National Opioid Settlement

Frequently Asked Questions about the National Opioid Settlement [Subject to ongoing corrections and updates]

1. Which Entities Are Eligible to Participate?

These settlements are open only to states and subdivisions. Claims brought on behalf of private individuals and businesses (including private hospitals and private third-party payers) are not included (and will not be released).

All states may participate in the J&J settlement and all states except West Virginia may participate in the Distributors settlement.[1] Washington DC and the five U.S. Territories[2] are treated as states in the settlements. Within a settling State, nonlitigating and litigating political subdivisions may participate, including all county, municipal, and township governments and any other subdivision that has filed a lawsuit that falls within the release provisions of the agreements. A limited number of "Special Districts," such as school districts, fire districts, and hospital districts, may be eligible to participate (with certain limitations).[3] Subdivisions and Special Districts in non-settling states cannot participate in the settlements.[4] Subdivisions and Special Districts that separately resolved their claims with the Distributors or J&J prior to the Reference Date (explained below) also cannot participate.

Each settling State, subdivision, or Special District must provide a release to participate. (The settlements also incentivize states to obtain legislative or judicial bars on subdivisions and Special Districts suing on claims otherwise encompassed in the settlement. Even if a settling State has obtained a bar, however, a subdivision must provide a release of its own to participate and be eligible for designated subdivision settlement funds.)

2. What Funds Will Be Available for Abatement?

About $23.5 billion of the maximum $26 billion would be available to be paid out in settlement proceeds for abatement, if there is full participation in the settlement. About $760 million of that is set aside as a credit towards potential settlements with the Tribes and certain subdivisions, leaving a "net abatement" settlement fund of about $22.8 billion. Each of the Distributors and J&J will make annual payments consisting of base and incentive payments (described below).[5] Approximately half of settlement funds are earmarked for base payments. The remaining funds are earmarked for

incentive payments determined on a state-by-state basis depending on whether certain participation benchmarks are met.[6]

3. How Will Settlement Proceeds Be Used?

At least 70% of the funds are to be used to fund future opioid-remediation efforts. The agreement includes a broad and non-exhaustive list of qualifying opioid remediation expenditures.[7]

4. What Is the Process to Opt In and What Are the Deadlines to Do So?

There are three phases before either settlement becomes effective. And there are opportunities to walk away if there is not enough "critical mass" to make settlement worth continuing. The settlements are designed to incentivize higher participation rates.

Phase 1, State Participation: Each state will have 30 days to decide whether to participate in the settlements. The Distributors and J&J then each have up to 14 days to decide whether, in their view, there are enough states to proceed to the next phase of the respective settlements.

Phase 2, Subdivision Participation: In phase 2, the subdivisions in each settling State will have 120 days to decide whether to participate in the settlements (the "Initial Participation Date"). The Distributors and J&J each then have 30 days to again decide whether there is enough "critical mass" to proceed with the respective settlements (the "Reference Date").[8]

Phase 3, Consent Judgments and Effective Date: The Effective Date for the settlements is 60 days after the Reference Date. During that time, each settling State will seek entry of a consent judgment to implement releases and injunctive relief. No settlement funds will be disbursed to a settling State unless a consent judgment has been entered.

Later Participation: States may join the settlements after the Initial Participation Date only with the consent of the Distributors/J&J. Subdivisions of Settling states may sign on and participate after the Initial Participation Date ("Later Participating Subdivisions"), but may receive lower total payments than those that join earlier. If a state joins after the 30-day state cutoff, the subdivisions in that state will be given 90 days from the date the state joins.

5. How Will Settlement Funds Be Allocated Within a State?

Settlement proceeds will be allocated in accordance with the terms of any qualifying agreement between a State and its subdivisions, or by a qualifying statute or statutory trust. In the absence of a qualifying agreement between a State and its subdivisions, a qualifying statute or statutory trust, settlement proceeds will be allocated in accordance with default allocation terms set out in the

settlement agreement. Under these default terms, settlement proceeds will be allocated among three subfunds for each settling State: a State Fund, an Abatement Accounts Fund, and a Subdivision Fund.[9] There are several important points to observe with respect to three subfunds:

- The settlement agreements provide default allocations among the subfunds (15% to the State Fund, 70% to the Abatement Accounts Fund, and 15% to the Subdivision Fund). As noted above, these defaults can be changed state-by-state through a qualifying agreement between a state and its subdivisions, or by a qualifying statute or statutory trust.[10]
- Under the default, at least 50% of the annual spend from the Abatement Accounts Fund must be allocated at a regional level for Settling States above a certain population. Each settling State will have an Advisory Committee—with equal representation from the state and local levels—to recommend how to spend the Abatement Accounts Fund.[11]
- Certain large participating subdivisions also will be eligible to receive block grants from the Abatement Accounts Fund.
- A settling State also is free to direct all or a portion of its State Fund to its Abatement Accounts Fund. A settling subdivision also may choose to direct all or a portion of its Subdivision Fund to the State's Abatement Accounts Fund or to another settling subdivision.

6. How Much Will a Settling State Receive in Base Payments?

Approximately $12.1 billion in abatement funds would be available for base payments to settling States. These base payments do not require a settling State to meet any specific participation benchmarks or conditions. Base payments will be paid out annually for distribution to each settling State according to its share of the abatement funds using the top-level state allocation model discussed below. Each state's base payment is then allocated into the three sub-funds or according to a state-subdivision agreement, as explained above.

7. How Much Can a State Receive in Incentive Payments?

Approximately $10.6 billion in abatement funds would be earmarked for "Incentive Payments" designed to reward states for increasing participation in the settlements by their subdivisions and/or taking steps to bar or otherwise resolve current and future subdivision litigation. States can qualify for a combination of four different Incentive Payments (A-D) to maximize payments. While the Incentive Payments under the Distributors' agreement and J&J's agreement are similar, there are differences in how they operate and when they accrue.

8. How Will Payments Be Calculated? How Will Payments Be Allocated Among the Settling States and Subdivisions?

If the proposed settlements become effective, each of the Distributors and J&J would make annual payments consisting of base and incentive payments (described above). Calculation of the amounts distributed to each settling State (including the state and its settling subdivisions) starts with a top level allocation among all states of the maximum potential payment. How much of that maximum amount each state will receive in any given year is then based on (a) which Incentive Payment categories that state qualifies for that year; and (b) whether amounts otherwise payable are suspended due to litigation by non-settling subdivisions within a settling State and whether any offsets are taken against amounts otherwise payable, based on judgments in favor of non-settling subdivisions. Once the annual payment for a state is calculated, the further allocation of that state's payment among that state's Abatement, State, and Subdivision Funds proceeds as outlined above.

9. How Will the State-Level Allocations Be Made?

For purposes of the top level maximum potential allocation discussed above, an Overall Allocation Percentage has been calculated for each state. The Overall Allocation Percentage is a blend (85%/15%) of sub-percentages calculated at both the state and subdivision levels.

The sub-percentages for each State are based on population adjusted for the proportionate share of the impact of the Opioid epidemic using reliable, detailed, and objective national data, including: (1) the amount of opioids shipped to the state; (2) the number of opioid-related deaths that occurred in the state; and (3) the number of people who suffer opioid use disorder in the state. Similarly, the sub-percentages for each subdivision were calculated based on each subdivision's proportionate share of the nationwide impact of the Opioid epidemic using that same data: (1) the amount of opioids shipped to the state; (2) the number of opioid-related deaths that occurred in the state; and (3) the number of people who suffer opioid use disorder in the state. Adjustments were made to reflect the severity of impact because the oversupply of opioids had more deleterious effects in some locales than in others. Ultimately, the model allocates settlement funds in proportion to where the opioid crisis has caused harm.

10. How Do "Tiers" Affect Payments?

There would be four possible Tiers applicable to the agreements; the more states and subdivisions that participate, the higher the Tier. The Tiers impact the extent to which payments can be suspended or offset due to litigation.

Under the Distributors' agreement, and subject to certain exceptions, the Tiers would determine (a) the circumstances and periods under which litigation by Later Litigating Subdivisions will trigger a suspension of a portion of a state's annual payment, (b) the per capita rate used to calculate the suspension amounts, (c) the annual per state cap on suspension amounts, and (d) the annual per state cap on offsets for certain monetary judgments in favor of non-settling subdivisions.

Under J&J's agreement, the Tiers would affect the circumstances under which litigation by non-settling subdivisions will trigger a suspension of a portion of a state's base and incentive payments.

11. Can Settlement Payments Be Suspended? Can a Defendant Take an Offset Against a Settlement Payment?

Yes, if the settlements become effective, portions of a settling State's payments could be held in suspension and/or offset under specified circumstances concerning litigation by its subdivisions.

A central goal of the proposed settlements is to shift the focus from litigation to getting Opioid abatement funds to states and subdivisions. With that goal in mind, portions of the payments to each state may be subject to "suspension" (i.e., placed in escrow) in the event certain subdivisions bring or expand litigation against the Distributors or J&J after the Reference Date, if the litigation continues past specified suspension deadlines. The suspension deadlines are determined by the applicable participation Tier (the higher the Tier, the less onerous the suspension deadline). Dollar-for-dollar "offsets" also may be taken if certain subdivisions obtain judgments that require payments by the Distributors or J&J.

- Will There Be a Grace Period During Which Payments Will Not Be Subject to Suspension?

Yes. Under the Distributors' agreement, suspensions will not be applicable to any settling State's annual payments during the first two payment years and, in payment years 3-18, suspensions are not applicable to the annual payment of any state that is eligible for Incentive Payment A (see above) in that year. Other exceptions would apply, including claims for less than $10 million and (when Tier 1 applies) claims by subdivisions of fewer than 10,000 people.

Under J&J's agreement, the suspension will not affect base payments in years 1-7. The suspension would affect only Incentive Payments A-D in any year and base payments in the last two payment years.

12. Will the Settlements Require Any Change to How the Defendants Operate Their Businesses?

In addition to billions of dollars to be used for abatement of the effects of the Opioid epidemic in communities across the nation, the proposed settlements would provide robust injunctive relief that will require the Distributors and J&J to make significant changes in the way they conduct their business in order to address the Opioid epidemic on the supply side as well. Among other changes, the Distributors must follow substantially increased and improved measures to identify suspicious orders and pharmacy customers, under the oversight of an independent third-party monitor. The Distributors each would be required to begin using a clearinghouse that accounts not only for their own opioid shipments, but the shipments of the other distributors. This enables, for the first time, a

truer picture of overall opioids distribution and requires drug distributors to alter their shipments based on the shipments by others.

As for J&J, which no longer markets or sells Opioids, the company and its subsidiaries (including Janssen) would agree not to reintroduce any Opioids for a 10-year period. This prohibition would extend to the manufacture, sale, promotion, and distribution of any opioid products as well as any lobbying relating to prescription opioids. J&J also would agree to make the clinical trial data for its discontinued opioid products available for medical research via the Yale University Open Data Access Project.

13. How Will Attorneys' Fees and Costs Be Addressed?

The overarching goal of this global settlement is to dedicate funds to abate opioid-related harms. If private lawyers, who represent some of the states and thousands of subdivisions, were to enforce their contingency fee contracts, a significant portion of the global settlement payments would go towards legal fees to compensate efforts to prosecute the lawsuits that are being resolved as to the Distributors and J&J. As a result, the government entities that hired counsel to litigate against the Distributors and J&J would net less proportional recovery than entities that did not litigate. To guard against this imbalance and maximize the amounts available for abatement, the negotiating State Attorneys General, the PEC's Negotiation Team, and the settling defendants have proposed to agree that these defendants will pay, and the parties will set aside, separate funds totaling a maximum of $1.95 billion to pay private counsel attorneys' fees.

These funds would include $350 million for outside counsel representing participating states and about $1.6 billion for outside counsel representing participating subdivisions. The $350 million state fund would be allocated by agreement between the states and their outside counsel.

14. How will more information on the settlements be made available?

Settlement documents, information, and updates will be posted on a public settlement website, https://nationalopioidsettlement.com/. The website will provide current information on an ongoing basis as the settlement implementation progresses. Some States have also set up their own websites to provide State-specific information.

[1] West Virginia previously settled with the Distributors in an unrelated settlement. A portion of the Distributors' settlement funds is treated as a credit toward potential settlements with West Virginia subdivisions and with Tribes. For J&J's agreement, a portion of the settlement funds is treated as a credit for Oklahoma, non-settling government entities and the Tribes. Settlement payments by the Distributors and J&J are calculated as net after those credits.

[2] American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands.

[3] Special Districts are treated as subdivisions under the Distributor agreement. The J&J agreement defines Special Districts separately from subdivisions, but still allows them to participate in the settlement by signing release forms.

[4] There is one exception in the J&J settlement agreement: subdivisions of the State of Oklahoma, whose litigated claims against J&J are the subject of an appeal pending in the Oklahoma Supreme Court, are eligible to participate in the J&J settlement whether or not the State elects to participate.

[5] J&J's base and incentive payments are front-loaded, with about 80% coming in the first three years and the rest over the next six years. The Distributors' payments are spread over 18 years.

[6] In the Distributors' agreement, 55% of the payments are earmarked as base payments. In the J&J agreement, 45% of the payments are earmarked as base payments.

[7] If settlement proceeds are used for something other than Opioid Remediation, the amounts and uses (including any use to pay attorneys' fees and costs) must be publicly reported.

[8] Additionally, under the Distributors Agreement only, each settling state will have 15 days from the Initial Participation Date to decide whether to proceed with the settlement.

[9] Non-litigating municipalities with a population under 10,000 and special districts get no direct allocation from the Subdivision Fund, unless an intrastate agreement provides otherwise.

[10] Allocation agreements/statutes have already been reached or enacted in several states.

[11] Spending from the Abatement Allocation Account Fund will be tracked and reported annually.