

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
McCollum, et al. v. Peter P.M. Buttigieg, Secretary, Department of Transportation
Notice of Resolution of Class Action Complaint

YOU ARE NOT BEING SUED. YOU MAY BE ELIGIBLE TO RECEIVE MONEY UNDER A CLASS ACTION SETTLEMENT.

You are receiving this Notice of Resolution (“Notice”) because you have been identified as a potential Class Member in the class action case before the United States Equal Employment Opportunity Commission (“EEOC”), Dallas District, entitled *McCollum, et al. v. Peter P.M. Buttigieg, Secretary, Department of Transportation* (the “Action”). The Class Agent, David McCollum, alleges that the Federal Aviation Administration (“FAA” or the “Agency”) violated the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 633a(a), by failing to select PATCO Inventory applicants for Air Traffic Control Specialist (“ATCS”) vacancies on the basis of age. This Notice is to inform you of the terms of a proposed resolution of the Class Action (the “Settlement”).

The Agency denies all of the claims and allegations. The Parties recognize the costs and risks of continued litigation, however, and believe that the proposed resolution is fair and reasonable. The Settlement provides that the Agency will pay a total of \$47,500,000.00 to settle this Action (the “Settlement Amount”). This Notice provides information on how to participate in the settlement and your options, and it includes a Questionnaire that will enable an individualized calculation of your settlement payment.

This Settlement is subject to the approval of the Administrative Judge assigned to the case. The parties have not yet requested the Administrative Judge approve the Settlement. If the Administrative Judge approves the Settlement, then Claim and Release Forms will be sent to class members. Class members must timely complete, sign and submit a Claim and Release Form to receive a settlement payment.

Class members who timely submit a completed Questionnaire will receive an individualized calculation based on the Questionnaire. Class members who DO NOT timely submit a completed Questionnaire will only be eligible for a minimum payment of \$10,000.00 if the class member remained in the PATCO Inventory as of October 2006 and later or a minimum payment of \$1,000.00 if the class member was removed from the PATCO Inventory prior to October 2006.

YOUR LEGAL RIGHTS ARE AFFECTED BY THIS SETTLEMENT, AND NOW YOU HAVE A CHOICE TO MAKE. THIS CHART SUMMARIZES YOUR RIGHTS AND OPTIONS. PLEASE REVIEW THE CHART AND THE FOLLOWING PAGES CAREFULLY.

You May:	Effect of Choosing the Option:	Due Date:
<i>Submit the Questionnaire</i>	A Questionnaire is included with this Notice. If you complete and return it on or before September 26, 2022 and if the Administrative Judge approves the Settlement, the Questionnaire will be used to calculate your individualized Settlement payment amount. You may return the Questionnaire via mail, email, fax, or you may choose to complete it electronically at ATCSsettlement.com	<i>September 26, 2022</i>

<i>File a Petition to Vacate</i>	If you think the Settlement should not be approved, you may write to the Administrative Judge, at the address provided below, and explain why you believe she should not approve it. However, if you wish to receive an individualized payment calculation if the Administrative Judge approves the Settlement, you should still complete a Questionnaire.	<i>August 27, 2022</i>
<i>Do Nothing</i>	If you do nothing at this time, you will not be entitled to an individualized calculation for your proposed settlement payment. If you sign a Claim Form and Release when those are sent after approval of the Settlement, you will only receive the minimum share of \$10,000.00 if you are a class member who remained in the PATCO Inventory as of October 2006 and later or a minimum payment of \$1,000.00 if you are a class member who was removed from the PATCO Inventory prior to October 2006.	<i>None</i>

This Notice summarizes the proposed Settlement, explains your rights and options, and the deadlines to exercise them. This Notice also attaches a copy of the Settlement Agreement. You can also view a copy of the Settlement Agreement at ATCSsettlement.com.

1. WHY DID I GET THIS NOTICE?

You received this Notice because the Agency’s records show that you meet the class definition, originally defined by the Commission. More specifically, the Agency’s records show you:

- Were a former FAA air traffic controller who went on strike in 1981;
- Applied to the FAA for an ATCS vacancy through Recruitment Notice 93-01 in 1993; and
- Were not rehired or otherwise removed from the PATCO Inventory any time before September 16, 2003.

This proposed settlement will affect your legal rights. Therefore, it is important that you read this Notice carefully.

2. WHAT IS A CLASS COMPLAINT OR CLASS ACTION?

Complaints of class discrimination in the federal government are called “Class Complaints” and may be certified as a “Class Action” by an Administrative Judge. A “class” is defined as a group of employees, former employees, or applicants who are alleged to have been adversely affected by an agency personnel policy or practice which allegedly discriminates against a group on the basis of their common race, color, religion, sex, national origin, age, genetic information, or disability. A “Class Complaint” is a written complaint of discrimination filed on behalf of the class by the agent of the class, alleging that the class is so numerous that a consolidated complaint by the members of the class is impractical, that there are questions of fact common to the class, that the claims of the agent of the class are typical of the claims of the class, and that the agent of the class and, if represented, the representative will fairly and adequately protect the interests of the class.

Under the federal regulations applicable to cases filed in the EEOC, such as this case, there is no mechanism for class members to “opt-out” of the class.

3. WHAT IS THIS ACTION ABOUT?

Class Agent David McCollum sought EEO counseling on October 31, 2003, asserting that the Agency failed to hire him for ATCS vacancies at the Houston Air Traffic Control Center in September 2003. He later filed a Class Complaint on behalf of PATCO applicants who are alleged to have been adversely affected by an FAA policy or practice which allegedly discriminated against the group on the basis of age. The Equal Employment Opportunity Commission (“Commission”) defined the class as “whether the agency discriminated against PATCO Inventory applicants on the basis of age when they were not selected for Air Traffic Control Specialist vacancies on September 16, 2003, and thereafter.” The Agency mailed class notices to approximately 3,652 class members included in the certified class in 2007.

In August 2015, the Agency filed a motion to decertify the class. On September 15, 2017, the Administrative Judge modified the class definition by eliminating class claims arising from the Agency’s circularization process that occurred in 2005 and limiting the class to PATCO inventory applicants who were not selected on the basis of age for ATCS vacancies within the Southwest Region or within the Central Service Area (Central Enroute & Oceanic Service Area and/or the Central Terminal Service Area) from September 2003 through September 2006. The Administrative Judge decertified part of the class and modified the class definition to the following:

From September 2003 through September 2006, did the Agency discriminate against PATCO Inventory applicants on the basis of age when they were not selected for Air Traffic Control Specialist vacancies within the Southwest Region or within the Central Service Area (Central Enroute & Oceanic Service Area and/or the Central Terminal Service Area)?

From October 2006 through approximately October 2012, did the Agency discriminate against PATCO Inventory applicants on the basis of age when they were not selected for Air Traffic Control Specialist vacancies nationally or within the Western Service Area (Western Enroute & Oceanic Service Area and/or the Western Terminal Service Area), the Central Service Area (Central Enroute & Oceanic Service Area and/or the Central Terminal Service Area), and/or Eastern Service Area (Eastern Enroute & Oceanic Service Area and/or the Eastern Terminal Service Area)?

Claims arising from the PATCO circularization are not part of the certified class action.

The Administrative Judge’s 2017 decision to decertify part of the class eliminated approximately 2,258 PATCO applicants who were originally included in the Commission’s 2007 class definition.

The liability hearing (i.e., trial) before the Administrative Judge was held in multiple sessions from October 30, 2017 to March 20, 2019. On March 11, 2021, the Administrative Judge issued the Liability Decision on Class Action Complaint Merits, which presented her decision on liability. The Administrative Judge ruled that: (1) the class did not prevail on the class claim of pattern or practice of age discrimination in air traffic controller specialist selections by the Agency for the September 2003 to September 2006 period; (2) the class did not prevail on the class disparate impact claim for the entire class period; (3) Class Agent did not prevail on his individual age discrimination claim; (4) the class prevailed on the class claim of a pattern or practice of discriminating against the class during the October 2006 through October 2012 time-frame, meaning that class members would be able to pursue individual claims with a presumption of discrimination; and (5) the Agency, as systemic relief, must train those Agency employees who make applicant selection decisions on age-bias and must conduct agency-wide employee training on age-based stereotypes.

Both the Agency and Class Agent appealed the Administrative Judge’s decision to the Commission—including the Administrative Judge’s 2017 decision to decertify part of the class—and submitted extensive papers on the appeal issues to the Commission from June to August 2021. The Agency argued that the entire class should be decertified and should not have proceeded as a group action. Class Agent argued that the class definition should be restored to the Commission’s original 2007 decision.

While the appeals were pending before the Commission, the parties attended a full two-day mediation with Judge Layn R. Phillips (retired). After extensive arms-length negotiations in the mediation, the parties signed a Terms Sheet on September 30, 2021, and a comprehensive settlement agreement on July 7, 2022. The parties settled before the Commission issued its decision on the appeals.

4. WHO IS INCLUDED?

Although the Administrative Judge modified the original class definition to exclude approximately 2,258 PATCO applicants, the parties agreed that this Settlement would include those eliminated from the class because both parties appealed the Administrative Judge’s decision to modify the class to the Commission. Accordingly, Class Members for the purposes of this Settlement are PATCO applicants who were not selected for Air Traffic Control Specialist vacancies from September 16, 2003 through October 31, 2012, and all individuals whose claims were subsumed in this case.

There are approximately 3,561 Class Members who were sent this Notice and who have an opportunity to receive a payment from this Settlement.

5. WHAT ARE THE SETTLEMENT BENEFITS?

Under the terms of the Settlement, the Agency agrees to pay the “Settlement Amount” of \$47,500,000.00. From this amount, Class Agent will request that the Administrative Judge approve \$9,875,000.00 in attorneys’ fees and \$1,000,000.00 in out-of-pocket litigation costs. The remaining \$36,625,000.00 (“Claims Fund”) will be used to pay eligible Class Members, as well as the following deductions subject to the Administrative Judge’s approval: (1) Service Payments in the amount of \$50,000 to Class Agent and \$5,000.00 to each of the approximately 14 Class Members who testified or traveled to and were prepared to testify at the liability hearing; (2) the employee’s and employer’s share of taxes attributable to the W-2 portion of payments to Class Members; (3) the anticipated amount of approximately up to \$60,000.00 to the Settlement Administrator for costs of administering the Settlement; (4) other costs and expenses of the Settlement; and (5) \$250,000.00 for the reserve fund that will be used solely to effectuate the purpose of the settlement, including legal fees and costs associated with administering and implementing the settlement.

Class Counsel and the Settlement Administrator will allocate the Claims Fund on a proportional basis using a uniform, non-discretionary formula that considers for each Class Member:

- (1) whether the Class Member was still in the PATCO Inventory during the October 2006 through approximately October 2012 period in which the Administrative Judge found a pattern or practice of age discrimination;
- (2) projected lost wages and benefits using uniform assumptions;
- (3) any mitigating compensation the Class Member earned;
- (4) whether the Class Member believes he or she would have been medically cleared to control air traffic;
- (5) whether the Class Member was convicted of a felony, rendering them ineligible for rehire; and

(6) a minimum allocation of \$10,000.00 applied to class members who remained in the PATCO Inventory as of October 2006 and later and a minimum allocation of \$1,000.00 for class members who were removed from the PATCO Inventory prior to October 2006.

Specifically, for Factor #1, the allocation formula divides the class members into two groups. Group 1 consists of class members who remained in the Inventory as of October 2006 and later according to Agency records. Group 2 consists of class members who were removed from the Inventory prior to October 2006 according to Agency records. For Factor #2, a formula using uniform assumptions for date of rehire, facility level, pay, and retirement date, will be applied within each Group. For each Group, the model assumes that each class member was rehired into a Level 10 facility on the start date of that Group's recovery period and retired 12 years later. The uniform tenure and facility level inputs were derived from the age of the overall class and actual hiring data the Agency provided. For each year in the recovery period, each Group's class members are assigned a uniform projected earnings figure. These annual pay amounts consider ATC pay bands, annual promotions, annual raises and locality bonuses. For Factor #3, the formula accounts for information collected on the class member's Questionnaire form. Average compensation reported by the class member will be deducted from the formula's projected lost wages assumption, Factor #2. Further, the formula assumes that a uniform percent of average compensation will be attributed to benefits and such amounts will be deducted from the loss benefits calculation. The model also assumes little to no lost wages or benefits beginning the year the class member reported they believe they would not have been medically cleared to control air traffic for Factor #4. Similarly, for Factor #5, the model assumes little to no lost wages or benefits beginning the year the class member was convicted of a felony.

Information relevant to Factors (3) through (5) will be collected from each Class Member through the enclosed Questionnaire. Regardless of factors (1) through (5), pursuant to factor (6), at a minimum, each class member who remained in the PATCO Inventory as of October 2006 and later will be eligible for a minimum allocation of \$10,000.00, and each class member who was removed from the PATCO Inventory prior to October 2006 will be eligible for a minimum allocation of \$1,000.00.

The actual amount distributed to each Class Member will depend on the total number of Class Members participating in the Settlement and the settlement amounts awarded to other Class Members. Class Counsel anticipates that Group 2 class members' claims, which were dismissed by the Administrative Judge's certification decision or her decision on liability and because of additional significant risks on appeal, will be discounted between 80-90% relative to Group 1 class members' claims. The exact amount of each person's claim will depend on the number of class members returning both the Questionnaire Forms and Claim and Release Forms. Any unclaimed funds, such as amounts allocated to class members who do not return a Claim and Release Form after the settlement is approved, will be reallocated to class members who do submit a Claim and Release Form.

For each Class Member's settlement payment, 30% will constitute back pay and will be reported as W-2 wages, and 70% shall constitute payment for the cost of retirement benefits and will be reported on an IRS Form 1099. All amounts allocated as service payments shall be reported on an IRS Form 1099. Each Class Member will be responsible for the payment of any personal taxes owing on their settlement payments.

6. WHAT HAPPENS IF I DO NOTHING RIGHT NOW?

This Settlement is subject to the Administrative Judge's approval of the Settlement. As mentioned above, if you do nothing at this time, you will only be eligible for the minimum amount of \$10,000.00 if you are a class member who remained in the PATCO Inventory as of October 2006 and later or a minimum payment of \$1,000.00 if you are a class member who was removed from the PATCO Inventory prior to October 2006. The Questionnaire enclosed with this Notice indicates whether the Agency's records reflect you remained in the PATCO Inventory

as of October 2006 and later. If the Administrative Judge approves the Settlement, then you will later be required to submit a Claim and Release Form in order to receive your minimum share of the settlement.

YOU MUST COMPLETE AND RETURN A QUESTIONNAIRE TO RECEIVE A SHARE OF THE SETTLEMENT BASED ON YOUR INDIVIDUALIZED INFORMATION.

7. HOW DO I SUBMIT RESPONSES TO THE QUESTIONNAIRE?

A Questionnaire is included with this Notice. You may also access a Questionnaire, complete it, and submit it at ATCSsettlement.com.

The deadline to submit a Questionnaire is September 26, 2022. That means you must electronically submit via email, fax, or through the Settlement Administrator’s website by September 26, 2022, or mail the Questionnaire to the Settlement Administrator postmarked by September 26, 2022.

If you do not return a Questionnaire, you will only be eligible for the minimum allocation amount of \$10,000.00 if you were in the PATCO Inventory as of October 2006 and later, or \$1,000.00 if you were removed from the PATCO Inventory prior to October 2006, if the Settlement is approved. Even if you file a petition to vacate the Settlement, you should still submit a Questionnaire to receive a payment from the Settlement that will be based on the information that you individually provided, in the event your objection is overruled by the Administrative Judge.

Follow the instructions on the Questionnaire. You will have to attest under penalty of perjury that the information you provide is accurate based on your best recollection and the information available to you.

8. HOW CAN I OBJECT TO THE SETTLEMENT IF I DO NOT SUPPORT IT?

The federal regulations provide that within thirty (30) days of the date of this Notice, or August 27, 2022, any Class Member may petition the Administrative Judge to vacate the resolution (i.e., object to the settlement) because the Class Member believes the settlement benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole.

To file a petition to vacate, you must mail or e-mail your petition to the Administrative Judge at the following address:

U.S. EEOC, Dallas District Office
Attn: Administrative Judge Veronica A. Cuadra
Re: McCollum v. FAA
207 S. Houston Street
3rd Floor
Dallas, TX 75202

efiling.dallashearing@eoc.gov (if submit by email, include in the subject line “McCollum v. FAA Settlement”)

You **must** also simultaneously mail or email counsel for the parties a copy of your petition at the following addresses:

FAA
Office of the Chief Counsel, AGC-100
600 Independence Ave., SW
Washington, DC 20591
AGC-McCollumClass@faa.gov

McCollum Settlement
Paul Hastings LLP
2050 M Street NW
Washington, DC 20036
mccollumsettlement@paulhastings.com

NICHOLS KASTER, PLLP
Attention: Rachhana Srey
80 South 8th Street, Suite 4700
Minneapolis, MN 55402
Telephone: (612) 256-3200
faasettlement@nka.com

The Administrative Judge will consider your petition in deciding whether to approve the Settlement, and may or may not approve the settlement. If you do not e-mail a petition to vacate to the Administrative Judge by August 27, 2022 or mail your petition postmarked by August 27, 2022, you will forever waive your ability to object to the settlement.

9. DO I HAVE A LAWYER REPRESENTING MY INTERESTS IN THIS CASE?

Yes. Class Counsel for Class Agent and the Class are:

NORWOOD & ATCHLEY
Jeffery L. Atchley
254 Court Ave., 2nd Floor
Memphis, TN 38103
Telephone (901) 832-6760
jeffatchley@gmail.com

NICHOLS KASTER, PLLP
Matthew H. Morgan
Rachhana T. Srey
Reena I. Desai
Laura Baures
80 South 8th Street, Suite 4700
Minneapolis, MN 55402
Telephone: (612) 256-3200
faasettlement@nka.com

Donati Law, PLLC
1545 Union Avenue
Memphis, TN 38104

10. HOW WILL THE LAWYERS BE PAID?

As part of the Settlement, Class Agent will request (1) a total \$9,875,000.00 for attorneys' fees, and (2) \$1,000,000.00 in incurred litigation costs. Class Agent will ask the Administrative Judge to approve these amounts as fair and reasonable. Class Counsel may be paid additional fees and costs associated with administering and implementing the settlement. Such fees and costs would be deducted from the reserve fund only.

11. WHEN WILL THE ADMINISTRATIVE JUDGE DECIDE WHETHER TO APPROVE THE SETTLEMENT?

Shortly after the August 27, 2022 deadline for Class Members to file petitions to vacate, Class Agent will file an unopposed motion for Settlement Approval with the Administrative Judge. The Administrative Judge will review the Settlement and decide whether it is fair, adequate and reasonable to the class as a whole.

12. WHAT ARE THE NEXT STEPS IF THE ADMINISTRATIVE JUDGE APPROVES THE SETTLEMENT?

If the Administrative Judge approves the Settlement, the Agency has twenty-one (21) days to issue a final agency order. The Settlement Administrator must mail and email within seven (7) days to each Class Member the notice of final agency order, notice of right to appeal to the EEOC, notice of right to file a complaint in federal court, and a Claim and Release Form for the class member to sign and return. The Claim and Release Form will include each Class Member's individual allocation based on the Questionnaire responses they submitted and, if they did not timely submit a Questionnaire, then the minimum allocation amount. Class Members will have forty-five (45) days to return the Claim and Release Form. At the appropriate time, **Class Members must submit a fully completed and signed Claim and Release Form to receive a payment in this settlement.**

The Claim and Release Form will provide you with the full release language. If you sign the Claim and Release Form, you will:

release and waive all claims of unlawful discrimination (including claims for age discrimination) arising out of the non-selection or non-hire for ATCS position(s) at the Agency from September 16, 2003 to October 31, 2012, that you have as of the time you sign the release, against the Agency and/or its officers, employees or agents, in their individual and official capacities, and/or against the Agency's benefits programs, including but not limited to the Thrift Saving Plan and any pension plans. The Released Claims include all such claims, whether known or unknown, disclosed or undisclosed, foreseen or unforeseen, suspected or unsuspected, vested or unvested, absolute or contingent, asserted or could have been asserted but were not asserted.

The claims of discrimination released include, but are not limited to: (a) discrimination claims under an anti-discrimination statute, including but not limited to the Age Discrimination in Employment Act of 1967, (inclusive of the Older Workers Benefit Protection Act (OWBPA)), Title VII of the Civil Rights Act of 1964, § 1981 of the Civil Rights Act of 1866, the Equal Pay Act, the Americans With Disabilities Act, the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008; (b) claims to attorneys' fees or other indemnities; and (c) claims for damages and/or equitable relief of every nature, including but not limited to back pay, front pay, reinstatement, instatement, benefits, emotional distress, and other compensatory damages, damage to reputation, liquidated damages, penalties, interest, and punitive damages, arising out of the non-selection or non-hire for ATCS position(s) at the Agency from September 16, 2003 to October 31, 2012.

For purposes of their Age Discrimination in Employment Act of 1967 (ADEA) claim only, each Class Member will release all known and unknown ADEA claims (inclusive of the Older Workers Benefit Protection Act (OWBPA)) asserted in the class complaint of discrimination up to the date of the signing of the settlement agreement.

The release does not include: (i) any claims that the law does not permit the Class Member to release by private agreement, (ii) claims for already vested benefits (except already denied benefits) under any employee-benefit

plan governed by ERISA, (iii) any rights or claims that arise after the signing of the settlement agreement (for claims of the class) and after the signing of the claim and release form (for claims of individual class members), or (iv) the class's right to enforce this Agreement.

If you do not sign the Claim and Release Form, you will still release the claims indicated above that you had as of July 7, 2022 unless you timely file a claim in federal court against the Agency raising the same allegations at issue in this case. For Class members who ultimately choose to file a claim in federal court and not participate in the Settlement, the time to file in federal court has not occurred. If the Administrative Judge approves the Settlement, you will receive a notice to file in federal court with the notice of final agency order.

13. WHERE DO I OBTAIN MORE INFORMATION?
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If you have any questions or would like more information, you may call or email the Settlement Administrator at:

McCollum v. FAA Settlement
c/o CPT Group
50 Corporate Park
Irvine, CA, 92606
Email: McCollumFAA@cptgroup.com
Website: ATCSsettlement.com
Telephone: 1-888-412-2847
Fax: 1-949-419-3446

PLEASE DO NOT CONTACT THE ADMINISTRATIVE JUDGE DIRECTLY WITH QUESTIONS ABOUT THIS SETTLEMENT.