

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 15-33

May 19, 2015

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

FROM: Anne Purcell, Associate General Counsel

SUBJECT: Securing Installment Payments

As we continue to look for and experiment with new ways of making discriminatees whole for losses caused by unfair labor practices, and to ensure that such remedies are fully complied with, please keep in mind the difference between **securing** and **expediting collection of** settlements involving installment payments. To the extent possible, when the Region agrees to settle a case—at any stage—and permits the payment of backpay over time and not in one lump sum, the settlement should be secured by encumbering immediately, and not some time in the future, identified assets. Examples include executed deeds of trust and mortgages recorded against real property owned by the charged party/respondent or guarantor in the county where the property is located, assignments of specified contract proceeds, surety bonds, letters of credit, and UCC security agreements (and financing statements) filed with state secretary of state offices against account receivables and other assets.¹

Where it is not possible to immediately encumber identified assets at the time of settlement, steps should be taken to ensure that a monetary judgment can be obtained as swiftly as possible after default against both the charged party/respondent and all guarantors of the installment plan so that the provisions of the Federal Debt Collection Procedure Act can be used to hold and collect assets to satisfy the judgment. Examples include executed promissory notes, backpay installment payment agreements, and default language in both formal and informal board settlements.² In cases that are or have been before federal courts, consent judgments/orders can also be used to secure and collect installment settlements.

Over the past few years, a number of Regions have settled cases with installment payment provisions mistakenly believing that they were secured by executed confessions of judgment, in large part due to the ambiguities contained in OM 09-58. In order to clear up these ambiguities and to more fully address due process concerns with their use, OM 09-58 has been rescinded and efforts are underway to develop clearer

¹ Compliance Casehandling Manual, Appendix 12(c), Optional Attachments to the Settlement Agreement.

² Compliance Casehandling Manual, Appendix 12(c), Optional Attachments to the Settlement Agreement.

instructions for their use. Regions that wish to use confessions of judgment in settlements may do so only after consulting with the Compliance Unit or the Contempt, Compliance and Special Litigation Branch (CCSLB). Special attention must be paid to procedural and substantive due process issues and the overriding importance of obtaining immediate security for installment payment settlements where possible.

Please contact Dan Collopy or Joan Sullivan in the Compliance Unit or Barbara O'Neill in CCSLB if you have any questions about securing and collecting installment payment settlements at all casehandling stages.

/s/
A.P.

cc: NLRBU
Release to the Public