

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

Karolyn Kruger, M.D., et al.,

*Plaintiffs,*

v.

Novant Health Inc., et al.,

*Defendants.*

Case No. 14-cv-208

Judge William Osteen, Jr.

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your legal rights might be affected if you are a member of the following class:**

All current and former participants and beneficiaries who participated in any of the following retirement plans (herein collectively referred to as the “Plans”) between October 1, 1998 and September 30, 2015 (the “Class Period”):

- The Savings and Supplemental Retirement Plan of Novant Health, Inc. and the Tax Deferred Savings Plan of Novant Health, Inc. (collectively, the “Retirement Plus Plan”);
- The Franklin/Upstate 401(k) Plan;
- The Presbyterian Women’s Care Corp. 401(k) Plan;
- The Lakeside/Q-Neck 401(k) Plan;
- The 457(b) Retirement Plan of Novant Health, Inc.; or
- The Retirement Plus Plan Wrap Nonqualified 457(b)/457(f) Plan of Novant Health, Inc. (the “457(f) Plan”).

Excluded from the class are members of the Novant Health Retirement Plan Committee, the Administrative Committee and members of Novant Health, Inc.’s Board of Trustees since October 1, 1998.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Novant Health Retirement Plus Plan (“Plan”) against Novant Health, Inc. (“Novant”) and other alleged fiduciaries to the Plan, alleging violations of the Employee Retirement Income Security Act (“ERISA”). Defendants deny all claims and nothing in the Settlement is an admission or concession on Defendants’ part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for the allocation of monies directly into the individual accounts of Class Members who had one or more accounts with a positive balance (an “Active Account”) in the Plans as of September 30, 2015 (“Current Participants”). Current Participants with an Active Account in the 457(f) Plan and/or an account in one or more of the other Plans that was no longer an Active Account as of September 30, 2015, will receive their allocation for these accounts in the form of a check mailed to their last known address or a rollover, if available and elected. Class Members who are entitled to a distribution but who no longer had any Active Accounts as of September 30, 2015 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if available and elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated October 15, 2015. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com). Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any possible amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on September 23, 2016, at 2:00 PM, before Judge William Osteen, Jr. at the United States District Court, 324 W. Market Street, Greensboro, North Carolina 27401.
- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page six of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com).

**According to the Plans’ records, you are a Former Participant. If you believe that you meet the definition of a Current Participant, please contact the Settlement Administrator. Current Participants include both participants currently employed at Novant and participants who are no longer employed by Novant but continue to have an account balance in the Plan.**

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<b>OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST MAIL A CLAIM FORM POSTMARKED ON OR BEFORE SEPTEMBER 12, 2016 TO PARTICIPATE IN THE SETTLEMENT</b>	<u>Our records indicate that you are a Former Participant.</u> You must mail a Former Participant Claim Form postmarked on or before September 12, 2016 to receive a check for your share of the Net Settlement Amount. If you do not mail the Former Participant Claim Form postmarked on or before September 12, 2016, you will forfeit your share of the Net Settlement Amount.
<b>YOU CAN OBJECT (NO LATER THAN AUGUST 24, 2016)</b>	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.
<b>YOU CAN ATTEND A HEARING ON SEPTEMBER 23, 2016</b>	If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel of your intention to appear at the hearing by August 24, 2016.

**The Class Action**

The case is called *Karolyn Kruger M.D., et al. v. Novant Health, Inc., et al.*, Case No. 14-208 (the “Class Action”). It has been pending since March 12, 2014. The Court supervising the case is the U.S. District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the entities they

sued are called Defendants. The Class Representatives are participants in the Plan. The Defendants are Novant Health, Inc., the Administrative Committee of Novant Health, Inc., and the Novant Health Retirement Plan Committee. The Class Representatives' claims are described below, and additional information about them is available at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com).

### **The Settlement**

After almost two years of litigation, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$32,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$32,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court.

In addition to the monetary component of the Settlement, the parties to the Settlement have agreed to certain additional terms. Defendants have agreed to conclude an RFP competitive bidding process for recordkeeping, investment consulting and participant education services for the Plans and to engage a mutually agreed upon Independent Consultant to assess the adequacy of the RFP process and assess Defendants' anticipated selection of service providers for the Plans. In addition, Defendants have agreed, during the four-year Settlement Period, to: (1) ensure that Plans' administrative service providers are not reimbursed for their services based on a percentage-of-plan-assets basis; (2) review all current investment options in the Plans and revise the investment options, as needed, ensuring that those options are selected or retained for the exclusive best interests of the Plans' participants; (3) the Independent Consultant reviewing the investment option selection process and providing recommendations, if necessary; (4) the Independent Consultant conducting an annual review of Novant's management of the Plans; (5) removing DL Davis, Inc. and related entities from any involvement with the Plans; (6) removing DL Davis and related entities from Novant employee benefit plans; (7) not enter into any new real estate or business relationships with DL Davis and related entities; (8) not offer any Mass Mutual investments in the Plans or any other investment that provides compensation to DL Davis and related entities; (9) provide accurate communications to participants in the Plans; (10) not offer any brokerage services to the Plans; and (11) adopt a new investment policy statement to ensure that the Plans are operated for the exclusive best interests of the Plans' participants.

### **Statement Of Attorneys' Fees And Costs Sought In The Class Action**

Class Counsel have devoted many hours to bringing this case and pursuing it for almost two years. During that time, they also have advanced costs for expert consulting services, substantial investigation, intensive document analysis and other costs necessary to pursue the case. Class Counsel have defended a motion to dismiss and engaged in substantial investigation and analysis of the Plans in order to obtain the monetary and other benefits in this settlement. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending before the District Court. Class Counsel also has agreed to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved. In addition, Class Counsel agrees to take any action necessary to enforce the Settlement Agreement for a four-year period, including any necessary mediations, arbitrations, and Court proceedings, without seeking additional payment from the Settlement Fund.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$10,666,666, in addition to no more than \$95,000.00 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000, for each of the seven Class Representatives who took on the risk of litigation, provided discovery, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and giving overall support to the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com).

## **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because Novant's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

## **2. What Is The Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated ERISA by imprudently and disloyally selecting high-priced investment options and by causing the Plan to pay excessive investment management, administrative, and brokerage fees.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plans have suffered any harm or damage for which Defendants could or should be held responsible. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever.

## **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel, and an all day mediation session with a private mediator. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are experienced in this kind of matter, believe that the Settlement is best for all Class Members.

## **4. What Does The Settlement Provide?**

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts, except that allocations associated with the 457(f) Plan and accounts in the Plans that are no longer Active Accounts as of September 30, 2015, will be distributed to Current Participants by check mailed to their last known address or, if available and they elect, as a rollover to a qualified retirement account. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if available and they elect, as a rollover to a qualified retirement account.

As discussed above, Defendants have agreed to conclude an RFP competitive bidding process for recordkeeping, investment consulting and participant education services for the Plans and to engage a mutually agreed upon Independent Consultant to assess the adequacy of the RFP process and assess Defendants' anticipated selection of service providers for the Plans. In addition, Defendants have agreed, during the four-year Settlement Period, to: (1) ensure that Plans' administrative service providers are not reimbursed for their services based on a percentage-of-plan-assets basis; (2) review all current investment options in the Plans and revise the investment options, as needed, ensuring that those options are selected or retained for the exclusive best interests of the Plans' participants; (3) the Independent Consultant reviewing the investment option selection process and providing recommendations, if necessary; (4) the Independent Consultant conducting an annual review of Novant's management of the Plans; (5) removing DL Davis, Inc. and related entities from any involvement with the Plans; (6) removing DL Davis and related entities from Novant employee benefit plans; (7) not enter into any new real estate or business relationships with DL Davis and related entities; (8) not offer any Mass Mutual investments in the Plans or any other investment that provides compensation to DL Davis and related entities; (9) provide accurate communications to participants in the Plans; (10) not offer any brokerage services to the Plans; and (11) adopt a new investment policy statement to ensure that the Plans are operated for the exclusive best interests of the Plans' participants.

All Class Members and anyone claiming through them will fully release the Plans as well as Defendants and their “Released Parties” from “Released Claims.” The Released Parties include Defendants and any past, present, and future related entities, and all of their past, present, and future officers, directors, employees, attorneys, and agents. The Released Claims include all claims that were asserted in the Class Action, as well as any claims that relate to: (1) the selection, oversight, retention, or performance of the Plans’ investment options and service providers, (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plans, (3) disclosures or failures to disclose information regarding the Plans’ investment options or service providers, (4) disclosures or failures to disclose relationships among fiduciaries, service providers, and investment managers for the Plans, (5) engaging in self-dealing or prohibited transactions, and/or (6) collecting compensation based on a percentage of total assets.

“Released Claims” specifically exclude (1) claims not related to those identified in the preceding paragraph; (2) claims of denial of benefits from the Plans; (2) labor or employment claims unrelated to the Plans; and, (3) claims arising from conduct outside the Class Period.

This is *only* a summary of the Released Parties and Released Claims and is not a binding description of either. The governing releases are found within the Settlement Agreement at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com). Generally, the release means that Class Members will not have the right to sue the Plans, the Defendants or related parties for conduct during the Class Period arising out of or relating to the allegations in the Class Action.

The entire Settlement Agreement is available at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com).

## 5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plans’ recordkeeper, and your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) “Current Participant” as defined on page 1 or (2) an “Authorized Former Participant” (a “Former Participant” as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Net Settlement Amount will be divided among all Class Members pro rata based on their Modified Average Account Balance during the Class Period. The Modified Average Account Balance is calculated by determining each participant’s average, aggregate quarter-ending balance across all of his or her accounts in the Plans for two separate periods: (1) March 31, 2008 through September 30, 2015 (the “Period 1 Average”); and (2) December 31, 1998 through December 31, 2007 (the “Period 2 Average”). Next, the Period 1 Average shall be multiplied by 4 to determine the Modified Period 1 Average. Then, the Modified Period 1 Average shall be combined with the Period 2 Average and the total divided by 2, to determine the participant’s Modified Average Account Balance.

The Settlement Administrator shall then determine the total settlement payment available to each Class Member by calculating each such participant’s pro-rata share of the Net Settlement fund based on his or her Modified Average Account Balance. To the extent a participant has more than one account in the Plans, the Settlement Administrator shall calculate the proportionate share of the total settlement distribution available to the participant (rounded to the nearest dollar or smaller increment, as determined by the Settlement Administrator) that shall be allocated to each of the participant’s accounts, based upon the most recent quarter-ending balance in each such account.

There are approximately 70,683 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, your portion of the Settlement will be distributed pursuant to the terms of that order.

## 6. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to Novant’s records, you are a Former Participant. Therefore, you must return a valid, timely claim form to receive your share of the Settlement.**



## 7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur late in 2016.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

## 8. Can I Get Out Of The Settlement?

No. The Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement. If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.

## 9. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 10. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Defendants do not oppose the amount of Attorneys' Fees and Costs or any Class Representatives' Compensation consistent with the terms of the Settlement Agreement. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$10,666,666 in fees and \$95,000.00 in costs. The Court will determine what fees and costs will be approved.

## 11. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than August 24, 2016. The Court's address is Clerk of the Court, U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401. Your written objection also must be mailed to the lawyers listed below, **no later than August 24, 2016**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Novant 401(k) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 Novant401ksettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-5934	Morgan, Lewis & Bockius, LLP Charles C. Jackson Christopher J. Boran Emily A. Glunz 77 West Wacker Drive Chicago, IL 60601 Tel: (312) 324-1000 Fax: (312) 324-1001

## 12. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at 2:00 PM on September 23, 2016, at the U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

## 13. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

## 14. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than August 24, 2016**.

## 15. What Happens If I Do Nothing At All?

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY.**

## 16. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com), call (855) 720-1156, or write to the Settlement Administrator at:

Novant 401(k) Settlement Administrator  
P.O. Box 2002  
Chanhassen, MN 55317-2002

## SPECIAL TAX NOTICE

### YOUR ROLLOVER OPTIONS

You are receiving this notice because all or a portion of a payment you are receiving as a result of the Settlement may be eligible to be rolled over to an IRA or an employer plan. This notice is intended to help you decide whether to do such a rollover.

This notice describes the rollover rules that apply to payments from the Settlement that are not from a designated Roth account (a type of account with special tax rules in some employer plans). This notice does not apply to payments from the Settlement attributable to past balances in the 457(f) or 457(b) plans sponsored by Novant Health, which are not rollover eligible.

If you also receive a payment from a designated Roth account in the Settlement, you will be provided a different notice for that payment, and the Settlement administrator or the payor will tell you the amount that is being paid from each account.

Rules that apply to most payments from a settlement are described in the “General Information About Rollovers” section below. Special rules that only apply in certain circumstances are described in the “Special Rules and Options” section below.

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### GENERAL INFORMATION ABOUT ROLLOVERS

#### How can a rollover affect my taxes?

You will be taxed on a payment from the Settlement if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (unless an exception applies). However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception applies).

#### Where may I roll over the payment?

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, no spousal consent rules apply to IRAs and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

#### How do I do a rollover?

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Settlement will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment to make the deposit. If you do not do a direct rollover, the Settlement is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

#### How much may I roll over?

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover. Any payment from the Settlement is eligible for rollover, except:

- Certain payments spread over a period of at least 10 years or over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Required minimum distributions after age 70½ (or after death)
- Hardship distributions
- ESOP dividends



- Corrective distributions of contributions that exceed tax law limitations
- Loans treated as deemed distributions (for example, loans in default due to missed payments before your employment ends)
- Cost of life insurance paid by the Plan
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment
- Amounts treated as distributed because of a prohibited allocation of S corporation stock under an ESOP (also, there will generally be adverse tax consequences if you roll over a distribution of S corporation stock to an IRA).

The Settlement administrator or the payor can tell you what portion of a payment is eligible for rollover.

**If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?**

If you are under age 59½, you will have to pay the 10% additional income tax on early distributions for any payment from the Settlement (including amounts withheld for income tax) that you do not roll over, unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the payment not rolled over.

The 10% additional income tax does not apply to the following payments from the Settlement:

- Payments made after you separate from service if you will be at least age 55 in the year of the separation
- Payments that start after you separate from service if paid at least annually in equal or close to equal amounts over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Payments from a governmental defined benefit pension plan made after you separate from service if you are a public safety employee and you are at least age 50 in the year of the separation
- Payments made due to disability
- Payments after your death
- Payments of ESOP dividends
- Corrective distributions of contributions that exceed tax law limitations
- Cost of life insurance paid by the Plan
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment
- Payments made directly to the government to satisfy a federal tax levy
- Payments made under a qualified domestic relations order (QDRO)
- Payments up to the amount of your deductible medical expenses
- Certain payments made while you are on active duty if you were a member of a reserve component called to duty after September 11, 2001 for more than 179 days
- Payments of certain automatic enrollment contributions requested to be withdrawn within 90 days of the first contribution.

**If I do a rollover to an IRA, will the 10% additional income tax apply to early distributions from the IRA?**

If you receive a payment from an IRA when you are under age 59½, you will have to pay the 10% additional income tax on early distributions from the IRA, unless an exception applies. In general, the exceptions to the 10% additional income tax for early distributions from an IRA are the same as the exceptions listed above for early distributions from a settlement. However, there are a few differences for payments from an IRA, including:

- There is no exception for payments after separation from service that are made after age 55.
- The exception for qualified domestic relations orders (QDROs) does not apply (although a special rule applies under which, as part of a divorce or separation agreement, a tax-free transfer may be made directly to an IRA of a spouse or former spouse).
- The exception for payments made at least annually in equal or close to equal amounts over a specified period applies without regard to whether you have had a separation from service.

- There are additional exceptions for (1) payments for qualified higher education expenses, (2) payments up to \$10,000 used in a qualified first-time home purchase, and (3) payments after you have received unemployment compensation for 12 consecutive weeks (or would have been eligible to receive unemployment compensation but for self-employed status).

### **Will I owe State income taxes?**

This notice does not describe any State or local income tax rules (including withholding rules). You may owe state income taxes, and certain states have mandatory withholding requirements on eligible rollover distributions; check with your tax advisor or local state tax authority if you have any questions or for more information.

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## **SPECIAL RULES AND OPTIONS**

### **If your payment includes after-tax contributions**

After-tax contributions included in a payment are not taxed. If a payment is only part of your benefit, an allocable portion of your after-tax contributions is generally included in the payment. If you have pre-1987 after-tax contributions maintained in a separate account, a special rule may apply to determine whether the after-tax contributions are included in a payment.

You may roll over to an IRA a payment that includes after-tax contributions through either a direct rollover or a 60-day rollover. You must keep track of the aggregate amount of the after-tax contributions in all of your IRAs (in order to determine your taxable income for later payments from the IRAs).

If you do a direct rollover of only a portion of the amount paid from the Settlement and a portion is paid to you, each of the payments will include an allocable portion of the after-tax contributions. If you do a 60-day rollover to an IRA of only a portion of the payment made to you, the after-tax contributions are treated as rolled over last. For example, assume you are receiving a complete distribution of your benefit which totals \$12,000, of which \$2,000 is after-tax contributions. In this case, if you roll over \$10,000 to an IRA in a 60-day rollover, no amount is taxable because the \$2,000 amount not rolled over is treated as being after-tax contributions.

You may roll over to an employer plan all of a payment that includes after-tax contributions, but only through a direct rollover (and only if the receiving plan separately accounts for after-tax contributions and is not a governmental section 457(b) plan). You can do a 60-day rollover to an employer plan of part of a payment that includes after-tax contributions, but only up to the amount of the payment that would be taxable if not rolled over.

### **If you miss the 60-day rollover deadline**

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. To apply for a waiver, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

### **If your payment includes employer stock that you do not roll over**

If you do not do a rollover, you can apply a special rule to payments of employer stock (or other employer securities) that are either attributable to after-tax contributions or paid in a lump sum after separation from service (or after age 59½, disability, or the participant's death). Under the special rule, the net unrealized appreciation on the stock will not be taxed when distributed from the Settlement and will be taxed at capital gain rates when you sell the stock. Net unrealized appreciation is generally the increase in the value of employer stock after it was acquired by the Plan. If you do a rollover for a payment that includes employer stock (for example, by selling the stock and rolling over the proceeds within 60 days of the payment), the special rule relating to the distributed employer stock will not apply to any subsequent payments from the IRA or employer plan. The Settlement administrator can tell you the amount of any net unrealized appreciation.

### **If you were born on or before January 1, 1936**

If you were born on or before January 1, 1936 and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

## **If you roll over your payment to a Roth IRA**

You can roll over a payment made before January 1, 2010 to a Roth IRA only if your modified adjusted gross income is not more than \$100,000 for the year the payment is made to you and, if married, you file a joint return. These limitations do not apply to payments made to you after 2009. If you wish to roll over the payment to a Roth IRA, but you are not eligible to do a rollover to a Roth IRA until after 2009, you can do a rollover to a traditional IRA and then, after 2009, elect to convert the traditional IRA into a Roth IRA.

If you roll over the payment to a Roth IRA, a special rule applies under which the amount of the payment rolled over (reduced by any after-tax amounts) will be taxed. However, the 10% additional income tax on early distributions will not apply (unless you take the amount rolled over out of the Roth IRA within 5 years, counting from January 1 of the year of the rollover). For payments during 2010 that are rolled over to a Roth IRA, the taxable amount can be spread over a 2-year period starting in 2011.

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59½ (or after your death or disability, or as a qualified first-time homebuyer distribution of up to \$10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

You cannot roll over a payment to a designated Roth account in an employer plan.

## **If you are not a plan participant**

Payments after death of the participant. If you receive a distribution after the participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions does not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

**If you are a surviving spouse.** If you receive a payment from the Settlement as the surviving spouse of a deceased participant, you have the same rollover options that the participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70½.

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the participant had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the participant would have been age 70½.

**If you are a surviving beneficiary other than a spouse.** If you receive a payment from the Settlement because of the participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

Payments under a qualified domestic relations order. If you are the spouse or former spouse of the participant who receives a payment from the Settlement under a qualified domestic relations order (QDRO), you generally have the same options the participant would have (for example, you may roll over the payment to your own IRA or an eligible employer plan that will accept it). Payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

## **If you are a nonresident alien**

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Settlement is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld

exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

### **Other special rules**

If a payment is one in a series of payments for less than 10 years, your choice whether to make a direct rollover will apply to all later payments in the series (unless you make a different choice for later payments).

If your payments for the year are less than \$200 (not including payments from a designated Roth account in the Plan), the Settlement is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you may do a 60-day rollover.

Unless you elect otherwise, a mandatory cashout of more than \$1,000 (not including payments from a designated Roth account in the Plan) will be directly rolled over to an IRA chosen by the Settlement administrator or the payor. A mandatory cashout is a payment from a plan to a participant made before age 62 (or normal retirement age, if later) and without consent, where the participant's benefit does not exceed \$5,000 (not including any amounts held under the plan as a result of a prior rollover made to the plan).

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

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### **FOR MORE INFORMATION**

You may wish to consult with the Settlement administrator or payor, or a professional tax advisor, before taking a payment from the Settlement. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORM.