



Frequently Asked Questions on the Memorandum of Agreement on the Allocation, Use, and Reporting of Opioid Settlement Funds in North Carolina

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PART 1: LEGAL FRAMEWORK

1. What is this FAQ?

This FAQ – prepared by the North Carolina Department of Justice (NC DOJ) – answers questions about the Memorandum of Agreement (MOA) on the allocation, use, and reporting of opioid settlement funds in North Carolina as well as the Supplemental Agreement for Additional Funds (SAAF).

NC DOJ has prepared a separate FAQ about the MOA Exhibit A strategies that are part of the MOA. To access this and other resources, visit NC DOJ’s [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – NC Memorandum of Agreement.

1A. What opioid settlements and bankruptcy resolutions are subject to the terms of the MOA or SAAF?

The opioid settlements and bankruptcy resolutions subject to the terms of the MOA or SAAF include the Wave One Settlements, the Wave Two Settlements, and certain bankruptcy resolutions.

Wave One Settlements: The Wave One Settlements resolved litigation about opioid-related misconduct that many state and local governments brought against three drug distributors – Cardinal, McKesson, and AmerisourceBergen – as well as the drug maker Johnson & Johnson and its subsidiary Janssen. Final consent judgments for the North Carolina cases were entered in the General Court of Justice, Superior Court Division, Wake County, in April of 2022. These final consent judgments incorporate the MOA.

Wave Two Settlements: The Wave Two Settlements resolved litigation about opioid-related misconduct brought by many state and local governments against three retail pharmacy chains – CVS, Walmart, and Walgreens – as well as the drug makers Allergan and Teva. The State of North Carolina, all 100 counties, and all municipalities with a population of 30,000 or more joined the Wave Two Settlements. It is anticipated that final consent judgments for the North Carolina cases will be entered in the General Court of Justice, Superior Court Division, Wake County by the fall of 2023; and that these final consent judgments will incorporate the SAAF (which applies most MOA terms to the Wave Two settlements, as discussed below).

Certain bankruptcy resolutions:

- **Mallinckrodt:** As a result of the bankruptcy reorganization plan approved by the United States Bankruptcy Court for the District of Delaware, which became effective in June of 2022, the drug maker Mallinckrodt is required to pay approximately \$35 million over eight years to help address the opioid crisis in North Carolina. The bankruptcy reorganization plan incorporates the MOA.
- **Endo:** An agreement was reached with drug maker Endo and its lenders in August of 2022 that would provide approximately \$14 million over 10 years to help address the opioid crisis in North Carolina. As part of the agreement, Endo filed for bankruptcy, and a bankruptcy court must approve the settlement's final terms, which are expected to occur in the second half of calendar year 2023 and incorporate the MOA.
- **Purdue:** A bankruptcy plan involving the drug maker Purdue Pharma and its owners (the Sackler Family) has been tied up in litigation and is now on appeal to the U.S. Supreme Court. In the event the litigation is finally resolved, and the bankruptcy plan proceeds, the plan would incorporate the MOA, and an estimated \$100 million in additional funds could be coming to North Carolina in the future to address the opioid epidemic.

Taken together, the Wave One Settlements, Wave Two Settlements, and bankruptcy resolutions described above have the potential to bring approximately \$1.5 billion to North Carolina state and local governments to address the opioid epidemic from 2022 through 2038.

In this document, the term “opioid settlement funds” refers to all funds received from the Wave One Settlements, Wave Two Settlements, and various bankruptcy resolutions described above.

For additional information about the opioid settlements and bankruptcy resolutions subject to the terms of the MOA or SAAF, visit NC DOJ’s [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements.

2. What is the MOA?

The MOA governs the allocation, use, and reporting of proceeds from the Wave One Settlements and bankruptcy resolutions described above. In addition, under the terms of the SAAF (described below), the MOA generally governs the allocation, use, and reporting of proceeds from the Wave Two Settlements.

With respect to the overall allocation of opioid settlement funds, the MOA provides that funds from the Wave One Settlements and bankruptcy resolutions are allocated as follows:

- 15 percent to the state
- 85 percent to local governments

[MOA § B.2]

For information and resources about the MOA, please visit NC DOJ’s [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – NC Memorandum of Agreement.

2A. What is the SAAF?

The SAAF governs the allocation, use, and reporting of proceeds from the Wave Two Settlements. The SAAF provides that the MOA governs the allocation, use, and reporting of proceeds from the Wave Two Settlements in the same way that the MOA governs the allocation, use, and reporting of proceeds from the Wave One Settlements and bankruptcy resolutions – with one minor difference. [SAAF §§ II.B.5, II.D & II.F.1]

Here is the one minor difference between the MOA and the SAAF: The SAAF provides that funds from the Wave Two Settlements are allocated as follows:

- 15 percent to the state
- 84.62 percent to local governments (versus 85 percent in the MOA)
- 0.38 percent to a “Local Counsel Fee Fund” to compensate private attorneys based in North Carolina that have represented local governments in opioid litigation

[SAAF § II.B.2]

For information and resources about the SAAF, please visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – Wave Two Settlements.

3. What if there is a discrepancy between this FAQ and either the MOA or the SAAF?

If there is a discrepancy between this FAQ (on the one hand) and either the MOA or the SAAF (on the other hand), the terms of the MOA or SAAF always take precedence. The MOA and SAAF are binding legal documents, incorporated into the various settlement agreements and bankruptcy resolutions described above. This FAQ is an effort to explain those documents in user-friendly terms.

4. What settlement agreements do the MOA and SAAF govern?

This is covered in questions 1A, 2, and 2A above.

5. What other matters might the MOA govern in North Carolina?

In addition to the opioid settlements and bankruptcy resolutions described above, the MOA is intended to govern future payments from any bankruptcy proceedings of other companies “concerning alleged misconduct in manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic.” [MOA p. 4]

6. What about the settlement between the State of North Carolina and the consulting firm McKinsey & Company?

The MOA and SAAF do not govern the 2021 settlement between the State of North Carolina and McKinsey & Company. In early 2021, Attorney General Josh Stein announced a \$573 million multi-state settlement with McKinsey, resolving investigations into the company's role in advising opioid companies how to promote their drugs and profit from the opioid epidemic. The settlement provides nearly \$19 million over five years for the state of North Carolina, with all funds allocated by the North Carolina General Assembly (NCGA) to address the opioid epidemic.

To learn how the NCGA has appropriated opioid settlement funds, please visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – State Spending of Opioid Settlement Funds.

6A. What about local government lawsuits against McKinsey and Company?

The MOA and SAAF will not govern any future settlements resolving lawsuits brought by local governments against McKinsey & Company. NC DOJ is not involved in these lawsuits, which are currently consolidated in federal court in California.

7. What local governments must abide by the MOA and SAAF?

Every local government that receives opioid settlement funds from any of the Wave One Settlements, Wave Two Settlements, or bankruptcy resolutions described above must abide by the MOA and SAAF. A list of local governments entitled to receive opioid settlement funds is provided in question 15 below.

8. What does the MOA require of local governments receiving opioid settlement funds?

Below is a broad-brush overview of some of the key requirements in the MOA. This overview does not replace the specific terms of the MOA; nor does it include every provision of the MOA that local governments must follow.

- A. Establish a fund. A local government receiving opioid settlement funds must secure and account for these funds in a special revenue fund. This is covered in Part 3 of this FAQ and in Sections D and F of the MOA.
- B. Authorize spending. Before spending opioid settlement funds, a local government must authorize the expenditure of these funds in a manner that satisfies MOA requirements as well as state law. This is covered in Parts 3A and 5 of this FAQ and in Section E.6 of the MOA.
- C. Understand and follow the options. A local government must spend opioid settlement funds on opioid remediation activities authorized under Option A or Option B as detailed in the MOA. This requires a strong understanding of – and strict compliance with – the requirements of each option. This is covered in Part 4 of this FAQ and in Section E.5 and Exhibits A, B and C of the MOA.
- D. Understand and follow all reporting requirements. A local government must comply with all reporting requirements in the MOA, including the following:
 - 1. The local spending authorization report – due within 90 days of the authorization of the expenditure of opioid settlement funds.
 - 2. The Option B report and recommendations – due within 90 days of presentation to the governing body. (This report is required for local governments proceeding under Option B.)
 - 3. The annual financial report (Exhibit E) – due within 90 days of any fiscal year in which opioid settlement funds are received, held, or expended.
 - 4. The annual impact report (Exhibit F) – due within 90 days of any fiscal year in which opioid settlement funds are received, held, or expended.

Note that the Exhibit E annual financial report and Exhibit F annual impact report have been modified by the Coordination Group as detailed in questions 63A and 71A below.

These and other reporting requirements are covered in Part 5 of this FAQ and in MOA Sections E.6 and F.6 and Exhibits C, E and F. To access these and other resources, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – NC Memorandum of Agreement.

- E. Hold annual meeting. The MOA requires that each county receiving opioid settlement funds hold at least one annual meeting open to the public, with all municipalities in the county invited to the meeting. The purpose of the meeting is to receive input from municipalities on proposed uses of the opioid settlement funds and to encourage collaboration among local governments. This is covered in Section E.4 of the MOA.

9. When should the annual meeting take place?

The MOA does not specify when the annual meeting should take place and does not clarify whether the term “annual” refers to the fiscal year or the calendar year. However, NC DOJ strongly recommends that local governments hold their annual meeting one time during each fiscal year, consistent with reporting requirements and other aspects of the MOA that generally align with the fiscal year rather than the calendar year. [MOA § E.4]

10. How can I get more information?

For information and resources about the opioid settlements and MOA, please visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – NC Memorandum of Agreement.

The Community Opioid Resources Engine for North Carolina ([CORE-NC](https://ncopioidsettlement.org)) is the resources and reporting hub for the North Carolina opioid settlements. You can access CORE-NC at <https://ncopioidsettlement.org>.

The North Carolina Association of County Commissioners (NCACC) offers an array of tools and resources at <https://www.ncacc.org/opioidsettlement>

11. What if I've read this FAQ and other relevant resources and still have questions?

If you have a legal question about the opioid settlements, the MOA, this FAQ, or any information on the information on the [MorePowerfulNC](https://www.morepowerfulnc.org) website (<https://www.morepowerfulnc.org>), please contact the NC Department of Justice at opioidsettlement@ncdoj.gov.

If you have a question or suggestion about the Community Opioid Resources Engine website ([CORE-NC](https://ncopioidsettlement.org)), or you've encountered a broken link there, please contact the CORE-NC website managers at the UNC Injury Prevention Research Center at opioidsettlement@unc.edu.

If you are a local government in need of technical assistance in planning, implementing, or evaluating opioid settlement strategies, contact the NC Association of County Commissioners (opioidsettlement@ncacc.org) or the NC Department of Health and Human Services (opioidsettlement@dhhs.nc.gov).

If you'd like to learn more about how local governments plan to spend opioid settlement funds, contact the county or municipality that interests you.

If you are a member of the media in need of further information, please contact Nazneen Ahmed (nahmed@ncdoj.gov) at NC DOJ.

PART 2: ALLOCATION OF FUNDS

12. How are opioid settlement funds allocated between the state of North Carolina and local governments in North Carolina?

As noted in question 2 above, the MOA provides that funds from the Wave One Settlements and bankruptcy resolutions are allocated as follows:

- 15 percent to the state
- 85 percent to local governments

[MOA § B.2]

As noted in question 2A above, the SAAF provides that funds from the Wave Two Settlements are allocated as follows:

- 15 percent to the state
- 84.62 percent to local governments
- 0.38 percent to a "Local Counsel Fee Fund" to compensate private attorneys based in North Carolina that have represented local governments in opioid litigation

[SAAF § II.B.2]

13. What about the "county incentive fund" mentioned in the MOA?

As a technical matter, with respect to funds from the Wave One Settlements and bankruptcy resolutions described above, the MOA allocates 15 percent of funds to the state, 80 percent to local governments, and 5 percent to a "county incentive fund." [MOA §§ B.2 & G]

As a practical matter, because every local government receiving settlement funds has qualified to participate in the "county incentive fund," the 80 percent going to local governments and the 5 percent going to the "county incentive fund" merge into a single 85 percent share of opioid settlement funds going to local governments.

14. What happens to the state portion of the funds?

The North Carolina General Assembly (NCGA) decides how to spend the 15 percent state share in keeping with the broad requirement – stated in the national settlement agreements and the MOA – that such funds be spent on opioid remediation activities. [MOA § B.5 and SAAF § II.B.2]

To learn how the NCGA has appropriated opioid settlement funds, please visit NC DOJ's MorePowerfulNC website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – State Spending of Opioid Settlement Funds.

15. Which local governments receive opioid settlement funds under the MOA?

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 opioid settlement funds under the MOA are Asheville, Canton, Cary, Charlotte, Concord, Durham, Fayetteville, Gastonia, Greensboro, Greenville, Henderson, Hickory, High Point, Jacksonville, Raleigh, Wilmington, and Winston-Salem. [MOA § B.4.a & Exhibit G]

Note that a municipality may direct its opioid settlement funds to the county or counties where it is located, and several municipalities have chosen to do so. This is discussed in questions 21 and 22 below. [MOA § B.4.b and SAAF § II.B.4]

16. If a county and a municipality within that county are both receiving opioid settlement funds, isn't that double dipping?

No. In situations where a county and a municipality within that county receive settlement funds, the portion of the settlement funds awarded to the county has been reduced by the amount awarded to the municipality – so there is no double dipping.

17. If a municipality is not receiving opioid settlement funds under the MOA, how do municipal residents benefit from the opioid settlements?

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

18. How much money will each local government receive from these settlements?

The Community Opioid Resources Engine for North Carolina ([CORE-NC](https://ncopioidsettlement.org)) includes a schedule of estimated payments for each local government. Visit the [CORE-NC](https://ncopioidsettlement.org) website at <https://ncopioidsettlement.org> and click on Data Dashboards – NC Payment Schedule.

19. Looking at the schedule of estimated payments for my county, what do you mean by the terms “spring” and “summer” of 2022?

[Answer deleted as no longer relevant, since all 2022 payments have been made]

20. What is the timing of payments after 2022?

The Community Opioid Resources Engine for North Carolina ([CORE-NC](#)) includes a schedule of estimated payments for each local government. Visit the [CORE-NC](#) website at <https://ncopioidsettlement.org> and click on Data Dashboards – NC Payment Schedule.

21. Can a municipality direct its opioid settlement funds to the county or counties where it is located?

Yes. The MOA and SAAF provide that a municipality may elect to have its share of opioid settlement funds directed to the county or counties where the municipality is located. If a municipality is located in more than one county, the municipality’s funds are directed to those counties based on a formula developed at the national level by experts retained by the outside counsel for local governments. [MOA § B.4.b and SAAF § II.B.4]

22. Have any municipalities directed their opioid settlement funds to the county or counties where they are located?

Yes. A number of municipalities have directed their opioid settlement funds to the counties where they are located, including Cary (starting in FY 22-23), Charlotte (starting in FY 23-24), Concord (starting in FY 23-24), Gastonia (starting in FY 22-23), and Raleigh (starting in FY 22-23). The estimated payments to Cabarrus, Chatham, Durham, Gaston, Mecklenburg, and Wake Counties on the CORE-NC schedule of estimated payments have increased to reflect these decisions.

22A. What are the advantages of a municipality directing its opioid settlement funds to the county or counties where they are located?

There are at least two potential advantages. First, a municipality that directs opioid settlement to the county or counties in which it is located is relieved of any reporting or other obligations under the MOA with respect to the funds that have been directed to their county or counties. Second, directing funds to the county has the potential to improve coordination and increase efficiency in addressing the opioid overdose epidemic. [MOA § B.4.b and SAAF § II.B.4]

22B. How can a municipality learn more about this option?

A municipality interested in exploring this option should email NC DOJ at opioidsettlement@ncdoj.gov.

23. Would it be a good idea for a local government to immediately spend the first batch of opioid settlement funds as soon as the funds are received in May of 2022?

[Answer deleted as no longer relevant]

24. What formula was used to allocate opioid settlement funds among local governments?

The allocation formula for the NC MOA is derived directly from the allocation model developed at the national level by experts retained by the outside counsel for local governments. The national allocation model gives equal weight to three factors:

- A. Opioid Use Disorder (“OUD”). Under this factor, each county is assigned a percentage derived by dividing the number of people in the county with OUD by the total number of people nationwide with OUD. The model uses data reported in the National Survey on Drug Use and Health for 2017.
- B. Overdose Deaths. This factor assigns to each county a percentage of the nation’s opioid overdose deaths. The percentage is based on Multiple Causes of Death data reported by the National Center for Health Statistics, the Centers for Disease Control and the U.S. Department of Health and Human Services. The data so reported is then adjusted using a standard, accepted method designed to address the well-established under-reporting of deaths by opioid overdose.
- C. Amount of Opioids. This factor assigns to each county a percentage of the national opioid shipments during 2006-2016 (expressed as morphine molecule equivalents) that produced a negative outcome. This percentage is based on data reported by the U.S. Drug Enforcement Agency in its so-called ARCOS database. Each county’s share of national shipments is multiplied by the higher of two ratios: (1) the ratio of the percentage of people in the county with OUD to the percentage of people nationwide with OUD; or (2) the ratio of the percentage of people in the county who died of an opioid overdose between 2006-2016 to the national percentage of opioid overdose deaths during that time.

PART 3: USE OF FUNDS IN GENERAL

25. What do the MOA and SAAF say about the special revenue fund that each local government must establish?

The MOA and SAAF state that each local government receiving opioid settlement funds must secure and account for them in a special revenue fund. [MOA § D and SAAF § D]

25A. Do the MOA and SAAF require separate special revenue funds depending on whether the source of the funds is the Wave One Settlements, Wave Two Settlements, or various bankruptcy resolutions described above?

No. The MOA and SAAF state that each local government receiving opioid settlement funds must secure and account for them in a special revenue fund. Beyond that requirement, there is no need for separate special revenue funds corresponding to the particular source of the funds (e.g., Wave One Settlements, Wave Two Settlements, or various bankruptcy resolutions).

25B. Beyond the requirement that local governments secure opioid settlement funds in a special revenue fund, do the MOA and SAAF require that local governments engage in separate accounting or reporting activities depending on the source of the funds?

No. The MOA and SAAF state that each local government receiving opioid settlement funds must secure and account for all such funds in a special revenue fund. Beyond that requirement, the MOA and SAAF do not mandate that local governments engage in separate accounting or reporting activities based on the specific source of the funds at issue – i.e., whether the funds stem from a particular Wave One Settlement, Wave Two Settlement, or bankruptcy resolution.

26. Does the MOA require a unique bank account for the special revenue fund?

No. The MOA does not require a unique bank account for the special revenue fund. A local government may place the funds in a separate, interest-bearing bank account, but the MOA does not require this.

27. Does the MOA require that a local government spend all the funds it receives in a particular fiscal year by the end of that fiscal year?

No. The MOA does not require that a local government spend all the funds it receives in a particular fiscal year by the end of that fiscal year. The MOA allows a local government to roll funds over from year to year. Consistent with this option, the annual financial report described in MOA Exhibit E allows a local government to report the amount of opioid settlement funds in the special revenue fund at the end of one fiscal year and the beginning of the following fiscal year. [See MOA Exhibit E, as modified by the Coordination Group – discussed in questions 61 through 69 of this FAQ]

28. Does the MOA allow a local government to invest and earn interest on settlement funds?

Yes. The MOA states that the funds in the special revenue fund may be invested, consistent with the investment limitations for local governments in state law. The funds may be placed in an interest-bearing bank account, with any interest earned used in a manner that is consistent with the MOA. [MOA § D.3]

In keeping with this provision of the MOA and relevant state law, a local government may pool opioid settlement funds with cash from other funds for deposit and investment purposes. A local government will then allocate the proportional share of any interest or investment gains (or losses) to the opioid settlement special revenue fund. (For more on this, see questions 67E and 67F below.)

29. Can funds in the special revenue fund be used for a loan or pledge of assets?

Under the MOA, funds in the special revenue fund may be used for a loan or pledge of assets only if the loan or pledge of assets is for an opioid remediation purpose that is consistent with the terms and procedures laid out in the MOA. [MOA § D.2]

30. Can a local government contract with a third party to implement opioid remediation strategies under the MOA?

Yes. The MOA provides that a local government may contract with a nonprofit, charity, or other entity to use opioid settlement funds to implement opioid remediation strategies in a manner consistent with all of the substantive and procedural requirements of the MOA and all other applicable laws and rules. [MOA § D.2]

31. Can a local government contract with a for-profit entity to implement opioid remediation strategies under the MOA?

Yes. As noted above, the MOA provides that a local government may make contracts with a nonprofit, charity, or other entity to implement opioid remediation strategies in a manner consistent with all of the substantive and procedural terms of the MOA and all other applicable laws and rules. The words “other entity” allows for the possibility that a local government may contract with a for-profit entity to implement one or more opioid remediation strategies. [MOA § D.2]

32. If a local government contracts with a third party to implement opioid remediation strategies under the MOA, does that relieve the local government of its obligations under the MOA?

No. The local government always bears ultimate legal responsibility for all of its obligations under the MOA.

Recommendation: A local government that contracts with a third party to implement opioid remediation strategies under the MOA must ensure that the third party complies with the MOA. To ensure that this happens, the local government should include relevant MOA requirements in its contract with the third party.

Example: Under the MOA, a local government that spends opioid settlement funds during a fiscal year must file annual financial and impact reports within 90 days of the end of the fiscal year (as discussed in Part 5 of this FAQ and in Section F.6 and Exhibits E and F of the MOA). Knowing this, the local government should ensure that any sub-recipient of opioid settlement funds agrees in advance – as part of its contract – to provide whatever information the local government will itself need to provide in order to comply with the reporting requirements in the MOA.

33. Can a local government assign to another entity its right to receive opioid settlement payments?

No. Although a local government may make contracts with a nonprofit, charity, or other entity to implement opioid remediation strategies under the MOA, the local government may not assign to another entity its rights to receive payments from the national settlements. [MOA § D.2]

33A. Can a local government assign to another entity its responsibilities for funding decisions?

No. Although a local government may make contracts with a nonprofit, charity, or other entity to implement opioid remediation strategies under the MOA, the local government may not assign to another entity its responsibilities for funding decisions. [MOA § D.2]

Example #1: Under the MOA, a local government may decide to spend opioid settlement funds to operate a syringe service program and contract with a sub-recipient to operate the program. The local government decides what strategy to fund, and the sub-recipient implements that strategy.

Example #2: Under the MOA, a local government may decide to spend opioid settlement funds on collaborative strategic planning and contract with a sub-recipient to coordinate the collaborative strategic planning activities.

- As part of the collaborative strategic planning process, the sub-recipient may gather or present recommendations on what additional strategies the local government may wish to support with opioid settlement funds.
- However, the sub-recipient may not make decisions on what additional strategies the local government will support with opioid settlement funds, because making decisions about what strategies to support with opioid settlement funds is the responsibility of the local government under the MOA. [MOA § D.2]

33B. Does the MOA allow a local government to spend opioid settlement funds on salary and fringe benefits of an employee?

Yes, under appropriate circumstances. The MOA permits a local government to spend opioid settlement funds on the salary and fringe benefits of an employee if the following conditions are satisfied:

First, the employee must be engaged in implementing a strategy or strategies listed in Exhibit A or Exhibit B to the MOA that are properly authorized pursuant to the substantive and procedural requirements in the MOA. In this FAQ we will refer to such strategies as “authorized MOA strategies.” (To learn more about the strategies listed in Exhibit A and Exhibit B of the MOA, see Section 4 of this FAQ and the additional resources listed there.)

Second, if the employee is responsible for implementing more than one authorized MOA strategy, then – for accounting and reporting purposes – the cost of that employee’s salary and fringe benefits should be prorated among the various strategies, based on the proportion of the employee’s time spent implementing each authorized MOA strategy.

Third, if the employee is engaged in other employment activities that do not involve implementing authorized MOA strategies, then funding must be prorated as follows:

- Opioid settlement funds may only be used to cover the part of the employee’s salary that corresponds to time spent implementing authorized MOA strategies. Opioid settlement funds can never be used to fund any portion of the employee’s salary that corresponds to time not spent implementing authorized MOA strategies.
- Other non-opioid-settlement funds must be used to cover the portion of the employee’s salary that corresponds to time spent on activities that do not involve implementing authorized MOA strategies.

Example #1: A local government has properly authorized the use of opioid settlement funds to support Exhibit A Strategy 3, recovery support services. As part of this authorized MOA strategy, the local government may use opioid settlement funds to pay the salary and benefits of a peer support specialist who spends 100 percent of their working time engaged in recovery support services as described in Exhibit A Strategy 3.

Example #2: A local government has properly authorized the use of opioid settlement funds to support Exhibit A Strategy 3, recovery support services, and Exhibit A Strategy 12, reentry programs. As part of this strategy, the local government may use opioid settlement funds to pay the salary and benefits of a peer support specialist who spends 50 percent of their working time engaged in recovery support services as described in Exhibit A Strategy 3 and 50 percent of their working time engaged in supporting reentry programs as described in Exhibit A Strategy 12. For accounting and reporting purposes,

the local government should consider 50 percent of the employee's salary and benefits devoted to Exhibit A Strategy 3 and 50 percent devoted to Exhibit A Strategy 12.

Example #3: A local government has properly authorized the use of opioid settlement funds to support Exhibit A Strategy 10, criminal justice diversion programs. The local government has hired a social worker who will spend 50 percent of their time implementing these criminal justice diversion programs and 50 percent of their time assisting elderly nursing home residents with matters unrelated to any MOA strategy. The local government may use opioid settlement funds to cover 50 percent of the employee's salary and benefits and must use other non-opioid-settlement funds to cover the other 50 percent of the employee's salary and benefits.

Example #4: A local government has properly authorized the use of opioid settlement funds to support Exhibit A Strategy 1, collaborative strategic planning. It may use opioid settlement funds to pay the salary and benefits of an Opioid Coordinator to implement this strategy. Based on the text of Exhibit A strategy 1, the Opioid Coordinator may engage in a wide array of activities including (for example) stakeholder engagement, planning activities, data analysis, program evaluation, gathering and reporting relevant information, or other activities listed in Exhibit C to the MOA. (See question 41 below for more on Exhibit A Strategy 1, collaborative strategic planning.)

33C. If a local government spends opioid settlement funds on salary and fringe benefits of an employee, may that employee spend time gathering or reporting information required by the MOA?

Yes. If a local government spends opioid settlement funds on salary and fringe benefits of an employee in a manner consistent with question 33B above, then the employee may spend time gathering or reporting information required by the MOA. To put it another way, if a local government employee is engaged in implementing a strategy or strategies listed in Exhibit A or Exhibit B to the MOA that are properly authorized pursuant to the substantive and procedural requirements in the MOA, then the employee may spend time gathering and reporting information required by the MOA as part of their broader effort to implement the authorized strategy.

Example: A local government properly authorizes the expenditure of opioid settlement funds on Option A Strategy 5 – employment-related services for people with Opioid Use Disorder – and hires a full-time peer support specialist to implement this strategy. As part of their work, the peer support specialist may gather and report data required by the MOA, including (for example) data needed to complete the annual impact report described in MOA Exhibit F (as modified by the Coordination Group).

33D. If a local government spends opioid settlement funds on salary and fringe benefits of an employee devoted to Exhibit A Strategy 1 – collaborative strategic planning – may that employee spend time gathering or reporting information required by the MOA?

Yes. Consistent with the answer to question 41 below, and taking into account the broad wording and scope of Exhibit A Strategy 1 (Collaborative Strategic Planning), if a local government spends opioid settlement funds on salary and fringe benefits of an employee devoted to this Exhibit A Strategy 1 (Collaborative Strategic Planning), then the employee may spend time gathering and reporting information required by the MOA – including (for example) data needed to complete the annual impact report described in MOA Exhibit F (as modified by the Coordination Group).

33E. Can a local government dedicate a set percentage of opioid settlement funds received or expended to “administrative expenses” or “indirect costs”?

No. The MOA does not allow this.

Example: A local government receives and expends \$1 million in opioid settlement funds in the 2024-2025 fiscal year. The local government may not take 10 percent (or any percent) “off the top” to cover “administrative expenses” or “indirect costs.”

33F. Does the MOA allow a local government to spend opioid settlement funds on a building, vehicle, or other capital asset?

The MOA permits a local government to spend opioid settlement funds on a building, vehicle, or other capital asset if the following conditions are satisfied:

First, the local government must use the building, vehicle, or other capital asset to implement a strategy or strategies listed in Exhibit A or Exhibit B to the MOA that are properly authorized pursuant to the substantive and procedural requirements in the MOA (“authorized MOA strategy”). To learn more about the strategies listed in Exhibit A and Exhibit B, see Section 4 of this FAQ and the additional resources listed there.

Second, if the building, vehicle, or other capital asset is used to implement more than one authorized MOA strategy, then – for accounting and reporting purposes – the cost of the capital asset should be prorated among the various strategies, depending on how much of the asset is devoted to implementing each respective strategy.

Third, if the local government is using the building, vehicle, or other capital asset for more than one purpose, funding must be prorated as follows:

- Opioid settlement funds may be used only to support the portion of the cost of the building, vehicle, or other capital asset used to implement the authorized MOA strategy or strategies. Opioid settlement funds can never be used to fund any portion of the building, vehicle, or other capital asset used for any other purpose that does not involve implementing an authorized MOA strategy.

- Other non-opioid-settlement funds must be used to cover the portion of the cost of the building, vehicle, or other capital asset that is not used to implement authorized MOA strategies.

Example #1: A local government has decided to use opioid settlement funds to support Exhibit A Strategy 2, Evidence-Based Addiction Treatment. As part of this strategy, the local government may use opioid settlement funds to build a treatment center that provides evidence-based addiction treatment.

Example #2: A local government has decided to use opioid settlement funds to support Exhibit A Strategy 2, Evidence-Based Addiction Treatment. Related to this strategy, the local government plans to build a new facility where half the space will be devoted to providing evidence-based addiction treatment and half the space will be used for offices for local government officials (unrelated to implementing any authorized MOA strategy). Under these circumstances, the local government could use opioid settlement funds to cover up to half the cost of the facility and would have to use other non-opioid-settlement funds to cover the other half of the cost of the facility.

Example #3: A local government has decided to use opioid settlement funds to support Exhibit A Strategy 8, Post-Overdose Response Team (PORT). The PORT Team will drive around and visit individuals who have experienced non-fatal overdoses in an effort to connect them to services or supports they need to improve their health or well-being. As part of this strategy, the local government may use opioid settlement funds to purchase a vehicle that will be used by members of the PORT for these PORT-related purposes (and for no other purposes).

Example #4: A local government has decided to use opioid settlement funds to support Exhibit A Strategy 8, Post-Overdose Response Team (PORT). The PORT Team will engage in the activities described in Example #3 above. Related to this strategy, the local government plans to purchase a vehicle that will be used half the time by the PORT Team and half the time by the Parks Department to clean up litter in public parks (unrelated to any authorized MOA strategy). Under these circumstances, the local government may use opioid settlement funds to cover up to half the cost of the vehicle and would have to use other non-opioid-settlement funds to cover the remaining half of the cost of the vehicle.

PART 3A: SPENDING AUTHORIZATION

34. What general requirements must a local government follow to spend opioid settlement funds in the special revenue fund?

There are two broad requirements for a local government to spend opioid settlement funds in the special revenue fund:

Substantive Requirement: The expenditures must be allowed under Option A or Option B of the MOA. This substantive requirement is discussed in Part 4 of this FAQ and in Section E.5 and Exhibits A, B, and C of the MOA.

Procedural Requirement: Before spending opioid settlement funds, a local government must specifically authorize the expenditure of such funds in a manner that is consistent with both the MOA and state law. These procedural requirements are discussed below.

35. What are the procedural requirements for a local government to follow in order to spend opioid settlement funds?

Assuming (as a substantive matter) that an expenditure of opioid settlement funds is allowed under Option A or Option B of the MOA, then (as a procedural matter) a local government must specifically authorize the expenditure of such funds in a manner that is consistent with both (1) the MOA and (2) state law. Here is an overview of these procedural requirements:

The MOA: Section E.6 of the MOA states that, before spending opioid settlement funds, the local government's governing body must adopt a resolution that includes very specific details about each funded strategy. These details are discussed in questions 35D through 35K below.

State Law: In addition to complying with the terms of the MOA, a local government must abide by budgeting, preaudit, and other expenditure control requirements in the Local Government Budget and Fiscal Control Act, NCGS Chapter 159, Article 3. These requirements are discussed in questions 35L through 35R below.

35A. Why does a local government have to satisfy the procedural requirements of both the MOA and state law?

Local governments must satisfy the procedural requirements in both (1) the MOA and (2) state law because the resolution required by the MOA is not sufficient under the Local Government Budget and Fiscal Control Act to authorize the expenditure of the opioid settlement funds. By the same token, a budget ordinance in keeping with state law – which requires appropriations by department, function, or project – will not include sufficient detail to meet the requirements of the MOA for authorizing the expenditure of opioid settlement funds.

For these reasons, in order to authorize the expenditure of opioid settlement funds, a local government must adopt both an authorizing resolution (consistent with the MOA requirements described in questions 35D through 35K below) and a formal budget ordinance (consistent with state law, described in questions 35L through 35R below).

35B. What if a local government has satisfied the procedural requirements of the Local Government Budget and Fiscal Control Act but has not satisfied the procedural requirements of the MOA?

The local government must take immediate action to comply with the procedural requirements in MOA. These procedural requirements are discussed in questions 35D through 35K below.

35C. What if a local government has satisfied the procedural requirements of the MOA but has not satisfied the procedural requirements of the Local Government Budget and Fiscal Control Act?

The local government must take immediate action to comply with the procedural requirements in the Local Government Budget and Fiscal Control Act. These procedural requirements are discussed in questions 35L through 35R below.

MOA Procedural Requirements to Authorize the Expenditure of Opioid Settlement Funds

35D. What are the procedural requirements in the MOA for a local government to authorize the expenditure of opioid settlement funds in the special revenue fund?

In order to comply with the procedural requirements in the MOA for a local government to authorize the expenditure of opioid settlement funds in the special revenue fund, a local government's governing board must adopt a resolution that provides the specific details required by Section E.6 of the MOA. Pursuant to that section of the MOA, the resolution must:

- (i) indicate that it is an authorization for expenditure of opioid settlement funds; and
- (ii) state the specific strategy or strategies the county or municipality intends to fund pursuant to Option A or Option B, using the item letter and/or number in MOA Exhibit A or Exhibit B to identify each funded strategy; and
- (iii) state the amount dedicated to each strategy for a specific period of time.

[MOA § E.6]

35E. When a local government seeks to authorize the expenditure of opioid settlement funds on a strategy listed in Exhibit B, must the authorizing resolution include both the letter and number to refer to the strategy?

Yes. Under Section E.6 of the MOA, the local government must adopt a resolution that states each specific strategy that the local government intends to fund. In this context, the word “specific” means that resolution must use both the letter and number to refer to the exact strategy listed in Exhibit B.

Example: A local government seeks to fund a program to address the needs of pregnant women with Opioid Use Disorder by training healthcare providers about best practices for treating pregnant women with OUD. It is not sufficient for the resolution to state the most relevant general strategy (Exhibit B Strategy E – Address the Needs of Pregnant or Parenting Women and their Families). Instead, resolution must identify a more specific strategy that includes both the letter and number in Exhibit B (such as Exhibit B Strategy E3 – “Training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD”).

Note: To learn more about the strategies listed in Exhibit A and Exhibit B of the MOA, see Section 4 of this FAQ and the additional resources listed there.

35F. When a local government seeks to authorize the expenditure of opioid settlement funds on a specific Exhibit B strategy, using both the letter and number of the strategy as the MOA requires, what if there are several numbered strategies that seem relevant?

When a local government seeks to fund a specific Exhibit B strategy, and there are several numbered strategies in Exhibit B that seem relevant, the local government should select the Exhibit B strategy that best describes – and accurately describes – the program or service the local government seeks to fund (using both the letter and the number listed in Exhibit B).

Example: A local government seeks to prevent the misuse of opioids through evidence-based prevention programs in schools. Such programs fall under Exhibit B Strategy G – Prevent Misuse of Opioids. However, there are several numbered strategies under Exhibit B Strategy B that seem relevant. In this situation, the local government should select the numbered strategy that best describes – and accurately describes – the programs the local government seeks to fund. In this case, the local government might select Strategy B8 – “Fund evidence-based prevention programs in schools or evidence-informed school and community education programs”).

Note: To learn more about the strategies listed in Exhibit A and Exhibit B of the MOA, see Section 4 of this FAQ and the additional resources listed there.

35G. Is it OK for a local government to authorize a single expenditure covering multiple strategies listed in Exhibit A or Exhibit B of the MOA?

No. Under Section E.6 of the MOA, the local government must adopt a resolution that states each specific strategy the local government intends to fund, along with the amount dedicated to that specific strategy for a specified period of time. For this reason, the MOA does not allow a local government to authorize the expenditure of a single amount of funds on multiple strategies listed in Exhibit A or Exhibit B of the MOA.

Example #1 (in which resolution does not comply with MOA): A local government adopts a resolution authorizing the expenditure of a single sum of \$300,000 during Fiscal Year 2024-2025 that is devoted to three different Exhibit A strategies:

- Exhibit A Strategy 1 – Collaborative Strategic Planning
- Exhibit A Strategy 2 – Evidence-Based Addiction Treatment
- Exhibit A Strategy 3 – Recovery Support Services

The resolution does not state the specific amount of funds devoted to each strategy. Because the resolution groups three distinct strategies together and does not state the particular amount dedicated to each strategy, the resolution does not comply with Section E.6 of the MOA.

Example #2 (in which resolution does comply with MOA): A local government adopts a resolution authorizing the following expenditures during Fiscal Year 2024-2025:

- \$100,000 on Exhibit A Strategy 1 – Collaborative Strategic Planning
- \$150,000 on Exhibit A Strategy 2 – Evidence-Based Addiction Treatment
- \$50,000 on Exhibit A Strategy 3 – Recovery Support Services

Because the resolution identifies each specific strategy the local government intends to fund, and states the particular amount dedicated to each strategy for a specified period of time, this resolution does comply with Section E.6 of the MOA.

Note: To learn more about the strategies listed in Exhibit A and Exhibit B of the MOA, see Section 4 of this FAQ and the additional resources listed there.

35H. If there is an Exhibit A strategy and an Exhibit B strategy that accurately describe a program or service that a local government wishes to support with opioid settlement funds, should the local government authorize an expenditure of opioid settlement funds on the Exhibit A strategy or the Exhibit B strategy – or both?

The following is a recommendation from NC DOJ, not a requirement:

If there is an Exhibit A strategy and an Exhibit B strategy that accurately describe a program or service that a local government wishes to support with opioid settlement funds, NC DOJ recommends that the local government authorize an expenditure of opioid settlement funds on the Exhibit A strategy rather than the Exhibit B strategy. Among other considerations, a local government that authorizes an expenditure of

opioid settlement funds on an Exhibit B strategy must first engage in the Option B collaborative strategic planning process described in question 38 below. In this sense, there are extra requirements associated with any decision to fund an Exhibit B strategy – requirements that are not triggered when a local government funds an Exhibit A strategy. Furthermore, there is a robust set of tools and resources available to local governments seeking to implement Exhibit A strategies.

Example: A local government wishes to provide evidence-based addiction treatment. Exhibit A Strategy 2 is Evidence-Based Addiction Treatment. Exhibit B Strategy A2 also covers evidence-based addiction treatment. NC DOJ recommends that the local government authorize an expenditure of opioid settlement funds on Exhibit A Strategy 2 rather than Exhibit B Strategy A2.

Note: To learn more about the strategies listed in Exhibit A and Exhibit B of the MOA, see Section 4 of this FAQ and the additional resources listed there.

35-I. If there are multiple Exhibit A and Exhibit B strategies that accurately describe a program or service that a local government wishes to support with opioid settlement funds, should the local government authorize the expenditure of opioid settlement funds on as many Exhibit A and Exhibit B strategies as possible?

The following is a recommendation from NC DOJ, not a requirement:

No. If there are several Exhibit A or Exhibit B strategies that accurately describe a program or service that a local government wishes to support with opioid settlement funds, NC DOJ recommends that the local government authorize an expenditure on the single Exhibit A strategy the best describes – and accurately describes – the program or service. If there is no Exhibit A strategy that accurately describes the program or service the local government seeks to fund, NC DOJ recommends that the local government authorize an expenditure of funds on the single Exhibit B strategy that best describes – and accurately describes – the relevant program or service (bearing in mind that the local government must first engage in the Option B collaborative strategic planning process described in question 38 below).

Even if there is no single strategy that accurately describes the program or service that the local government wishes to support, NC DOJ recommends that the local government seek to fund a smaller number (rather than a larger number) of Exhibit A or Exhibit B strategies – provided of course that the strategy or strategies selected accurately describe the programs or services the local government wishes to support. There are many advantages to this approach. Among other advantages, selecting a smaller number of strategies to fund has the potential to reduce the amount of annual reporting the local government may be required to undertake. (To learn more about relevant reporting requirements, see Section 5 of this FAQ.)

Example: A local government wishes to fund a Syringe Service Program (SSP) that will (among other things) distribute sterile syringes, distribute naloxone, and connect clients to recovery support services. Under these circumstances, it would be possible for the local government to authorize an expenditure of opioid settlement funds on Exhibit A Strategy 9 (Syringe Service Program), Exhibit A Strategy 7 (Naloxone Distribution), Exhibit A Strategy 3 (Recovery Support Services), and perhaps other Exhibit A strategies as well. On top of that, the local government could authorize the expenditure of opioid settlement funds on several Exhibit B strategies, such as Exhibit B strategies H1, H2, and H9. Although the local government could in theory authorize expenditures of funds on all of these strategies, NC DOJ would recommend that the local government select Exhibit A Strategy 9 (Syringe Service Program) and leave it at that – provided of course that this selection accurately describes the programs or services that the local government wishes to fund.

Note: To learn more about the strategies listed in Exhibit A and Exhibit B of the MOA, see Section 4 of this FAQ and the additional resources listed there.

35J. Is there a template that local governments can use to help ensure compliance with these procedural requirements in the MOA?

Yes. The North Carolina Association of County Commissioners (NCACC) has created a template that local governments may use to draft a resolution in compliance with these requirements. While NCACC developed the template for counties, it works equally well for municipalities (with a few minor tweaks, such as changing “county” to “municipality”).

The NCACC template is available at <https://www.ncacc.org/opioidsettlement> by scrolling down to the “Recommended Resources” section, clicking on the “Spending Authorization Language” button, and downloading the template.

35K. Are there any reporting requirements associated with a local government resolution authorizing the expenditure of opioid settlement funds on specific strategies?

Yes. Pursuant to MOA Section F.6.c.i, after a local government passes a resolution authorizing the expenditure of opioid settlement funds, the local government has 90 days to report this information to the Community Opioid Resources Engine for North Carolina (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/> Note that a local government may report more than one resolution authorizing the expenditure of opioid settlement funds to CORE-NC. This and other reporting requirements are described in Part 5 of this FAQ.

State Law Procedural Requirements to Authorize the Expenditure of Opioid Settlement Funds

35L. What state law requirements must local governments follow to authorize the expenditure of opioid settlement funds?

In addition to complying with the procedural requirements in the MOA, a local government must abide by budgeting, preaudit, and other expenditure control requirements in the Local Government Budget and Fiscal Control Act, NCGS Chapter 159, Article 3. As noted above, the resolution required by the MOA and described above is not sufficient under the Local Government Budget and Fiscal Control Act to authorize the expenditure of the opioid settlement funds.

35M. How can local governments comply with relevant state law requirements?

In addition to adopting the authorizing resolution that the MOA requires, a local government's governing board must appropriate the opioid settlement funds through a legal budget ordinance before funds can be obligated and expended. Under current law, there are two budgeting options available to local governments:

- (i) The annual budget ordinance, or an amendment to the annual budget ordinance; or
- (ii) A capital project ordinance for capital projects that are consistent with the MOA.

While some local governments have considered a grant project ordinance for opioid settlement funds, NC DOJ does not believe this is a viable option at present (August 2023) – unless legislation is passed to clarify the availability of this option for opioid settlement funds. This issue is addressed in question 35R below.

35N. How can local governments authorize the expenditure of opioid settlement funds through an annual budget ordinance?

The local government's governing board may appropriate the opioid settlement funds in the annual budget ordinance or an amendment to the annual budget ordinance. The amount of opioid settlement funds estimated to be expended during the fiscal year is included as revenue and corresponding appropriations are made by department, function, or project, in accordance with NCGS § 159-13. The appropriations must be consistent with the authorizing resolution required by the MOA that is described in questions 35D through 35K above.

NCGS §§ 159-11 and 159-12 detail the process for adopting the annual budget ordinance. In addition, NCGS § 159-15 authorizes the governing board to amend the budget ordinance to increase or reduce the estimated opioid settlement funds it expects to expend during the fiscal year or to change the department, function, or project to which the funds are appropriated (consistent with the authorizing resolution required by the MOA). The governing board also may delegate authority to the local

government's budget officer to make appropriation changes within a fund. As adopted or amended, the annual budget ordinance must be balanced.

35-O. How can local governments authorize the expenditure of opioid settlement funds through a capital project ordinance?

As an alternative to an annual budget ordinance, if a local government is expending all or a portion of its opioid settlement funds on a capital project that is permissible under the MOA, it may budget the funds through a capital project ordinance pursuant to NCGS § 159-13.2. A capital project is defined, in relevant part, as a "project involving the construction or acquisition of a capital asset." The project must be permissible under the MOA, and it must be consistent with the authorizing resolution required by the MOA (described in questions 35D through 35K above).

A capital project ordinance is a multi-year budget that authorizes all appropriations necessary for the completion of the capital project. Unlike in the annual budget ordinance, funds do not need to be reappropriated each fiscal year. NCGS § 159-13.2 specifies the process for adopting or amending the capital project ordinance. As adopted or amended, the capital project ordinance must be balanced over the life of the project.

35P. Under what circumstances does the MOA allow a local government to spend opioid settlement funds on a capital project?

This is addressed in question 33F above.

35Q. Is there a reporting requirement associated with a local government resolution authorizing the expenditure of opioid settlement funds on specific strategies?

A local government that passes a resolution (or several resolutions) authorizing the expenditure of opioid settlement funds and reports each such resolution to CORE-NC as provided in question 35K above is not also required to report its annual budget ordinance or any amendment to its annual budget ordinance or any capital project ordinance to CORE-NC. Reporting the resolution or resolutions required by the MOA – as discussed in questions 35D through 35K above – is sufficient.

35R. Can a local government authorize the expenditure of opioid settlement funds through a grant project ordinance?

Some local governments have considered a different potential budget ordinance alternative, authorized by NCGS § 159-13.2, known as the grant project ordinance. However, despite some ambiguity in the relevant statutory language, NC DOJ does not believe that a local government can use a grant project ordinance for opioid settlement funds at this time (August 2023) unless legislation is passed to clarify the availability of this option for opioid settlement funds.

Here is why NC DOJ does not believe that a local government can use a grant project ordinance for opioid settlement funds at this time:

Before July of 2022, NCGS § 159-13.2 defined “grant project” as follows: “‘Grant project’ means a project financed in whole or in part by revenues received from the federal and/or State government for operating or capital purposes as defined by the grant contract.”

In July of 2022, the definition of grant project under NCGS § 159-13.2 was amended to add the underlined words: “‘Grant project’ means a project financed in whole or in part by revenues received from the federal and/or State government or other grant or settlement funds for operating or capital purposes as defined by the grant contract.”

Although the amended definition of “grant project” now mentions “settlement funds,” it still requires that settlement funds be used for “purposes as defined by the grant contract.” Because there is no “grant contract” associated with opioid settlement funds, NC DOJ does NOT believe that a local government can use a grant project ordinance for opioid settlement funds.

PART 4: OPTION A AND OPTION B

36. When deciding which opioid remediation strategies to fund, what is the relevance of Option A and Option B?

Under the MOA, a local government may spend opioid settlement funds on opioid remediation strategies authorized under Option A or Option B or both. [MOA § E.5]

37. What is Option A?

Under Option A, a local government may fund one or more strategies from MOA Exhibit A, which is a shorter list of high-impact strategies to address the epidemic. This option allows for but does not require specific planning activities at the local level. [MOA § E.5.a & Exhibit A]

For more information, read the list of MOA Exhibit A strategies and review the FAQ about MOA Exhibit A strategies from NC DOJ. To access these and other resources, visit NC DOJ’s [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – NC Memorandum of Agreement.

38. What is Option B?

Under Option B, a local government undertakes the following steps:

1. The local government engages in a collaborative strategic planning process described in MOA Exhibit C.

2. The local government drafts a report and recommendations, the contents of which are described in the right-hand column of MOA Exhibit C.
3. The local government formally presents the report and recommendations to its governing body.
4. The local government submits the report and recommendations to the Community Opioid Resources Engine for North Carolina (CORE-NC) within 90 days of the date the report and recommendations were presented to the local governing body, using this link: <https://ncopioidsettlement.org/reporting/>

Once the report and recommendations have been submitted to the local governing body for consideration, the local governing body may decide to fund one or more strategies from the shorter list of approved strategies listed in MOA Exhibit A or the longer list of strategies from the national settlements in MOA Exhibit B. The local governing body is not required to select the specific strategies recommended in the report and recommendations; they may fund the recommended strategies or other strategies in MOA Exhibit A or B.

By going through the collaborative strategic planning process that is required for Option B, the local government not only reaps the benefits of thoughtful planning but also opens up a wider array of strategies available to address the epidemic, including the strategies listed in Exhibit A as well as Exhibit B. [MOA § E.5.b & Exhibits B & C]

To see MOA Exhibits and other resources, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – NC Memorandum of Agreement.

38A. If a local government authorizes or funds a strategy that is listed in Exhibit B but not in Exhibit A, does that mean the local government is proceeding under Option B?

Yes. A local government that proceeds under Option A can fund strategies listed in Exhibit A but not strategies in Exhibit B. A local government that proceeds under Option B can fund strategies listed in Exhibit A or Exhibit B or both. For this reason, a local government that authorizes an expenditure of funds on an Exhibit B strategy or spends funds on an Exhibit B strategy must be proceeding under Option B and must have engaged in the collaborative strategic planning process described question 38 above before authorizing an expenditure of funds on an Exhibit B strategy or spending funds on an Exhibit B strategy.

38B. If a local government authorizes or funds a strategy listed in Exhibit B without first engaging in the collaborative strategic planning process described in question 38 above, is that a violation of the MOA?

Yes. If a local government were to authorize an expenditure of funds on an Exhibit B strategy or spend funds on an Exhibit B strategy without first engaging in the collaborative strategic planning process described in question 38 above, that local

government would be in violation of section E.5.b of the MOA. The consequences of an MOA violation are discussed in Part 6 of this FAQ.

39. Can a local government proceed with Option A and Option B at the same time?

Yes. For example, a county that has received \$500,000 in opioid settlement funds could decide to spend \$75,000 on naloxone distribution pursuant to Option A, strategy 7 – and to do so immediately. At the same time, the county could undertake the collaborative strategic planning process described in question 38 above before making a decision on how to spend the remaining \$425,000 received that year (along with additional payments in future years). After engaging in the collaborative strategic planning process, the local governing body would have a wider array of strategies to fund, including strategies from the shorter list of MOA Exhibit A strategies as well as strategies from the longer list of MOA Exhibit B strategies. [MOA § E.5 & Exhibits A, B & C]

40. Can a local government select different options in different years?

Yes.

41. Can you clarify the relationship between collaborative strategic planning activities as an Option A strategy and the collaborative strategic planning process that is required under Option B?

Yes.

Collaborative Strategic Planning Under Option A: Under Option A Strategy 1, a local government may fund a wide range of collaborative strategic planning activities (individually or in combination) to address opioid misuse, addiction, overdose, or related issues. These activities may include staff support, facilitation services, or any activity or combination of activities listed in Exhibit C to the MOA. Because a local government may fund any activity or combination of activities listed in Exhibit C, activities listed there that may be funded by the local government include:

- Engaging diverse stakeholders (including those listed on page 2 of MOA Exhibit C)
- Facilitating any planning activities related to opioid settlement funds
- Building upon any related planning efforts to address the opioid overdose epidemic
- Agreeing on a shared vision for the use of opioid settlement funds
- Identifying or reporting on key indicators to determine need or measure progress
- Identifying or exploring root causes of the opioid overdose epidemic
- Identifying or evaluating potential strategies to address the epidemic
- Identifying gaps in existing efforts to address the opioid overdose epidemic
- Prioritizing strategies to address the opioid overdose epidemic
- Identifying or implementing goals, measures, or evaluation plans related to potential or funded strategies to address the opioid overdose epidemic

- Considering ways to align strategies to address the opioid overdose epidemic
- Identifying organizations to implement strategies to address the epidemic
- Developing budgets and timelines for addressing the epidemic

Collaborative Strategic Planning Under Option B: Under Option B, a local government that engages in all of the steps of the collaborative strategic planning process described in question 38 above may then select one or more strategies from the shorter list of Exhibit A strategies or from the longer list of Exhibit B strategies. [MOA § E.5.b & Exhibits A, B & C]

To view Exhibit A, Exhibit B, Exhibit C, or other key resources, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org> and click on Opioid Settlements – NC Memorandum of Agreement.

42. If a local government chooses to engage in the collaborative strategic planning process required for Option B and detailed in question 38 above, can it use opioid settlement funds to cover the cost of the planning process?

Yes. A local government may rely on Option A, strategy 1 (described in question 41 above) to cover any or all costs associated with the collaborative strategic planning process that is required under Option B (and described in question 38 above). This is another example of how a local government may undertake Option A and Option B at the same time. [MOA § E.5.a & Exhibit A]

43. Is there a deadline for a local government to select Option A or Option B?

No. There is no general deadline for a local government to select Option A or Option B. Whether a local government is proceeding under Option A or Option B will become apparent when the local government does one of the following things:

- Authorizes the expenditure of opioid settlement funds on an Exhibit B strategy, or spends opioid settlement funds on an Exhibit B strategy. (As noted in questions 38 through 38B above, a local government that funds an Exhibit B strategy must be proceeding under Option B and must comply with all procedural requirements associated with Option B, which are described in question 38 above.)
- Presents an Option B Report and Recommendation to its governing body, reporting on the Option B collaborative strategic planning process it has undertaken, thus indicating that it is proceeding under Option B.
- Passes a resolution or takes other formal action indicating that it is proceeding under Option A or Option B or both.
- Submits a report to CORE-NC indicating that it is proceeding under Option A or Option B or both.

44. Does NC DOJ or some other state agency or authority have to “sign off” on the strategy or strategies that a local government chooses to fund?

No. A local government is free to choose any strategy that is authorized under the MOA in keeping with the terms and procedures laid out in the MOA and any other applicable laws and rules. That said, NC DOJ routinely reviews local government submissions to CORE-NC and reaches out to local governments with any questions or concerns that DOJ may have.

45. Are there any factors to keep in mind when deciding how many different strategies to fund with opioid settlement funds?

This is addressed in questions 35F through 35-I above.

46. With respect to Option B, what does the MOA say about the report and recommendations that come at the end of the collaborative strategic planning process?

The collaborative strategic planning process required under Option B is described in question 38 above. One step in that process is to offer a report and non-binding recommendations to the local governing body (such as the county board or city council). The contents of the report and recommendation are detailed in the right-hand column of Exhibit C. [MOA § E.5.b & Exhibit C]

47. Are the report and recommendations available to the public?

Yes. Since collaborative strategic planning is a public process involving a diverse array of stakeholders, the report and recommendations that come out of this process are public as well. In addition to any local efforts to share the report and recommendations with stakeholders and members of the public, the report and recommendations must be reported to the Community Opioid Resources Engine for North Carolina ([CORE-NC](#)) within 90 days of the date they are formally submitted to the local governing body for consideration. [MOA §§ E.5.b & F.6.c & Exhibit C]

48. Does the local governing body have to accept the recommendations in the report and recommendations?

No. As mentioned in question 38 above, the recommendations in the report and recommendations are not binding on the governing body.

49. Does NC DOJ or some other state agency or authority have to “sign off” on the report and recommendations?

No. There is no requirement that NC DOJ or some other state agency or authority “sign off” on the report and recommendations. That said, NC DOJ routinely reviews local government submissions to CORE-NC and reaches out to local governments with any questions or concerns.

50. Is regional planning allowed or required under the MOA?

Regional planning is allowed and encouraged under the MOA, but it is not required.

51. If a group of local governments want to engage in regional planning, do they have to proceed under Option A or Option B?

Regional planning is allowed and encouraged regardless of whether the local governments involved are proceeding under Option A or Option B. With respect to Option B, the MOA provides that two or more local governments may undertake a single collaborative strategic planning process resulting in a report and recommendations to all of the local governments involved, if they wish to do so. [MOA § E.5.b]

52. Can a local government use opioid settlement funds to support regional planning?

Yes. As noted in question 41 above, a local government can take advantage of Option A, strategy 1 to support a wide array of planning activities related to opioid settlement funds. This may include regional planning.

53. Is there any other support for regional planning?

Efforts are underway to support regional planning to maximize the impact of opioid settlement funds. For example, the [Dogwood Health Trust](#) has awarded planning grants to a number of local governments in their 18-county service region in Western NC.

PART 5: REPORTING REQUIREMENTS

54. What reporting obligations does a local government have under the MOA?

As detailed below, under the MOA, a local government must report the following to the Community Opioid Resources Engine for North Carolina ([CORE-NC](#)).

Item One – Spending authorization. After a local government passes a resolution authorizing the expenditure of opioid settlement funds (discussed in questions 35D through 35K above), the local government has 90 days to report this information to CORE-NC. [MOA §§ E.6.b & F.6.c]

Item Two – Option B report and recommendations. If a local government has undertaken the collaborative strategic planning process under Option B (as described in question 38 above), the resulting report and recommendations to the local governing body must be reported to CORE-NC within 90 days of the date they were presented to the local governing body. [MOA §§ E.5.b.ii & F.6.c & Exhibit C]

Item Three – Annual financial report. A local government that receives, holds, or spends opioid settlement funds during a fiscal year must file an annual financial report within 90 days of the end of the fiscal year. [See MOA § F.6 and Exhibit E (as modified by the Coordination Group).]

Item Four – Annual impact report. A local government that receives, holds, or spends opioid settlement funds during a fiscal year must file an annual impact report within 90 days of the end of the fiscal year. [See MOA § F.6.c & Exhibit F (as modified by the Coordination Group).]

Note that the Exhibit E annual financial report and Exhibit F annual impact report have been modified by the Coordination Group as detailed in questions 63A and 71A below.

54A. Are there any other reporting obligations?

Yes. In addition to the reporting requirements summarized above, certain audit reports are discussed in questions 84 and 85 below. [MOA § F & Exhibit D]

Finally, if a national settlement agreement or bankruptcy resolution requires that a local government provide a report or other document beyond those described in the MOA – or if any local government communicates in writing with any national settlement or bankruptcy administrator regarding the local government’s compliance with any opioid settlement agreements or bankruptcy resolutions – a copy of any such report, document, or written communication must be emailed to NC DOJ at opioidsettlement@ncdoj.gov. [MOA § F.6.d]

55. How should local governments report the information described above?

Local governments should submit the various reports described in question 54 above to the Community Opioid Resources Engine (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/>

56. What happens if a local government fails to comply with its reporting obligations under the MOA?

The MOA states that:

- i. Every local government shall make a good faith effort to comply with all of its reporting obligations under the MOA.
- ii. A local government that engages in a good faith effort to comply with its reporting obligations under the MOA but fails in some way to report information in an accurate, timely, or complete manner shall be given an opportunity to remedy this failure within a reasonable time.
- iii. A local government that does not engage in a good faith effort to comply with its reporting obligations under the MOA, or that fails to remedy reporting issues within a reasonable time, may be subject to action for breach of contract.

- iv. However, a local government that is in substantial compliance with the reporting obligations in this MOA shall not be considered in breach of the MOA or in breach of contract.

[MOA § F.6.e]

ITEM 1 – SPENDING AUTHORIZATION

57. When reporting that it has authorized the expenditure of opioid settlement funds, what information must a local government provide?

As discussed in question 35D above, in order to comply with the procedural requirements of the MOA for a local government to authorize the expenditure of opioid settlement funds in the special revenue fund, a local government’s governing board must adopt a resolution that provides the specific details required by Section E.6 of the MOA. Pursuant to Section E.6 of the MOA, this separate resolution must:

- (i) indicate that it is an authorization for expenditure of opioid settlement funds; and
- (ii) state the specific strategy or strategies the county or municipality intends to fund pursuant to Option A or Option B, using the item letter and/or number in Exhibit A or Exhibit B to identify each funded strategy; and
- (iii) state the amount dedicated to each strategy for a specific period of time.

[MOA §§ E.6 & F.6.c]

58. How should this information be reported?

Local governments should submit reports to the Community Opioid Resources Engine (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/>

ITEM 2 – OPTION B REPORT AND RECOMMENDATIONS

59. If a local government has chosen to undertake the collaborative strategic planning process that is required for Option B, what does the MOA say about the contents of the final reporting and recommendations?

As noted question 38 above, the contents of the report and recommendation are detailed in the right-hand column of Exhibit C. [MOA §§ E.5.b & F.6.c & Exhibit C]

60. If a local government has chosen to undertake the collaborative strategic planning process that is required under Option B, how should the local government provide the resulting report and recommendations to CORE-NC?

The local government must upload the report and recommendations to CORE-NC within 90 days of the date they are submitted to the local governing body for consideration.

Local governments should submit the reports to the Community Opioid Resources Engine (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/> [MOA §§ E.5.b & F.6.c & Exhibit C]

ITEM 3 – ANNUAL FINANCIAL REPORT

61. What is the annual financial report?

A local government that receives, holds, or spends opioid settlement funds during a fiscal year must file an annual financial report within 90 days of the end of the fiscal year. The contents of the annual financial report are detailed in Exhibit E to the MOA.

Note that the annual financial report requirements stated in Exhibit E have been modified by the Coordination Group as explained in question 63A below.

[See MOA § F.6 and Exhibit E (as modified by the Coordination Group)]

62. How should a local government submit this report?

Local governments should submit reports to the Community Opioid Resources Engine (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/>

63. If a local government reports its annual financial report to CORE-NC, does it also have to email a copy of the report to NC DOJ?

No. By providing the annual financial report to CORE-NC in a timely manner, a local government satisfies its obligation (stated Section F.6.b of the MOA) to email the annual financial report to NC DOJ. Once the report is provided to CORE-NC, the additional step of emailing the report to NC DOJ is unnecessary and not required.

63A. Have the reporting requirements in the Exhibit E annual financial report been modified?

Yes. Pursuant to its authority under Section E.7 and Exhibit D of the MOA, the Coordination Group voted unanimously to modify the reporting requirements in the Exhibit E annual financial report at its July 12, 2023 meeting. Local governments are required to comply with these modified requirements.

To read Exhibit E as modified by the Coordination Group, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org>, click on Opioid Settlements, click on NC Memorandum of Agreement, and scroll down to "Exhibit E = Annual Financial Report (as modified by the NC MOA Coordination Group on July 12, 2023)."

To learn more about the Coordination Group, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org>, click on Opioid Settlements, and click on "NC MOA Coordination Group."

64. Do the contents of the annual financial report vary depending on the proportion of settlement funds a local government receives?

Yes. In keeping with Exhibit E (as modified by the Coordination Group), every local government receiving opioid settlement funds must provide certain basic information as part of its annual financial report. This basic information is described in PART ONE of Exhibit E (as modified).

In addition, all local governments that receive two-tenths of one percent (0.2 percent) or more of the total local government allocation as listed in Exhibit G to the MOA are required to provide certain additional information in PART TWO of Exhibit E (as modified by the Coordination Group). Other local governments are strongly encouraged to provide this information.

65. Which local governments are required to provide the basic information in PART ONE of Exhibit E (as modified) but not the additional information in PART TWO?

The following local governments that stand to receive less than two-tenths of one percent (0.2 percent) of the total local government allocation as listed in Exhibit G to the MOA are required to provide the basic information in PART ONE and are encouraged – but not required – to provide the additional information detailed in PART TWO of Exhibit E (as modified):

- Counties: Alleghany, Anson, Bertie, Camden, Caswell, Chowan, Currituck, Gates, Graham, Greene, Hyde, Jones, Northampton, Pamlico, Perquimans, Tyrrell, Warren, and Washington.
- Municipalities: Canton, Greenville, Henderson, Hickory, Jacksonville, and Wilmington.

66. Which local governments are required to provide the basic information in PART ONE as well as the additional information in PART TWO of Exhibit E (as modified)?

Except as noted in question 65 above, and except as noted in the paragraph below, all local governments receiving opioid settlement funds are required to provide both the basic information in PART ONE and the additional information in PART TWO of Exhibit E (as modified).

As discussed in questions 20 through 22B above, a number of municipalities have directed their opioid settlement funds to the counties where they are located, including Cary (starting in FY 22-23), Charlotte (starting in FY 23-24), Concord (starting in FY 23-24), Gastonia (starting in FY 22-23), and Raleigh (starting in FY 22-23). These municipalities are relieved of their reporting obligations with respect to funds that have been directed to their respective counties. To be more specific:

- Because Cary, Gastonia, and Raleigh have never received any opioid settlement funds, they are relieved of all reporting obligations under the MOA so long as their opioid settlement funds are directed to their respective counties.

- Because Charlotte and Concord received opioid settlement funds during the 2021-2022 and 2022-2023 fiscal years, they have continuing reporting obligations with respect to all opioid settlement funds received during those years. However, they have no reporting obligations with respect to funds that are directed to their respective counties starting in the 2023-2024 fiscal year.

67. What is the basic information in Exhibit E / PART ONE that all local governments must provide in their annual financial reports if they receive, hold, or disburse opioid settlement funds during the relevant fiscal year?

The basic information in Exhibit E / PART ONE states:

All Local Governments that receive, hold, or disburse Opioid Settlement Funds during the fiscal year shall report the following financial information:

1. The amount of Opioid Settlement Funds in the special revenue fund at the beginning of the fiscal year (July 1).
2. The amount of Opioid Settlement Funds received during the fiscal year.
3. The amount of any interest and investment gains realized during the fiscal year.
4. The amount of any investment losses realized during the fiscal year.
5. The amount of Opioid Settlement Funds disbursed during the fiscal year, net of any reimbursements, not including audit costs covered in item 6 below. This amount shall be reported:
 - a) in total; and
 - b) broken down by funded strategy, including the item letter and/or number in Exhibit A or Exhibit B to identify each such funded strategy (with any permissible common costs prorated among strategies).
6. The amount of Opioid Settlement Funds used to cover audit costs as provided in Section F.3 of this MOA.
7. The amount of Opioid Settlement Funds in the special revenue fund at the end of the fiscal year (June 30).

67A. What is the mathematical relationship between these seven items?

With respect to the seven items listed above, Exhibit E states that item 1 plus item 2 plus item 3 minus item 4 minus item 5 minus item 6 must equal item 7. To put it another way: $1 + 2 + 3 - 4 - 5 - 6 = 7$

67B. What if items 1 through 7 do not add up as required?

If items 1 through 7 do not add up as required by Exhibit E and explained in question 67A above, it means the local government has provided inaccurate information or made an accounting error that should be reviewed and corrected.

If the local government has already submitted an annual financial report that contains incorrect information or an accounting error, the local government should submit a corrected annual financial report to the Community Opioid Resources Engine (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/>

67C. With respect Exhibit E / Part One / item 1 (the amount of Opioid Settlement Funds in the special revenue fund at the beginning of the fiscal year), should this amount be identical to the amount of opioid settlement funds in the special revenue fund at the end of the preceding fiscal year?

Yes. The amount of opioid settlement funds in the special revenue fund at the end of any fiscal year (on June 30 at 11:59 p.m.) should be identical to the amount of opioid settlement funds in the special revenue fund at the beginning of the next fiscal year (on July 1 at 12:01 a.m.). If the amounts do not match, the local government needs to take corrective action as discussed in question 67D below.

67D. With respect Exhibit E / Part One / item 1 (the amount of Opioid Settlement Funds in the special revenue fund at the beginning of the fiscal year), what if there is a discrepancy between the amount of opioid settlement funds in the special revenue fund at the end of one fiscal year (as reported) and the amount of opioid settlement funds in the special revenue fund at the beginning of the next fiscal year (as reported)?

If there is a discrepancy between the amount of opioid settlement funds in the special revenue fund at the end of one fiscal year (as reported) and the amount of opioid settlement funds in the special revenue fund at the beginning of the next fiscal year (as reported), it means one of two things: Either (1) there is an error in the reported amount of opioid settlement funds in the special revenue fund at the end of the earlier fiscal year, or (2) there is an error in the reported amount of opioid settlement funds in the special revenue fund at the beginning of the subsequent fiscal year.

In the event this situation arises, the local government should correct whichever annual financial report contains erroneous information and submit the corrected report to the Community Opioid Resources Engine (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/>

67E. With respect to Exhibit E / Part One / item 3 (the amount of any interest and investment gains realized during the fiscal year), is there further guidance available to local governments?

Yes. With respect item 3 in the annual financial report, the local government should provide the amount of interest (if any) and/or investment gains (if any) that were realized during the fiscal year and allocated to the special revenue fund.

Explanation: MOA Section D.3 provides that “The funds in the special revenue fund may be invested, consistent with the investment limitations for local governments, and may be placed in an interest-bearing bank account. Any interest earned on the special

revenue fund must be used in a way that is consistent with this MOA.” In keeping with this provision of the MOA and relevant state law, a local government may pool opioid settlement funds with cash from other funds for deposit and investment purposes. A local government will then allocate the proportional share of any interest or investment gains to the opioid settlement special revenue fund.

67F. With respect to Exhibit E / Part One / item 4 (the amount of any investment losses realized during the fiscal year), is there further guidance available to local governments?

Yes. With respect item 4 in the annual financial report, the local government should provide the amount of investment losses (if any) that were realized during the fiscal year and allocated to the special revenue fund.

Explanation: MOA Section D.3 provides that “The funds in the special revenue fund may be invested, consistent with the investment limitations for local governments, and may be placed in an interest-bearing bank account. Any interest earned on the special revenue fund must be used in a way that is consistent with this MOA.” In keeping with this provision of the MOA and relevant state law, a local government may pool opioid settlement funds with cash from other funds for deposit and investment purposes. A local government will then allocate the proportional share of any investment losses to the opioid settlement special revenue fund.

67G. With respect to Exhibit E / Part One / item 5 (the amount of opioid settlement funds disbursed during the fiscal year), is there any further guidance available to local governments?

Yes. Exhibit E / Part One / item 5 has two subparts:

Subpart (a) – Total Amount Disbursed

A local government must provide the total amount of opioid settlement funds disbursed during the relevant fiscal year, net of any reimbursements. A local government should not include obligations that have not yet been disbursed. Further, a local government should not include audit costs disbursed during the fiscal year, as these addressed in Exhibit E / Part One / item 6. (For more on audit costs, see question 67K below.)

Subpart (b) – Amount Disbursed Broken Down by Funded Strategy

After recording the total amount of opioid settlement funds disbursed during the fiscal year in the manner just described, the local government must then record the amount of opioid settlement funds disbursed during the fiscal year broken down by funded strategy, including the item letter and/or number in Exhibit A or Exhibit B to identify each such funded strategy (with any permissible common costs prorated among strategies).

Relationship between Subpart (a) and Subpart (b)

The total amount reported for subpart (a) should equal the total amount reported for subpart (b). In other words, the total amount of opioid settlement funds disbursed during the fiscal year reported subpart (a) should equal the sum of all of the amounts disbursed for the various funded strategies reported in subpart (b).

67H. With respect to item 5 / subpart (b) (the amount of opioid settlement funds disbursed, broken down by funded strategy), when a local government identifies a funded strategy that is listed in Exhibit B, must the local government report both the letter and the number of the Exhibit B strategy?

Yes. When a local government identifies a funded strategy that is listed in Exhibit B, the local government must report both the letter and the number of the Exhibit B strategy. This is addressed in question 35E above. (While question 35E addresses MOA spending authorization requirements, the same rule applies to the annual financial report.)

67-I. With respect to item 5 / subpart (b) (the amount of opioid settlement funds disbursed, broken down by funded strategy), what is the relationship between this part of the annual financial report and the requirement that local governments authorize spending of opioid settlement funds before spending such funds?

As explained in Part 3A of this FAQ, before spending opioid settlement funds, a local government must authorize the expenditure of these funds in a manner that satisfies both the MOA and state law. Section E.6 of the MOA states that, before spending opioid settlement funds, the local government's governing body must adopt a resolution that includes specific details about each strategy it intends to fund. Furthermore, Section F.6.c.i of the MOA requires that the local government report this spending authorization to CORE-NC within 90 days.

If a local government reports in its annual financial report that it disbursed funds on a strategy that it had not previously authorized pursuant to MOA Section E.6 and reported to CORE-NC within 90 days as required by the MOA, that would be a violation of the MOA that the local government should address right away, as discussed in question 67J below.

67J. With respect to item 5 / subpart (b) (the amount of opioid settlement funds disbursed, broken down by funded strategy), if a local government reports in its annual financial report that it disbursed funds on a strategy that it had not previously authorized and reported to CORE-NC as required by the MOA, what should the local government do?

If a local government reports in its annual financial report that it disbursed funds on a strategy that it had not previously authorized and reported to CORE-NC within 90 days as required by the MOA, that would be a violation of the MOA that the local government would need to address right away. The local government should inform NC

DOJ of the MOA violation and the local government's plan to address it by emailing NC DOJ at opioidsettlement@ncdoj.gov

If the local government previously authorized the expenditure of opioid settlement funds as required by Section E.6 of the MOA but neglected to report this information to CORE-NC as required by Section F.6.c.i of the MOA, the local government should submit the spending authorization information to CORE-NC using this link:
<https://ncopioidsettlement.org/reporting/>

If the local government never authorized the expenditure of opioid settlement funds as required by Section E.6 of the MOA, the local government should take immediate action to authorize the expenditure as required by Section E.6 of the MOA and report this information to CORE-NC as required by Section F.6.c.i of the MOA. (See Part 3A of this FAQ for additional information on spending authorization requirements and procedures.)

If the local government disbursed funds on an Exhibit B strategy without engaging in all the steps of the Option B collaborative strategic planning process (described in question 38 above), this is a serious violation of the MOA that the local government must address immediately in consultation with NC DOJ (addressing the email to opioidsettlement@ncdoj.gov).

67K. With respect to Exhibit E / Part One / item 6 (the amount of opioid settlement funds used to cover audit costs as provided in Section F.3 of this MOA), is there further guidance available to local governments?

Yes. A local government should report the amount of opioid settlement funds disbursed during the relevant fiscal year to cover the cost of any audit of how the local government expended and accounted for opioid settlement funds in the past (e.g., in the prior fiscal year).

Example: In the fall of 2027, Granville County completes its annual financial report for the 2026-2027 fiscal year. For Exhibit E / Part One / item 6, Granville County reports that it disbursed \$3,000 during the 2026-2027 fiscal year to cover the cost of the audit of Granville's use of opioid settlement funds during the 2025-2026 fiscal year.

67L. With respect Exhibit E / Part One / item 7 (the amount of opioid settlement funds in the special revenue fund at the end of the fiscal year), is this amount identical to the amount of opioid settlement funds in the special revenue fund at the beginning of the fiscal year that follows?

Yes. Please see questions 67C and 67D for more on this.

68. What is the additional information in Exhibit E / PART TWO that most local governments receiving opioid settlement funds must provide in their annual financial reports?

Exhibit E / PART TWO states:

- A. The reporting requirements in Part Two, subpart B below are mandatory for all Local Governments that receive two-tenths of one percent (0.2 percent) or more of the total Local Government Allocation as listed in Exhibit G and that disburse any amount of Opioid Settlement Funds during the fiscal year, as reported above in Part One, item 5. Other Local Governments that disburse Opioid Settlement Funds during the fiscal year are strongly encouraged to provide such information.
- B. For each sub-recipient (as defined below) that during the fiscal year received a disbursement of Opioid Settlement Funds from the Local Government equal to or greater than either (a) \$50,000 or (b) ten percent of the total amount disbursed by the Local Government during the fiscal year as reported above in Part One, line 5, the Local Government shall report the following:
 - 1. The name of the sub-recipient.
 - 2. The amount of Opioid Settlement Funds disbursed to the sub-recipient during the fiscal year.
 - 3. A very brief description of the goods, services or other value provided by the sub-recipient (for example, “addiction treatment services” or “peer-support services” or “syringe service program”).

For the purposes of this Part Two, sub-section B, a sub-recipient for whom reporting is required is an entity receiving Opioid Settlement Funds from the Local Government for the purpose of the entity implementing a strategy listed in Exhibit A or Exhibit B to this MOA.

69. If a local government receives opioid settlement funds in May 2022 but does not spend any of the funds until after July 1, 2022, does it have to file an annual financial report in the fall of 2022?

[Answer deleted as no longer relevant]

ITEM 4 – ANNUAL IMPACT REPORT

70. What is the annual impact report?

A local government that receives, holds, or expends opioid settlement funds during a fiscal year must file an annual impact report within 90 days of the end of the fiscal year. The contents of the annual impact report are detailed in Exhibit F to the MOA. [See MOA § F.6.c and Exhibit F (as modified by the Coordination Group)]

Note that the annual impact report requirements stated in Exhibit F have been modified as explained in question 71A below.

71. How is this information reported?

Local governments should submit reports to the Community Opioid Resources Engine (CORE-NC) using this link: <https://ncopioidsettlement.org/reporting/>

71A. Have the reporting requirements in the Exhibit F Annual Impact Report been modified?

Yes. Pursuant to its authority under Section E.7 and Exhibit D of the MOA, the Coordination Group voted unanimously to modify the reporting requirements in the Exhibit F annual impact report at its June 21, 2023 meeting. Local governments are required to comply with these modified requirements.

To read Exhibit F as modified by the Coordination Group, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org>, click on Opioid Settlements, click on NC Memorandum of Agreement, and scroll down to "Exhibit F = Annual Impact Report (as modified by the NC MOA Coordination Group on June 21, 2023)."

To learn more about the Coordination Group, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org>, click on Opioid Settlements, and click on "NC MOA Coordination Group."

72. If a local government receives opioid settlement funds in May 2022 but does not spend any of the funds until after July 1, 2022, does it have to file an annual impact report in the fall of 2022?

[Answer deleted as no longer relevant]

72A. What information must every local government provide as part of its annual impact report?

Exhibit F (as modified by the Coordination Group) requires that, within 90 days of the end of any fiscal year in which a Local Government receives, holds, or expends Opioid Settlement Funds, the Local Government shall:

- (A) provide a BRIEF GENERAL NARRATIVE as described below;
- (B) provide the date of the most recent annual meeting held by the county pursuant to section E.4 of this MOA (for counties only); and
- (C) report impact information for each strategy that it funded with Opioid Settlement Funds during that fiscal year ("funded strategy"), using the STANDARD FORM or the SHORT FORM for each funded strategy, as described below.

72B. What information must every local government provide in connection with the “Brief General Narrative” mentioned in the annual impact report?

Exhibit F (as modified by the Coordination Group) states that:

The Local Government shall provide a BRIEF GENERAL NARRATIVE of approximately one page (250 words) summarizing how the Local Government made use of Opioid Settlement Funds in the relevant fiscal year to support activities across all funded strategies. The narrative may include success stories, ways in which Opioid Settlement Funds were used to meet community needs, or information on planning, implementation, or evaluation of strategies.

72C. With respect to the Standard Form and the Short Form that are required for the reporting of impact information related to each funded strategy, which local governments are required to use which form?

Exhibit F (as modified by the Coordination Group) states:

The STANDARD FORM is recommended to all Local Governments for all funded strategies, as it offers an opportunity for Local Governments to share the impact of Opioid Settlement Funds using their own words and data. However, Local Governments that receive less than 0.4 percent (four-tenths of one percent) of the total Local Government Allocation as shown in Exhibit G may use the SHORT FORM for all funded strategies, while Local Governments that receive 0.4 percent (four-tenths of one percent) or more of the total Local Government Allocation as shown in Exhibit G shall use the STANDARD FORM for all funded strategies.

72D. Which local governments may use the SHORT FORM to report on all funded strategies because they receive less than 0.4 percent (four-tenths of one percent) of the total Local Government Allocation as shown in Exhibit G?

The following local governments may use the SHORT FORM to report on all funded strategies because they receive less than 0.4 percent (four-tenths of one percent) of the total Local Government Allocation as shown in Exhibit G:

- Counties: Alleghany, Anson, Ashe, Avery, Bertie, Camden, Caswell, Chowan, Clay, Currituck, Duplin, Gates, Graham, Greene, Hertford, Hoke, Hyde, Jones, Madison, Martin, Mitchell, Montgomery, Northampton, Pamlico, Pasquotank, Perquimans, Polk, Swain, Tyrrell, Warren, Washington, Yancey.
- Municipalities: Asheville, Canton, Concord, Durham, Fayetteville, Greenville, Henderson, Hickory, High Point, Jacksonville, Wilmington.

72E. Which local governments are required to use the STANDARD FORM for all funded strategies because they receive 0.4 percent (four-tenths of one percent) or more of the total Local Government Allocation as shown in Exhibit G?

Except for the local governments listed above that stand to receive less than four-tenths of one percent (0.4 percent) of the total local government allocation as listed in Exhibit G to the MOA, and except as noted in the paragraph below, all remaining local governments receiving opioid settlement funds are required to use the STANDARD FORM for all funded strategies.

Note that – as discussed in questions 20 through 22B above – a number of municipalities have directed their opioid settlement funds to the counties where they are located, including Cary (starting in FY 22-23), Charlotte (starting in FY 23-24), Concord (starting in FY 23-24), Gastonia (starting in FY 22-23), and Raleigh (starting in FY 22-23). These municipalities are relieved of their reporting obligations with respect to funds that have been directed to their respective counties. To be more specific:

- Because Cary, Gastonia, and Raleigh have never received any opioid settlement funds, they are relieved of all reporting obligations under the MOA so long as their opioid settlement funds are directed to their respective counties.
- Because Charlotte and Concord received opioid settlement funds during the 2021-2022 and 2022-2023 fiscal years, they have continuing reporting obligations with respect to all opioid settlement funds received during those years. However, they have no reporting obligations with respect to funds that are directed to their respective counties starting in the 2023-2024 fiscal year.

73. Do the contents of the annual impact report depend on the number of strategies that a local government chooses to fund during the fiscal year that is the subject of the report?

74. Can you explain how the contents of the annual impact report vary depending on the proportion of settlement funds a local government receives?

75. Which local governments are in Group One?

76. Which local governments are in Group Two?

77. Which local governments are in Group Three?

78. Which local governments are in Group Four?

[Answers to questions 73-78 above – which stem from the original (2022) version of this FAQ – have been deleted as no longer relevant in light of modifications to Exhibit F approved by the Coordination Group in 2023.]

79. What information is required on the STANDARD FORM?

The information required on the STANDARD FORM is as follows:

1. County or municipality and fiscal year covered by this report.
2. Name, title, and organization of person completing this report.
3. Name of funded strategy, letter and/or number of funded strategy on Exhibit A or Exhibit B to the MOA, and number and date of resolution(s) authorizing expenditure of settlement funds on funded strategy.
4. **Brief progress report** describing the funded strategy and progress made during the fiscal year. Recommended length: approximately one page (250 words).
5. **Brief success story** from a person who has benefitted from the strategy (de-identified unless the person has agreed in writing to be identified). Recommended length: approximately one page (250 words).
6. **One or more process measures**, addressing the question, “How much did you do?” Examples: number of persons enrolled, treated, or served; number of participants trained; units of naloxone or number of syringes distributed.
7. **One or more quality measures**, addressing the question, “How well did you do it?” Examples: percentage of clients referred to care or engaged in care; percentage of staff with certification, qualification, or lived experience; level of client or participant satisfaction shown in survey data.
8. **One or more outcome measures**, addressing the question, “Is anyone better off?” Examples: number or percentage of clients with stable housing or employment; self-reported measures of client recovery capital, such as overall well-being, healthy relationships, or ability to manage affairs; number or percentage of formerly incarcerated clients receiving community services or supports within X days of leaving jail or prison.
9. In connection with items 6, 7, and 8 above, **demographic information** on the participation or performance of people of color and other historically marginalized groups.

80. What information is required on the SHORT FORM?

The information required on the SHORT FORM is as follows:

1. County or municipality and fiscal year covered by this report.
2. Name, title, and organization of person completing this report.
3. Name of funded strategy, letter and/or number of funded strategy on Exhibit A or Exhibit B to the MOA, and number and date of resolution(s) authorizing expenditure of settlement funds on funded strategy.
4. **Brief progress report** describing the funded strategy and progress made during the fiscal year. Recommended length: approximately one page (250 words).

80A. Are there any recommended measures or sources of data for common opioid remediation strategies such as those listed in Exhibit A?

Yes. Exhibit A states that “The State will provide counties and municipalities with recommended measures and sources of data for common opioid remediation strategies such as those listed in Exhibit A.” To assist NC DOJ in addressing this need, the NC Association of County Commissioners developed “NC Opioid Settlements Measures Models,” available at <https://www.ncacc.org/opioidsettlement>

PART 6: COMPLIANCE AND AUDIT MATTERS

81. If a question or issue arises concerning a local government’s compliance with the MOA, who is the point of contact at the local level?

The MOA states that the local government manager or administrator is the point of contact for questions that may arise under the MOA. [MOA § F.4]

82. Are local governments required to preserve records related to opioid settlement spending?

Yes. The MOA provides that each local government that receives opioid settlement funds must maintain, for a period of at least five years, records of opioid settlement expenditures and documents underlying those expenditures, so that it can be verified that funds are used in a manner consistent with the national settlements and MOA. NC DOJ and the State Auditor shall have access to persons and records related to the MOA and expenditures of opioid settlement funds. [MOA §§ F.4 & F.5]

83. What happens if a local government spends opioid settlement funds in a manner that is inconsistent with the NC MOA?

Local governments are entrusted with the responsibility of spending opioid settlement funds to in a manner consistent with the terms of the MOA. In the unlikely event that a local government spends opioid settlement funds in a manner that is not consistent with the terms of the MOA, the local government has 60 days after discovery of the expenditure to cure the inconsistent expenditure in one of several ways. In the unlikely event that the local government fails to cure the inconsistent expenditure, future opioid settlement payments may be reduced by the amount of the inconsistent expenditure. [See MOA Sections E.2 and E.3 for details.]

Compliance or non-compliance with reporting obligations under the MOA are addressed in question 56 above.

In addition to these MOA-specific considerations, note that spending or other action by a local government that is inconsistent with the terms of the various settlement agreements or bankruptcy could result in additional sanctions by the relevant courts.

84. What are the audit-related provisions of the MOA?

Section F of the MOA states:

- 1) Audits under Local Government Budget and Fiscal Control Act. Local Governments' Opioid Settlement Funds are subject to financial audit by an independent certified public accountant in a manner no less than what is required under G.S. 159-34. Each Local Government must file an annual financial audit of the Opioid Settlement Funds with the Local Government Commission. If any such audit reveals an expenditure inconsistent with the terms of this MOA, the Local Government shall immediately report the finding to the Attorney General.
- 2) Audits under other acts and requirements. The expenditure of Opioid Settlement Funds is subject to the requirements of the Local Government Budget and Fiscal Control Act, Chapter 159 of the North Carolina General Statutes; Local Government Commission rules; the Federal Single Audit Act of 1984 (as if the Opioid Settlement Funds were federal funds); the State Single Audit Implementation Act; Generally Accepted Government Auditing Standards; and all other applicable laws, rules, and accounting standards. For expenditures for which no compliance audit is required under the Federal Single Audit Act of 1984, a compliance audit shall be required under a compliance supplement approved by the coordination group [described in questions 88 and 89 below].
- 3) Audit costs. Reasonable audit costs that would not be required except for this Section F may be paid by the Local Government from Opioid Settlement Funds.

85. What does the MOA say about the compliance supplement mentioned in the last sentence of Section F.2 of the MOA?

Exhibit D to the MOA states:

As provided in Section F.2 of the MOA, where no compliance audit would be required under the Federal Single Audit Act of 1984 for expenditures of Opioid Settlement Funds, a compliance audit shall be required under a compliance supplement established by a vote of at least 8 members of the coordination group [described in questions 88 and 89 below]. The compliance supplement shall address, at least, procedures for determining:

- i. Whether the Local Government followed the procedural requirements of the MOA in ordering the expenditures.
- ii. Whether the Local Government's expenditures matched one of the types of opioid-related expenditures listed in Exhibit A of the MOA (if the Local Government selected Option A) or Exhibit B of the MOA (if the Local Government selected Option B).
- iii. Whether the Local Government followed the reporting requirements in the MOA.

- iv. Whether the Local Government (or sub-recipient of any grant or loan, if applicable) utilized the awarded funds for their stated purpose, consistent with this MOA and other relevant standards.
- v. Which processes (such as sampling) shall be used (i) to keep the costs of the audit at reasonable levels; and (ii) to tailor audit requirements for differing levels of expenditures among different counties.

85A. Has the Coordination Group approved a compliance supplement for use by local government auditors as called for in MOA Section F.2 and Exhibit D?

Yes. The Coordination Group approved a compliance supplement for local government auditors at its meeting of June 21, 2023.

To review the compliance supplement, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org>, click on Opioid Settlements and click on NC Memorandum of Agreement.

To learn more about the Coordination Group, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org>, click on Opioid Settlements, and click on NC MOA Coordination Group.

PART 7: COLLABORATION AND COORDINATION

86. Does the MOA promote collaboration and coordination of efforts?

Yes. The MOA promotes collaboration in general and establishes a Coordination Group to help implement the MOA. [MOA §§ F.7 & E.7 & Exhibit D]

87. How does the MOA promote collaboration in general?

The MOA states that the state of North Carolina and local governments must collaborate to promote effective use of opioid settlement funds, including through the sharing of expertise, training, technical assistance. The MOA also states that the state and local governments should coordinate with trusted partners to collect and share information about successful strategies to address the opioid epidemic.

88. What is the composition of the coordination group?

The coordination group has twelve members, including:

- Five local government representatives (a county commissioner, county manager, county attorney, county local health director or consolidated human services director, and municipal manager).
- Four experts appointed by NC DHHS.

- One expert appointed by the North Carolina Attorney General.
- Two experts appointed by legislative leaders, including:
 - One representative from the University of North Carolina School of Government with relevant expertise appointed by the Speaker of the North Carolina House of Representatives.
 - One representative from the board or staff of the North Carolina Institute of Medicine with relevant expertise appointed by the President Pro Tempore of the North Carolina Senate.

89. What are the responsibilities of the coordination group?

The coordination group has a variety of responsibilities, including the following:

- To develop certain guidelines for audits required under the MOA (as discussed in questions 84 and 85 above).
- To make adjustments as needed to certain aspects of the NC MOA, including:
 - The high-impact strategies listed in Exhibit A.
 - The collaborative strategic planning process described in Exhibit C.
 - The annual financial report described in Exhibit E.
 - The impact information described in Exhibit F.
- To work with counties, municipalities, NCACC, NCLM, other associations, foundations, non-profits, and other government or nongovernment entities to provide support to local governments in their efforts to effectuate the goals and implement the terms of the MOA.

[MOA Exhibit D]

89A. Has the Coordination Group taken any action?

Yes. The Coordination Group met on June 21, 2023 and took the following actions:

- Approved basic operating procedures for the Coordination Group
- Approved a compliance supplement for the MOA
- Approved modifications to MOA Exhibit F (Annual Impact Report)
- Approved a proposal for future annual and special meetings

In addition, the Coordination Group met on July 12, 2023 and took the following actions:

- Approved minutes from the June 21, 2023 meeting
- Approved modifications to MOA Exhibit E (Annual Financial Report)

To learn more about the Coordination Group, visit NC DOJ's [MorePowerfulNC](https://www.morepowerfulnc.org) website at <https://www.morepowerfulnc.org>, click on Opioid Settlements, and click on "NC MOA Coordination Group."

90. Has there been any collaboration to promote effective use of opioid settlement funds?

Yes. To date there has been a high level of collaboration among multiple state, local, foundation, university, and other partners, including the North Carolina Department of Justice ([NC DOJ](#)), North Carolina Association of County Commissioners ([NCACC](#)), the University of North Carolina Injury Prevention Research Center ([IPRC](#)), the North Carolina Department of Health & Human Services ([NC DHHS](#)), and the North Carolina Institute of Medicine ([NCIOM](#)). Working together, these and many other partners have collaborated on numerous projects and initiatives to promote effective use of opioid settlement funds.

APPENDIX: ACRONYMS AND SHORTHAND

Authorized MOA Strategies – Strategies listed in Exhibit A or Exhibit B to the MOA that are properly authorized pursuant to the substantive and procedural requirements in the MOA.

CORE-NC – Community Opioid Resources Engine – the resources and reporting hub for the North Carolina opioid settlements available at <https://ncopioidsettlement.org>

FAQ – Frequently Asked Questions.

MOA – Memorandum of Agreement on the allocation, use, and reporting of opioid settlement funds in North Carolina.

NCACC – North Carolina Association of County Commissioners.

NC DHHS – North Carolina Department of Health and Human Services.

NC DOJ – North Carolina Department of Justice.

NCGA – North Carolina General Assembly.

NCLM – North Carolina League of Municipalities.

Opioid Settlement Funds – All funds received from the Wave One Settlements, Wave Two Settlements, and various bankruptcy resolutions discussed in question 1A of this FAQ.

Wave One Settlements – The Wave One Settlements resolved litigation about opioid-related misconduct that many state and local governments brought against three drug distributors – Cardinal, McKesson, and AmerisourceBergen – as well as the drug maker Johnson & Johnson and its subsidiary Janssen.

Wave Two Settlements – The Wave Two Settlements are expected to resolve litigation about opioid-related misconduct brought by many state and local governments against three retail pharmacy chains – CVS, Walmart, and Walgreens – as well as the drug makers Allergan and Teva.