

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 90- 50

July 2, 1990

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: Joseph E. DeSio, Associate General Counsel

SUBJECT: Backpay Escrow Accounts

As you know, in certain casehandling situations, backpay collected on behalf of discriminatees may be deposited in an escrow account until it is finally disbursed. The Casehandling Manual, Part III: Compliance, provides guidelines for the establishment and use of such escrow accounts. Additionally, at the May 1990 Regional Directors Conference, those guidelines were reiterated and the various escrow account procedures were discussed with you.

Initially, it should be noted that Section 10640.1 of the Manual provides that "in no event should checks be made payable to Board employees, nor should bank accounts be opened in their names." Thus, the establishment of any backpay escrow account in any name other than the respondent's is clearly not appropriate. Section 10640.2 provides that escrow accounts may be established in a local bank in the name of respondent [emphasis supplied], but expendable only on order of the Regional Director. On occasion, in those situations where less than 100 percent backpay has been collected, the use of an escrow account in a local bank has enabled accrual of interest to increase the amount of backpay available for discriminatees. While the ability to earn interest may appear desirable, local bank escrow accounts should only be used in those situations where respondent remains in business and will continue to remain in business until the backpay has been disbursed. In such an account, the only responsibility of the Regional office is authorization for disbursement of backpay. The respondent employer is responsible for necessary payroll transactions, such as preparation of backpay checks, payment of FICA and withholding taxes to IRS, and preparation of tax and W-2 forms. Local bank escrow accounts should not be used in situations where respondent has ceased or will cease operations because of the potential for a determination by IRS that the Agency becomes the employer when respondent goes out of business.

Additionally, because of the \$100,000 insurability limit established under F.D.I.C. regulations, local bank escrow accounts should not be used where the backpay deposit exceeds \$100,000. Accordingly, notwithstanding their interest earning capability, local bank escrow accounts should only be used under the limited conditions described herein.

Sections 10640.2, 10648.5 and 10644 of the Manual provide guidelines for the use of escrow accounts established by the Agency and administered by the Financial Management Branch. Such accounts should be used in all situations where respondent has or will cease operations and where the backpay amount is over \$100,000. The Finance Branch will prepare all checks, forward taxes to IRS and prepare tax and W-2 forms. Although such accounts generally do not earn interest, they are considered preferable to local bank escrow accounts because they do not present problems with insurability and there is no potential for the Agency to be considered the employer under IRS regulations. Under certain circumstances, including backpay settlements involving very large amounts of money, the Finance Branch may arrange for the backpay to be deposited in an interest bearing treasury account. Such accounts must be established on an ad hoc basis. If you have such a settlement and an escrow account is required, please contact your Assistant General Counsel for further information.

Any questions concerning this matter should be addressed to your Assistant General Counsel.

J. G. D.

cc: NLRBU