

**UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON FIELD OFFICE**

<b>Ann M. Garcia, et al.,</b>	)	
<b>Class Agent,</b>	)	<b>EEOC No. 570-2015-000037X</b>
	)	
<b>v.</b>	)	
	)	<b>Agency No. 89-665-98-005</b>
<b>Merrick B. Garland,</b>	)	
<b>Attorney General,</b>	)	
<b>Department of Justice,</b>	)	<b>Date: April 28, 2022</b>
<b>Agency.</b>	)	
_____	)	

**FORMULA FOR THE DISTRIBUTION OF SETTLEMENT FUNDS**

Pursuant to a settlement reached between the Class and the U.S. Department of Justice, Drug Enforcement Administration (“Agency” or “DEA”) in this matter (the “settlement agreement”), a fund of \$12,000,000 (twelve million dollars) is available to pay all claims to members of the Class as well as all attorney’s fees and costs. This Distribution Formula describes how the monetary relief will be distributed. The Claims Administrator will calculate the amount of money to be paid to each Settlement Class Member under the settlement agreement.

**I. PRELIMINARY DETERMINATIONS**

**A. Class Definition**

The Claims Administrator will first consider the eligibility of Claimants to receive compensation under the settlement agreement. This determination is based on the Settlement Class definition, as determined by the settlement agreement in this matter and the Equal Employment Opportunity Commission. In order to be eligible to receive compensation under the settlement agreement, a Claimant must be a Settlement Class Member (*i.e.*, meet the Settlement Class definition).

Settlement Class is defined as the 71 Claimants identified in Attachment 2 of the Settlement Agreement, who filed individual claims for damages and have not subsequently withdrawn their claims.

Phase 1 Class Counsel will provide information to the Claims Administrator based on submissions of written claims for relief, and documents provided by the Agency in discovery. The Claims Administrator will presume that every person who submitted a written claim for relief in this matter meets the Class definition. If a Claimant’s name is not included in the information provided by Phase 1 Class Counsel to the Claims Administrator, the Claims Administrator will presume that the Claimant is not a Class Member. Claimants who are not included in the information **must** provide additional documentation to overcome the Claims Administrator’s

presumption. For example, the Claimant may provide a copy of a timely-submitted written claim for relief that was submitted in this matter. It is within the Claims Administrator's sole discretion to determine if a Claimant meets the Class definition.

## **B. Years Served at DEA**

The Claims Administrator will determine the number of years from 1990 to 2022 in which each Settlement Class Member worked for the Agency.

Phase 1 Class Counsel will provide information to the Claims Administrator based on submissions of written claims for relief, and employment records and information provided by the Agency in discovery. The Claims Administrator will presume that a Class Member worked at the Agency during the time period included in the employment records and information produced by the Agency. If a Class Member's name is not included in employment records that were produced by the Agency, the Claims Administrator will presume that the Class Member did not work at DEA during that time period. Class Members who are not included in the Agency records **must** provide additional documentation to overcome the Claims Administrator's presumption. For example, the Class Member may provide a copy of employment payment records from the Agency. It is within the Claims Administrator's sole discretion to determine the years in which a Class member worked for the Agency.

## **C. Claims Related to Non-Selections Dating After November 20, 1991**

The Claims Administrator will determine for each Settlement Class Member whether or not the Class Member has any potential claim for relief related to a non-selection for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992.

Phase 1 Class Counsel will provide information to the Claims Administrator based on submissions of written claims for relief, employment records, and information provided by the Agency in discovery. The Claims Administrator will presume that a Class Member has a potential claim for relief related to a non-selection for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992, if the information provided by Phase 1 Class Counsel indicates that there was such a possible claim. If the information provided by Phase 1 Class Counsel indicates that a Class Member did not present a potential claim for relief related to a non-selection for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992, the Claims Administrator will presume that the Class Member did not present such a possible claim for relief. Class Members who are identified as having not made a potential claim for relief for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992 **must** provide additional documentation to overcome the Claims Administrator's presumption. For example, the Class Member may provide documentary evidence of a potential claim for relief for a foreign assignment selection that occurred during the time period November 21, 1991 to December 31, 1992. It is within the Claims Administrator's sole discretion to determine whether a Class Member made a potential claim for relief for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992.

#### **D. Number of Applications for Foreign Assignments During 1990-1992**

The Claims Administrator will determine for each Settlement Class Member the number of applications that were submitted for a foreign assignment for which a selection was made during the time period January 1, 1990 to December 31, 1992.

Phase 1 Class Counsel will provide information to the Claims Administrator based on submissions of written claims for relief, and employment records and information provided by the Agency in discovery. The Claims Administrator will presume that the number of foreign assignment applications submitted by each Class Member for selections made during the time period January 1, 1990 to December 31, 1992 is the number reflected by the information provided by Phase 1 Class Counsel. Class Members who are identified as having not made any applications for foreign assignments during the time period January 1, 1990 to December 31, 1992 **must** provide additional documentation to overcome the Claims Administrator's presumption. For example, the Class Member may provide documentary evidence of an application for foreign assignments during the time period January 1, 1990 to December 31, 1992. It is within the Claims Administrator's sole discretion to determine the number of applications that a Class Member submitted for foreign assignments during the time period November 21, 1991 to December 31, 1992.

#### **II. CONTRIBUTION POINT DETERMINATION**

The settlement agreement provides for compensation to Settlement Class Members who positively contributed to Phase 1 Class Counsel's litigation of this matter. The assistance, guidance, and time provided by contributing Class Members strengthened the legal position of the Class as a whole, and supported Phase 1 Class Counsel's work toward successfully resolving this matter.

The Claims Administrator will determine the number of Contribution Points to be allocated to each Class Member. The Claims Administrator will assign Contribution Points as follows:

- Class Members who filed a written claim for relief that was pending as of the effective date of the settlement agreement will each receive 1 Contribution Point.
- Class Members who testified at the Phase 1 class-wide liability hearing in this case (in or about July 2009) will each receive 1 Contribution Point.
- Class Members who served on the steering committee that assisted Phase 1 Class Counsel with the mediation and settlement discussions in this case will each receive 1 Contribution Point.

The Claims Administrator will notify each Claimant of the number of total Contribution Points allocated to the Claimant pursuant to the terms stated above.

#### **III. COMPENSATORY DAMAGES POINT DETERMINATION**

The Claims Administrator will determine the number of Compensatory Damages Points to be allocated to each Class Member. In order for a Class Member to be eligible for Compensatory Damages Points, the Class Member must be found to have presented a potential claim for relief related to a non-selection for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992. If a Class Member is found to have not presented a potential claim for relief related to a non-selection for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992, the Class Member may not receive an allocation of Compensatory Damages Points.

For Class Members who presented a potential claim for relief related to a non-selection for a foreign assignment that occurred during the time period November 21, 1991 to December 31, 1992, the Claims Administrator will determine the number of total Compensatory Damages Points for each Class Member as follows:

- Class Members will each receive 5 Compensatory Damages Points multiplied by the number of years in which the Class Member worked for DEA during the time period 1990 to 2022.
- Class Members will each receive 2 Compensatory Damages Point multiplied by the number of foreign assignment applications that the Class Member submitted during the time period January 1, 1990 to December 31, 1992.

The Claims Administrator will notify each Claimant of the number of total Compensatory Damages Points allocated to the Claimant pursuant to the terms stated above.

#### **IV. NOTIFICATION OF POINT ALLOCATIONS**

Based on the formulas for assigning Contribution Points and Compensatory Damages Points presented above, the Claims Administrator will notify each Claimant of the awarded point allocations. Each Claimant's point allocation notice will include a total number of Contribution Points and Compensatory Damages Points, the date on which the point allocation notice is issued, and a description of the process available (and deadlines) for seeking correction of the point allocations.

If a Claimant believes that the point allocation set forth in the point allocation notice is correct, then no further action is required by the Claimant – the Claims Administrator will base the Claimant's monetary award on the point allocations contained in the notice.

#### **V. CORRECTION PROCESS**

If a Claimant believes that a determination made by the Claims Administrator requires correction, the Claimant may seek correction pursuant to the following process:

The Claimant must submit her request for correction by U.S. mail within 35 calendar days of the issuance of the Claims Administrator's notice of the relevant determination. Timeliness of

the Claimant's submission will be based on the date of the postmark. The Claimant must include: (1) a copy of the Claims Administrator's notice regarding the relevant determination, (2) a copy of all information and documentation submitted by the Claimant to the Claims Administrator relating to the relevant determination, and (3) written explanation of the correction sought by the Claimant. The request for correction must be directed to the Claims Administrator at the address included in the Claims Administrator's notice regarding the allocation of points.

It is the responsibility of the Claims Administrator to consider and determine Claimant requests for correction, provided that such requests meet all of the procedural requirements identified above. The Claims Administrator's consideration and determination will be based on a substantial evidence standard of review; that is, the initial determination will be affirmed if the determination is supported by substantial evidence. The decision of the Claims Administrator regarding a Claimant's request for correction will be final. A copy of the decision of the Claims Administrator regarding a Claimant's request for correction will be delivered to the Claimant seeking correction.

## **VI. AWARDS BASED ON POINT ALLOCATIONS**

Once the Claims Administrator has assigned all Contribution Points and Compensatory Damages Points pursuant to the formulas presented above, and after all timely requests for corrections have been determined by the Claims Administrator pursuant to the process identified above, the Claims Administrator will determine the monetary award for each Class Member based on the number of points held by the Class Member.

### **A. Claims Administration Payment**

Prior to application of the award determination formulas identified below, the Claims Administrator will determine certain monetary payments to be assigned. The Trustees of the Fund may set aside reserves prior to the determination of monetary awards. The Claims Administrator will be bound by the provisions of the settlement agreement.

The Claims Administrator will be paid for all services and expenses out of the Settlement Fund. The Claims Administrator will submit a verified administration fee statement to Phase 1 Class Counsel and/or the Trustees of the Fund. Phase 1 Class Counsel and/or the Trustees of the Fund will review the verified administration fee statement. If approved by Phase 1 Class Counsel and/or the Trustees of the Fund, the administration fee will be deducted from the interest earned by the settlement fund. Any approved administration fee left outstanding after the interest earned by the fund is exhausted will be paid by deducting such amount from the Fund.

### **B. Contribution Point Award Determination**

The Claims Administrator will assign a monetary value for the total number of Contribution Points allocated to each Class Member. The gross monetary value of one

Contribution Point will be \$15,000.<sup>1</sup> The Claims Administrator will assign a total Contribution Point recovery for each Class Member, based on the gross monetary value of one Contribution point times the number of Contribution points assigned to the Class Member.

**C. Compensatory Damages Award Determination**

The Claims Administrator will assign a monetary value to each Compensatory Damages Point. The Claims Administrator will determine the total settlement fund proceeds remaining after the allocation of all Contribution Points and determination of the gross value of all Contribution Point awards. The remainder will be used to determine the gross monetary value of Compensatory Damages Points. The gross value of a Compensatory Damages Point will be based on the total monetary amount available for Compensatory Damages Points divided by the total number of Compensatory Damages Points awarded to all Class Members pursuant to the settlement agreement. The Claims Administrator will assign a total gross Compensatory Damages Point recovery for each Settlement Class Member, based on the gross monetary value of one Compensatory Damages Point times the number of Compensatory Damages Points assigned to the Class Member.

**D. Maximum Total Award to Any Class Member**

The gross total monetary award for each Class Member for all Contribution Points and all Compensatory Damages Points shall not exceed \$183,000. Any sum beyond a gross total of \$183,000 for an individual Class Member shall be redistributed to all Class Members pro rata. The Claims Administrator will repeat this process until there are no Class Members with a total gross award exceeding \$183,000.

**E. Claims Made by Estates**

If a Claimant is no longer living, the authorized legal representative of a Claimant may seek to obtain a recovery on behalf of the estate or heirs of the Claimant so long as the Claimant would have been eligible for an award if living. The authorized legal representative (or other representative of the heirs of the deceased Claimant if no legal representative has been appointed) must submit proof of death and proof of the representative's status.

**F. Payment of Attorney's Fees and Costs**

Following a computation of each Class Member's gross award based on the provisions set out above, the Claims Administrator will determine the amount of attorney's fees and costs owed to Phase 1 Class Counsel by each Class Member pursuant to the terms of the Attorney-Client Retainer Agreement entered into by the Class Member. The Claims Administrator will notify each Class Member of the amount of attorney's fees and costs deducted from the Class Member's gross award.

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<sup>1</sup> For the purposes of this Distribution Formula, "gross amount" or "gross value" or "gross monetary value" means the monetary value prior to the deduction of any withholdings or attorney's fees and costs from the amount.

## **G. Payment of Awards**

In accordance with the process above and pursuant to the provisions of the settlement agreement, the Claims Administrator will distribute awards by mailing to each eligible Class Member a check in the amount determined by the Claims Administrator, subject to all applicable deductions and withholdings pursuant to the Distribution Formula and state and federal tax laws. The Claims Administrator will withhold appropriate tax amounts (including income taxes) and forward withholdings to the appropriate governmental entity.

## **VII. UNEXPENDED MONEY**

If any unexpended balance exists in the Fund after all payments to eligible Class Members, the Claims Administrator, and of all tax and other obligations under the settlement agreement, then such balance will be distributed to Class Members pro rata if feasible. If a pro rata second distribution to Class Members is not feasible, then any unexpended balance may be donated to the TIME'S UP Legal Defense Fund, or may be contributed to the U.S. Treasury as unclaimed property.

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