

## **PLAN OF ALLOCATION**

The Net Settlement Fund (defined below) will be allocated amongst all Settlement Class Members, as defined as “Putative Class Member” in Paragraph I(A) of the Joint Stipulation of Settlement and Release, who did not submit a timely request for exclusion, subject to the exceptions listed in footnote 1 below.<sup>1</sup>

## **FORMULA**

Settlement Class Members will receive a share of the Settlement Fund less all court-approved costs, service awards, attorneys’ fees, and employer withholdings tax (“Net Settlement Fund”). **First**, each Settlement Class Member will be allocated a minimum per capita amount of \$100.00. **Next**, each Settlement Class member will be allocated their share of the remaining Net Settlement Fund according to the Formula set out below.

The Net Settlement Fund will be divided between the Nonexempt Employees Fund, for the payment of claims of the Nonexempt Class Members, and the Exempt Employees Fund, for the payment of claims of the Exempt Class Members. The Nonexempt Fund will be allocated 74.6% of the remaining Settlement Fund, and the Exempt Fund will be allocated 25.4% of the remaining Settlement Fund

Each Settlement Class Member will be assigned an Individual Class Member Share, denoted as a percentage of the Fund (Exempt or Nonexempt) to which they belong. Settlement Class Members will be paid a corresponding percentage of the relevant Fund. The processes for calculating the Individual Class Member Share for Nonexempt and Exempt Employees are as follows:

### **Calculating Individual Class Member Share in the Nonexempt Employees Fund**

1. Determine the Settlement Class Member’s individual amount of qualifying incentive payments received, based on the incentive payments listed in the Program 4 NonEx Only tab of the spreadsheet produced as Bates BOA PPP 00005652 (later reproduced as BOA-0002756).
2. For Settlement Class Members who worked in California, multiply this total by 1.75. For those who worked in New York, multiply the total by 1.4.
3. Determine the total amount of qualifying incentive payments for the entire class. To do so, repeat steps 1 and 2 for each eligible Nonexempt Class Member and sum up the total.
4. For each Nonexempt Settlement Class Member, divide the individual qualifying incentive payment figure by the total qualifying incentive payments for the entire class.

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<sup>1</sup> Excluded from the Classes are Bank of America, any entity in which Bank of America has a controlling interest, any of the officers or directors of Bank of America, the legal representatives, heirs, successors, and assigns of Bank of America, anyone employed with Plaintiffs’ counsel’s firms, and any Judge to whom this case is assigned, and his or her immediate family.

The resulting percentage constitutes the Individual Class Member Share for each Settlement Class Member.

5. Each Settlement Class Member will be allocated a percentage of the Nonexempt Employees Fund corresponding to their Individual Class Member Share.

### **Calculating Individual Class Member Share in the Exempt Employees Fund**

1. Determine the Settlement Class Member's individual number of qualifying overtime hours.
  - Allocate to each eligible Exempt Settlement Class Member a baseline of 50 qualifying overtime hours.
  - Using Program 4 of the spreadsheet produced as Bates BOA PPP 00005652 (later reproduced as BOA-0002756), allocate an additional 4 hours for every payment of \$500, and an additional 8 hours for every payment of \$1,000.
  - For Settlement Class Members who worked in California, multiply this total by 1.75. For those who worked in New York, multiply the total by 1.4.
2. For each eligible Exempt Settlement Class Member, multiply their total number of qualifying overtime hours by their average hourly rate, as established by Bank of America's payroll records, to determine their amount of qualifying unpaid overtime.
3. Determine the total amount of qualifying unpaid overtime payments for the entire Exempt Fund class. To do so, repeat steps 1 and 2 for each eligible Exempt Class Member and sum up the total.
4. For each Exempt Settlement Class Member, divide the individual qualifying unpaid overtime payment figure by the total qualifying unpaid overtime payments for the entire class. The resulting percentage constitutes the Individual Class Member Share for each Settlement Class Member.
5. Each Settlement Class Member will be allocated a percentage of the Exempt Employees Fund corresponding to their Individual Class Member Share.

### **Formula for Distribution of the Settlement Fund:**

1. The Net Settlement Fund shall be reduced to cover payroll taxes as defined by the Settlement Agreement.
2. All eligible Settlement Class Members shall be allocated a Minimum Payment of \$100.00.
3. All remaining funds shall be allocated between the Nonexempt Employees Fund and the Exempt Employees' Fund and divided into Individual Class Member Shares as set forth above.
4. Each eligible Settlement Class Member shall receive a distribution equal to their Individual Class Member Share plus their Minimum Payment of \$100.00.

The relevant payroll and compensation data will be conclusively derived from Bank of America's data and determined by the Notice Administrator.

Payments to Settlement Class Members shall not be made until the Effective Date has passed and all objections, collateral challenges or appeals relating to the Settlement have been fully and finally resolved.

#### EMPLOYER TAX WITHHOLDINGS

The Settlement states that taxes shall be paid from the Settlement Fund. Payments to Settlement Class Members shall be reduced by any employee withholding amounts that the Settlement Administrator determines must be paid directly to the relevant taxing authorities.

#### REMAINING FUNDS

For Settlement Class Members who could not be located (after continuing diligent efforts by the Settlement Administrator) or who do not cash their checks by the stale date, the Settlement Administrator shall remit such payments to the relevant unclaimed property divisions. To the extent undistributed funds still remain after this process is complete, Plaintiffs will petition the Court for an order to dispose of the remaining funds. At this time, Plaintiffs anticipate the remaining Settlement amounts will be distributed pro rata to Settlement Class Members who deposited their settlement checks if it is economically feasible to do so. If it is not economically feasible to redistribute payments, the remainder will be distributed to a *cy pres* recipient to be approved by the Court. In no event shall any of the remaining funds be returned to Bank of America.