

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CASEY CUNNINGHAM, *et al.*,

Plaintiffs,

v.

CORNELL UNIVERSITY, *et al.*,

Defendants.

No. 16-cv-6525-PKC

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

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

All persons who participated in the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, including any designated Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds during the relevant time period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012.

The Class Period is defined as August 17, 2010 through the date of the preliminary order. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

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 Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan (the “Plans”) against Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman (collectively “Cornell” or “Defendants”), alleging violations of the Employee Retirement Income Security Act (“ERISA”) related to the retention of an imprudent share class of the TIAA-CREF Lifecycle Funds. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and had Plan accounts during the Class Period with a balance greater than \$0 as of September 1, 2020 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of September 1, 2020 (“Former Participants”) will receive their allocation in the form of a check mailed to the address listed on the Former Participant Claim Form or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated September 18, 2020. 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.Cornell403bPlanSettlement.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 subsequent 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 December 22, 2020 at 2:00 p.m., before United States District Court Judge P. Kevin Castel in Courtroom 11D, United States Courthouse, 500 Pearl St., New York, NY, 10007-1312.
- 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 Defendant's Counsel, as identified on page 6 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.Cornell403bPlanSettlement.com.

If you believe you had any balance invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and do not currently have an account in the Plans, you must complete a Former Participant Claim Form. If you are unsure whether you have an account with the Plan or invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than \$0 as of September 1, 2020.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
<p>IF YOU ARE A FORMER PARTICIPANT THAT INVESTED IN THE TIAA-CREF LIFECYCLE FUNDS BETWEEN AUGUST 17, 2010 AND APRIL 17, 2012, YOU MUST RETURN THE FORMER PARTICIPANT CLAIM FORM BY NOVEMBER 23, 2020 TO PARTICIPATE IN THE SETTLEMENT</p>	<p>If You Are A Former Participant, you must return a Former Participant Claim Form that is postmarked or submitted on-line at www.Cornell403bPlanSettlement.com by November 23, 2020 to receive your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form that is postmarked or submitted on-line by November 23, 2020, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. A claim form may also be obtained by accessing www.Cornell403bPlanSettlement.com.</p>
<p>ANY CLASS MEMBER CAN OBJECT (NO LATER THAN NOVEMBER 22, 2020)</p>	<p>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 Settling Parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.</p>
<p>YOU CAN ATTEND A HEARING ON DECEMBER 22, 2020</p>	<p>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 by December 12, 2020, of your intention to appear at the hearing.</p>

The Class Action

The case is called *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.) (the “Class Action”). The Court supervising the case is the United States District Court for the Southern District of New York. The individuals who brought this suit are called Class Representatives, and the entity and individuals they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman. The Class Representatives’ claims are described below, and additional information about them is available at www.Cornell403bPlanSettlement.com.

What Does the Settlement Provide?

The Settlement was reached on September 18, 2020. Class Counsel filed this action on August 17, 2016. Since the filing of the case and for a period of over four years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze voluminous pages of documents produced by Defendant and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 16 depositions to support their underlying claims, not all of which are addressed by the Settlement. The Settling Parties engaged in substantial settlement discussions. Only after extensive arm’s length negotiation over a period of several months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$225,000 will be established to resolve Plaintiffs’ claim that Defendants breached their duty of prudence by failing to adopt the institutional share classes of the TIAA-CREF Lifecycle Funds. This settlement does not include claims previously dismissed by the Court or claims to which the Court found that Defendants were entitled to summary judgment. Those claims may be appealed to the Second Circuit. The Net Settlement Amount is \$225,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representative’s 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. 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. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

Release

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other “Released Parties” from “Released Claims.” The Released Parties include (a) Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (d) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, (e) the Plans and the Plans’ fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest, other than CapFinancial Partners, LLC d/b/a Captrust Financial Advisors.

The Released Claims include the portion of Count V of the Corrected Amended Complaint related to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds upon which summary judgment was denied in an order dated September 27, 2019. This agreement does not settle nor release any of the other claims in the Corrected Amended Complaint.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at www.Cornell403bPlanSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants or the Released Parties for conduct arising out of or relating to the Released Claims.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.Cornell403bPlanSettlement.com.

Statement of Attorneys’ Fees and Costs Sought in the Class Action

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing and handling this case. Class Counsel reviewed voluminous pages of documents produced in this case, conducted a substantial number

of depositions, and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to enforce the Settlement Agreement in accordance with its terms; and (3) to do each of these without additional pay.

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, \$75,000, in addition to no more than \$18,000 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 and must be approved by the Court.

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 payment, not to exceed \$1,000 each, for one Class Representative who invested in the TIAA-CREF Lifecycle Funds and took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. The Class Representative's activities also included assisting in the factual investigation of the case by Class Counsel, being deposed by Defense counsel, and providing information for the case. Any Class Representative Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full 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.Cornell403bPlanSettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plan'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, if any, 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, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan. The claim at issue involved in the Settlement only includes allegations that Defendants failed to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds.

The district court dismissed some of Plaintiffs' claims for failure to state a viable claim, and determined that Defendants were entitled to summary judgment on the merits of all remaining claims except the claim pertaining to the TIAA-CREF Lifecycle Funds that is the subject of this settlement. Defendants maintain that they are without fault or liability with respect to that issue, as well as any of the allegations or claims asserted in this action that the Court already dismissed. Defendants are settling the Released Claim solely to avoid litigation costs and the risks associated with an in-person trial set for September 2020 amidst the current public health crisis.

3. Why Is There A Settlement?

The Court dismissed or granted summary judgment to Defendants as to all claims other than the portion of Count V of the Corrected Amended Complaint relating to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds. The Court has not finally decided the final claim. Instead, the Class Representative and Defendants have agreed to the Settlement of that claim. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. 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 Representative and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper, or, if on September 1, 2020, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form.

To be eligible for a distribution from the Net Settlement Amount, you must have invested in the TIAA-CREF Lifecycle Funds between August 17, 2010 and April 17, 2012. If you invested in these funds and no longer have a Plan account or have a Plan account with no money in it, you must submit a Former Participant Claim Form available at www.Cornell403bPlanSettlement.com and submit that form to the Settlement Administrator.

Current Participants shall receive their settlement payments as contributions to their account(s) in the Plans. For each Authorized Former Participant that completes a Former Participant Claim Form, the Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail the check to the address of such Authorized Former Participant listed in his or her Former Participant Claim Form or will follow proper rollover instructions provided by the Authorized Former Participant.

The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at www.Cornell403bPlanSettlement.com.

There are approximately 7,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the Plan of Allocation as if you are a Current Participant or Authorized Former Participant.

5. 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." **It is your responsibility to determine whether you are a Former Participant.**

6. 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 during the second half of 2021.

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

7. Can I Get Out Of The Settlement?

No. The Class was 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 Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

8. 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. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. 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. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$75,000 in fees and \$18,000 in costs and Class Counsel has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

10. 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 *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.) 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 **November 22, 2020**. The Court's address is Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl St., New York, NY, 10007-1312. Your written objection also must be mailed to the lawyers listed below, no later than **November 22, 2020**. 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: Cornell 403b Plan Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 Cornell403bPlanSettlement@uselaws.com	MAYER BROWN LLP Attn: Brian D. Netter 1999 K Street NW Washington, DC 20006 bnetter@mayerbrown.com

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

The Court will hold a Fairness Hearing at 2:00 p.m. on December 22, 2020 at the United States District Court for the Southern District of New York, Courtroom 11D, 500 Pearl St., New York, NY, 10007-1312.

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.

12. 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.

13. 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 *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525." 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. 10, **no later than December 12, 2020**.

14. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

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 UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.

15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.Cornell403bPlanSettlement.com, call 1-844-791-1288, or write to the Settlement Administrator at Cornell University Retirement Plans Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.