December 30, 2003

ANTHONY J. VEGLIANTE
VICE PRESIDENT, LABOR RELATIONS

MARY ANNE GIBBONS
VICE PRESIDENT, GENERAL COUNSEL

SUBJECT: Audit Report – Postal Service's December 2000 Equal Employment Opportunity Settlement Policy (Report Number HM-AR-04-003)

This report presents the results of our review of the Postal Service's December 2000 Equal Employment Opportunity Settlement Policy (Project Number 03YG046LH001). This review was part of the work conducted during the self-initiated survey of Equal Employment Opportunity monetary settlement agreements (Project Number 03YG046LH000). This is one in a series of reports developed from the survey, and is intended to help protect the interests of the Postal Service by making recommendations as soon as we identify issues.

Background and Prior Audit Coverage

In a prior Office of Inspector General (OIG) report entitled, Equal Employment Opportunity Complaint Settlement Agreement (Report Number LB-AR-01-013, dated December 21, 2000), the OIG recommended the Postal Service revise their policies and procedures to require officers and executives[1] to obtain higher-level[2] approval for proposed Equal Employment Opportunity settlements in instances where officers and executives were personally charged with discrimination. In response to the OIG recommendation, the Postal Service revised its policy in December 2000, requiring officers and executives who were personally charged in a complaint to obtain higher-level approval to settle such complaints for $25,000 or more. The revised policy also favored reasonable settlement of appropriate Equal Employment Opportunity disputes at the earliest possible opportunity. It also stated individuals representing the Postal Service in mediation or settlement negotiations should normally be vested with

[1]The term "officers" as used in this report refers to Postal Service officials in grade level Postal Career Executive Service II, which includes the postmaster general, deputy postmaster general, chief operating officer, general counsel, chief postal inspector, and all senior vice presidents and vice presidents reporting to them. The term "executives" refers to those officials in grade level Postal Career Executive Service I, which includes many, but not all, managers at headquarters and in the field.
[2] The term "higher-level" approval as used in this report is approval given by an official who is a higher level than the official against whom the allegation has been made.

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full authority to settle the dispute and with accountability for the terms of the settlement agreement. The OIG concluded the revised policy met the intent of the recommendation.

Upon further review of the policy during our survey of the Postal Service's Equal Employment Opportunity monetary settlement agreements, we found the policy was inconsistent with Equal Employment Opportunity Commission Management Directive 110, which indicated the official charged with discrimination cannot be the individual with settlement authority in an alternative dispute resolution process, regardless of the dollar amount.

In another OIG report entitled, Pacific Area's Equal Employment Opportunity Monetary Settlement Process (Report Number HM-AR-04-002, dated December 24, 2003), the OIG concluded the Pacific Area was generally in compliance with the Postal Service's December 2000 Equal Employment Opportunity settlement policy. The OIG also found the Pacific Area had its own settlement policy, dated March 2002, which was different from the December 2000 policy as it related to the dollar threshold for settlement approval. The OIG found the Pacific Area was in compliance with its own settlement policy. No recommendations were made in the report and management agreed the report was accurate with regard to settlement costs in Equal Employment Opportunity cases settled by the Labor Relations personnel and the Law Department.

Objective, Scope, and Methodology

The objective of our audit was to determine if the Postal Service's December 2000 policy requiring officers and executives to obtain higher-level approval in order to settle Equal Employment Opportunity complaints against themselves for $25,000 or more, was appropriate. To accomplish our objective, we reviewed the Postal Service's December 2000 settlement policy, Equal Employment Opportunity Commission Management Directive 110, and the prior December 21, 2000, OIG report. We also interviewed Postal Service officials at headquarters and obtained guidance from the Equal Employment Opportunity Commission's Office of Legal Counsel regarding the Postal Service's compliance with Equal Employment Opportunity Commission Management Directive 110.

This review was conducted from February through December 2003, 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

Equal Employment Opportunity Settlement Policy

The review disclosed the Postal Service's December 2000 policy, requiring officers and executives to obtain higher level approval in order to settle Equal Employment Opportunity complaints against themselves for $25,000 or more, was not appropriate because it was inconsistent with the Equal Employment Opportunity Commission's policies and procedures.

Equal Employment Opportunity Commission Management Directive 110 stated that in an alternative dispute resolution process an agency ". . . will make accessible an individual with settlement authority and that no responsible management official[3] or agency official directly involved in the case will serve as the person with settlement authority." The Equal Employment Opportunity Commission's Office of Legal Counsel told us in a June 2003 letter that this policy was established to "strip" responsible management officials of settlement authority during alternative dispute resolution because they were concerned officials would block otherwise appropriate settlements. The legal counsel said the alternative dispute resolution program was a new requirement and the Equal Employment Opportunity Commission wanted to do what they could to ensure it would be successful. He also told us, however, it appeared responsible management officials were not hindering the settlement of complaints in the Postal Service's alternative dispute resolution program.[4]

The Postal Service's managing counsel for Employment and Labor Law told us their settlement policy was consistent with Equal Employment Opportunity Commission Management Directive 110 because the language in the directive regarding responsible management official settlement authority was "guidance" only; the language was applicable only to settlements reached in an alternative dispute resolution process; and local Postal Service policy was to require higher-level approval for all monetary settlements. In addition, the Postal Service's former Equal Employment Opportunity Compliance and Appeals manager told us most Equal Employment Opportunity settlements involve very small or no monetary payouts, and restricting responsible management officials from agreeing to such settlements would hinder the officials from resolving matters as quickly as possible, thus seriously interfering with the settlement process.

[3] Responsible management officials (RMO) are the agency officials alleged to have discriminated against the complainant.
[4] The Postal Service alternative dispute resolution program, Resolve Employment Disputes Reach Equitable Solutions Swiftly, provides an informal and speedy alternative to the traditional Equal Employment Opportunity resolution process.

Corrective Action

The Postal Service's managing counsel for Employment and Labor Law sent a letter on July 30, 2003, to the Equal Employment Opportunity Commission's Office of Legal Counsel advising the Postal Service policy was "entirely consistent with the requirements of Equal Employment Opportunity Commission Management Directive 110." The managing counsel's letter stated the language regarding responsible management officials was only guidance and there was no requirement the Postal Service follow it, but that "generally, as a matter of local policy and practice, supervisors (whether or not RMOs) . . . are required to obtain approval for monetary settlements." She also stated the Postal Service's alternative dispute resolution program was successful and that published independent research stated "postal employees consistently rate [the program] at the highest levels of satisfaction in terms of fairness, their control over the process, and the treatment they receive."

According to the Postal Service's managing counsel, in response to her July 2003 letter, the Equal Employment Opportunity Commission's Office of Legal Counsel called her on October 15, 2003, and advised her they would not be officially responding in writing to her letter. She said the legal counsel told her the original rationale for the Equal Employment Opportunity Commission Management Directive 110 language was a concern complainants would be intimidated by having to meet face-to-face with the responsible management official. He also told her the Equal Employment Opportunity Commission was concerned responsible management officials might block settlements because they look like admissions of wrongdoing. He further stated, however, these concerns did not appear to be true with the Postal Service's alternative dispute resolution program. Therefore, the Equal Employment Opportunity Commission would not suggest any changes to the Postal Service's alternative dispute resolution settlement policy.

As a result of the discussions between the Postal Service's managing counsel, Equal Employment Opportunity Commission's legal counsel, and the OIG, we believe the inconsistency with the Postal Services' settlement policy and the Equal Employment Opportunity Commission's policies and procedures, has been addressed and there will be no recommended change to the Postal Service's policy.

Management's Comments

Management stated it found the report to be accurate, and had no further comments or information to add. Management's comments, in their entirety, are included in the appendix of this report.

We appreciate the cooperation and courtesies provided by your staff. If you have any questions, or need additional information, please contact Chris Nicoloff, director, Human Capital, at (214) 775-9114 or me at (703) 248-2300.

Mary W. Demory
Deputy Assistant Inspector General
for Operations and Human Capital

Attachment

cc: Patrick R. Donahoe
Patricia M. Richter
Eric J. Scharf
Susan M. Duchek

APPENDIX. MANAGEMENT'S COMMENTS

UNITED STATES POSTAL SERVICE

December 16, 2003

KIM H. STROUD

SUBJECT: Draft Audit Report – Postal Service's December 2000 Equal Employment Opportunity Settlement Policy (Report Number HM-AR-04-DRAFT)

This is in reply to the above referenced report. Management has reviewed the report, finds it to be accurate, and has no further comments or information to add.

Thank you for the opportunity to review and comment upon this report.

Anthony J. Vegliante
Vice President
Labor Relations

Mary Anne Gibbons
Vice President
General Counsel

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