allegation is investigated internally (if the person has an attorney, the law department handles the investigation); (2) a position paper is written summarizing what was found during the fact-finding effort(s); (3) the position paper is sent to the EEOC for their ruling; (4) if harm is found, they attempt to reach a settlement.	Yes. The agency utilizes the Ombudsman to facilitate mediation for EEO complaints. An individual may choose to go through the informal counseling process of utilize the ADR.

Question	Agency #1	Agency #2	Agency #3	Agency #4
<p>3. If the ADO is in a higher level position and the organization has an ADR process, is that person allowed to settle the complaint without authorization from superiors?</p>	<p>If the settlement is monetary, the ADO is not allowed to settle. All monetary settlements are pre-approved by a Deputy to the Chairman. This is handled by legal before the mediation.</p> <p>If the ADO happens to be a Deputy Director, he/she may be at the mediation and offer a settlement for nonmonetary issues, such as staffing issues.</p>	<p>No. The ADO may be at the mediation session to give his/her version of the events. However, he/she will not be part of the settlement process. If the settlement is monetary, the legal department and EEO office select an amount and the recommended amount is communicated to the ADO. The ADO does not have the right to approve the amount, which is done by senior management.</p> <p>If the settlement is nonmonetary, the EEO counselor makes a recommendation to the ADO who may agree or disagree. The EEO office then assesses the risk to the agency of not settling and discusses the issue with the ADO again. If settlement is not agreed upon, a person senior to the ADO is notified.</p>	<p>No. During settlement procedures, the two parties are kept separate. Generally, a law department representative, the manager of the person charged, the attorneys of the person charged, and the complainant are the parties involved in the settlement.</p>	<p>Yes, however, the Office of Chief Counsel must review the terms of the agreement.</p>
<p>4. Are you using the current EEOC guidelines?</p>	<p>Yes.</p>	<p>Yes.</p>	<p>Yes.</p>	<p>Yes.</p>
<p>5. How strongly do you encourage settlement of EEO cases (at what level)?</p>	<p>Settlements are encouraged as early as possible, preferably during the informal stage.</p>	<p>EEO counselors attempt to resolve EEO cases as soon as the complaint is filed.</p>		<p>The agency encourages settlement of EEO complaints at both the informal and formal phases of the process.</p>
<p>6. Do monetary settlements require upper level approval?</p>	<p>Yes. If there is a monetary settlement, a justifying memo is sent from one of the agency's corporate attorneys to the General Counsel, to a Deputy to the Chairman. All monetary settlements are handled through the legal department prior to mediation.</p> <p>The agency does not settle for nuisance value; all settlements must be meritorious and have legal reasoning.</p>	<p>Yes. Monetary settlements are suggested by the legal department and the EEO office, and approved by senior management.</p>	<p>Yes. Settlements are handled by the law department and the manager of the person charged.</p>	<p>Yes. Chief Counsel and the Assistant Director for Administration are involved in the approval and issuance of settlements.</p>

<b>Question</b>	<b>Agency #1</b>	<b>Agency #2</b>	<b>Agency #3</b>	<b>Agency #4</b>
7. Where does the money come from?	Not certain.	A general operating fund.	From the manager's budget.	The operating budget.
8. How does the organization avoid the appearance of wrongdoing in cases where the ADO is a person of position?	The ADO is not able to offer any monetary settlements during mediation. All settlements are handled strictly through the legal department.	Complainants know that once they file a complaint against a senior official, that person is in the process. Steps may be taken to minimize external exposure but no complaints are pulled. Also, the ADO's inability to settle his/her own case minimizes the appearance of a conflict of interest.	The agency minimizes the risk of a conflict of interest and the appearance that due process is being compromised by keeping the ADO completely out of the process. If the ADO is the manager of the complainant, the two are separated to avoid retaliation.	If discrimination is found in such cases as sexual harassment or retaliation, appropriate corrective action is taken.  Also, EEO complaints are typically filed against the agency and not a specific individual.
9. Demographic Questions				
<ul style="list-style-type: none"> <li>• How large is the organization?</li> <li>• Number of employees?</li> <li>• How many EEO cases involve upper level management as the ADO (vice president and above)?</li> <li>• Corporate Office location?</li> <li>• Number of years in business?</li> <li>• Reporting/ organization structure?</li> </ul>	<p>Quasi-Government with regional offices.</p> <p>7,400 employees (but downsizing).</p> <p>Not certain because many managers are named in complaints simply because of their positions.</p> <p>Washington, D.C.</p> <p>67 years.</p> <p>A chairman with three deputies who manage division directors who, in turn, manage deputy directors (equivalent of SES).</p>	<p>Information not provided.</p> <p>1,700 employees.</p> <p>One this year.</p> <p>Washington, D.C.</p> <p>Information not provided.</p> <p>A chairman with seven Board of Governors. Board officers (SES equivalent) include division directors, deputy directors, associate directors, and assistant directors.</p>	<p>National corporation</p> <p>500 stations in 45 states.</p> <p>6,000 employees.</p> <p>Interviewee not aware of historical data. As he has only been there since April 2000.</p> <p>Washington, D.C.</p> <p>29 years.</p> <p>President with senior vice presidents who manage vice presidents for the corridors, who, in turn, manage area managers. Area managers supervise district managers who supervise station managers.</p>	<p>Information not provided.</p> <p>5,483 employees.</p> <p>Complaints are filed against the agency and not a specific individual.</p> <p>Information not provided.</p> <p>Information not provided.</p>

**Private Companies**

Question	Company #1	Company #2	Company #3
1. How do you handle EEO complaints where the alleged discriminating official (ADO) is a person in a higher level position?	To his knowledge the company has not had any EEO complaints where the alleged discriminating official was an upper level manager. If this were to happen, the case would be handled the same way as any other case; however, a senior investigator probably would investigate the case.	All complaints are handled in the same manner. An investigation is conducted by the Manager of Diversity and Workforce Planning.	EEO complaints are handled at the home office through the Labor and Employment Division. This division conducts the fact-finding; a senior level employee in Human Resources may be brought in to assist with the process.
2. Do you have an ADR process for handling EEO complaints? If so what is it and how, does it work?	Yes. It is called the Dispute Resolution Process (DRP). The DRP has three levels – Level 1 is a discussion between the manager, employee, and a DRP representative; Level 2 is mediation; and Level 3 is arbitration.	No. The company does not have an internal ADR program. If a complaint is filed, the Manager of Diversity and Workforce Planning investigates. If the subject of the complaint is found guilty, he/she is terminated. If the complaint cannot be substantiated but there is a finding of some wrongdoing, the manager may be demoted from a managerial role to an individual contributor role. If the complainant is not satisfied, they can file a complaint through the EEOC.	Yes. The company has a program known as the "Open Door Policy" in which employees are encouraged to talk with their supervisors when they have a complaint.  If an official complaint is filed, the company's Labor and Employment Division conducts the fact-finding process. During the fact-finding, both parties may be required to give their versions of the incidents. The division then writes a report on its findings for management. The legal team is typically not involved but, if necessary, they will work with the EEOC to resolve issues.
3. If the ADO is in a higher level position and the organization has an ADR process, is that person allowed to settle the complaint without authorization from superiors?	No. It has never happened at this company but he could not think of a situation where if the ADO were an upper level manager that he/she would make a monetary settlement without approval at the next highest level.	If the complainant accepts the EEOC's invitation to mediate, the ADO will not be a part of the mediation team. Settlements are handled by Human Resources and Corporate Counsel.	If the ADO were a senior level employee, he/she would never be allowed to handle settlements; it would be unusual for him/her to be present at the settlement meetings.
4. Are you using the current EEOC guidelines?	The company has its own program, and it is probably based on the federal program.	Yes.	Yes.
5. How strongly do you encourage settlement of EEO cases (At what level)?	The company's goal is to settle EEO cases before they go to litigation.	Settlements are usually not a part of the process. They conduct investigations to attempt to substantiate the complainant's charges.	The company encourages employees to talk with their supervisors if there is a problem by using the Open Door Policy process.
6. Do monetary settlements require upper level approval?	Yes. Monetary settlements are handled through Corporate Counsel department with a vice president's approval.	If there is a settlement through the EEOC process, it will be handled by Human Resources and Corporate Counsel.	Yes. The Corporate Counsel is the company representative under the direction of top management.
7. Where does the money come from?	From the manager's budget.	From the department's budget.	From the manager's budget or another budget if directed by top management.

Question	Company #1	Company #2	Company #3
<p>8. How does the organization avoid the appearance of wrongdoing in cases where the ADO is a person of position?</p>	<p>Information not provided.</p>	<p>The company minimizes the risk of conflict of interest and the appearance that due process is being compromised by not allowing the ADO to handle or be present at settlements.</p>	<p>The company minimizes the risk of conflict of interest and the appearance that due process is being compromised by not allowing the ADO to handle settlements. They may be present at the mediation; however, this is rare. The company's legal team handles settlements in the mediation process.</p>
<p>9. Demographic Questions</p> <ul style="list-style-type: none"> <li>• How large is the organization?</li> <li>• Number of employees?</li> <li>• How many EEO cases involve upper level management as the ADO (VP and above)?</li> <li>• Corporate Office location?</li> <li>• Number of years in business?</li> <li>• Reporting/ organization structure?</li> </ul>	<p>Multinational corporation - in 10 countries.</p> <p>24,000 employees.</p> <p>Doesn't know of any. Most occur at the supervisory level.</p> <p>Missouri.</p> <p>120 years.</p> <p>President with approximately 12 vice presidents who manage lower level vice presidents who, in turn, manage directors/senior managers.</p>	<p>National corporation.</p> <p>8,000 employees.</p> <p>Approximately three cases over the last five years.</p> <p>Georgia.</p> <p>114 years.</p> <p>Chief Executive Officer, Chief Operating Officer who manages approximately 15 senior vice presidents who supervise directors, assistant vice presidents and/or vice presidents who supervise directors and managers.</p>	<p>Multinational corporation in nine countries.</p> <p>1 million employees domestically. Information not provided.</p> <p>Arkansas.</p> <p>38 years.</p> <p>Chief Executive Officer with executive vice presidents who manage divisional vice presidents (there are 5-6 divisions) who, in turn, manage regional vice presidents. The vice presidents manage district managers who manage store managers.</p>

## APPENDIX B. MANAGEMENT'S COMMENTS



October 30, 2000

Debra D. Pettitt  
Acting Assistant Inspector General  
for Oversight and Business Evaluation  
Office of Inspector General  
1735 N Lynn Street  
Arlington, VA 22209-2020

Dear Ms. Pettitt:

This is in response to the draft audit report regarding the Equal Employment Opportunity complaint settlement authority limits within the Postal Service, which is report number LM-AR-00-DRAFT. We reviewed the draft report, and we are in agreement with the recommendation, with two clarifications.

The recommendation is that postal policy be revised "to require top management review of proposed Equal Employment Opportunity settlements in instances involving high level officials." It is our understanding, based on several conversations with the OIG that by "top management" is meant a level of management higher than the official against whom the allegation has been made, and that by "high level officials" is meant officers and executives. To make certain that this is clear, we suggest that the recommendation be reworded by substituting the words "higher level" for "top management" and by substituting the words "officers and executives" for "high level officials."

We have only one additional comment to make. Under internal controls for settlement agreements, the report makes note that in the benchmarking data collected, federal agencies require legal review of monetary settlements. We believe that mention should be made in the report that the postal settlement agreement involved did receive legal review prior to execution. Otherwise, readers may be left with the mistaken impression that Mr. Davis acted wholly on his own in this matter.

We recommend revising the audit results to include an additional sentence in the section labeled, "Internal Controls for Settlement Agreements," to read:

In this case, the settlement agreement did receive legal review and approval.

Since our last discussions with you, the General Counsel made a presentation on this subject matter to the Board of Governors. The Board agreed that management should adopt a policy consistent with the recommendation in this draft report. As a result, we are preparing such a policy statement and anticipate that it will be issued within the next month.

Please feel free to contact me if you have any additional questions.

Sincerely,



Laree Martin  
Manager  
National EEO Compliance and Appeals Programs



Karen A. Intrater  
Managing Counsel  
Employment and Labor Law

cc: Mr. Donahoe  
Ms. Gibbons  
Mr. Vegliante