

**EXHIBIT 6**

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
BALTIMORE FIELD OFFICE  
10 South Howard Street, 3<sup>RD</sup> Floor  
Baltimore, MD**

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<b>Walter Flournoy,</b>	)
<b>on behalf of himself</b>	)
<b>and all other persons similarly situated,</b>	)
	)
<b>Class Agent,</b>	)
	)
<b>v.</b>	)
	)
<b>Sean O’Keefe, Administrator</b>	)
<b>National Aeronautics and</b>	)
<b>Space Administration,</b>	)
	)
<b>Agency.</b>	)
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**Agency No. NCN-92-GSFC-F064**

**EEOC No. 120-A2-1267**

**ADMINISTRATIVE ORDER NO. 1**

This Administrative Order is entered pursuant to the Settlement Agreement (the “Agreement”) resolving Flournoy v. O’Keefe, EEOC No. 120-A2-1267X (the “Action”) to specify the purposes, terms, funding, operation and disbursement of the Settlement Fund, as delineated in the Agreement, to appoint the Trustees and Administrators of the Settlement Fund (the “Administrators”), and to establish and define the Trustees and Administrators’ duties, authority, responsibilities and obligations.

**I. ESTABLISHMENT OF THE FUND.**

**A. Name, Status, and Trustees and Administrators of the Fund.**

**1. Name and Status as a Trust. The common fund agreed to**

by the parties in the Agreement is hereby established and shall be known as the NASA Goddard Settlement Fund (the “Fund”). The Fund shall be a trust under the laws of the District of Columbia.

2. Fund Portions. The Fund will consist of the following three portions:

a. Claims Portion. One portion of the Fund shall be used to make distributions of back pay, prejudgment interest, and compensation for emotional distress to or on behalf of Class Members and for taxes (the “Claims Portion”). The Class Members include the Class Agent and all members of the Class as defined in Part II.D. of the Agreement. The Claims Portion shall consist of \$2,286,459.00, and any income earned by the Fund allocable to the Claims Portion. The Claims Portion shall be administered for the benefit of Class Members as a group and not for the benefit of individual Class Members, except insofar as they receive awards from the Fund.

b. Contribution Fund. One portion of the Fund shall be used to make distributions to or on behalf of Mediation Representatives (the “Contribution Portion”). The Mediation Representatives, as defined in Part II.A of the Agreement, include Walter Flournoy, William Weston, Pat McClain, William Reaves and Leroy Brown. The Contribution Portion shall consist of \$500,000, and any income earned by the Fund allocable to the Contribution Portion. The Contribution Portion shall be administered for the benefit of the Mediation Representatives as a group.

c. Litigation Fund. The third portion of the Fund shall be known as the “Litigation Portion.” It shall consist of \$928,819.00, and any income earned by the Fund allocable to the Litigation Portion. The Litigation Portion shall be

used to pay all attorneys' fees and expenses incurred by Class Counsel up through Final Approval of the Agreement.

3. **Qualified Settlement Fund.** The Fund, including all three portions and the income thereon, shall be a single qualified settlement fund within the meaning of Treas. Reg. Sections 1.468B-1 et seq. The division of the qualified settlement fund into three portions is for accounting and bookkeeping purposes only. NASA Goddard shall provide a statement to the Administrators that complies with Treasury Regulation § 1.468B-3(e), no later than February 15 of the year following each calendar year in which it made a transfer to the Fund. Such statement shall include (a) the legend "§ 1.468B-3 Statement" at the top of the first page, (b) NASA Goddard's name, address, and EIN, (c) the Fund's name, address, and EIN, (d) the date of each transfer, (e) the amount transferred, and (f) a description of any property transferred and its fair market value on the date of the transfer.

4. **Trustees and Administrators.** The oversight of the Fund shall be the responsibility of the Trustees who shall be Maia Caplan and Jessica Parks, who shall also serve as Administrators. These Trustees and Administrators are collectively referred to as "Administrators." The status and powers of the Administrators shall be as defined by this Order and the Settlement Agreement.

5. **Other Fund Characteristics.** The entire amount paid by NASA Goddard into the Fund pursuant to the Agreement, and all income generated by that amount, shall be in custodia legis and immune from attachment, execution, assignment, hypothecation, transfer or similar process by any third party or Claimant. Payments made to the Fund irrevocably vest in the Administrators at the time of

payment. Once the Fund vests in the Administrators, it is irrevocable during its term and NASA Goddard has divested itself of all right, title and interest, whether legal or equitable, in the Fund. The Administrators may make disbursements out of the Fund at any time and from time to time only in accordance with this Order.

6. Expiration of the Fund. Subject to paragraph II.D of this Order, the Fund, shall expire one year from the Effective Date, provided that the Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Administrators' sole discretion, finally determined and all such amounts have been paid by the Fund.

7. Alteration or Amendment. The Administrators may apply to the presiding Administrative Judge to alter or amend this Order at any time, or from time to time; provided, however, that no such amendment or modification shall in any way affect: (a) the purposes of the Fund; (b) the powers, duties and liabilities of the Administrators under this Order; (c) the total amount of money NASA Goddard is required to pay into the Fund; (d) the qualification of the Fund as a "qualified settlement fund" under Section 468B of the Internal Revenue Code and regulations there under; or (e) the terms of the Agreement.

**B. Purpose and Funding of the Fund.**

1. Purpose. The Fund is established exclusively for the purpose of: (a) making distributions as compensation for lost wages, prejudgment interest and emotional distress to Class Members and Mediation Representatives who execute and submit (i) a signed release in the form of Exhibit 2 to the Agreement ("NASA Goddard's

Release”), (ii) a signed release in the form of Exhibit 3 to the Agreement (“Administrators’ Release”), (iii) an executed W-9; and (iv) a Certificate of Residency; (b) making payments to Class Counsel and vendors that may have been engaged by Class Counsel to assist with Class Counsel’s prosecution of the case; and (c) paying related employment, withholding and other applicable taxes, in accordance with the Agreement.

2. Funding. The Fund consists of the amount of three million seven hundred fifteen thousand two hundred and seventy-eight dollars (\$3,715,278.00) plus any income earned on such amount and additional taxes as provided for in the Agreement to pay the employer portion of FICA and other taxes. Such amount is to be wire transferred by NASA Goddard into an account in the name of “NASA Goddard Settlement Fund” at Chevy Chase Bank within thirty (30) days of the Final Approval of the Agreement. The Fund also consists of any and all interest that accrues on the above-referenced deposits. The Administrators shall furnish a copy of this Order to Chevy Chase Bank.

## II. Administration of the Fund.

### A. Awards to Class Members.

All decisions concerning the awards from the Claims and Contribution Portions in settlement of the claims of the Class Members are the sole responsibility of the Administrators, subject to the Agreement and the provisions of this Order. All awards to Class Members and Mediation Representatives are confidential, and shall not be disclosed except on order of the presiding Administrative Judge other than to the Administrators, the presiding Administrative Judge, the awardees, and such legal and accounting personnel and other administration personnel, including at NASA Goddard, as

are required by the Administrators and by the awardee to know as part of the allocation and distribution process.

1. **Award Elements.** Each award from the Claims Portion to a Claimant shall include back pay, compensation for emotional distress, and prejudgment interest. The allocation shall be 33% back pay, 40% compensation for emotional distress, and 27% prejudgment interest.

2. **Allocation Formula(s).** The Claims and Contribution Portions shall be allocated among all Class Members and Mediation Representatives, respectively as provided for in the Agreement and Exhibit 5.

3. **Distributions.** The Administrators shall distribute awards to Class Members in three separate checks: one for back pay/ wages; one for compensation for emotional distress; and one for prejudgment interest.

4. **Releases and Certificates of Residency.** No award shall be paid to any Claimant prior to receipt by the Administrators of four documents executed by such Claimant: NASA Goddard's Release, the Administrators' Release, a completed IRS Form W-9, and a Certificate of Residency. The Administrators shall deliver a copy of each such Release to NASA Goddard after receipt by the Administrators.

**B. Payments from the Litigation Portion.**

The Administrators shall disburse funds from the Litigation Portion at such time as the Administrators deem appropriate. The Administrators shall pay from this Portion all income taxes attributable to interest earned on this Portion. The Administrators may disburse all moneys in the Litigation Portion, without creating any reserves.

**C. Withholding, Payment and Reporting of Taxes.**

The Administrative Judge, the Administrators and NASA Goddard recognize that there will be federal and state income tax and employment tax withholding and reporting requirements in connection with distributions to Class Members from the Fund. The Order sets out the responsibilities, liabilities and obligations of the parties with respect to any such withholding, payment and reporting requirements.

1. **Definitions.** For purposes of this Order, the term income taxes shall mean taxes imposed or measured by taxable income. Federal and state income tax withholding will be required on the wage portion of each distribution. In addition, withholding will be required on other portions of the distribution if backup withholding applies to a particular Class Member. Federal income tax will be withheld on the wage portion of each distribution at a rate of 27%, and on the other portions of each distribution at a rate of 30% if backup withholding applies. State income tax will be withheld at the applicable rate based on the residence of the Class Member. The term employment taxes shall mean both the employee and employer portions of FICA (Social Security and Medicare taxes), state unemployment taxes, and any other federal or state taxes imposed on employees and employers on or with respect to wages. The term state shall include the District of Columbia and the political subdivisions of any state.

2. **Administrators' Responsibilities.** Class Members shall have sole responsibility to federal and state taxing authorities for payment of taxes owing on all awards received pursuant to the Settlement. Notwithstanding the foregoing ultimate responsibility, the Administrators shall perform the following to withhold appropriately: (a) promptly after the award to each Class Member and Mediation Representative is determined, forward to NASA Goddard a list of awards and the amount constituting wage income, along with a computation of the employer's share of any employment taxes due on such awards; (b) determine the income tax and employee share of FICA to be withheld from each distribution to a Class Member or Mediation Representative and withhold and pay over such amounts; (c) deposit the employer's share of FICA and any other employment taxes required by law following receipt of such share from NASA Goddard; (d) make and file any reports or returns due with respect to such distributions to a Claimant or Mediation Representative, including distribution of IRS forms W-2 and 1099. The Administrators shall have the sole responsibility to determine and pay any income taxes owing with respect to the income earned by the Fund, and to allocate such payments appropriately between the Claims, Contribution and Litigation Portions. Additionally, the Administrators shall file returns and reports with the appropriate government agencies of the federal, state and local government with respect to such income and distribution to the Class Members.

3. **NASA Goddard's Responsibility.** NASA Goddard shall, following receipt of the allocation of awards to Class Members and computation of the employers' share in accordance with federal, state and local requirements, pay to the Fund the total amount of the employer portion of the employment taxes so calculated

within forty-five (45) days after receiving such information from the Administrators.

Such payment shall be in addition to the \$3,715.278.00 paid to the Fund.

a. **Tax Reserves.** The Administrators, if they deem appropriate, may request expedited review and decision by the IRS and/or the applicable state or local taxing authorities, with regard to the appropriateness of the returns filed for the Fund and may establish tax reserves to assure the availability of sufficient funds to meet the obligations of the Fund itself and the Administrators as fiduciaries of the Fund. Such reserve shall include 50% of the earnings of the Fund or such lesser amount that the Administrators determine to be sufficient. The tax reserves, including any income earned thereon, shall be used to meet the obligations of the Fund and to hold harmless the Administrators and NASA Goddard from any government fees, taxes, fine, charges and excise taxes of any sort, provided, however, that the tax reserves shall not be used to hold NASA Goddard harmless from failure to pay the employer portion of employment taxes. The tax reserve may be used to pay income taxes of the Fund as they are incurred. The creation of the tax reserve does not limit the amount of taxes that the Administrators may pay from the Fund or from any income earned thereon.

5. **Cooperation of the Parties.** The Administrators and NASA Goddard shall provide to and exchange with each other such information as shall be reasonably necessary to file notices, reports and returns and to make timely determinations of withholding obligations.

**D. Termination of Fund.**

1. **Unexpended Money.** If any unexpended balance exists in the Fund after all payments to eligible Class Members, Mediation Representatives, and Class Counsel, and of all tax and other obligations under the Settlement and this Order, then such balance shall be (1) distributed to Class Members pro-rata if feasible, (2) used to offset expenses and fees of Class Counsel and others that NASA Goddard is required to pay under the Agreement, or (3) contribute to the U.S. Treasury as unclaimed property.

2. **Termination of Fund.** Subject to paragraph I.A.6 of this Order, the Administrators shall, in their discretion, determine when their liability, and the liability of the Fund, for tax and other obligations described above has been fully satisfied, at which time the Fund may be terminated. Any balance remaining in the Fund at the time of such termination, including any amount remaining in the tax reserves established pursuant to paragraph D.2 above, when all obligations are satisfied, shall be distributed as provided in II.D.1.

**III. Powers, Replacement and Indemnification of the Administrators.**

**A. Powers of the Administrators**

1. **Processing Claims.** The Administrators shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the settlement terms, including the satisfaction of all of the Class Members' claims. Such powers include but are not limited to developing a formula for the allocation of the Claims Portion in accordance with the Agreement, receiving and processing information from Class Members pertaining to their claims and allocations, investing, allocating and distributing the Fund, and in general

supervising the administration of the Agreement in accordance with its terms and this Order. The entirety of the Administrators' powers over the Fund are as expressly stated in this Order or future order.

2. **Investment of Fund.** Pending payment of awards to the Class Members and Class Counsel, the Administrators shall invest the Fund in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury (collectively "U.S. or U.S.-backed securities"), in repurchase agreements collateralized by U.S. or U.S.-backed securities, or in other interest-bearing instruments or accounts. The Administrators shall invest any cash in the Fund in the foregoing investments as soon as practicable.

3. **Reporting and Record Keeping.** The Administrators shall keep detailed and accurate accounts of all investments, receipts, disbursements and other transactions of the Fund.

a. **Inspection.** All accounts, books and records relating to the Fund shall be open for reasonable inspection by the Administrators and by counsel for NASA Goddard. Included in the Administrators' records shall be complete information regarding actions taken with respect to the award of any payments to any Claimant; the nature and status of any payment from the Fund and other information which the Administrators consider relevant to showing that the Fund is being administered, and awards are being made, in accordance with the purposes of the Agreement, this Order and any future order.

b. **Disclosure Limitations.** The Administrators may establish protective conditions concerning the disclosure of information maintained by the

Administrators if publication of such information would violate any law, including rights to privacy. Any person entitled to such information who is denied access to the Fund's records may submit a request to the presiding Administrative Judge for such information. However, the Administrators shall supply such information to any Claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

c. Notice. Any notices or other information to be provided to NASA Goddard hereunder shall be provided at the following address: Chief Counsel, NASA Goddard, Goddard Space Flight Center, Code 140, Greenbelt, MD 20771, unless and until NASA Goddard notifies the Administrators of a different address.

B. Replacement of Trustees and Administrators.

An Administrator may resign by sixty (60) days written notice to the presiding Administrative Judge, subject to approval. In the event of resignation of an Administrator, the Judge may by order appoint a successor Administrator. Upon executing a written acceptance of an executed copy of this Order, and on the settlement of the accounts and discharge of the prior Administrator, the successor Administrator shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Administrators. Any Administrator who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the presiding Administrative Judge or by any successor Administrator, to transfer administrative powers over the Fund to the successor Administrator. The appointment of a successor Administrator, if any, shall not under any

circumstances require NASA Goddard to make any further payment of any nature into the Fund or otherwise. All notices hereunder, including notices of resignation or removal of any Administrator, must be in writing and directed to the presiding Administrative Judge, the Administrators and, where relevant, NASA Goddard.

C. Liability and Indemnification of Administrators.

Subject to compliance with the Agreement terms and this Order, the Administrators shall be free from any and all liability to the Fund in connection with the administration of the Fund and the settlement of Class Members' claims from the Fund, except for any loss arising out of their gross negligence and/or willful misconduct.

1. The Fund shall indemnify and hold harmless the Administrators as to any third-party claims against them arising from their status as Administrators for all expenses, including, attorneys' fees, judgments, fines, and amounts paid in settlement of any action, which amounts are ordinarily and reasonably paid by them in connection with such action, suit, or proceeding, but only if the Administrators acted in good faith and in a manner they reasonably believed to be in the best interest of the Fund and the Class Members.

IV. SEVERABILITY

If any term or provision of this Order, or the application thereof to any person or circumstances, is held to any extent to be invalid or unenforceable, the remainder of this Order, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Order shall be valid and enforceable to the fullest extent permitted by law. If there is any conflict between the terms of this Order and the

Agreement, the Agreement shall take precedence. However, in the event any of the settlement terms incorporated in this Order is held invalid, the effect shall be to invalidate the whole Order. Any capitalized terms not defined herein have the meaning ascribed to them in the Agreement.

IT IS SO ORDERED.

Dated: July \_\_, 2002

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Linda A. Kincaid  
EEOC Administrative Judge