

**COMPLIANCE SUPPLEMENT FOR NATIONAL OPIOID SETTLEMENTS AND
NORTH CAROLINA MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF
NORTH CAROLINA AND LOCAL GOVERNMENTS ON PROCEEDS RELATING TO
THE SETTLEMENT OF OPIOID LITIGATION**

**Authorization: North Carolina Memorandum of Agreement Between the
State of North Carolina and Local Governments on Proceeds
Relating to the Settlement of Opioid Litigation (MOA)**

NC Department of Justice

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The auditor should not consider the Supplement to be “safe harbor” for identifying audit procedures to apply in a particular engagement, but the auditor should be prepared to justify departures from the suggested procedures. The auditor can consider the supplement a “safe harbor” for identification of compliance requirements to be tested if the auditor performs reasonable procedures to ensure that the requirements in the Supplement are current.

State agencies including the North Carolina Office of the State Auditor, the North Carolina Department of Justice, and the North Carolina Department of State Treasurer / Local Government Commission may elect to review audit working papers to determine that audit tests are adequate.

Auditors may request documentation of monitoring visits by the above referenced State Agencies.

I. PROGRAM OBJECTIVES

Background: National Opioid Settlements and Bankruptcy Resolutions

This document concerns local government use of proceeds from a series of national opioid settlements – referred to here as “Wave One Settlements” and “Wave Two Settlements” – and from certain opioid-related 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 North Carolina Memorandum of Agreement Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation (MOA), discussed below.

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. The State of North Carolina, all 100 counties, and all municipalities with a population of 30,000 or more joined the Wave Two Settlements by April of 2023. It is anticipated that all defendants will provide final approval of the Wave Two settlements by the summer of 2023, that final consent judgments for the North Carolina cases will thereafter be entered in the General Court of Justice, Superior Court Division, Wake County, and that these final consent judgments will incorporate the Supplemental Agreement for Additional Funds (SAAF), discussed below. If all goes well, payments to the State and to local governments in North Carolina will begin in Fiscal Year 2023-2024.

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 will pay approximately \$35 million over eight years to abating 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 abate 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 is currently anticipated to occur in the second half of calendar year 2023.
- Purdue Pharma: A bankruptcy plan involving the drug maker Purdue Pharma and its owners the Sackler Family has been tied up in litigation. In May 2023, a federal appellate court ruled the plan proposed by Purdue Pharma complied with bankruptcy law and that the settlement could proceed. However, that decision could be appealed to the U.S. Supreme Court. In the event that the litigation is finally resolved, and the bankruptcy plan proceeds, 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 from 2022 through 2038 to North Carolina state and local governments to address the opioid epidemic.

Background: North Carolina Legal Framework

In North Carolina, the allocation, use, and reporting of proceeds from the Wave One Settlements and bankruptcy resolutions described above are governed by the North Carolina Memorandum of Agreement Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation (MOA). The allocation, use, and reporting of proceeds from the Wave Two Settlements is governed by Supplemental Agreement for Additional Funds (SAAF). The SAAF extends to the Wave Two Settlements all the basic terms of the MOA governing the Wave One Settlements – with one minor difference (discussed below) that relates to the allocation of funds to local governments by the national settlement administrator.

Although the relevant national settlement agreements, bankruptcy resolutions and court orders discussed above also include some requirements on allocation, use, and reporting of opioid settlement proceeds, the MOA is equally or more restrictive than each of those agreements and orders. For this reason, compliance with the MOA conclusively demonstrates compliance with all relevant national settlement agreements, bankruptcy resolutions and related court orders.

In the remainder of this document, the term “opioid settlement funds” refers to funds from the Wave One Settlements, Wave Two Settlements, and bankruptcy resolutions discussed above, governed by the terms of the MOA and SAAF.

Allocation of opioid settlement funds within North Carolina: 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 governments¹

The SAAF provides that funds from the Wave Two Settlements are divided as follows:

- 15 percent to the state
- 84.62 percent to local governments
- 0.38 percent to private attorneys who have a principal office in North Carolina that have represented local governments in opioid litigation (referred to as “local counsel” in the SAAF)

Allocation of opioid settlement funds among local governments within North Carolina is specified in Exhibit G to the MOA. Any municipality allocated a

¹ As written, the MOA provides 15 percent to the state, 80 percent to local governments, and 5 percent to local governments that qualify for an incentive fund. Because all local governments ended up qualifying for the incentive fund, it is accurate to say that 85 percent of funds go to local governments.

share in Exhibit G may elect to have its share instead directed by the national settlement administrator to the county or counties in which the municipality is located, as discussed below under “Program Procedures – Eligible Recipients.”

Disbursement of opioid settlement funds: The disbursement of funds to the state of North Carolina, to local governments, and to local counsel is handled by national settlement or bankruptcy administrators by means of direct wire transfers or paper checks. The State of North Carolina does not disburse opioid settlement funds to local governments in North Carolina.

State share of opioid settlement funds: The North Carolina General Assembly decides how to spend the 15 percent state share in keeping with the broad requirement – stated in the national settlement agreements, the MOA, and the SAAF – that such funds be spent on opioid remediation activities.

Disbursement of funds not subject to local government audit: As provided by the relevant settlement documents, bankruptcy resolutions, and court orders, for each of the Wave One Settlements, Wave Two Settlements, and bankruptcy resolutions discussed above, national settlement administrators make the relevant allocation calculations and disburse funds to the State and each eligible local government from national trust funds via wire or check. The State of North Carolina does not disburse funds from opioid settlements or bankruptcy resolutions to local governments. Once disbursed by the national settlement administrators, the amount received by a local government is not subject to dispute or audit. DOJ receives and retains notice of all disbursements made by the national settlement administrator to the State and its local governments.

All relevant rules in MOA: Taken together, the MOA and SAAF establish a set of rules that govern the way local governments handle, use, and report on opioid settlement funds. Apart from a minor difference in the allocation of funds noted above (with 85 percent of funds going to local governments under the MOA versus 84.62 percent of funds going to local governments under the SAAF), all of the rules on how local governments handle, use, and report on opioid settlement funds are the same with respect funds stemming from the Wave One Settlements, the Wave Two Settlements, and the bankruptcy proceedings discussed above. All of the relevant rules are laid out in the MOA, with the SAAF simply applying those exact rules to the Wave Two Settlements, just as the MOA applies those rules to the Wave One Settlements and bankruptcy resolutions discussed above. There is no requirement that local governments provide a separate accounting for opioid settlement funds depending on the source of the funds (*i.e.*, Wave One Settlements, Wave Two Settlements, or bankruptcy proceedings).

The MOA includes guidelines and limitations on the use of opioid settlement funds as well as transparency and accountability measures for the use of opioid settlement funds by local governments.

Resources

The North Carolina Department of Justice offers extensive resources regarding the MOA on DOJ's "More Powerful NC" website at <https://www.morepowerfulnc.org/> (click on "Opioid Settlements" and then "NC Memorandum of Agreement"). Some of these resources are referenced throughout this document, including the following:

- MOA = full text of the Memorandum of Agreement
- Exhibit A to the MOA = shorter list of Option A strategies
- Exhibit B to the MOA = longer list of strategies from national settlements
- Exhibit C to the MOA = collaborative strategic planning process and reporting requirements
- FAQ re MOA = FAQ about the MOA that DOJ updates from time to time
- FAQ re Option A Strategies = FAQ about the Exhibit A strategies in the MOA that DOJ updates from time to time
- Spending Authorization Memo from DOJ that was initially drafted in November 2022 and may be updated from time to time
- Reporting Requirements Memo from DOJ that was initially drafted in July 2022 and may be updated from time to time

Another important source of information is the Community Opioid Resources Engine for North Carolina (CORE-NC), located at <https://ncopioidsettlement.org/>. CORE-NC provides extensive resources, tools, and data to assist local governments in making the best use of opioid settlement funds. In addition, CORE-NC is the official, state-designated portal designed to receive required reports and other information from local governments and to share that information with the public (pursuant to section F.6.c of the MOA).

Finally, the North Carolina Association of County Commissioners (NCACC) has developed extensive resources and templates for local governments regarding the opioid settlements and MOA, available at <https://www.ncacc.org/opioidsettlement>.

Acronyms and Abbreviations Summary

A summary of acronyms and abbreviations used in this document appears at the end of the document.

II. PROGRAM PROCEDURES

FUNDING PRIORITIES

Local governments receiving opioid settlement funds will be expected to follow accounting and compliance guidelines as set forth in the MOA. Funds should be audited following the guidelines as set forth in the MOA. Under the MOA, local governments may expend funds only on opioid remediation activities consistent with strategies outlined in the MOA.

In broad and general terms, subject to additional detail provided below, to comply with the MOA, a local government receiving opioid settlement funds must do the following:

1. Establish a fund. A local government receiving opioid settlement funds must secure them in a special revenue fund. This is addressed below under “Compliance Requirements – Cash Management” and is covered in Part 3 of the FAQ re MOA and in Sections D and F of the MOA.
2. Authorize spending. Before spending opioid settlement funds, a local government must authorize the expenditure of such funds. This is addressed below under “Compliance Requirements – Special Tests and Provisions” and is covered in Parts 3 and 5 of the FAQ re MOA, in the Spending Authorization Memo, and in Section E.6 of the MOA.
3. 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 addressed below under “Compliance Requirements – Activities Allowed or Unallowed” and is covered in Part 4 of the FAQ re MOA, Section E.5 of the MOA, and Exhibits A, B and C of the MOA.
4. Understand and follow all reporting requirements, including the following:
 - i) The local spending authorization report, due to CORE-NC within 90 days of the authorization of the expenditure of opioid settlement funds.
 - ii) The Option B report and recommendations (only for local governments proceeding with Option B), due within 90 days of presentation to the governing body.
 - iii) The annual financial report, due within 90 days of any fiscal year in which opioid settlement funds are received, held, or expended.
 - iv) The annual impact report, due within 90 days of any fiscal year in which opioid settlement funds are expended.

These reporting requirements are addressed below under “Compliance Requirements – Reporting” and are covered in Part 5 of the FAQ re MOA, Sections E.6 and F.6 of the MOA, and Exhibits C, E and F of the MOA.
5. 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 addressed below under “Compliance Requirements – Special Tests and Provisions” and is covered in section E.4 of the MOA.

ELIGIBLE RECIPIENTS

Entities eligible to receive settlement funds include and are limited to

- (1) 15 percent of the funds to the State of North Carolina and
- (2) 85 percent of funds from the Wave One Settlements and bankruptcy resolutions and 84.62 percent of funds from the Wave Two Settlements to local governments as follows:

- All 100 North Carolina counties
- These 17 municipalities: Asheville, Canton, Cary, Charlotte, Concord, Durham, Fayetteville, Gastonia, Greensboro, Greenville, Henderson, Hickory, High Point, Jacksonville, Raleigh, Wilmington, Winston Salem.:

Municipalities that direct opioid settlement funds to their respective counties:

Some municipalities have elected to direct their opioid settlement funds to the county or counties where there are located, as permitted by the MOA and SAAF and discussed above. A municipality allocated a share in MOA Exhibit G that has elected to have its share instead directed by the national settlement administrator to the county or counties in which it is located is relieved of reporting requirements under the MOA for any fiscal years in which this election was in effect. As of June of 2023, Cary, Charlotte, Concord, Gastonia, and Raleigh have made such an election. Auditors retained by municipalities that have directed opioid settlement funds to their respective counties may reach out to DOJ at opioidsettlement@ncdoj.gov for more information.

Recipients must deliver appropriate service to members of the targeted populations as described in the MOA.

III. COMPLIANCE REQUIREMENTS

Noted below in the following matrix are the types of compliance requirements that are applicable to the program. The Types to be tested are noted by “Y.”

If the Matrix indicates “Y,” the auditor must determine if a particular type of compliance requirement has a direct and material effect on the program for the auditee.

Standard audit procedures, such as sampling, that are designed to promote audit efficiency and effectiveness while meeting audit and program objectives, should be used to test program compliance.

1	2	3	4	5	6	7	8	9	10	12	13	14
Activities Allowed or Unallowed	Allowable Costs/ Cost Principles	Cash Management	Conflict of Interest	Eligibility	Equipment/ Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	Y	N	N	N	N	Y	Y	Y	Y

1. Activities Allowed or Unallowed

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 the FAQ re MOA, Section E.5 of the MOA, and Exhibits A, B and C of the MOA.

Under Option A, a local government may fund one or more strategies from a shorter list of approved strategies listed in Exhibit A. The Option A strategies are:

- i) Collaborative strategic planning
- ii) Evidence-based addiction treatment
- iii) Recovery support services
- iv) Recovery housing
- v) Employment-related services
- vi) Early intervention programs
- vii) Naloxone distribution
- viii) Post-overdose response teams
- ix) Syringe service programs

- x) Criminal justice diversion programs
- xi) Addiction treatment for incarcerated persons
- xii) Reentry programs

Under Option B, a local government engages in a collaborative strategic planning process described in Exhibit C, drafts a report and recommendations (the contents of which are described in the right-hand column of Exhibit C), presents the report and recommendations to the governing body, and (within 90 days of that presentation) submits the report and recommendations to CORE-NC. 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 Exhibit A and/or the longer list of strategies from the national settlements in 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 they may fund other strategies in Exhibit A and/or Exhibit B.

The longer list of Exhibit B strategies – the full range of strategies that will be allowed under a national settlement or bankruptcy resolution – involve multiple strategies falling into these broad categories:

- i) Provide treatment for Opioid Use Disorder (OUD)
- ii) Support people in treatment and recovery
- iii) Address the needs of criminal-justice-involved persons with OUD
- iv) Address the needs of pregnant or parenting women and their families
- v) Prevent over-prescribing of opioids and misuse of opioids
- vi) Prevent overdose deaths and other harms (harm reduction)

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 from Exhibit A and/or Exhibit B. **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 above before authorizing an expenditure of funds on an Exhibit B strategy or spending funds on an Exhibit B strategy. A local government that authorizes an expenditure of funds on an Exhibit B strategy or spends funds on an Exhibit B strategy without first engaging in the collaborative strategic planning process described above is in violation of section E.5.b of the MOA.**

Additional Information

A local government can proceed under Option A, or proceed under Option B, or proceed under both Option A and Option B. Furthermore, a local government may switch gears from year to year as to whether it is proceeding under Option A or Option B. Refer to Part 4 of the FAQ re MOA.

A local government is not required to formally announce whether it is proceeding under Option A or Option B or both. Instead, 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, which – as noted above – indicates definitively that the local government is proceeding under Option B and must comply with all procedural requirements associated with Option B.
- 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 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.

Evidence of the above process should be documented in the auditee's files (*i.e.*, copy of signed resolution with minutes supporting the action and/or copies of the report with evidence of the reporting in the minutes of the governing body)

Audit Objective: Determine if the local government selected Option A or Option B or both, in order to determine if costs are allowed.

Suggested Audit Procedure: Review minutes of board meetings, budget ordinance, or other documents approved by the board to see what Option or Options were selected and this was authorized by the board.

2. Allowable Costs/Cost Principles

Funds can be spent on expenses that are consistent with the MOA guidelines and the resolution authorizing the expenditure of opioid settlement funds.

The local government should answer and document the answers to the following questions:

Audit Objective: Determine if the local government selected Option A, Option B, or both to determine if the costs are allowed.

Suggested Audit Procedure: Review minutes of board meetings, budget ordinance, or other documents approved by the board to see what Option or Options were selected and this was authorized by the board.

OPTION A

1. Did the government authorize or spend funds on any strategy in Exhibit A?

2. If the answer is yes, for each strategy listed in Exhibit A that was authorized, did the local government authorize and spend funds on programs or services consistent with the description of each such strategy in Exhibit A? (Additional detail is available in the FAQ re Option A strategies.).

OPTION B

1. Did the local government authorize or spend funds on any strategy in Exhibit B (indicating that the local government is proceeding under Option B) or otherwise indicate that it is proceeding under Option B? (Refer to the information above under “Compliance Requirements – Activities Allowed or Unallowed.”)
2. If the answer is yes, for each strategy listed in Exhibit A or B that was authorized, did the local government authorize and spend funds on programs or services consistent with the description of each such strategy in Exhibit A or Exhibit B? (With respect to Exhibit A, additional detail is available in the FAQ re Option A strategies.)
3. If the answer to question #1 is yes, did the local government follow the procedural requirements associated with Option B? Specifically:
 - a. Did the local government engage in a collaborative strategic planning process consistent with the requirements of Exhibit C (which is required for a local government to authorize or spend funds on any strategy in Exhibit B)?
 - b. Did the collaborative strategic planning process result in a report and recommendations that includes all the items listed in the right-hand column of Exhibit C?
 - c. Were the report and recommendations presented to the governing body of the local government for consideration?
 - d. Did the local government submit a copy of the report and recommendations to CORE-NC within 90 days of the date they were presented to your local governing body?

Opportunity to Cure Inconsistent Expenditures: The MOA requires that local governments expend opioid settlement funds for opioid-related expenditures consistent with the terms of the MOA. Section E of the MOA provides that, if a Local Government spends any opioid settlement funds on an expenditure inconsistent with the terms of this MOA, the local government shall have an opportunity to cure the inconsistent expenditure as described below under “Compliance Requirements – Procurement and Suspension and Debarment.”

Audit Objective: Determination should be made as to the consistency of the funds used against the MOA Option A or B or if not, has the unit followed proper procedures to cure inconsistent use.

3. Cash Management

The MOA provides that a local government receiving opioid settlement funds must secure them in a special revenue fund. This is covered in Part 3 of the FAQ re MOA and in Sections D and F of the MOA.

The MOA provides that the local government **may** place the funds in a separate, interest-bearing bank account, but this is not a requirement under the MOA.

Audit objective: Determine that the funds are properly recorded in a special revenue fund for financial statement purposes.

The funds in the special revenue fund **may** be invested, consistent with the investment limitations for local governments (refer to G.S. 30 for allowable investments). This should be tested as part of the financial audit. No compliance testing is required.

Audit objective: Determine that the funds are properly recorded in a Special Revenue Fund. The funds should be reported as a liability, such as unearned revenues, until spent.

Suggested Audit procedure: Review the trial balance to ensure the funds are properly recorded as a liability and not as a fund balance.

4. Conflict of Interest

The unit of government must comply and document its conflict-of-interest policies and ethics requirements for elected officials, employees, or any officer as outlined in NCGS 14-243 and 14-243.3.

The unit should show evidence that this requirement has been met with appropriate policies that have been adopted by the governing body.

Suggested Audit Procedures: Review contracts, minutes of board meetings, and perform inquiries to determine if any government official has violated the government's policies or general statutes related to conflicts of interest or ethics.

5. Eligibility

Eligible entities include the units of government listed under "Funding Priorities – Eligible Entities."

Units of government may contract with subrecipients to carry out the activities outlined in Option A or Option B and evidence of their eligibility and the process of determining must be documented.

Section D.2 of the MOA provides that, although counties or municipalities may make contracts with a nonprofit, charity, or other entity, "counties or municipalities may not assign to another entity their rights to receive payments from the national settlement or their responsibilities for funding decisions." For example, under the MOA, a local government could not provide opioid settlement funds to a non-profit and let the non-profit make decisions about which strategies to fund.

In response to questions received from local governments, NC DOJ has clarified that the reference to “nonprofit, charity or other entity” would allow a county or municipality to contract with a for-profit entity to provide services consistent with the terms of the MOA.

Counties must comply with NCGS 153A-449 and municipalities must comply with 160A-20.1 regarding contracts with private entities.

Audit Objective: Determine if the government has passed funds to another entity. If so, determine if the entity is qualified to receive the funding.

6. Equipment and Real Property Management

Expenditures must meet program guideline requirements and adhere to allowable activities described in Option A and Option B and included in the resolution stating which strategies the local government intends to fund (discussed below under “Special Tests and Provisions – Authorization of Spending of Opioid Settlement Funds”). The unit must follow their specific capitalization thresholds and must comply with applicable state and local procurement requirements.

This should be tested as part of the financial audit. No compliance testing is required.

7. Matching, Level of Effort, Earmarking

Opioid settlement funds may be leveraged with other funds if projects adhere to allowable activities described in Option A or B of the MOA and the resolution stating which strategies the local government intends to fund (discussed below under “Special Tests and Provisions – Authorization of Spending of Opioid Settlement Funds.”) There is no matching requirement.

No testing at the local level.

8. Period of Performance

The period of performance of Wave One of the funding is the eighteen (18) year period described in the MOA. The period of performance of Wave Two is the fifteen (15) year period described in the MOA and the SAAF.

Currently, no testing at the local is required

9. Procurement and Suspension and Debarment

The MOA requires that local governments expend opioid settlement funds for opioid-related expenditures consistent with the terms of the MOA. Section E of the MOA provides that, if a Local Government spends any opioid settlement funds on an expenditure inconsistent with the terms of this MOA, the local government shall have 60 days after discovery of the expenditure to cure the inconsistent expenditure through payment of such amount for opioid remediation activities through budget amendment or repayment. If a Local Government does not cure the inconsistent expenditure within 60 days after the discovery of the inconsistent expenditure, (i) future Opioid Fund payments to that Local Government shall be reduced by an amount equal to the inconsistent

expenditure, and (ii) to the extent the inconsistent expenditure is greater than the expected future stream of payments to the Local Government, the Attorney General may initiate a process up to and including litigation to recover and redistribute the overage among all eligible Local Governments. The Attorney General may recover any litigation expenses incurred to recover the funds. Any recovery or redistribution shall be distributed consistent with Sections B.3 and B.4 of the MOA.

The unit of government must adhere to applicable state and local procurement requirements. The unit must document any inconsistency and their efforts to cure the deficiencies within the framework of the MOA.

This should be tested as part of the financial audit. No compliance testing is required.

10. Program Income

Any interest or program income must be credited to the special revenue fund and maintained in the cash account that accompanies the special revenue fund to be utilized in the approved activities as outlined in the MOA and as authorized in the budget or project ordinance approved by the governing body.

Audit Objectives: Determine if the proceeds received for Opioid Settlement funds are invested or in an interest-bearing account and are the returns or interest income used in a way consistent with guidance found in the MOA

11. Reserve

N/A

12. Reporting

Local governments will submit the following reports to the Community Opioid Resources Engine for North Carolina (CORE-NC) (ncopioidsettlements.org) during the duration of the distributions of the settlements.

- a) the local spending authorization report, due to CORE-NC within 90 days of the passage of a resolution authorizing the expenditure of opioid settlement funds;
- b) the Option B report and recommendations (for local governments proceeding with Option B), due within 90 days of presentation to the governing body;
- c) the annual financial report, due within 90 days of any fiscal year in which opioid settlement funds are received, held, or expended; and
- d) the annual impact report, due within 90 days of any fiscal year in which opioid settlement funds were expended.

These reporting requirements are covered in Part 5 of the FAQ re MOA, Sections E.6 and F.6 of the MOA, and Exhibits C, E and F of the MOA.

Suggested Audit Procedures – Local Spending Authorization Report.

1. Determine if spending authorization was required. As described below in “14. Special Tests and Provisions / (a) Authorization of Spending Opioid Settlement Funds,” before spending opioid settlement funds, the local government shall adopt a resolution authorizing the expenditure of opioid settlement funds that includes certain specific details stated in the MOA.
2. If spending authorization was required and included in a resolution, determine if a spending authorization report was submitted to CORE-NC in a timely manner. Once a local government authorizes the expenditure of opioid settlement funds in the manner required by the MOA, the local government must provide that information to CORE-NC within 90 days of the date the budget or resolution is approved.
3. If a spending authorization report was submitted to CORE-NC, determine if the report included all required details – including the specific strategy or strategies the local government intended 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 the amount dedicated to each strategy for a stated period of time. (For more on this, see the Spending Authorization Memo and Reporting Requirements Memo.)

Suggested Audit Procedures – Option B Report & Recommendations.

1. Determine if the Option B report and recommendations were required or voluntarily undertaken. Option B is described above under “III Compliance Activities / 1 Activities Allowed or Unallowed.” A local government that elects to fund a strategy listed in Exhibit B but not in Exhibit A is required to proceed under Option B and must have taken all steps required under Option B. Alternatively, a local government may decide to proceed with Option B because they wish to engage in the collaborative strategic planning process and widen the range of opioid remediation strategies available to them, even if they do not ultimately decide to fund a strategy from Exhibit B.
2. If you determine the local government was required to proceed under Option B or voluntarily chose to proceed under Option B, then determine if the report and recommendations were drafted in a manner consistent with the MOA. Specifically, determine if the report and recommendations follow the format described in the right-hand column of Exhibit C, documenting all of the steps in the collaborative strategic planning process described in Exhibit C.
3. Next determine if the report and recommendations were presented to the local governing body as required.
4. Then determine if the report and recommendations were submitted to CORE-NC in a timely manner. The MOA requires that a local government must submit a copy of the Option B report and recommendations to CORE-NC within 90 days of the date they are presented to the local governing body for consideration.

Suggested Audit Procedures – Annual Financial Report.

1. Determine if report required. The annual financial report is required if a local government received, held, or expended opioid settlement funds during the preceding fiscal year.
2. Determine if required report was created.
3. Determine if required report was accurate and in compliance with the MOA. The required contents of the annual financial report are described in Exhibit E to the MOA and in Part 5 of the FAQ re MOA.
4. Determine if report submitted to CORE-NC in timely manner. The annual financial report is due to CORE-NC within 90 days of the end of the fiscal year covered in the report.
5. Determine if expenditures listed in Annual Financial Report were previously authorized as required in a budget or separate resolution and included in a spending authorization report submitted to CORE-NC.
6. Determine if expenditures listed in Annual Financial Report correspond to strategies listed in Annual Impact Report.

Suggested Audit Procedures – Annual Impact Report.

1. Determine if report required. The annual financial impact is required if a local government expended opioid settlement funds during the relevant fiscal year.
2. Determine if required report was created.
3. Determine if required report was accurate and in compliance with the MOA. The required contents of the annual impact report are described in Exhibit E to the MOA and in Part 5 of the FAQ re MOA.
4. Determine if report submitted to CORE-NC in timely manner. The annual impact report is due to CORE-NC within 90 days of the end of the fiscal year covered in the report.
5. Determine if strategies listed in Annual Impact Report were previously authorized as required in a budget or separate resolution and included in a spending authorization report submitted to CORE-NC.
6. Determine if strategies listed in Annual Impact Report correspond to expenditures listed in Annual Financial Report.

13. Subrecipient Monitoring

Any funding provided to another entity pursuant to contract must be used for the purposes selected under Option A or Option B and authorized by the governing body. The unit must require the same level of compliance to the provisions of the MOA, which should be monitored by the unit on an ongoing basis. The subrecipient must report annually to the unit of government of its spending activities and provide sufficient information for the local government to complete all required reports, including the annual financial report and

annual impact report. The subrecipient is to be bound by the same procurement standards as the unit of government.

The unit must provide evidence to the reporting agency of subrecipient monitoring and evaluation of program expenditures for adherence to MOA requirements.

Suggested Audit Procedures:

Review subaward documents including the terms and conditions of the subaward to ascertain if, at the time of subaward (or subsequent subaward modification), the governmental entity made the subrecipient aware of the award information required by the MOA sufficient for the governmental entity to comply with the terms and conditions of the award.

Review the governmental entity's documentation of monitoring the subaward and consider if the governmental entity's monitoring provided reasonable assurance that the subrecipient used the subaward for authorized purposes in the terms and conditions of the sub-award

14. Special Tests and Provisions

(a) Authorization of Spending Opioid Funds

Before spending opioid settlement funds, a local government must authorize the expenditure of such funds. This is covered in Parts 3 and 5 of the FAQ re MOA, in the Spending Authorization Memo, and in Section E.6 of the MOA.

Additional detail: Before spending opioid settlement funds, the local government shall adopt a resolution authorizing the expenditure of opioid settlement funds. The resolution must include the following information:

- (i) indicate that it is an authorization for expenditure of opioid settlement funds.
- (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 stated period of time.

In addition, the local government must follow state law budgeting requirements.

Audit Objective: Determine if the government properly authorized Opioid Settlement Funds to be expended by resolution, with details on timing, amount, and specific strategy or strategies, as required by MOA section E.6.b.

In addition, determine if the local government followed state law budgeting requirements.

(b) Annual Meeting Requirement

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. [MOA §E.4].

The MOA does not say when the annual meeting should take place, does not clarify whether the term “annual” refers to the fiscal year or the calendar year, and does not provide any further detail regarding the required annual meeting. That said, NC DOJ encourages local governments to hold an annual meeting each **fiscal** year to coincide with other MOA requirements.

Evidence of such meeting should be provided by the unit via minutes of the meeting as approved by the governing body and/or copies of the agenda and other pertinent information as presented in the meeting.

Audit Objective: If the government receiving Opioid Settlement Funds is a County, determine if they helped an annual meeting as required by MOA E.4.

(c) Miscellaneous Correspondence – Compliance

The local government is required to promptly respond to and resolve any inquires and correspondence, either by letter or email, regarding compliance with the MOA from DOJ, CORE-NC, and/or the national administrator regarding the local government’s compliance with any national opioid settlement or bankruptcy.

The auditor should request and review all such correspondence to determine whether the local government has resolved any issues raised in any such correspondence.

If any Local Government communicates in writing with any national settlement administrator or other entity created or authorized by any national opioid settlement or bankruptcy resolution regarding the local government’s compliance with relevant settlements, the local government should provide a copy of any such report, document, or communication to the North Carolina Department of Justice at opioidsettlement@ncdoj.gov.

Suggested Audit Procedures: Inquire as to any correspondence and copies of response and resolution, if any.

APPENDIX: ACRONYMS AND ABBREVIATIONS IN THIS DOCUMENT

Note: Unless otherwise noted, all of the documents mentioned below are available at available at <https://www.morepowerfulnc.org/> (click on “Opioid Settlements” and then “NC Memorandum of Agreement”).

CORE-NC = Community Opioid Resources Engine for North Carolina, located at <https://ncopioidsettlement.org/>.

DOJ = North Carolina Department of Justice.

FAQ re MOA = A document with frequently asked questions about the MOA that is updated from time to time.

FAQ re Option A Strategies = A document with frequently asked questions about the Option A strategies in the MOA that is updated from time to time.

MOA = North Carolina Memorandum of Agreement Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation.

Opioid settlement funds = Funds from the Wave One Settlements, Wave Two Settlements, and bankruptcy resolutions discussed above, governed by the terms of the MOA and SAAF.

Reporting Requirements Memo = Memorandum from DOJ that was drafted in July 2022 and may be updated from time to time.

SAAF = Supplemental Agreement for Additional Funds from Additional Settlements of Opioid Litigation, available at <https://www.morepowerfulnc.org/> (click on “Opioid Settlements” and then “Wave Two Settlements”).

Spending Authorization Memo – Memorandum from DOJ that was drafted in November 2022 and may be updated from time to time.

Wave One Settlements = Legal settlements that 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. Learn more at <https://www.morepowerfulnc.org/> (click on “Wave One Settlements”)

Wave Two Settlements = Legal settlements that 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. Learn more at <https://www.morepowerfulnc.org/> (click on “Wave Two Settlements”)