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To: Executive Branch Offices and Agencies
From: Office of the Governor
Date: January 27, 2025
Re: Executive Department Settlement Policy

It is the policy of the Healey-Driscoll Administration to encourage the amicable settlement of disputes in cases involving agencies or employees of the executive department, and to promote executive department-wide settlement processes and procedures that are consistent, transparent, and fair. The Administration recognizes that the resolution of disputes by mutual agreement, and in accordance with regular procedures, ensures the efficient use of taxpayer funds, promotes confidence in government, and avoids disruption in public services. To further these goals, this Executive Department Settlement Policy establishes requirements for obtaining authority to settle, settling, and tracking settlements of actual or threatened litigation involving agencies or employees of the executive department.

1. Applicability of the Office of the Comptroller's Regulations and Settlements & Judgments Policy.

Executive department offices and agencies are reminded that the Office of the Comptroller's settlements and judgments regulations, 815 CMR 5.00 *et seq.*, and the Comptroller's Settlements and Judgments Policy, are applicable to all monetary settlements within the scope of 815 CMR 5.00 *et seq.*, whether the settlement occurs prior to or after the institution of litigation, and whether the settlement is paid from agency funds or the Settlements and Judgments Reserve. The requirements set forth in this Executive Department Settlement Policy serve as a supplement and do not supersede the requirements prescribed by the Office of the Comptroller.

2. Required Approvals for Settlement.

Settlements of \$20,000 or more. An agency may agree to any settlement of \$20,000 or more, other than a workers compensation settlement, only with the advance approval of: (i) the General Counsel of the Agency; (ii) the General Counsel of the Executive Office; and (iii) the Executive Office for Administration and Finance. After approval is received by the General Counsel of the Agency and the General Counsel of the Executive Office, the General Counsel of

the Executive Office for Administration and Finance shall be provided with: (i) a written settlement recommendation, including the procedural status of the case and a summary of why settlement is appropriate; and (ii) the controlling complaint if the matter is in litigation, and the most pertinent judicial decision, if applicable.¹

Settlements of workers compensation claims before the Department of Industrial Accidents. An agency may agree to a settlement of a workers compensation claim of \$100,000 or more only with the advance approval of: (i) the General Counsel of HRD; (ii) the General Counsel of the Executive Office; and (iii) the Executive Office for Administration and Finance. After approval is received by the General Counsel of HRD and the General Counsel of the Executive Office, the General Counsel of the Executive Office for Administration and Finance shall be provided with a written settlement recommendation, including the procedural status of the case and a summary of why settlement is appropriate.

Settlements in cases involving the Attorney General's Office. Where an agency is represented by the Attorney General's Office or by a Special Assistant Attorney General, the agency may agree to settle litigation only with the approval of the Attorney General's Office. In addition, settlements over \$2,500 and arising under G. L. c. 258 require the approval of the Attorney General's Office regardless of representation.

3. Settlement Agreements are Public Records.

Under established case law, settlement agreements are public records but may be subject to limited redactions for personnel information of a highly personal nature under G. L. c. 4, § 7, cl. 26(c). Absent unusual privacy concerns, settlement agreements should include language providing that the agreement will be considered a public record in its entirety. Agencies may consider settlement language agreeing to limited redactions only when: (i) required by statute; or (ii) the language is requested by a claimant to address a significant privacy or safety concern, the language is approved by both the General Counsel of the Agency and the General Counsel of the Executive Office, and the claimant's preference for the language is memorialized in the settlement agreement.²

4. Nondisclosure Agreements are Prohibited.

Since 2018, the policy of the executive department has generally precluded the use of nondisclosure agreements in litigation settlement agreements, and this policy has continued under the Healey-Driscoll Administration. Non-disclosure agreements erode public trust and, by their terms, are largely inconsistent with the transparency requirements of the public records law. Accordingly, nondisclosure agreements (NDAs) in settlement agreements are prohibited and shall not appear in executive department settlement agreements.

¹ Under the Settlements and Judgments line item (1599-3384), approval by the Executive Office for Administration and Finance is also required for settlements on behalf of non-executive agencies or employees of non-executive agencies in excess of \$250,000.

² If such language is included in a settlement subject to 815 CMR 5.00 *et seq.*, agencies are required to: (i) note the required redactions on the Comptroller's Non-Tort Settlement/Judgment Payment Authorization Form; and (ii) consult with the Comptroller's Office prior to the submission of required paperwork.

For purposes of this Executive Department Settlement Policy, a “nondisclosure agreement” is a term or condition in a settlement agreement that would prevent a claimant from disclosing or discussing the underlying facts and circumstances of their claim or the existence of a settlement.

5. Required Record Keeping and Tracking for Settlements.

Executive department offices and agencies are reminded that the Secretary of State’s Statewide Records Retention Schedule applies to the retention of settlements and relevant supporting documentation. *See* Schedule at D01-01(c): Primary copies of payment support documentation and transaction Postings; E05-01: Employee Complaint/Investigation/Disciplinary Records; B05-01: Landmark Cases; E05-02(c): All other records.³

For any matter that is settled, other than settlements of labor grievances or affirmative litigation, the settling agency shall, subject to the applicable records retention period, maintain a complete file consisting of: (i) the underlying claim or complaint; (ii) the settlement agreement; (iii) any settlement recommendation memoranda and attachments; (d) all documentation submitted or received from the Office of the Comptroller under 815 CMR 5.00 *et seq.*, and the Comptroller’s Settlements and Judgments Policy; (iv) documentation of all required approvals; and (v) documentation of payment of the claim.

Each executive office shall track settlements entered by the office and its agencies, other than settlements of labor grievances and affirmative litigation, including: (i) the claimant’s name; (ii) the date of settlement; (iii) the amount of settlement; (iv) the office or agency at issue; and (v) the type of claim. The tracker maintained by each executive office shall be treated as a public record.

6. Executive Office Settlement Policies

Each Executive Office shall promulgate a Settlement Policy, applicable to the office and its agencies, which policy shall be approved by the Executive Office for Administration and Finance. Office-specific settlement policies shall adhere to this Executive Department Settlement Policy and to all relevant requirements of the Office of the Comptroller, and shall include requirements for approvals of settlements of less than \$20,000. Office-specific settlement policies shall be treated as public records.

³ While the Records Retention Schedule should always be consulted, most settlement documentation, including settlement payment support documentation and complaints associated with settlements, have a records retention period of 6 years.