

**BEFORE THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
DALLAS DISTRICT OFFICE**

DAVID McCOLLUM,	)	
	)	
Class Agent,	)	
	)	
v.	)	EEOC Docket No. 450-2007-00109X
	)	310-2004-00322X
PETER P.M. BUTTIGIEG, Secretary	)	
	)	
Department of Transportation,	)	Agency No. 5-04-5026
	)	
Agency.	)	
	)	

**SETTLEMENT AGREEMENT**

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1. PREAMBLE

1.1 WHEREAS, Class Agent David McCollum (“McCollum”) filed an individual complaint with the Equal Employment Opportunity Commission on February 6, 2004, alleging that the Federal Aviation Administration, Department of Transportation (“the FAA” or “the Agency”) had failed to hire him in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621, *et seq.* See EEOC No. 450-2007-00109X, DOT Complaint No. 5-04-5026.

1.2 WHEREAS, on March 22, 2004, McCollum amended his complaint to further allege a class claim regarding: “Whether the FAA discriminated against complainant and other similarly situated applicants (those applicants who are former FAA air traffic controllers fired as a result of the 1981 PATCO strike) on the basis of age (over 40) when he, and similarly situated applicants, were not selected for Air Traffic Control Specialist positions in, or after, September 2003. Specifically, [complainant] and other similarly situated applicants [allege that they] were subjected to disparate treatment and disparate impact discrimination on the basis of age.”

1.3 WHEREAS, on February 22, 2006, the Administrative Judge (“AJ”) issued a decision certifying the following class:

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. This class complaint encompasses the following allegedly discriminatory practices and/or policies for the hiring of Air Traffic Control Specialists: (A) The maintenance of separate ‘applicant pools.’ (B) The use of quotas in making selections. (C) Not comparing candidates from one pool with those in other applicant pools. (D) Beginning in approximately 1999, not making any further selections from the PATCO Inventory,” with membership in the class defined as “Those PATCO Inventory applicants who were not selected for Terminal and En Route Air Traffic Control Specialist vacancies (at their preferred locations) beginning on September 16, 2003 [] and thereafter. ‘Preferred locations’ refers to the locations identified by the PATCO Inventory applicant as ones for which they would like to be considered for ATCS employment.

1.4 WHEREAS, on April 21, 2006, the Agency issued a Final Order rejecting the decision of the AJ to certify the class, and contemporaneously filed an appeal of the decision.

1.5 WHEREAS, on October 26, 2006, the Office of Federal Operations reversed the Agency’s final agency action rejecting the certification of the matter as a class claim, and ruled that the class was defined 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.”

1.6 WHEREAS, on January 6, 2017, during a telephonic hearing, the Administrative Judge issued an oral ruling modifying the class to only “during the time that the Centralized

Selection Panels were in operation. In other words, from approximately fiscal year 2007 to fiscal year 2013. Prior to the CSP period...the Class will be limited to the Southwest Region and subsequently to the Central Service Unit, which included the area where the Class Agent, Mr. McCollum, applied while he was at Southwest Region...[F]iscal year 2005 will be excluded from the Class.”

1.7 WHEREAS, on September 15, 2017, the Administrative Judge issued a Decision Modifying Class Certification, following class discovery and the filing of dispositive and decertification motions, the Administrative Judge modified the class claims in the Order as follows:

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 En Route & Oceanic Service Area and/or 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.

1.8 WHEREAS, on October 25, 2017, the Administrative Judge issued a Pre-Hearing Conference Report and Order that reaffirmed the modified class claims.

1.9 WHEREAS, on September 24, 2020, the Administrative Judge issued a Class Action Interim Hearing Decision (“Interim Decision”), ruling that Class Agent prevailed in phase one on his class claim of a pattern or practice of age discrimination in air traffic controller specialist selections by the Agency from October 2006 through approximately October 2012, that Class Agent did not prevail on the class claim corresponding to the period of time between September 2003 through September 2006, and that Class Agent did not prevail on any disparate impact claim nor on his individual claim, and ordered the parties to further brief systemic relief.

1.10 WHEREAS, on March 11, 2021, the Administrative Judge issued a Decision on Class Action Complaint Merits (“Decision”), ruling that Class Agent prevailed in phase one on his class claim of pattern or practice of age discrimination in air traffic controller specialist selections by the Agency from October 2006 through approximately October 2012, that Class Agent did not prevail on the class claim corresponding to the period of time between September 2003 through September 2006, and that Class Agent did not prevail on any disparate impact claim nor on his individual claim, and ordered systemic relief.

1.11 WHEREAS, on May 10, 2021, the Agency issued a Final Order and notification of appeal, EEOC Office of Federal Operations Appeal No. 2021003195. The Agency adopted

the Administrative Judge's ruling dismissing Class Agent's individual claim, and all disparate impact claims, and the claims for the period before fiscal year 2007. The Agency appealed the Administrative Judge's decision on the merits of: (i) the Administrative Judge's decision on the merits in phase one of the class agent's claim that the class members (Western Service Area; Central Service Area; and Eastern Service Area from October 2006 - October 2012) were subjected to a pattern or practice of differential treatment on the basis of age in nonselections from October 2006 through approximately October 2012 in the Interim Decision and Decision; (ii) the Remedial Order set forth in the Decision; (iii) the September 15, 2017 Decision Modifying Class Certification, to the extent it certified a class for the period from October 2006 through October 2012, and all subsequent decisions incorporating, reaffirming or finalizing that ruling including the Interim Decision and the Decision; and (iv) the October 6, 2017 Order on Witness Objections and the October 25, 2017 Prehearing Conference Report and Order, to the extent that they denied the Agency's motions to exclude witnesses and overruled objections to witnesses, including but not limited to the Agency's Motion to Exclude Wanda Reyna's Declaration and Hearing Testimony on Topics Addressed in the Testimony of Janice Madden, Ph.D. (Aug. 14, 2015) and the Agency's Motion to Exclude the Expert Report of Kyle Brink, Ph.D. (Aug. 14, 2015), and all subsequent decisions incorporating, reaffirming or finalizing that ruling including during the Hearing.

1.12 WHEREAS, on June 9, 2021, Class Agent submitted an appeal of the Agency's Final Order, the Decision, the Interim Decision, the Final Order on Administrative Judge's Decision Modifying Class Certification dated September 15, 2017, the Pre-Hearing Conference Report and Order dated October 25, 2017, and the Telephonic Prehearing Conference dated January 6, 2017.

1.13 WHEREAS, the parties have reached agreement to settle this case after lengthy and difficult, arms-length negotiations in which they have considered all facets of the settlement, including its fairness to the Class Agent and all Class Members, and agree on the following terms to settle and resolve the matter of *David McCollum et al. v. Peter Buttigieg, Secretary, U.S. Department of Transportation (Federal Aviation Administration)*, EEOC No. 450-2007-00109X, 310-2004-00322X, Agency No. 5-04-5026, and Appeal No. 2021003195, pursuant to 29 C.F.R. § 1614.204(g) and guidance in the Equal Employment Opportunity Commission's Management Directive 110.

1.14 WHEREAS, the Parties acknowledge that this Agreement is the result of negotiations by the Parties via counsel and is the subject of mutual consideration, and that this Agreement was made freely, voluntarily, and fairly and was not the result of duress, coercion, fraud, misrepresentation, or undue influence.

1.15 WHEREAS, the Parties represent that they have thoroughly discussed all aspects of the Agreement with counsel, that they have read this Agreement carefully and understand fully all of the provisions of this Agreement.

1.16 WHEREAS, Administrative Judge Veronica Cuadra has jurisdiction over the Parties and the subject matter of the underlying action.

## 2. DEFINITIONS

For purposes of this Settlement Agreement (“Agreement”) and all exhibits hereto, the capitalized terms in such documents shall have the meanings set forth below. All terms defined in the singular shall have the same meaning when used in the plural, and all terms defined in the plural shall have the same meaning when used in the singular.

2.1 “Agreement” or “this Agreement” or “Settlement Agreement” shall refer to this document, including all attachments.

2.2 “The Agency” or “the FAA” means the Federal Aviation Administration, Department of Transportation. The “Agency” or “FAA” shall include the Agency, and its present directors, officers, agents, employees, and other representatives.

2.3 “ATCS” means Air Traffic Control Specialist.

2.4 “Claim and Release Form” means the written description of Claimant’s Claims, in the form prescribed in this Agreement, including a Release of Claims, served by a Claimant on the Settlement Administrator to initiate the Claim Resolution Process.

2.5 “Claim and Release Form Submission Date” means the date that the Claim and Release Form must be received (if submitted by hand-delivery, or electronically via email, fax, or through the Settlement Administrator’s website) or the postmarked by date if sent to the Settlement Administrator by mail in order for Claimant to participate in the Settlement.

2.6 “Claim Resolution Process” means the procedures for resolution of Eligible Claims as set forth in this Agreement.

2.7 “Claimant” means any person who is eligible to make, and who has made, a claim in the Claim Resolution Process set forth in this Agreement.

2.8 “Claims Fund” means thirty-six million, six hundred twenty-five thousand dollars (\$36,625,000.00) from the Settlement Fund that shall be used to pay the Claims of the Class Members, to pay Service Payments, to withhold and pay the employee’s and the employer’s share of FICA, FUTA and SUTA taxes attributable to W-2 wages, to fund the reserve fund and to pay the Settlement Administrator and to pay other costs and expenses of the settlement, as described in Section 7.2.

2.9 “Class Agent” means David McCollum, who filed the initial class complaint.

2.10 “Class Claim” means any individual or class age discrimination claim, administrative charge, demand, complaint, right, and/or cause of action of any kind, known or unknown, by Class Agent or Class Member(s) for monetary and/or equitable relief and/or for attorney’s fees, arising from any events, acts, omissions, policies, practices, procedures, conditions, or occurrences concerning applications and/or claims of discrimination arising out of the nonselection or non-hire for ATCS positions with the Agency at any time on or after

September 16, 2003, including claims arising from the PATCO circularization, under the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621, *et seq.*, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 *et seq.*, the Civil Rights Act of 1866, 42 U.S.C. § 1981 *et seq.*, or any other federal, state, or local statute, regulation, rule, order, ordinance or other authority of any nature, against the Agency, and/or its officers, employees or agents, in their individual official capacities and/or its benefit program. Class Claim refers to any claims or other cause of action described above brought in an administrative, arbitral, judicial, or other forum of whatsoever kind or nature.

2.11 “Class Counsel” means Nichols Kaster, PLLP, Norwood & Atchley, and Donati Law, PLLC.

2.12 “Class Members” or “Settlement Class” or “Class,” or any variation of such term means Class Agent and all members of the Class certified in the Office of Federal Operations decision dated October 26, 2006 and incorporating the end of the class period on October 31, 2012 (i.e., PATCO Inventory applicants who were not selected for Air Traffic Control Specialist vacancies between September 16, 2003, and October 31, 2012), and all individuals whose claims were subsumed in this case as documented in a proceeding under the EEOC federal sector regulations.

2.13 “EEOC” means the Equal Employment Opportunity Commission.

2.14 “EEOC MD-110” or “MD-110” means the Equal Employment Opportunity Commission’s Management Directive 110, for 29 C.F.R. Part 1614, as revised August 5, 2015.

2.15 “Eligible Claims” means all Class Claims.

2.16 “Notice of Resolution” refers to the Notice of Resolution attached as Exhibit A to be issued to all Class Members within fourteen (14) days after this Agreement is fully executed, as described in Section 6.2.

2.17 “Parties” means the Class Agent, the Class, and the Agency.

2.18 “PATCO” refers to the Professional Air Traffic Control Organization. “PATCO Controllers” or “PATCOs” refers to PATCO members who were ATCS employees of the FAA who were terminated from Agency employment in 1981 because they participated in a PATCO strike.

2.19 “PATCO Inventory Applicants” refers to the PATCO Controllers who applied to the Recruitment Notice 93-01 and were eligible for consideration for rehire from the PATCO inventory on or after September 16, 2003.

2.20 “Questionnaire” refers to the Questionnaire to be sent to all Class Members in the form of Exhibit B with the Notice of Resolution, as described in Section 6.2.

2.21 “Recruitment Notice 93-01” is the PATCO recruitment announcement that was open to certain reinstatement and transfer eligible applicants who were separated because of the PATCO strike.

2.22 “Settlement Administrator” or “Trustee” means the organization designated to effectuate the Settlement terms, concerning the satisfaction and resolution of all Claimants’ claims pursuant to the Claim Resolution process set forth in this Agreement; receiving and processing information from Claimants pertaining to their claims; assisting with allocating and distributing the Fund; and in general supervising the administration of the Settlement Fund in accordance with the Settlement.

2.23 “Settlement Fund” or “Fund” means the qualified settlement fund created by the deposit of \$47,500,000.00 by the Agency, the purpose and administration of which are governed by this Agreement.

### 3. NATURE OF THE CASE

In 1981, approximately 11,000 ATCSs who were members of the PATCO union went on an illegal strike and were terminated from the FAA for doing so through a directive by President Ronald Reagan. Following the 1981 termination of the striking PATCO members, a ban against rehiring any of the members was imposed. In August 1993, President William Clinton issued a memorandum lifting the ban on re-employment of the terminated PATCO controllers and stating that they were eligible to apply for FAA openings without preference. PATCO controllers interested in re-employment could apply to Recruitment Notice 93-01, which was open to reinstatement and transfer eligible applicants who were separated because of the strike.

Applicants to Recruitment Notice 93-01 were rated individually for terminal radar, non-radar terminal, and enroute options. PATCO applicants who successfully applied to Recruitment Notice 93-01 were part of the PATCO inventory and eligible for consideration through 2013. In 2005, the Agency “circularized” the PATCO inventory by requiring its members to update their qualifications, geographic preferences, contact information, and to state whether they continued to be interested in the ATCS position. In addition to the PATCO Inventory, the Agency made ATCS hiring selections from several other hiring sources. The Agency’s multi-source approach recruited individuals of varying experience and education, including the Air Traffic Collegiate Training Initiative (AT-CTI); Control Tower Operator (CTO); General Public; Reinstatement/Department of Defense (DOD); Retirement Military Controller (RMC); and Veterans Recruitment Appointment/Veterans Readjustment (VRA). In 2007, the new AT-SAT exam was fully implemented and used by the Agency in its entry-level public hiring.

From the beginning of the class period up to approximately 2005, referral list selections were generally made by selection officers in nine regions. Before the transition to the new Air Traffic Organization, at times, regions issued their own vacancy announcements. The regions could also request referral lists from centralized inventories, such as PATCO.

Starting in fiscal year 2007, the Agency transitioned to a Centralized Selection Panel (CSP) process, in anticipation of a surge in hiring. The CSP selections were generally made by six panels (an en route panel and a terminal panel for each of the three service areas, Western, Central, and Eastern). Each panel consisted of a team of two to three selecting officials, with one of them serving as team lead. Selection decisions were made separately by each of the six panels.

Class Agent was previously employed by the Agency from 1970 to August 1981 as an ATCS at the FAA’s Houston Air Traffic Control Center. His employment was terminated for his

participation in the 1981 strike. In 1993, Class Agent applied for employment with the FAA in response to the PATCO Recruitment Notice 93-01. In August 2007, he was selected for the Fort Worth ARTCC (ZFW) in the Central Service Area through the VRA hiring source, and he received a firm offer of employment as an ATCS on September 17, 2009. Class Agent was also selected via the PATCO inventory. On September 21, 2009, Class Agent declined the Agency's offer.

Class Agent and the Class alleged that the Agency discriminated against them in non-selection and non-hire decisions due to their age under disparate treatment and disparate impact theories. The Agency denies this allegation and presented substantial evidence in support of its defense, including statistics, anecdotal evidence and expert testimony. Class Agent, too, presented substantial evidence in support of the asserted claims, including statistics, anecdotal evidence, and expert testimony. The Administrative Judge issued an opinion which certified two sub-classes: (1) September 2003 through September 2006 in Southwest Region or within the Central Service Area (Central En Route & Oceanic Service Area and/or Central Terminal Service Area); (2) from October 2006 through approximately October 2012 under the CSP process; and the opinion further excluded claims arising from the PATCO circularization. Following a hearing, the Administrative Judge dismissed the claims for the sub-class encompassing September 2003 through September 2006 in the Southwest Region or the Central Service Area; dismissed all disparate impact claims in both subclasses; dismissed Mr. McCollum's individual claim; and made a phase one finding of a pattern or practice of discrimination, giving rise to a presumption of discrimination which would be applicable in phase two individual proceedings, related to the subclass encompassing October 2006 through approximately October 2012 under the CSP process.

Both Class Agent and the Agency appealed the Administrative Judge's decisions.

#### 4. EFFECTIVE DATE AND TERM OF AGREEMENT

4.1 This Agreement is effective upon signing by all Parties. The Agreement shall continue to be effective and binding on the Parties and their agents and successors until the expiration of the later of (a) the completion of the Claims Process set forth in Section 9 herein or (b) two (2) years from the effective date of this Agreement, at which time this Agreement shall expire and terminate; provided, however, that the release of claims in this Agreement, in Claim and Release forms or on checks pursuant to this Agreement, and the reversion of unused funds in Section 10.2 hereof shall survive the expiration of this Agreement. If the Administrative Judge determines that the settlement is not fair, adequate and reasonable to the class as a whole, or if the Administrative Judge's approval of the settlement is reversed, vacated or modified on appeal to the Commission, then, within, at a maximum, the two year period described in Section 4.1(b) herein, and pursuant to the process described in Section 6.7 *infra*, the Parties shall engage in a process to confer in good faith to determine whether they can agree upon a revised settlement.

#### 5. CLASS MEMBERS COVERED BY AGREEMENT

5.1 The Class included in and bound by this Agreement is: PATCO Inventory applicants who were not selected for Air Traffic Control Specialist vacancies between September 16, 2003, and October 31, 2012, inclusive of individuals with EEO complaints that were subsumed by this class action. This class is intended to be identical in scope to the class certified in the EEOC's Office of Federal Operations decision dated October 26, 2006, and inclusive of all



claims that were subsumed in this case as documented in a proceeding under the EEOC federal sector regulations.

5.2 Class Agent David McCollum is included in the class pursuant to this Agreement. Class Agent acknowledges that he has been advised in writing to consult with counsel and has acted with the advice of counsel and that he signs this Agreement voluntarily and with full knowledge of all material facts in the execution of this Agreement.

## 6. REMAND, NOTICE, CERTIFICATION OF CLASS AND MOTION FOR APPROVAL

6.1 Within fourteen (14) days after execution hereof by all Parties, the Parties will jointly request that the EEOC Office of Federal Operations remand the case from appeal to the Administrative Judge solely for settlement purposes pursuant to 29 C.F.R. § 1614.204(g)(4).

6.2 Pursuant to 29 C.F.R. § 1614.204(g)(4), within fourteen (14) days of the execution of this Agreement by all parties, the Agency will:

(a) Via the Settlement Administrator, provide the attached Exhibit A Notice of Resolution (“Notice”) to all Class Members via mail and e-mail, if available. The Notice will include a Questionnaire to be sent to all Class Members in the form of Exhibit B. The Notice shall inform Class Members they have thirty (30) days to petition to vacate the Settlement. The Notice shall also inform Class Members that they must submit a Questionnaire with sixty (60) days of the date the Notice is sent to receive an allocation amount that is based on the Class Member’s individual responses to the Questionnaire; otherwise, the Class Member will be allocated the minimum allocation share.

(b) Provide the Administrative Judge with a copy of the proposed resolution and the notice sent to the parties.

6.3 Within seven (7) days after the deadline for a class member to file a petition to vacate the Settlement, Class Agent shall move for approval of this settlement and for certification of the Class as described herein, solely for settlement purposes, pursuant to 29 C.F.R. § 1614.204(g)(4). The Agency will not oppose the approval of this settlement and certification of the Class solely for settlement purposes.

6.4 Pursuant to 29 C.F.R. § 1614.204(g)(4), the Administrative Judge will review the proposed resolution after the motion for approval is filed and after the expiration of the thirty (30) day period allowed for petitions, consider any petitions received from members of the Class, and rule regarding whether the settlement is fair, adequate, and reasonable to the class as a whole.

6.5 If the Administrative Judge determines that the settlement is fair, adequate, and reasonable to the class as a whole, then within twenty-one (21) days after that ruling, the Agency shall issue a notice of final agency order reflecting the approval and the dismissal of the action if that is included in the approval order.

6.6 Within seven (7) days of the Agency’s notice of final agency order, the Settlement Administrator shall send copies of the final agency order, notice of right to appeal to the EEOC,

notice of right to file a complaint in federal court, and the Claim and Release Form to the Class via mail and e-mail, if available.

6.7 If the Administrative Judge determines that the settlement is not fair, adequate and reasonable to the class as a whole, or if the Administrative Judge's approval of the settlement is reversed, vacated or modified on appeal, then the Parties shall confer in good faith to determine whether they can agree upon a revised settlement. If the parties agree upon and execute a revised settlement agreement, then the procedures set forth in this Section shall be followed again. If the parties do not agree upon and execute a revised settlement agreement, then the settlement shall be void *ab initio* and the Parties shall return to the status quo immediately before the settlement.

6.8 Pursuant to 29 C.F.R. § 1614.204(g)(4) and MD-110 §§ VI.C, XI.C, once the Administrative Judge rules that this Agreement is fair, adequate, and reasonable to the class as a whole, this Agreement controls the claims of all Class Members and binds all Class Members, and no Class Members may opt out.

## 7. SETTLEMENT FUND

7.1 The Agency and Class agree that payments made to the Settlement Fund in settlement of this action are made in lieu of or full satisfaction of the Class Claims. As noted in Paragraph 6.8, the Administrative Judge must review and issue a decision that the proposed resolution is fair, adequate, and reasonable before the Agency can issue any payments to the Settlement Fund. If the Administrative Judge issues this decision before September 30, 2022, then the following provision applies:

- (a) This Agreement reflects that the settled amount is for Plaintiffs' Class Claims from fiscal years 2017 through 2022 only. All other Class Claims, including, without limitation, those prior to FY 2017 and FY 2023 forward, are waived and/or discharged.

If the Administrative Judge issues this decision on or after October 1, 2022, then the following provision applies:

- (b) This Agreement reflects that the settled amount is for Plaintiffs' Class Claims from fiscal years 2017 through 2023 only. All other Class Claims, including, without limitation, those prior to FY 2017 and FY 2024 forward, are waived and/or discharged.

While this provision defines the monies used to fund this settled amount, it does not otherwise exclude from the scope of this Agreement claims to relief that arose in earlier or subsequent years. "Fiscal year" means each twelve-month period commencing on October 1 and ending on September 30. Nothing in this Section is intended to release claims not identified as released, waived or barred in Sections 12.1, 12.2, and 12.3 of this Agreement. This Section does not alter the limit imposed by Section 12.4 of this Agreement.

7.2 For the purpose of satisfying and settling all claims of the Class and Class Agent, and paying all attorneys' fees and expenses, the Agency shall pay the sum of forty-seven million, five hundred thousand dollars (\$47,500,000.00) (the "Settlement Amount") into a qualified settlement fund (the "Settlement Fund"). Class Agent, operating as an agent of the Class, shall establish the Settlement Fund as a qualified Settlement Fund under Section 468B of the Internal Revenue Code. The Settlement Fund shall be the sole source from which Class Agent shall pay all of the Eligible Claims of all Class Members, and all attorneys' fees and costs, all service payments, all taxes, the entirety of a reserve fund and all other payments, costs and expenses associated with this Agreement. The Agency shall pay by wire transfer the Settlement Amount into the Settlement Fund on or before: (a) if there is no appeal, the date one hundred (100) days after the Agency issues the final agency order to the Class along with their right to file a complaint in federal court; (b) if there is an appeal, the date one hundred (100) days after the conclusion of the appeal without reversal, vacatur or modification of the approval of the settlement.

7.3 From the Settlement Fund, Class Agent shall pay thirty-six million, six hundred and twenty-five thousand dollars (\$36,625,000.00) for the Claims of the Class Members, to pay Service Payments, to withhold and pay the employee's and the employer's share of FICA, FUTA and SUTA taxes attributable to W-2 wages, to fund the reserve fund and to pay the Settlement Administrator and to pay other costs and expenses of the settlement. This amount and any income thereon and shall be known as the "Claims Fund." All such amounts shall be paid from the Claims Fund.

7.4 From the Settlement Fund, Class Agent shall pay ten-million, eight hundred seventy-five thousand dollars (\$10,875,000.00) (reflecting a total of \$9,875,000.00 in attorneys' fees and \$1,000,000.00 as out-of-pocket litigation costs) for Class Counsel's attorneys' fees and litigation; provided that Class Agent demonstrates to the Administrative Judge that these fees and costs are reasonable and appropriate. The Agency will not object to the approval of these amounts when Class Counsel seeks approval of them. All amounts allocated as attorneys' fees and costs will be paid solely by Class Agent from the Settlement Fund and will be reported on an IRS Form 1099. The Agency shall not make any payment of attorneys' fees and costs.

7.5 Should the Administrative Judge not approve the amount of attorneys' fees and costs sought by the Class Agent but approve the remainder of the proposed settlement, the Class Agent may propose a different amount for the Administrative Judge's approval or add the unapproved amount to the Claims Fund.

7.6 Class Agent may apportion an amount of the Claims Fund, not to exceed two hundred and fifty thousand dollars (\$250,000.00), to a reserve fund which shall be used solely to effectuate the purpose of the settlement, including but not limited to, resolving any challenge by a Class Member regarding the amount of a settlement payment or to cover unforeseen costs or errors associated with settlement administration. Any funds remaining in the reserve fund will be reallocated to Class Members who submitted a Claim Form.

7.7 To promote fairness and efficiency, 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) for class members who submit a Claim and Release Form, 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 a 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 or 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.

7.8 Service Payments in the amount of \$50,000.00 shall be paid to Class Agent David McCollum, and \$5,000.00 each to the approximately fourteen (14) Class Members who testified or traveled to and were prepared to testify at the liability hearing. The Service Payments will be paid from the Claims Fund.

7.9 Class Agent shall pay, from the Claims Fund, any claims administration expenses incurred in administering this Settlement, including but not limited to those relating to: (1) the administration of the Claims Resolution Process and the Claims Fund, including distribution of the Claims Fund to Class Members and related matters, (2) all attorneys' fees, costs, and expenses incurred by Class Counsel in administering the settlement to be drawn from the contingency fund only; and (3) fees and costs of the Settlement Administrator. Notwithstanding the above, attorneys' fees, costs and expenses incurred by any person objecting to, or making a collateral or direct attack on the Agreement or on the actions of the Settlement Administrator, shall be borne by that person and shall not be chargeable to either the Agency, Class Agent, the Settlement Fund or the Claims Fund.

7.10 The employer's share of payroll taxes resulting from payments to Class Members shall be paid from the Claims Fund.

7.11 For any Class Member who files a claim in federal court for claims covered by the Class Claims and/or the Release, no payment shall be made to that Class Member and the amount allocated for payment to that Class Member shall immediately revert from the Claims Fund and be paid to the Agency.

7.12 In no event will the Agency pay any amount in addition to or above the Settlement Amount.

## 8. SETTLEMENT ADMINISTRATOR

8.1 Within fourteen (14) days of the execution of this Agreement by all parties, the Settlement Administrator shall create a settlement website to "go live" the same day the Notice of Resolution is sent to Class Members. The website, at the very least, will post the Notice of Resolution. After the AJ has approved the settlement, the website will provide the Claim and Release Form, and provide the ability for Class Members to submit the Claim and Release Form electronically through the website. The website will also include a general description of the matter, subject to approval by the Agency, including the class definition, contact information for Class Counsel and the Settlement Administrator for Class Members to contact for additional information. Given the confidential nature of EEOC litigation, the website postings will not include confidential information about Class Members.

8.2 The Settlement Fund and Claims Fund and Claim Resolution Process shall be administered by CPT Group (the "Settlement Administrator"). Class Agent shall select the Settlement Administrator, subject to approval by the Agency, which approval will not be unreasonably withheld.

8.3 Prior to any mailing, the Settlement Administrator shall utilize appropriate systems to verify and/or update the addresses for each member of the Settlement Class. Should any mailing be returned, the Settlement Administrator shall re-mail to the forwarding address, if any, and if no forwarding address was provided, utilize any other legally available resource for the purpose of finding new addresses and re-mailing.

8.4 The Settlement Administrator shall be responsible for identifying a current address for all Class Members; sending and administering Claim and Release Forms; reviewing

the Forms to determine whether they are fully completed and signed and are not submitted by Class Members who filed a claim in federal court; disbursing payments; and taking other necessary steps to manage the Settlement Fund and Claims Fund and Claim Resolution Process.

8.5 The Settlement Administrator will make timely and regular update reports to both Parties, at least once per quarter, including but not limited to with respect to locating individual Class Members as needed for notifying Class Members about the settlement and/or reissuance of uncashed settlement payment checks, and informing the Parties about Claim and Release Forms that have been received.

## 9. CLAIMS FILING PROCEDURES

9.1 As identified in paragraph 6.6, the Settlement Administrator shall mail and email, if available, a Claim and Release Form to every known Class Member at his/her last known address, or the best current address identified by the Settlement Administrator within seven (7) days of the Agency's notice of final agency order. Class Counsel also shall make Claim and Release Forms available to Class Members upon request. Claim and Release forms shall be issued in the form attached as Exhibit C. The Claim and Release form will inform the Class Member of their share of the Settlement consistent with Paragraph 7.3. To be eligible for payment, Claim and Release forms must be submitted by hand-delivery, or electronically via email, fax, or through the Settlement Administrator's website, or postmarked no later than forty-five (45) days after Claim and Release forms are initially sent. Class Members who do not timely return a fully completed and signed Claim and Release form will not be entitled to payment under this Settlement. The burden to prove timely receipt of a claim by the Settlement Administrator will be upon the Claimant. A Claim and Release Form that is postmarked, or otherwise received, by the Settlement Administrator or Class Counsel after forty-five (45) days will not be accepted unless the deadline is extended by the Settlement Administrator.

9.2 Duly appointed personal representatives, beneficiaries, or trustees of deceased or bankrupt Claimants may submit a Claim and Release form. The Settlement Administrator will have the right to request, and the third-party filer will have the burden of providing to the Settlement Administrator, any additional information and/or documentation deemed necessary by the Settlement Administrator to substantiate the claim(s) contained in the submission. Documentation from a third-party filer that is not acceptable to the Settlement Administrator will result in rejection of the affected claim(s).

9.3 The Claim and Release Forms submitted, in accordance with the procedures set forth on the Claim Form, to the Settlement Administrator by Class Members as defined in this Agreement and postmarked, electronically, by fax, or by mail, or hand delivered no later than forty-five (45) days after Claim and Release forms are initially sent, shall be processed and reviewed by the Settlement Administrator to determine whether the form has been fully completed and signed.

9.4 The Notice of final agency order and the Claim and Release Form shall inform Class Members that if they timely return a completed Claim Form and Release but they file a lawsuit in federal court, their Claim Form and Release will be void and they will not receive a payment in this Settlement.

9.5 In consultation with Class Counsel, the Settlement Administrator shall have authority to resolve Class Members' disagreements with the allocation of settlement amounts for the complaining Class Member.

9.6 The Settlement Administrator shall issue payments within five (5) days of the Agency funding the Settlement Fund with the Settlement Amount pursuant to paragraph 7.2.

9.7 The Settlement Administrator shall prepare tax forms and calculate, withhold and pay from the Claims Fund any taxes that must be withheld and paid. With respect to any payment to a Class Member, thirty percent (30%) shall be for back pay and reported as W-2 wages, and seventy percent (70%) shall constitute payment for the cost of retirement benefits and be reported on an IRS Form 1099. All amounts allocated as service payments shall be reported on an IRS Form 1099.

9.8 Each Settlement Class Member shall be responsible for obtaining their own independent tax advice concerning the proper income reporting and tax obligations regarding any and all payments and/or other remuneration they receive or obtain pursuant to this Agreement, and shall further assume the responsibility of remitting to the Internal Revenue Service or any other relevant taxing authorities any and all amounts required by law to be paid out of any monies received, or other remuneration obtained, under this Agreement, without any contribution whatsoever from the Agency, Class Counsel or the Settlement Fund maintained by the Settlement Administrator.

9.9 Nothing in this Agreement shall be construed as the Agency or Class Counsel providing any advice regarding the payment of taxes or the tax consequences of a Settlement Class Member's participation in any portion of this Agreement.

## 10. REALLOCATION

10.1 Class Agent may reallocate unclaimed or unused amounts from the Claims Fund to Class Members who submitted a Claim and Release Form. This includes amounts allocated to Class Members who did not submit a Claim and Release Form, except those Class Members who filed a Class Claim in federal court.

10.2 Any unclaimed or unused funds remaining 365 days after payment of claims to Class Members commences will revert to the Agency.

## 11. DISMISSAL OF CLAIMS

11.1 Seven (7) days after a finding by the Administrative Judge that the resolution is fair, adequate, and reasonable to the class as a whole, if the approval decision does not dismiss the entire case, the Parties shall jointly move to dismiss with prejudice the class claims and all individual claims of Class Members (including individuals whose claims were subsumed in this case). To the extent any additional filings in other proceedings are necessary to secure dismissal of the subsumed claims, Class Agent's counsel and the Agency's counsel will jointly move for dismissal of those claims in those proceedings.

## 12. CLASS AGENT'S RELEASE OF CLAIMS ON BEHALF OF THE CLASS

12.1 Class Agent, on his own behalf and on behalf of the class, and each and every member of the Class, hereby releases and waives all claims of unlawful 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 the class member has as of the date the Settlement Agreement is fully executed, 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 claims that are known and unknown, disclosed and undisclosed, foreseen and unforeseen, suspected and unsuspected, vested and unvested, absolute and contingent, and asserted or could have been asserted but were not asserted.

12.2 The claims released in paragraph 12.1 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.

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

12.4 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. The release does not apply to any class members who timely file their claim in federal court.

12.5 Class members who submit claims must sign a release of claims in the form of the Claim and Release Form attached hereto as Exhibit C as set forth in Section 13.

12.6 The Settlement is intended to bar all claims of the Class and/or Class Members, arising out of the same transaction or occurrence as was at issue in this case, that were or could have been brought in this case, against the Agency and/or its officers, employees or agents, in their individual and official capacities, and/or its benefits programs, including but not limited to



pension plans. This paragraph does not apply to any class members who timely file their claim in federal court.

12.7 This Release does not apply to any Class Member who timely files a claim in federal court against the Agency raising the same allegations as were at issue in this case.

### 13. RELEASE ON CLAIM AND RELEASE FORMS AND CHECKS

13.1 As a condition precedent to the receipt of any relief under the terms of this Agreement, and in consideration thereof, and in addition to the Class Agent's Release of Claims on Behalf of the Class in Section 12 hereof, each Class Member shall execute the Release on the Claim and Release Form in Exhibit C, attached.

13.2 The Release shall also be printed on every check issued to a Class Member from the Claims Fund. Cashing of the check shall constitute agreement to the Release terms on the check even in the absence of a signature on the Release. Participating Class Members will have sixty (60) days to cash or negotiate their settlement checks.

### 14. TRAINING

14.1 Within one (1) year of the Agency's notice of final agency order, the Agency will provide managers and other personnel who are in the position to process and consider applications from former controllers for ATCS positions with Equal Employment Opportunity (EEO) training emphasizing the Agency's obligation under the ADEA to conduct selection processes free of differential treatment based on age.

14.2 Within one (1) year of the Agency's notice of final agency order, the Agency will modify EEO training the Agency provides to its Air Traffic Organization (ATO) workforce to include instruction on the pernicious effects of age-based stereotypes and stigma in the workplace. A segment of this training will inform that improperly basing a selection decision on age may result in individuals protected by the ADEA seeking recourse via the EEO process and the federal district courts. The training may include more specific information about the maximum entry age rules, and clarify that the original appointment maximum entry age guidelines would not apply to certain former controllers. The training should encourage consultation with HR personnel (or other knowledgeable personnel) with respect to whether exemptions from the mandatory separation age are available for particular candidates including former controllers who meet or exceed age 56.

### 15. NO OTHER RELIEF

15.1 The Agency is not required to provide any monetary, equitable or injunctive relief or take any action that is not expressly stated in this Agreement. This Agreement does not include any requirement for ongoing monitoring or reporting of Agency activities, or posting of any notice or information at the Agency. This Agreement does not give Class Members any right to instatement or reinstatement.

## 16. NO WRONGDOING

16.1 The Agency expressly denies any wrongdoing or liability whatsoever. This Agreement represents the compromise of disputed claims. It reflects the Parties' recognition that litigation of the cross-appeals of the Administrative Judge's decision, and/or subsequent individual damages phase of the trial, would burden all concerned and require a massive commitment of time, resources, and money. The Agreement does not constitute, is not intended to constitute, and shall not under any circumstances be deemed to constitute an admission by the Agency as to the merits, validity, or accuracy of any of the Class's allegations or claims.

16.2 Nothing in or related to this Agreement, including but not limited to any action taken to implement it or any statements, discussions, communications, or any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading up to this Agreement, may be introduced, admitted or used in any way, in any administrative, judicial, arbitral, investigative, or other proceeding of any kind as evidence of discrimination, retaliation, or any violation of the ADEA, Title VII, Section 1981, or any other federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

16.3 In the event that the Administrative Judge does not find that the resolution in this Agreement is fair, adequate, and reasonable to the class as a whole, or the EEOC so finds on an appeal related thereto, nothing herein shall be deemed to waive any of the Agency's objections and/or defenses, including but not limited to the Agency's objections to class certification and defenses on the merits, and neither this Agreement nor the Administrative Judge's approval hereof nor the certification of a settlement class shall be admissible in any court regarding the propriety of class certification or regarding any other issue in this case.

## 17. CONFLICTS/CONFIDENTIAL INFORMATION

17.1 Due to Class Counsel's continuing representation of the Class, their receipt of confidential information regarding the Agency during this litigation, and their continuing receipt of such confidential information during the term of the Agreement, Class Counsel will not during the term of the Agreement undertake any representation that would involve the use of the Agency's confidential information for any purpose unrelated to the enforcement of the Agreement.

## 18. PUBLICITY

18.1 The Parties shall issue a Joint Press Release in connection with this Agreement, which shall be made available to the news media within seven days after the Effective Date of this Agreement. The Parties shall not make any other public statements about the settlement; provided, however, that the Agency may respond to questions or statements from third-parties, including but not limited to Congress.

18.2 The Parties agree to a Joint Press Release, *see* Exhibit D. The Parties may modify the Joint Press Release by mutual agreement.

## 19. CONFIDENTIALITY AND RETURN OF DOCUMENTS

19.1 Class Counsel acknowledges that during the course of this litigation they have received confidential information regarding the Agency, its personnel, including without limitation, personnel files, internal memoranda, personnel plans, programs, policies and procedures, computerized data and other information. Class Agent and Class Counsel shall maintain the confidentiality of all such information and shall not disclose or use it.

19.2 Class Agent, and Class Counsel, shall within sixty (60) days after the Administrative Judge approves this Agreement or the conclusion of appeals without reversal or modification of the approval, whichever is later, either certify in writing that all materials (and copies of materials) that the Agency produced to Class Agent in the course of the litigation or that otherwise include confidential information of the Agency, including all copies thereof that have been provided to or are in the possession of Class Agent's expert(s) or consultant(s), have been destroyed or return all such materials (and copies of such materials) to the Agency.

19.3 Class Counsel shall be responsible for advising their experts, outside consultants, and any other individual acting for or on behalf of Class Counsel, of the confidentiality provisions of this Agreement and procuring their compliance with them.

## 20. DISPUTE RESOLUTION

20.1 Pursuant to 29 C.F.R. § 1614.504, any Party alleging a violation of this Agreement shall notify the agency's EEO Director, in writing, of the alleged noncompliance within thirty (30) days of when the Party knew or should have known of a breach of this agreement. The Party may request that the terms of this Agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

20.2 In the event of any such claim of noncompliance with this Agreement, the Party alleging noncompliance and the Agency shall first confer in a good faith effort to resolve the dispute. The Agency shall resolve the matter and respond to the party in writing.

20.3 If conferral between the Party alleging noncompliance and the Agency does not result in the resolution of the claim to the satisfaction of all Parties, then upon mutual agreement by the Party alleging noncompliance and the Agency, before the Agency has rendered the written response to the complainant provided in 29 C.F.R. 1604.504(b), the claim may be referred to mediation before the Honorable Layn Phillips, Esq., Phillips ADR, 2101 East Coast Highway, Suite 250, Corona Del Mar, California 92625. The Party alleging noncompliance and the Agency shall share the cost of any such mediation equally.

20.4 If the Agency has not responded to the Party, in writing, if the mediation does not result in the resolution of the claim, or if the Party and the Agency do not mutually agree upon mediation, the Party may appeal to the Commission for a determination pursuant to 29 C.F.R. § 1614.504 as to whether the Agency has complied with the terms of the settlement agreement or final decision. The appellant may file such an appeal 35 days after they have served the Agency with the allegations of noncompliance, but must file an appeal within thirty (30) days of their receipt of the Agency's determination.

## 21. COUNSEL

21.1 The Agency and Class Agent (on behalf of himself and the Class) acknowledge and represent that each has read this Agreement and the Claim and Release Form in their entirety, and each understands all of their terms and ramifications of those documents. All Parties and all Class Members are represented by competent counsel. Class Agent acknowledges and represents that Class Agent and Class Members have been advised by the Agency to consult with an attorney with respect to this Agreement and the Release of claims, and that they have had a reasonable opportunity to do so before signing them. Each Party further acknowledges and represents that such Party has not been subject to coercion, duress, fraud, misrepresentation or undue influence in any manner in connection with such Party's execution of this Agreement and Claim and Release forms, and that such Party's execution of this Agreement is done freely, voluntarily, fairly and with full knowledge and understanding of their terms and ramifications and with sufficient time to consider them.

## 22. GOVERNING LAW

22.1 This Agreement shall be governed by and construed and enforced in accordance with U.S. federal law, without regard to any principles of conflicts of law or choice of law rules that would result in the application of the substantive or procedural rules or law of any other jurisdiction.

## 23. SEVERABILITY

23.1 Any part or provision of the Agreement may be rendered invalid if federal law prohibits it.

23.2 The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision other than any Release shall not affect the validity or enforceability of the other provisions hereof, which shall remain in full force and effect; provided however that: (a) a finding that any Release in this Agreement, a Release Form or a check is invalid shall result in this Agreement being voidable in its entirety by the Agency at the Agency's discretion; (b) any Administrative Judge, agency, judge or other forum considering the validity or enforceability of this Agreement or any such Release shall have the authority to reform any provision in this Agreement or any such Release so that it effectuates the intent of the parties expressed herein to the greatest extent permissible under applicable law.

## 24. ENTIRE AGREEMENT

24.1 This Agreement including the Releases constitutes the complete understanding between the Parties with respect to the subject matter hereof and supersedes the Terms Sheet and all prior agreements, negotiations and discussions between the Parties with respect thereto. No Party has made or relied on any statement, representation, warranty, or covenant with respect to this Agreement except as expressly set forth herein.

25. MODIFICATION

25.1 This Agreement may not be modified except by a written instrument signed by the Agency and the Class Counsel on behalf of the Class. The Parties may agree by stipulation to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Administrative Judge about the contents of such exhibits without the need to further amend this Agreement. Any stipulation modifying the Agreement itself must be filed with the Administrative Judge and is subject to the Administrative Judge's approval.

26. CONSTRUCTION

26.1 The Agency, Class Agent, and Class Counsel on behalf of the Class participated in drafting this Agreement. No provision of this Agreement shall be interpreted or construed against any Party because that Party or its legal representative drafted that provision. The captions and headings of the Sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Any reference herein to any person shall be deemed to include the heirs, personal representatives, successors and permitted assigns (if any) of such person.

**SIGNATURE PAGE**

THEREFORE, to signify their agreement to the terms set forth herein, the Parties set forth their signatures below.

Acknowledged and Agreed:

**FEDERAL AVIATION ADMINISTRATION**



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Tim Arel

(A) Chief Operating Officer, Air Traffic Organization



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Brett Dace

Russell Christensen

Elisabeth Fry

Lisa Holden

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*Counsel for the Agency*

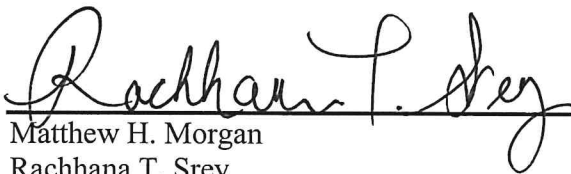
**BEFORE SIGNING THE AGREEMENT, READ IT CAREFULLY, AND DISCUSS IT WITH YOUR ATTORNEY. BY SIGNING IT YOU WILL BE WAIVING YOUR KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED CLAIMS.**



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David McCollum, Class Agent

**BEFORE SIGNING THE AGREEMENT, READ IT CAREFULLY, AND DISCUSS IT WITH YOUR ATTORNEY. BY SIGNING IT YOU WILL BE WAIVING YOUR KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED CLAIMS.**



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*Counsel for Class Agent & Class*

# EXHIBIT A



*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.**

<b>You May:</b>	<b>Effect of Choosing the Option:</b>	<b>Due Date:</b>
<i>Submit the Questionnaire</i>	A Questionnaire is included with this Notice. If you complete and return it on or before [60 days after mailing Notice], and if the Administrative Judge approves the	<b>[60 days from the date of mailing]</b>

	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 [website].	
<b><i>File a Petition to Vacate</i></b>	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.	<b><i>[30 days after date of Notice]</i></b>
<b><i>Do Nothing</i></b>	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.	<b><i>None</i></b>

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 [website address].

**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 X 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 January X, 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 2,319 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 3,622 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 [enter website].

**The deadline to submit a Questionnaire is [60 days from mailing Notice]. That means you must electronically submit via email, fax, or through the Settlement Administrator’s website by [DATE], or mail the Questionnaire to the Settlement Administrator postmarked by [enter date again].**

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 [30 days after Notice sent], 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:

[enter mail and email]

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

[enter Agency counsel and class counsel address]

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 [30 days after Notice sent] or mail your petition postmarked by [30 days after Notice sent], 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](mailto: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](mailto: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 [enter date] 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 [the date the Settlement Agreement was fully executed] 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?**

If you have any questions or would like more information, you may call or email the Settlement Administrator at:

[enter Settlement Admin info]

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

# EXHIBIT B

**QUESTIONNAIRE**

*David McCollum, et al. v. Peter P.M. Buttigieg, Secretary, Department of Transportation,*  
EEOC Case Nos.: 450-2007-00109X, 310-2004-00322X

As explained in the Notice of Resolution, the parties have agreed to use the information submitted on this form to allocate the Settlement Fund. The Agency's records reflect the following:

- You **WERE** in the PATCO Inventory as of October 2006 and through any point until approximately October 31, 2012, the period in which the Administrative Judge found a pattern or practice of age discrimination. You are in Group 1.
- You **WERE NOT** in the PATCO Inventory as of October 2006 and through any point until approximately October 31, 2012, the period in which the Administrative Judge found a pattern or practice of age discrimination. You are in Group 2.

If you would like your individualized information considered for the allocation, you must complete and return your Questionnaire to the Settlement Administrator by **[60 days from the date of the Notice mailing]**. That means you must electronically submit your Questionnaire via email, fax, or through the Settlement Administrator's website on or before **[DATE]**, or mail your Questionnaire to the Settlement Administrator postmarked on or before **[enter date again]**. 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 is in Group 1 and \$1,000.00 if the class member is in Group 2. If you return a Questionnaire, and your allocation is calculated to be under the \$10,000.00 or \$1,000.00 minimums for Group 1 and Group 2 respectively, you will receive the minimum.

Please visit this website ([www.url.com](http://www.url.com)) to submit your fillable, electronic Questionnaire.

Alternatively, you may print and mail, email, OR fax it to:

McCollum v. Department of Transportation c/o **Settlement Administrator**

**ADDRESS**

**ADDRESS**

Telephone: **XXX**

Fax: **XXX**

Email: **XXXX**

**If the Class Member is deceased, then the deceased Class Member's legal beneficiary or executor of the estate may submit a Questionnaire on the deceased Class Member's behalf, and must also complete Section D below. If the Class Member is in bankruptcy, then the trustee of the estate may submit a Questionnaire on the deceased Class Member's behalf, and must also complete Section D below.**

**If you have questions about this Questionnaire, you may contact counsel representing the class at **[insert contact info]**. Do not contact the Administrative Judge with questions about the Questionnaire.**

**Complete the below information to the best of your ability (please print clearly):**

**A. CONTACT AND IDENTIFICATION INFORMATION**

1. Class Member's Full Legal Name, including Middle Name:

---

2. Class Member's Full Legal Name, including Middle Name at Time of Application (if different than #1 above)

---

3. Class Member's Date of Birth

---

4. Address:

---

5. Best Phone Number:

---

6. Best Email:

---

7. Last Four Digits of Social Security Number:

---

If your address or other contact information changes, you **must** send the Settlement Administrator your new address to ensure that you receive any payment to which you may be entitled.

**B. ELIGIBILITY FACTORS**

Even if the FAA rehired you after September 16, 2003, complete the following:

1. Health (*Check one that applies to you and provide answers if requested.*)

Between September 16, 2003 and October 31, 2012:

I was in generally good health, and I believe I could have worked as an air traffic controller at the FAA.

Starting on \_\_\_\_\_ (actual or estimated date), I had a medical condition that I believe may have prevented me from working as an air traffic controller at the FAA.

2. Background (If applicable)

I was convicted of a felony on \_\_\_\_\_ (actual or estimated date) and my conviction was not expunged.

**C. COMPENSATION FROM WORK**

Include any income earned as an employee, business owner, or for work you otherwise performed from any source.

**DO NOT** include the value of benefits or other perks received, income from sources where you did not receive compensation from work performed, such as retirement or disability benefits, investment income, or unemployment benefits.

Additionally, for years where you did not receive any compensation from work, **DO NOT** include those years in your average calculations. For example, if in 2007, you earned \$40,000 for work performed and \$60,000 in 2008, and from 2009 until 2013 you earned no compensation (due to retirement or some other reason), the answer to Question 2 below would be \$50,000 (i.e., the average of \$40,000 and \$60,000).

1. For 2004 through 2006, my average compensation from work (omitting years I did not earn compensation from work) was approximately \$\_\_\_\_\_ per year.
2. For 2007 through 2013, my average compensation from work (omitting years I did not earn compensation from work) was approximately \$\_\_\_\_\_ per year.
3. For 2014 through 2020, my average compensation from work (omitting years I did not earn compensation from work) was approximately \$\_\_\_\_\_ per year.
4. To confirm, I did not receive any compensation from work during the following years between 2004 and 2020 (check each year that applies):  
 2004  2005  2006  2007  2008  2009  2010  2011  2012  2013  
 2014  2015  2016  2017  2018  2019  2020

**D. DECEASED CLASS MEMBER** (Only complete the below if the Class Member is deceased.)

*A deceased Class Member's Settlement payment will be paid only to those individuals who have a legal right to receive such funds. You will be asked to provide further documentation showing that you possess that legal right. You will also be asked to submit a Claim and Release Form if the settlement is approved by the Administrative Judge in order to receive the payment.*

Please be sure to complete sections A-C above as to the deceased Class Member and provide

the following information about yourself:

Your name: \_\_\_\_\_

Your mailing address: \_\_\_\_\_

Your phone number: \_\_\_\_\_

Your email address: \_\_\_\_\_

Identify your relationship to the deceased Class Member: (check all that apply)

Spouse

Child

Beneficiary

Executor/Representative of Estate

Other: \_\_\_\_\_

Date of deceased Class Member's death: \_\_\_\_\_

**Submit a copy of the Class Member's death certificate with this Questionnaire.**

**E. AFFIRMATION** (*must be completed by all persons completing this Questionnaire*)

**For these individual factors to be considered in any potential settlement allocation, please affirm the following by signing below. To receive a settlement payment, this settlement will need to be approved by the Administrative Judge, and you will subsequently need to submit a Claim and Release form.**

I, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and accurate to the best of my knowledge.

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

# EXHIBIT C



## CLAIM AND RELEASE FORM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

*David McCollum v.*

*Peter P.M. Buttigieg, Department of Transportation (Federal Aviation Administration)*

Agency No. 5-04-5026

EEOC No. 450-2007-00109X, 310-2004-00322X

### INSTRUCTIONS FOR COMPLETING CLAIM AND RELEASE FORM

#### 1. GENERAL

1.1 This Claim and Release form is for class members in the action entitled *David McCollum v. Peter P. M. Buttigieg, Department of Transportation (Federal Aviation Administration)*, Agency No. 5-04-5026; EEOC No. 450-2007-00109X, 310-2004-00322X, and all individual claims subsumed thereunder (the “Action”).

1.2 To recover as a member of the Settlement Class in the Action, you must be a member of the class or the legal beneficiary of a member of the class (if the class member is deceased or a trustee of a member of the class (if the class member is in bankruptcy) and you must fully complete and sign this Claim and Release Form. If you fail to timely submit a fully completed, signed and properly addressed Claim and Release Form, you will be precluded from any recovery from the Settlement Fund. You agree to furnish additional information to the Settlement Administrator to support this claim if requested to do so. You are advised in writing to consult with an attorney prior to signing this release. Counsel representing the class may be contacted at **[insert contact info]**

1.3 The deadline to submit a Claim and Release Form is **[45 days from mailing Claim and Release Form]**. This means you must electronically submit your fully completed and signed Claim and Release Form via email, fax, or through the Settlement Administrator’s website by **[DATE]**, OR mail your fully completed and signed Claim and Release Form post-marked on or before **[45 days from mailing Claim and Release Form]** addressed to:

**[SETTLEMENT ADMINISTRATOR ADDRESS, EMAIL ADDRESS, AND WEBSITE ADDRESS]**

1.4 THIS CLAIM MUST BE SUBMITTED BY THE SETTLEMENT CLASS MEMBER OR, IF THE CLASS MEMBER IS DECEASED, THE LEGAL BENEFICIARY OF SUCH CLASS MEMBER, OR IF THE CLASS MEMBER IS IN BANKRUPTCY, THE TRUSTEE OF THE CLASS MEMBER’S ESTATE. Beneficiaries, executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of the class member they represent and, they must submit documentation of their authority and state their titles or capacities with this Claim and Release Form. The last four digits of the Social Security (or taxpayer identification) number and telephone number of the class member may be used in verifying the claim. Failure to provide the foregoing information could delay verification of a claim or result in rejection of a claim.

2. WHO IS QUALIFIED FOR A PAYMENT

2.1 The class complaint alleges age discrimination against members of the PATCO Inventory in selection for Air Traffic Control Specialist jobs. The Settlement Class is defined as “Those PATCO Inventory applicants who were not selected for Terminal and En Route Air Traffic Control Specialist vacancies (at their preferred locations) between September 16, 2003 and October 31, 2012. ‘Preferred locations’ refers to the locations identified by the PATCO Inventory applicant as ones for which they would like to be considered for ATCS employment.”

2.2 If you are NOT a member of the Settlement Class (as defined above), then you are not eligible for any payments from the Settlement Fund in this Action.

3. If you are a member of the Settlement Class and you did not timely and validly file a claim in federal court raising the same allegations as in the Action, you are bound by the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM AND RELEASE FORM.

4. PLEASE DO NOT CONTACT THE ADMINISTRATIVE JUDGE OR THE EEOC WITH QUESTIONS ABOUT THIS CLAIM AND RELEASE FORM.

5. For questions or information about this Claim and Release Form, please contact [settlement administrator contact info].

[The remainder of this page was intentionally left blank.]

**CLAIM AND RELEASE FORM**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

*David McCollum v.*

*Peter P.M. Buttigieg, Department of Transportation (Federal Aviation Administration)*

Agency No. 5-04-5026

EEOC No. 450-2007-00109X, 310-2004-00322X

**PART I: CLAIMANT IDENTIFICATION**

Class Member's Full Name (First, Middle, Last)

Class Member's Full Name at Time of Application (if different) (First, Middle, Last)

Address Line 1

Address Line 2

City

State

Zip Code

Country Name

Email

Telephone Number (Work)

Telephone Number (Home)

Last Four Digits of Social Security Number

**PART II: CLASS MEMBER OR LEGAL BENEFICIARY**

2.1 I hereby certify that I am a Class Member, as defined above, or have a legal right to a Class Member's share of the Settlement Fund.

2.2 I hereby warrant and represent that I have included all information relevant to my claim in this form and such information is accurate.

2.3 I understand that if I timely return this Claim and Release Form, I will be entitled to the pre-tax amount of [**ENTER ALLOCATION AMOUNT**] as my share of the Settlement Fund.

2.4 I understand that my share of the Settlement Fund was calculated using a uniform, non-discretionary formula, outlined in the Notice of Resolution previously provided to me, that considered:

- (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 Inventory as of October 2006 and later, and a minimum allocation of \$1,000.00 for Class Members who were removed from the 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) was collected from each Class Member through a 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.

2.5 I understand that if I timely submitted a Questionnaire that was sent to me with the Notice of Resolution, that the information I provided was considered in calculating my settlement share.

2.6 I hereby warrant and represent that I have not submitted any other claim in the Settlement of the Action and know of no other person having done so on my behalf.

[The remainder of this page was intentionally left blank.]

YOU MUST READ THE RELEASE. YOUR SIGNATURE ON PAGE 8 WILL CONSTITUTE YOUR ACKNOWLEDGEMENT OF THE RELEASE.

**PART III: RELEASE**

3.1 I, together with each and all of my representatives, heirs, successors and assigns hereby acknowledge full and complete satisfaction of the “Released Claims” against the “Released Parties.”

3.2 I, together with each and all of my representatives, heirs, successors and assigns hereby full, finally, unconditionally, irrevocably waive, release, discharge, and forever settle the “Released Claims” against the “Released Parties.”

3.3 The “Released Parties” include the Department of Transportation, the Federal Aviation Administration, the United States Government, and all present or former employees, officers, agents, attorneys of any of them.

3.4 The “Released Claims” mean 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 the Class Member has as of date of signing of this Claim and Release Form, against the Agency and/or its officers, employees or agents, in their individual and/or official capacities, and/or against the Agency’s benefits programs, including but not limited to the Thrift Saving Plan and CSRS, FERS or any other 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 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 (ADEA), 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 claim only, each Class Member releases all known and unknown claims for age discrimination (inclusive of the Older Workers Benefit Protection Act (OWBPA)) asserted in the class complaint of discrimination up to the date of the signing of this Claim and Release Form.

3.5 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. The release does not apply to any class members who timely file their claim in federal court.

3.6 I agree and acknowledge that this Agreement waives all claims of unlawful discrimination as identified in paragraph 3.4, arising out of my non-selection or non-hire for ATCS position(s) at the Agency from September 16, 2003 to October 31, 2012, that I have as of the date of signing this Claim and Release Form that were or could have been brought in this case against the Released Parties.

3.7 I agree and acknowledge that a monetary payment is provided to me as full consideration pursuant to the terms of the Settlement Agreement and the claims resolution process provided for therein.

3.8 I agree and acknowledge that I have the full legal right to sign this Claim and Release Form on behalf of myself or of the Class Member.

3.9 I agree and acknowledge that if I timely return this completed Claim and Release Form but I file a lawsuit in federal court, my Claim and Release Form will be void and I will not receive a payment in this Settlement.

**BY SIGNING THIS RELEASE, I ACKNOWLEDGE AND AFFIRM THAT:**

**(1) I HAVE CAREFULLY READ AND UNDERSTAND THIS ENTIRE DOCUMENT;**

**(2) I AM COMPETENT TO READ AND SIGN THIS RELEASE;**

**(3) I HAVE BEEN ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS RELEASE;**

**(4) NO PROMISES OR INDUCEMENTS HAVE BEEN MADE TO ME EXCEPT AS SET FORTH IN THIS RELEASE, AND THAT I HAVE SIGNED THIS RELEASE FREELY AND VOLUNTARILY, INTENDING TO BE LEGALLY BOUND BY ITS TERMS;**

**(5) I HAVE BEEN AFFORDED A TIME PERIOD OF AT LEAST TWENTY-ONE (21) DAYS TO REVIEW THIS RELEASE WITH LEGAL COUNSEL OF MY CHOICE AND HAVE DONE SO IF I CHOSE TO DO SO; AND**

**(6) IF I TAKE FEWER THAN 21 DAYS TO CONSIDER AND EXECUTE THIS RELEASE, I DO SO VOLUNTARILY, WITH THE UNDERSTANDING THAT I WILL BE ACCELERATING ITS EFFECTIVE DATE.**

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING INFORMATION SUPPLIED BY THE UNDERSIGNED IS TRUE AND CORRECT.

Executed this \_\_\_\_ day of \_\_\_\_, in \_\_\_\_ (City), \_\_\_\_ (State/Country)

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Print Name of Claimant

\_\_\_\_\_  
Date

*If Claimant is not the person completing this form, the following must also be provided:*

\_\_\_\_\_  
Signature of Person Completing Form

\_\_\_\_\_  
Print Name of Person Completing Form

\_\_\_\_\_  
Date

\_\_\_\_\_  
Capacity of Person(s) Signing (e.g., Executor, Administrator)



# EXHIBIT D

## **Former PATCO Air Traffic Controllers and the Federal Aviation Administration (FAA) Agree to \$47.5 Million Settlement**

**DATE**—The Federal Aviation Administration (FAA) and the Class Agent, who filed a class complaint on behalf of himself and other former Professional Air Traffic Controllers Organization (PATCO) air traffic controllers, have reached an agreement in which the FAA will pay \$47.5 million to settle an 18-year-old class action age discrimination complaint.

The settlement covers approximately 3,600 former PATCO air traffic controllers who went on strike in 1981 and were subsequently fired and banned from rehire by President Ronald Reagan. When the ban was lifted in 1993 by President Bill Clinton, the air traffic controllers reapplied but alleged they were not rehired due to age discrimination from approximately September 2003 to October 2012. The FAA denied this allegation and both sides presented substantial evidence in support of their claims and defenses, including statistics, anecdotal evidence and expert testimony.

The parties reached agreement after eighteen years of litigation that included a multiple-week administrative hearing and several appeals in the matter entitled *David McCollum, et al. v. Department of Transportation (FAA)*, EEOC No. 450-2007-00109X, 310-2004-00322X and Agency No. 5-04-5026, venued in the E.E.O.C. federal hearings unit in Dallas, Texas.

The parties agree that the matter was amicably resolved and provides a fair and reasonable resolution for thousands of former PATCO controllers.

Class Agent and the class are represented by Jeff Atchley of the law firm of Norwood & Atchley, Nichols Kaster, PLLP, and Donati Law, PLLC. The FAA is represented by the Office of the Chief Counsel with assistance from the law firm of Paul Hastings, LLP.