

IN THE MATTER OF GRIEVANCES BETWEEN:

AMERICAN FEDERATION OF	}	
GOVERNMENT EMPLOYEES	}	
(AFGE), LOCAL 3313	}	
Union,	}	
	}	
V.	}	FLSA OVERTIME GRIEVANCES
	}	
UNITED STATES DEPARTMENT	}	
OF TRANSPORTATION	}	
Agency	}	

NOTICE OF SETTLEMENT FUND AND DEADLINE TO FILE PROOF OF CLAIM

Attorneys representing the Union and the Agency entered into a Final Settlement Agreement out of Court

TO: ALL BARGAINING UNIT EMPLOYEES WHO WERE EMPLOYEES OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, OFFICE OF THE SECRETARY (OST), FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION(FMCSA) , PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA), NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA), AND FEDERAL TRANSIT ADMINISTRATION (FTA) (HEREINAFTER ALL REFERRED TO JOINTLY AS “AGENCY”) BETWEEN JULY 30, 2008 AND OCTOBER 4, 2018, INCLUSIVE AND WHO THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 3313 (THE “UNION”) (COLLECTIVELY, “THE PARTIES”) FILED OVERTIME GRIEVANCES AGAINST THE AGENCY, YOU MAY BE ENTITLED TO OVERTIME COMPENSATION (AS DEFINED BELOW) .

IMPORTANT:

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE EXPLAINS IMPORTANT RIGHTS YOU MAY HAVE, INCLUDING THE POSSIBLE RECEIPT OF MONEY PURSUANT TO THE FINAL SETTLEMENT AGREEMENT DESCRIBED HEREIN. YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU ACT.

CLAIMS DEADLINE:

ELIGIBLE BARGAINING UNIT EMPLOYEES MUST SUBMIT PROOF OF CLAIM, ON THE FORM ACCOMPANYING THIS NOTICE, BY ONLINE ELECTRONIC SUBMISSION OR MAILED POSTMARKED ON OR BEFORE SEPTEMBER 23, 2019.

REASON FOR NOTICE

You are receiving this Notice to advise you of a Settlement Fund created and being distributed in the above referenced matter from the Union which filed Overtime Grievances against the Agency, on behalf of all bargaining unit employees (“BUE”) at the Agency represented by the Union, alleging violations of the Fair Labor Standards Act (FLSA), Title 5 of the U.S. Code and other applicable laws, rules and regulations. BUEs who held a bargaining unit position at any time from July 30, 2008 (for Title V claims), January 25, 2011 (for Office of the Secretary of Transportation Professional bargaining unit employees Title V claims) and July 30, 2011 (for FLSA claims) through October 4, 2018 (“covered timeframe”), are those employed by the Agency and are covered by this Agreement.

ELIGIBILITY CRITERIA FOR A COVERED BARGAINING UNIT EMPLOYEE TO PARTICIPATE IN THE SETTLEMENT FUND DISTRIBUTION INCLUDES:

1. An employee who held a bargaining unit position in the Federal Motor Carrier Safety Administration (FMCSA), the National Highway Traffic Safety Administration (NHTSA), the Federal Transit Administration (FTA), and the Office of the Secretary of Transportation (OST) (non-professionals, only) at any time during the Grievance timeframe from July 30, 2012 through October 4, 2018; or
2. An employee who held a bargaining unit position in the Pipeline and Hazardous Materials Safety Administration (PHMSA) at any time during the Grievance timeframe from May 5, 2013 through October 4, 2018; or
3. An employee who held a bargaining unit position in the Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology at any time during the Grievance timeframe from February 9, 2015 through October 4, 2018; or
4. An employee who held a Professional bargaining unit position in the Office of the Assistant Secretary for Transportation (OST) at any time during the Grievance timeframe from January 21, 2015 through October 4, 2018; and
5. An employee who held a bargaining unit position, during the Grievance timeframes specified in paragraphs 1 through 4 directly above:
 - a. Participated in the FLSA Grievance Lawsuit by: 1) submitting claims/damages information; or 2) filed an affidavit; or 3) completed a survey; or 4) completed a non-election form; or
 - b. Previously opted out of the FLSA Grievance Lawsuit but later provided an affidavit in support of a claim; or
 - c. Did not want to participate in the FLSA Grievance Lawsuit but provided an affidavit in support of a claim; and
6. An employee MUST have been in the bargaining unit while in a covered position for *at least four quarters* or more during the Grievance timeframes specified in paragraphs 1 through 4 directly above; and
7. An employee who files a completed Proof of Claim accompanying this Notice.

SUMMARY OF THE MATTER AND OF FINAL SETTLEMENT AGREEMENT

On or about July 30, 2014, the Union filed Overtime Grievance for FLSA and other violations (“Overtime Grievances” or “Grievances”) against the Agency alleging violations of the FLSA, Title 5 of the U.S. Code and other applicable laws, rules and regulations on behalf of all covered bargaining unit employees (included as Attachment 1 to the Final Settlement Agreement and provided as part of this Notice).

The Overtime Grievance sought relief on behalf of BUEs for:

1. Unpaid entitlement to overtime resulting from “capped” overtime payments and “forced” compensatory time;
2. Unpaid entitlement to “suffered or permitted” overtime as defined by the FLSA and “induced” overtime in accordance with Title V;
3. Liquidated damages equal to all unpaid or underpaid overtime, comp time and other damages or interest on all damages; and
4. Reasonable attorney fees, costs and expenses.

On January 25, 2017, the Union and the Agency entered into a Partial Settlement Agreement, which resolved the FLSA designations of employees in the Agency bargaining units covered by the Grievances to include addressing bargaining unit positions, grades and series for which the Union had challenged

the Agency designation of FLSA Exempt during the covered timeframes of the Grievances. That Partial Settlement Agreement on FLSA designations is incorporated as part of the Final Settlement Agreement as Attachment 2 and provided as part of this Notice.

On October 4, 2018, the Union and the Agency entered into a Final Settlement Agreement (hereinafter "Settlement"), which fully and completely resolved any and all claims which were or could have, consistent with the scope of the Overtime Grievances, been raised by the Union in the Overtime Grievances including but not limited to FLSA designations, overtime compensation of any kind, back pay, interest, liquidated damages, attorney fees and costs.

The employees covered by the Settlement include all current and former bargaining unit employees, represented by the Union, who held a bargaining unit position at any time from July 30, 2008 (for Title V claims), January 25, 2011 (for OST Professional BUE Title V claims) and July 30, 2011 (for FLSA claims) up to the effective date of the Final Settlement Agreement, October 4, 2018 (hereinafter collectively referred to as "covered BUEs"). The timeframe covered by the Final Settlement Agreement is from July 30, 2008 through October 4, 2018 ("covered timeframe").

The Settlement included a lump sum payment to the Union and its legal counsel on behalf of all covered BUEs related to the Overtime Grievances and the Final Settlement Agreement. The total Lump Sum Payment of Five Million and Five Hundred Thousand Dollars and No Cents (\$5,500,000) constitutes the Union Settlement Fund (hereinafter referred to as the "Settlement Fund"), in recognition and settlement of any and all potential liability for all issues and claims which were or could have, consistent with the scope of the Overtime Grievances, been raised in the Overtime Grievances for the covered timeframe.

Non-Admission Clause

The Settlement does not constitute an admission by either Party that either Party has violated any statute, regulation, policy or the Parties' Collective Bargaining Agreements, and is entered solely for the purpose of globally resolving and settling all issues that were or could have, consistent with the scope of the Overtime Grievances, been raised in the Overtime Grievances.

Union Withdrawal of Grievances, Waiver of Claims

The Union, upon executing the Settlement and receiving payment of all amounts due by the Agency, *on behalf of all covered BUEs*, agreed to withdraw the Overtime Grievances filed. The Union also agreed to release and waive the right to file any complaint, claim, lawsuit, grievance or appeal against the Agency, its officials, employees, former officials or former employees or their successors and assignees regarding any matter or claim raised, or that could have, consistent with the scope of the Overtime Grievances, been raised, in the Overtime Grievances for covered BUEs for the covered timeframe.

YOUR LEGAL RIGHTS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY SEPTEMBER 23, 2019.	This is the only way to show proof of eligibility and to get a payment from the Settlement.
DO NOTHING.	If you are an eligible BUE and you do not submit a Proof of Claim Form online electronic submission or mailed postmarked to the address set forth in the Proof of Claim Form that accompanies this Notice on or before September 23, 2019 then you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a covered BUE, which means that you give up your right to sue about the claims that are resolved by the Settlement.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE AN ELIGIBLE BUE AND YOU WISH TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, THEN YOU ARE REQUIRED TO SUBMIT A PROOF OF CLAIM THAT IS BEING DISTRIBUTED WITHIN THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN BY ONLINE ELECTRONIC SUBMISSION OR POSTMARKED NO LATER THAN SEPTEMBER 23, 2019.

DISTRIBUTION OF SETTLEMENT FUNDS Pursuant to the Settlement, the Agency paid to Snider & Associates, LLC, legal counsel for the Union, a Total Lump Sum Payment of Five Million and Five Hundred Thousand Dollars and No Cents (\$5,500,000). After attorney’s fees of One Million and Six Hundred Thousand Dollars (\$1,650,000) was paid, Three Million and Eight Hundred and Fifty Thousand Dollars and No Cents (\$3,850,000) was deposited into a Settlement Fund. Administrative expenses for accounting, implementation and settlement distribution services of One Hundred and Fifty Thousand Dollars and No Cents (\$150,000) was paid to the Claims Administration firm, C. Brown & Associates, Inc. Another Two Hundred and Forty Thousand Dollars and No Cents (\$240, 000) was set aside for unexpected expenses and retained by the Union to pay it’s employers share of FICA and Medicare taxes leaving a balance of Three Million and Four Hundred Sixty Thousand Dollars and No Cents (\$3,460,000), the “Net Settlement Fund” to be distributed to covered BUEs who met the **ELIGIBILITY CRITERIA FOR A COVERED BARGAINING UNIT EMPLOYEE TO PARTICIPATE IN THE SETTLEMENT FUND DISTRIBUTION.** In accordance with the Final Settlement Agreement, the Union may, in its sole discretion, determine amounts to be paid for all items covered by the Agency’s Total Lump Sum Payment, including which BUEs may participate in any claims and/or payment process. The Net Settlement Fund will be distributed by the Union’s Claims Administrator in a fair and equitable manner, as directed by the Union less: (a) all taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of accountants and payroll services); (b) the costs and expenses incurred in connection with providing Notice to BUEs within the scope of the Overtime Grievances for the covered time period; and (c) any attorney’s fees), will be distributed to eligible BUEs as set forth in the Plan of Allocation set forth herein.

Approval of the Settlement was made independent from the approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation does not affect the approved Settlement.

Persons (BUEs) and entities (representatives) who do not meet the eligibility criteria for distribution or who exclude themselves from the Settlement Fund are not eligible to receive a distribution from the Net Settlement Fund and should not submit a Proof of Claim.

PLAN OF ALLOCATION OF NET SETTLEMENT FUND

The Plan of Allocation is a matter separate and apart from the Settlement.

The Claims Administrator shall distribute each Authorized Claimant's (covered BUEs determined to be eligible to receive settlement funds) share of the Net Settlement Fund based upon an allocation formula for calculating settlement payments, as defined below. *Please Note:* The allocation formula is not intended to be an estimate of the amount that a BUE might have been able to recover if there had been a trial, nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The allocation formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the allocation formula.

If any funds remain in the Net Settlement Fund by reason of unclaimed disbursements, or otherwise, after the Claims Administrator has made reasonable and diligent efforts to disburse the claim, then any balance remaining in the Net Settlement Fund four (4) months after the initial distribution of such funds shall be used: first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants; second, to pay any additional fees and expenses incurred in administering the Settlement; and finally, to make a second distribution to Authorized Claimants who claimed their disbursement from the initial distribution if such second distribution is economically feasible. If after four (4) months after such second distribution, if undertaken, or if such second distribution is not undertaken, any funds shall remain in the Net Settlement Fund after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in this Settlement claim their disbursement, any funds remaining in the Net Settlement Fund shall be disbursed in a manner that benefits the entire bargaining unit.

Plan of Allocation Summary

- A) **Total Lump Sum Payment (5.5M).** Constitutes the monetary payment to the Union in recognition and settlement of any and all potential issues and claims.
- B) **Legal Fees (\$1.65M).** The amount contractually obligated and paid to Snyder & Associates (the "Union's lawyers") for legal, information collection, and allocation planning services.
- C) **Implementation/Distribution (\$150K).** The amount contractually obligated and paid to C. Brown & Associates to perform Claims Administration services.
- D) **Set Aside & Employer's share of Taxes (\$240K).** The amount the Union must pay for its share of the eligible BUEs FICA and Medicare taxes.
- E) **CT/OT Back Pay Compensatory Time/Overtime (\$434K):** The amount for eligible BUEs who were miscoded as exempt from FLSA to receive a back pay damages payment if they were not already paid directly by the Agency with half of the amount allocated to CT/OT damages and the other half to liquidated damages/interest for CT/OT damages These amounts have been calculated by reviewing the Agency's records and other related data.
- F) **Suffered or Permitted Overtime/Induced Overtime (SPOT/IOT) (\$2.04M):** The amount for eligible BUEs who provided the Union's lawyers with claims/damages information, which

was deemed crucial in the prosecution and settlement of this matter, will receive an allocation based on 60% of the Net Settlement Fund amount available for distribution with half of the amount allocated to SPOT/IOT damages and the other half to liquidated damages/interest for SPOT/IOT damages.

- G) Suffered or Permitted Overtime/Induced Overtime (SPOT/IOT) (\$26.4K):** The amount for eligible BUEs who previously opted out or indicated they did not want to participate but later provided the Union's lawyers with a Spot/Induced Overtime damages affidavit, as reviewed and approved by the Union's lawyers and the Union, will each receive \$2,402.81, with half of the payment allocated to SPOT/IOT damages back pay and the other half to liquidated damages/interest for SPOT/IOT damages.
- H) Conversion from FLSA Exempt Status (\$270K):** The amount to pay exemption status damages to eligible BUEs who were miscoded as exempt, and provided the Union's lawyers with a liability/exemption status survey. Each will receive \$961.1, with half of the payment allocated to exemption status overtime damages back pay and the other half to liquidated damages/interest for exemption status damages.
- I) Compensatory Time Election (CTE) (\$4,947K)** The amount to pay forced compensatory time damages of \$480.60 to eligible BUEs who provided the Union's lawyers with compensatory time non-election forms as reviewed and approved by the Union's lawyers and the Union. Half of the payment is allocated to exemption status overtime damages back pay and the other half to liquidated damages/interest for exemption status damages.
- J) General/Quarterly (\$675.4K):** The amount to pay eligible BUEs who were in a covered position for at least four (4) or more quarters during the specified Grievance Timeframes outlined in ELIGIBILITY CRITERIA FOR A COVERED BARGAINING UNIT EMPLOYEE TO PARTICIPATE IN THE SETTLEMENT FUND paragraph, in the Notice herein. The remaining Settlement proceeds will be equally distributed amongst all eligible BUEs who were in a covered position for at least four quarters, based on the number of covered quarters during the specified Grievance timeframes.

Federal and State Income Taxes

Total payments will be allocated between Back-Pay and Liquidated Damages. The Back-Pay will be subject to both statutory and ordinary withholding taxes consisting of FICA, Medicare, Federal and State taxes for Authorized Claimants. Authorized Claimants will receive an IRS Form W-2 reporting Back-Pay and a Form 1099 to report the liquidated damages and interest received.

If you reside outside of the District of Columbia, Maryland or Virginia, you will be required to pay state taxes when you file your state income tax return.

DISBURSEMENT/PLAN OF ALLOCATION SUMMARY TABLE

	Category	Amount	Settlement Fund Balance	Explanation/Rationale
A	SETTLEMENT FUNDS	\$ 5,500,000	\$5,500,000	October 4, 2018 FLSA OT Grievance settlement amount.
B	LEGAL FEES	\$ (1,650,000)	\$3,850,000	Contracted fee at 30 percent of gross settlement amount.
C	DISTRIBUTION IMPLEMENTATION	\$ (150,000)	\$3,700,000	Payment to Claims Administration firm.
D	SET ASIDE AND EMPLOYER'S SHARE OF TAXES	\$(240,000)	\$3,460,000	Union's share of FICA/Medicare taxes
	Net Settlement Fund		\$3,460,000	
E	CT/OT Back pay	(\$433,635)	\$3,026,365	Compensatory Time/Over Time (CT/OT). Allocation to eligible BUEs miscoded as exempt from FLSA and not appropriately compensated.
F	SPOT/IOT	(\$2,049,569)	\$976,796	Eligible BUEs who provided Suffered and/or Permitted Overtime time (SPOT) and induced OT (Overtime that was not paid, but work was directed) affidavits, were calculated based on 60 percent of the Net Settlement Fund (\$3.4M), less a smaller SPOT/IOT allocation (\$26K) detailed in G below.
G	SPOT/IOT	\$ (26,431)	\$950,365	Awarded \$2,402.81 to 11 eligible BUEs who originally opted out or did not want to participate but later provided information useful to arbitration.
H	CONVERSION FROM FLSA EXEMPT STATUS	\$ (270,072)	\$ 680,293	Awarded \$961.1 to 281 eligible BUEs that the Agency agreed to covert to non-exempt as part of the 2015 Partial Settlement.
I	COMPENSATORY TIME ELECTION (CTE)	\$ (4,806)	\$ 675,487	Awarded \$480.60 to 10 eligible BUEs who were forced to take Comp Time and not allowed to take OT (submitted affidavit).
J	GENERAL - QUARTERLY	\$ (675,487)	\$ -	The remaining settlement proceeds will be equally distributed amongst all eligible BUEs, based on the number of covered quarters (no less than 4) during the specified Grievance timeframes.

SUBMISSION OF PROOF OF CLAIM

Eligible bargaining unit employees must submit Proof of Claim, on the form accompanying this Notice, by online electronic submission OR mailed postmarked on or before September 23, 2019. The Proof of Claim will be used to determine if you are eligible and authorized to receive a payment from the Settlement Fund.

Online Instructions. Submit a Proof of Claim form online at www.cbrownassoc.com/afge.html on or before September 23, 2019.

Mailing Instructions. Mail your Proof of Claim to: Claims Administrator, AFGE Local 3313, c/o C. Brown & Associates, Inc., 9646 Pennsylvania Avenue, Upper Marlboro, MD 20772, **postmarked on or before September 23, 2019.**

A Proof of Claim form can also be obtained online at www.cbrownassoc.com/afge.html .

ADDITIONAL INFORMATION

This Notice is only a summary. If you have any questions about this Notice, the Settlement Fund, or the filing of a Proof of Claim, please direct your questions to the Claims Administrator via email claims@cbrownassoc.com or call (301) 577-7110.

Dated: August 23, 2019.

IMPORTANT LEGAL DOCUMENT – PLEASE FORWARD