



## Frequently Asked Questions on the Wave Two Opioid Settlements and Supplemental Agreement for Additional Funds ("SAAF")

February 15, 2023

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### PART 1: WAVE TWO OPIOID SETTLEMENTS

#### **1. What is the purpose of this FAQ?**

Part 1 of this FAQ answers questions about the Wave Two Opioid Settlements and Part 2 answers questions about the Supplemental Agreement for Additional Funds ("SAAF").

#### **2. What if there is a discrepancy between this FAQ and any of the Wave Two Settlement documents or SAAF?**

If there is a discrepancy between this FAQ and the Wave Two Settlement documents or SAAF, then the Wave Two Settlement documents or SAAF take precedence. This FAQ is an effort to explain the Wave Two Settlements and SAAF in user-friendly terms, but this FAQ is not a binding legal document.

#### **3. What are the Wave Two Opioid Settlements?**

In addition to the \$26 billion national opioid settlements with the "big three" drug distributors plus Johnson & Johnson ("Wave One Settlements"), Attorney General Josh Stein helped negotiate \$21 billion in new settlements with CVS, Walgreens, Walmart, Allergan and Teva ("Wave Two Settlements").

**4. How much money will the Wave Two Opioid Settlements bring to North Carolina?**

North Carolina's state and local governments stand to receive more than \$600 million from the Wave Two Settlements between 2023 and 2035 – in addition to the more than \$750 million we are already slated to receive from the Wave One Settlements between 2022 and 2038. In total, the Wave One Settlements and Wave Two Settlements will provide more than \$1.35 billion in new funds for opioid remediation activities in North Carolina.

**5. Which North Carolina local governments will receive funds from the Wave Two Opioid Settlements?**

The same local governments that receive funds from the Wave One Settlements (governed by the Memorandum of Agreement or “MOA”) will receive funds under the Wave Two Settlements (governed by the SAAF).

To be more specific: Local governments entitled to receive direct payments under the settlements are the 100 North Carolina counties plus any municipality that either filed suit against the defendants, or had a population of 75,000 or more in 2019, or both. Based on those criteria, the municipalities entitled to receive funds are Asheville, Canton, Cary, Charlotte, Concord, Durham, Fayetteville, Gastonia, Greensboro, Greenville, Henderson, Hickory, High Point, Jacksonville, Raleigh, Wilmington, Winston-Salem.

Three of the municipalities entitled to receive direct payments under the settlements (Cary, Gastonia, and Raleigh) have chosen to direct their opioid settlement funds to their respective counties. That leaves all 100 counties plus 14 municipalities (rather than 17 municipalities) slated to receive opioid settlement funds under the Wave One and Wave Two Settlements. (Any other municipalities interested in option of directing opioid settlement funds to their respective counties should reach out to the NC DOJ team at [opioidsettlement@ncdoj.gov](mailto:opioidsettlement@ncdoj.gov).)

**6. How much funding will the 100 counties and 14 municipalities receive from the Wave Two Opioid Settlements?**

As with the Wave One Settlements, North Carolina will receive its full share of payments from the Wave Two Settlements only if all required local governments sign onto each settlement. And the defendants will agree to finalize the Wave Two Settlements only if the vast majority of local governments across the nation sign onto them.

If all required local governments sign onto the Wave Two Settlements in North Carolina, and a sufficient number of local governments join the Wave Two Settlements across the nation, then the maximum amount that each of the 100 counties and 14 municipalities identified above could receive from the Wave Two Settlements is available [HERE](#) on the “Wave Two Settlements” page of DOJ’s [www.MorePowerfulNC.org](http://www.MorePowerfulNC.org) website.

**7. Which local governments need to sign onto the Wave Two Settlements in order for North Carolina to receive the full share of settlement funding to which it is entitled?**

Local governments that must sign the Wave Two Settlements in order for North Carolina to receive the full share of settlement funding to which it is entitled include:

- all 100 counties,
- the 17 municipalities listed above that are entitled to receive opioid settlement funds, and
- all other municipalities with a population of 30,000 or greater.

**8. So there are some municipalities that asked to sign the Wave Two Settlements even though they do not receive direct funding under the settlements? Why is that?**

Residents of all municipalities in North Carolina – including those that receive settlement funds directly and those that do not receive settlement funds directly – stand to benefit from state and local programs and services supported with opioid settlement funds.

There are 22 municipalities that signed the Wave One Settlements and are now asked to sign the Wave Two Settlements even though they do not receive direct payments under the Wave One or Wave Two Settlements. By signing onto the settlements, these municipalities help ensure that North Carolina receives the full amount of settlement funds to which it is entitled.

**9. What actions are required for a local government to join the Wave Two Opioid Settlements?**

Typically, local governments follow a two-step process to join the Wave Two Settlements and SAAF.

**First**, the governing board of the county or municipality passes a resolution authorizing designated local officials to sign onto the settlements and SAAF. To assist with this step, draft resolution templates for counties and municipalities are available [HERE](#) on the “Wave Two Settlements” page of DOJ’s [www.MorePowerfulNC.org](http://www.MorePowerfulNC.org) website.

**Second**, after receiving authorization from their respective governing boards, designated local officials (such as managers or attorneys) will sign onto the five new settlements and documents through an electronic sign-on process. In mid-February 2023, all 100 counties and the 36 municipalities identified above will receive an email from the national administrator, Rubris. The email from Rubris will invite each local government to sign onto each of the five new settlements as well as the SAAF.

**10. What is the deadline for local governments to sign onto the settlements and SAAF?**

April 18, 2023 is the deadline to sign onto the Wave Two Settlements and SAAF.

**11. When will North Carolina receive funds from the Wave Two Opioid Settlements?**

If the sign-on to the Wave Two Settlements in North Carolina and across the nation goes well, and the defendants agree to finalize the settlements (as described in question 6 above), we anticipate Wave Two Settlement payments will begin in the second half of calendar year 2023 to the 100 counties plus 14 municipalities slated to receive funds.

The Wave Two Settlement payments will be made over 15 years. We anticipate the payments will be frontloaded, with the largest payment in the first year. (This is because Walmart will pay nearly 100% of its settlement in the first year.) That said, we will be unable to provide a year-by-year schedule of Wave Two Settlements payments until we know the dates when all the settlements are finalized.

Under the MOA and SAAF, local governments are NOT required to spend funds from the Wave One Settlements or Wave Two Settlements during the same fiscal year in which the funds are received. Instead, the MOA and SAAF allow local governments to develop multi-year plans and to spend opioid settlement funds when it makes most sense for them to do so.

**12. How can I learn more about the Wave Two Settlements?**

Additional information is available [HERE](#) on the “Wave Two Settlements” page of DOJ’s [www.MorePowerfulNC.org](http://www.MorePowerfulNC.org) website.

## PART 2: SUPPLEMENTAL AGREEMENT FOR ADDITIONAL FUNDS (“SAAF”)

### **13. What is the purpose of the Supplemental Agreement for Additional Funds (“SAAF”)?**

The purpose of the SAAF is to direct funds from the Wave Two Settlements to the state of North Carolina and local governments in a manner consistent with the Memorandum of Agreement (“MOA”) that has governed the distribution, use, and reporting of funds from the Wave One Settlements since May 2022.

### **14. Under the SAAF, do funds from the Wave Two Settlements go into the same special revenue fund as funds from the Wave One Settlements?**

The SAAF provides that every local government receiving funds from the Wave Two Settlements must either:

1. Deposit the funds from the Wave Two Settlements into the same special revenue fund used for funds from the Wave One Settlements; or (alternatively)
2. Create a separate special revenue fund for funds from the Wave Two Settlements if there is a desire to do so.

It is important to understand that the MOA and SAAF allow local governments to combine funds from Wave One Settlements and funds from Wave Two Settlements into a single fund for spending and reporting purposes. The MOA and SAAF do NOT require that local governments develop separate accounting or reporting requirements for funds from Wave One Settlements versus funds from Wave Two Settlements.

### **15. Regarding the USE of opioid settlement funds, how does the SAAF compare to the MOA?**

Regarding the use of opioid settlement funds, the MOA and SAAF are identical. Funds from the Wave Two Settlements (under the SAAF) are subject to the same rules and guidelines as to how those funds may be used as funds under the Wave One Settlements (under the MOA). For example, Option A and Option B (as described in the MOA) apply to funds from the Wave Two Settlements the same way they apply to funds from the Wave One settlements. And all of the auditing, compliance, reporting, and accountability provisions in the MOA apply to funds from the Wave Two Settlements in the same way they apply to funds from the Wave One Settlements.

### **16. Regarding the REPORTING of opioid settlement funds, how does the SAAF compare to the MOA?**

With respect to reporting requirements, funds from the Wave Two Settlements (under the SAAF) are subject to all the exact same reporting requirements as funds under the Wave One Settlements (under the MOA).

As noted above, the MOA and SAAF allow local governments to combine funds from Wave One Settlements and funds from Wave Two Settlements into a single fund for

spending and reporting purposes. The MOA and SAAF do NOT require that local governments develop separate accounting or reporting requirements for funds from Wave One Settlements versus funds from Wave Two Settlements.

**17. Regarding the ALLOCATION of opioid settlement funds, how does the SAAF compare to the MOA?**

Regarding the allocation of opioid settlement funds, the MOA and SAAF are nearly identical:

- Both the MOA and the SAAF direct 15 percent of each payment from the Wave One Settlements and Wave Two Settlements to the State of North Carolina.
- The MOA directs 85 percent of each payment from the Wave One Settlements to local governments, including all 100 counties and the 14 municipalities identified in question 5 above.
- The SAAF directs 84.62 percent of each payment from the Wave Two Settlements to local governments, including all 100 counties and the 14 municipalities identified in question 5 above.
- The SAAF directs 0.38 percent of each payment from the Wave Two Settlements to private attorneys who have a principal office in North Carolina that have represented local governments in opioid litigation (“Local Counsel”).

**18. Why does the SAAF direct funds to Local Counsel?**

Both the Wave One Settlements and the Wave Two Settlements provide national attorney fee and cost funds that compensate the attorneys who filed suit and litigated on behalf of local governments across the country. The out-of-state counsel who pursued the federal court litigation filed by more than 75 counties and municipalities in North Carolina will receive substantial amounts from these national funds. However, only a small portion of these national funds go to the North Carolina-based lawyers who have also represented our counties and municipalities in opioid litigation.

During the sign-on process for the Wave One Settlements, some counties and municipalities hesitated to join the settlements because of concerns about whether outside counsel would seek to enforce contingency fee arrangements. To ensure that North Carolina obtains 100% participation in the Wave Two Settlements, which is necessary for North Carolina to receive 100% of its funds as explained in question 6 above, the SAAF provides a small fund to Local Counsel in exchange for their clear advance commitment to waive their fee claims against all North Carolina counties and municipalities.

## **19. Does the SAAF impose any conditions for Local Counsel to receive funds?**

Yes. The SAAF provides funds from the Wave Two Settlements to Local Counsel only if:

- All North Carolina counties and municipalities that filed lawsuits against the settling companies join the Wave Two Settlements by April 18, 2023.
- Local Counsel release all North Carolina counties and municipalities from any claim regarding the obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against the Defendants who were part of the Wave One Settlements and Wave Two Settlements.
- National Counsel release all North Carolina counties and municipalities from any contractual obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against the Defendants who were part of the Wave One Settlements and Wave Two Settlements.

All of the above conditions must be met in order for Local Counsel to receive funds. If any of the above conditions are not met, the SAAF allocates no Wave Two Settlement funds to Local Counsel.

## **20. How can I learn more about the SAAF?**

Additional information is available [HERE](#) on the “Wave Two Settlements” page of DOJ’s [www.MorePowerfulNC.org](http://www.MorePowerfulNC.org) website.