



Frequently Asked Questions on the Kroger Settlement and Second Supplemental Agreement for Additional Funds (“SAAF-2”)

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PART 1: KROGER SETTLEMENT

1. What is the purpose of this FAQ?

Part 1 of this FAQ answers questions about the Kroger Settlement, and Part 2 answers questions about the Second Supplemental Agreement for Additional Funds (“SAAF-2”).

2. What if there is a discrepancy between this FAQ and the Kroger Settlement or SAAF-2?

If there is a discrepancy between this FAQ and the Kroger Settlement or SAAF-2, then the Kroger Settlement or SAAF-2 take precedence. This FAQ is an effort to explain the Kroger Settlement and SAAF-2 in user-friendly terms, but this FAQ is not itself a binding legal document.

3. What is the Kroger Settlement?

In addition to the national opioid settlements with the “big three” drug distributors plus Johnson & Johnson (“Wave One Settlements”) and the national settlements with CVS, Walgreens, Walmart, Allergan and Teva (“Wave Two Settlements”), Attorney General Josh Stein helped negotiate a national settlement with the Kroger Company (“Kroger”) regarding the unlawful dispensing of opioids from pharmacies in the grocery stores it operates, including at Harris-Teeter grocery stores. Read the press release [HERE](#).

4. How much money will the Kroger Settlement bring to North Carolina?

North Carolina's state and local governments stand to receive just over \$40 million from the Kroger Settlement, in addition to amounts they may receive from the Wave One Settlements, Wave Two Settlements, and relevant bankruptcy resolutions.

5. Which North Carolina local governments will receive funds from the Kroger Settlement?

The same local governments that receive funds from the Wave One Settlements (governed by the 2021 Memorandum of Agreement or "MOA") and the Wave Two Settlements (governed by the 2023 Supplemental Agreement for Additional Funds (or "SAAF")) will receive funds under the Kroger Settlement.

To be more specific: Local governments entitled to receive direct payments under the settlements are the 100 North Carolina counties plus any municipality that either filed suit against opioid defendants, or had a population of 75,000 or more in 2019, or both.

Based on those criteria, the municipalities entitled to receive funds from the Kroger settlement are Asheville, Canton, Cary, Charlotte, Concord, Durham, Fayetteville, Gastonia, Greensboro, Greenville, Henderson, Hickory, High Point, Jacksonville, Raleigh, Wilmington, Winston-Salem.

Note that some municipalities entitled to receive direct payments under the Wave One and Wave Two settlements have chosen to direct opioid settlement payments to their respective counties. This option is available for the Kroger Settlement as well. Municipalities interested in learning more about this option should email NC DOJ at opioidsettlement@ncdoj.gov.

6. How much funding will North Carolina local governments receive from the Kroger Settlement?

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

If all required local governments sign onto the Kroger Settlement in North Carolina, and a sufficient number of local governments join the Kroger Settlement across the nation, then the maximum amount that each local government could receive from the Kroger Settlement is available [HERE](#) on the "Kroger Settlement" page of DOJ's www.MorePowerfulNC.org website.

7. Which local governments need to sign onto the Kroger Settlement for North Carolina to receive the full share of settlement funding to which it is entitled?

Local governments that must sign the Kroger Settlement for North Carolina to receive the full share of settlement funding to which it is entitled include:

- all 100 counties,
- the 17 municipalities listed above that are entitled to receive opioid settlement funds, and
- all other municipalities that had a population of 30,000 or greater in 2019.

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

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

There are 19 municipalities that signed the Wave One and Wave Two Settlements that are now asked to sign the Kroger Settlement even though they are not entitled to receive direct payments under settlement. By signing onto the Kroger Settlement (along with prior settlements they already joined), these municipalities help ensure that North Carolina receives the full amount of settlement funds to which it is entitled.

9. What actions are required for a local government to join the Kroger Settlement?

To join the Kroger settlement and sign onto the SAAF-2, local governments follow a two-step process:

FIRST, the governing board of the local government passes a new resolution authorizing designated local officials to sign onto the Kroger Settlement and SAAF-2. To assist with this step, a draft resolution template is available [HERE](#) for counties and [HERE](#) for municipalities.

Note that some counties and municipalities may have previously passed resolutions as part of signing onto the Wave One or Wave Two Settlements that provide authorization for local government officials to sign onto the Kroger Settlement. Local governments are encouraged to consult their local legal counsel on the wording of prior resolutions to determine if a new resolution is required.

SECOND, after receiving authorization from their respective governing boards, designated local officials (such as managers or attorneys) will sign onto the Kroger Settlement and SAAF-2 through an electronic sign-on process. We anticipate that on June 14, 2024, all 100 counties and the 36 municipalities identified above will receive an email from the national administrator, Rubris, inviting each local government to sign

onto the Kroger Settlement and SAAF-2. (Rubris will use the email addresses that each local government previously provided to Rubris.)

10. What is the deadline for local governments to sign onto the Kroger Settlement and the SAAF-2?

August 12, 2024 is the deadline to sign onto the Kroger Settlement and the SAAF-2.

11. When will North Carolina receive funds from the Kroger Settlement?

If the sign-on to the Kroger Settlement in North Carolina and across the nation goes well, and Kroger agrees to finalize the settlements (as explained in question 6 above), we anticipate that the first Kroger Settlement payment to the 100 counties and relevant municipalities during Fiscal Year 2024-2025.

The Kroger Settlement payments will be made over 11 years, with roughly equal payments each year.

12. Will local governments have to spend the Kroger funds right away?

No. Under the MOA, SAAF, and SAAF-2, local governments are NOT required to spend funds from the various settlements during the same fiscal year in which the funds are received. Instead, local governments are allowed to develop multi-year plans and to spend opioid settlement funds when it makes most sense for them to do so.

13. How can I learn more about the Kroger Settlement?

Additional information is available [HERE](#) on the “Kroger Settlement” page of DOJ’s www.MorePowerfulNC.org website.

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

14. What is the purpose of the Second Supplemental Agreement for Additional Funds From (“SAAF-2”)?

The purpose of the SAAF-2 is to direct funds from the Kroger Settlement to the state of North Carolina and local governments in a manner consistent with the 2021 Memorandum of Agreement (“MOA”) that has governed the distribution, use, and reporting of funds from previous national opioid settlements and bankruptcy resolutions.

15. Under the SAAF-2, do funds from the Kroger Settlement go into the same special revenue fund as funds from the previous national opioid settlements?

The SAAF-2 provides that every local government receiving funds from the Kroger Settlement must do one of the following two things:

1. Deposit the funds from the Kroger Settlement into the same special revenue fund used for funds from the previous national opioid settlements; or
2. Create a separate special revenue fund for funds from the Kroger Settlement if there is a desire to do so.

It is important to understand that the 2021 MOA, 2023 SAAF, and 2024 SAAF-2 allow local governments to combine funds from Wave One Settlements, Wave Two Settlements, Kroger Settlement, and relevant bankruptcy resolutions into a single fund for spending and reporting purposes. Local governments are NOT required to develop separate accounting or reporting requirements for funds from the various settlements.

16. Regarding the USE of opioid settlement funds, how does the SAAF-2 compare to the MOA and SAAF?

Regarding the use of opioid settlement funds, the 2021 MOA, 2023 SAAF, and 2024 SAAF-2 are identical. Funds from the Wave One settlements (under the MOA), Wave Two settlements (under the SAAF and MOA), and Kroger Settlement (under the SAAF-2 and MOA) are all subject to the same rules and guidelines as to how local governments may use those funds.

For example, Option A and Option B (as described in the MOA) apply to funds from the Kroger Settlement the same way they apply to funds from the prior opioid settlements and bankruptcy resolutions. Similarly, all of the auditing, compliance, reporting, and accountability provisions in the MOA apply to funds from the Kroger Settlement in the same way they apply to funds from the prior opioid settlements and bankruptcy resolutions.

17. Regarding the REPORTING of opioid settlement funds, how does the SAAF-2 compare to the MOA and SAAF?

With respect to reporting requirements, funds from the Kroger Settlement (under the SAAF-2) and Wave Two Settlements (under the SAAF) are subject to all the exact same reporting requirements as funds under the Wave One Settlements (under the MOA).

As noted above, the 2021 MOA, 2023 SAAF, and 2024 SAAF-2 allow local governments to combine funds from the various national opioid settlements into a single fund for spending and reporting purposes. The MOA, SAAF, and SAAF-2 do NOT require that local governments develop separate accounting or reporting requirements for funds from different national opioid settlements and bankruptcy resolutions.

18. Regarding the ALLOCATION of opioid settlement funds, how does the SAAF-2 compare to the MOA and SAAF?

Regarding the allocation of opioid settlement funds, the 2021 MOA, 2023 SAAF, and 2024 SAAF-2 are nearly identical:

- The MOA, SAAF, and SAAF-2 direct 15 percent of each payment from the various national opioid settlements to the State of North Carolina.
- The MOA directs 85 percent of each payment from the Wave One Settlements to local governments, including all 100 counties and the 17 municipalities identified in question 5 above.
- The SAAF and SAAF-2 direct 84.62 percent of each payment from the Wave Two Settlements and Kroger Settlement to local governments, including all 100 counties and the relevant municipalities identified above.
- The SAAF and SAAF-2 direct 0.38 percent of each payment from the Wave Two Settlements and Kroger Settlement to private attorneys who have a principal office in North Carolina that have represented local governments in opioid litigation (“Local Counsel”).

19. Why do the SAAF and SAAF-2 direct funds to Local Counsel?

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

During the sign-on process for the Wave One Settlements, some counties and municipalities hesitated to join the settlements because of concerns about whether outside counsel would seek to enforce contingency fee arrangements.

To ensure that North Carolina obtained 100% participation in the Wave Two Settlements, which was necessary for North Carolina to receive 100% of its funds, the SAAF provided a small fund to Local Counsel in exchange for their clear advance commitment to waive their fee claims against all North Carolina counties and municipalities.

In a similar vein, to ensure that North Carolina obtains 100% participation in the Kroger Settlement, which is necessary for North Carolina to receive 100% of its funds as explained in question 6 above, the SAAF-2 provides a small fund to Local Counsel in exchange for their clear advance commitment to waive their fee claims against all North Carolina counties and municipalities.

20. Does the SAAF-2 impose any conditions for Local Counsel to receive funds?

Yes. The SAAF-2 provides funds from the Kroger Settlement to Local Counsel only if:

- All North Carolina counties and municipalities that filed lawsuits against the defendants who were part of the Wave One Settlements, Wave Two Settlements, and Kroger Settlement join the Kroger Settlement by the August 12 deadline.
- Local Counsel release all North Carolina counties and municipalities from any claim regarding the obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against Kroger.
- National Counsel release all North Carolina counties and municipalities from any contractual obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against Kroger.

All of the above conditions must be met in order for Local Counsel to receive funds. If any of the above conditions are not met, the SAAF-2 allocates no Kroger Settlement funds to Local Counsel.

21. How can I learn more about the SAAF-2?

Additional information is available [HERE](#) on the “Kroger Settlement” page of DOJ’s www.MorePowerfulNC.org website.