



# A Review of the First 10 Years of the Master Settlement Agreement

Fiscal Brief

February 9, 2011

*Since 1999, North Carolina has received over \$1.7 billion in MSA payments and used these funds for grants, debt service, cancer research, General Fund availability, and the creation of an endowment.*

## Executive Summary

North Carolina is one of 46 states that are party to the Master Settlement Agreement (MSA) with tobacco product manufacturers. As one of the signatories of the MSA, North Carolina is expected to receive annual payments totaling approximately \$4.56 billion from participating manufacturers over the first 25 years of the agreement, 2000 to 2025; payments are in perpetuity for as long as a participating manufacturer sells cigarettes. North Carolina has already received over \$1.7 billion in MSA funds. This fiscal brief is intended to provide background information on the administration and use of these funds.

To distribute its funds, the North Carolina General Assembly created three grant-making entities: the Health & Wellness Trust Fund Commission (HWTF), the Tobacco Trust Fund Commission (TTF), and the Golden LEAF Foundation. HWTF and TTF are State entities, which use their share of the annual MSA payments for grants. Golden LEAF is an independent nonprofit, which places its share of the MSA payment in an endowment and uses the income from that endowment for grants.

Through FY 2009-10, Golden LEAF, HWTF, and TTF have distributed nearly \$707 million as grants to entities across North Carolina. Eligibility requirements vary across the organizations, and grants range in value from a few thousand dollars to multiple millions.

In addition to grants, the General Assembly has redirected over \$534.4 million in MSA funds from HWTF and TTF to:

- Fund the debt service for new university buildings;
- Support cancer research at UNC; and
- Support General Fund availability.

## Background

In 1998, the Attorneys General from 46 states, including North Carolina, reached an agreement that, once approved by each state, ended their legal battle with four major tobacco manufacturers over health care costs and other damages associated with cigarette smoking.<sup>1</sup> Each state accepted the provisions of the Master Settlement Agreement (MSA) through individual Consent Decrees. In signing the MSA, tobacco companies agreed to a number of conditions, ranging from restrictions on advertising to annual payments to states, and received immunity from state liability claims over harm caused by tobacco.<sup>2</sup>

The original settlement included the four major tobacco product manufacturers – Philip Morris USA, RJ Reynolds Tobacco Company, Brown & Williamson, and Lorillard Tobacco. However, many smaller manufacturers who were not named in the original law suit have signed the MSA and are subject to its conditions, but also have immunity from liability. Together, these companies are known as Participating Manufacturers (PMs).<sup>3</sup>

In 1999, the National Association of Attorneys General (NAAG) estimated that total payments to the settling states would exceed \$206 billion through 2025. At the time, North Carolina was expected to receive approximately 2.3 percent of the total annual payments to states, or \$4.56 billion through 2025.<sup>4</sup>

<sup>1</sup> The four states not party to the MSA are Florida, Minnesota, Mississippi, and Texas; they settled with the tobacco companies prior to the MSA.

<sup>2</sup> For a summary of the conditions of the MSA, [click here](#).

<sup>3</sup> For a current list of participating manufacturers, [click here](#).

<sup>4</sup> Wilson (2), Tobacco Settlement at a Glance.

Through FY 2009-10, North Carolina has received over \$1.7 billion in MSA payments.

Payments to states are based on a formula developed by NAAG; the main driver of the formula is cigarette sales. While estimated payments were calculated for the first 25 years of the agreement, payments to states are in perpetuity. Each PM will continue to make annual payments for as long as that PM sells cigarettes and is a party to the MSA.

### Administration of North Carolina's MSA Funds

The MSA places no restrictions on the use of annual payments, allowing each state to decide how to spend its MSA settlement. The North Carolina General Assembly decided to create three grant-making entities – two commissions and one nonprofit – to administer its MSA funds: the Health & Wellness Trust Fund Commission (HWTF), the Tobacco Trust Fund Commission (TTF), and the Golden LEAF (aka. Long-term Economic Advancement Foundation). The table below shows the amount of MSA funds allocated to each entity by fiscal year.

**Table 1. MSA Principle Payments by Entity**

*\$ in thousands*

Fiscal Year	HWTF	TTF	Golden LEAF	Total
1999-2000	\$ 47,351	\$ 47,351	\$ 94,701	\$ 189,402
2000-01	\$ 35,068	\$ 35,068	\$ 70,137	\$ 140,274
2001-02 <sup>1</sup>	\$ 43,959	\$ 43,959	\$ 87,918	\$ 175,836
2002-03	\$ 42,300	\$ 42,300	\$ 86,628	\$ 171,228
2003-04	\$ 37,627	\$ 37,627	\$ 73,226	\$ 148,480
2004-05	\$ 37,160	\$ 37,160	\$ 74,320	\$ 148,641
2005-06	\$ 34,113	\$ 34,113	\$ 68,227	\$ 136,453
2006-07	\$ 35,706	\$ 35,706	\$ 71,413	\$ 142,825
2007-08	\$ 39,988	\$ 39,988	\$ 79,977	\$ 159,954
2008-09	\$ 43,797	\$ 43,797	\$ 87,593	\$ 175,187
2009-10	\$ 36,590	\$ 36,590	\$ 73,179	\$ 146,358
<b>Total</b>	<b>\$ 433,659</b>	<b>\$ 433,659</b>	<b>\$ 867,319</b>	<b>\$ 1,734,638</b>

### Health & Wellness Trust Fund Commission

#### The Health and Wellness Trust Fund Commission

([Article 6C of Chapter 147](#)) was established in 2000 by the North Carolina General Assembly. The Commission is located within the Department of Health & Human Services and is overseen by an 18-member Commission appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The enabling statute outlined the following purposes for HWTF:

- To address the health needs of vulnerable and underserved populations in North Carolina.

- To fund programs and initiatives that include research, education, prevention and treatment of health problems in North Carolina, and to increase the capacity of communities to respond to the public's health needs.
- To develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of North Carolinians.

Per Section (6) of [S.L. 1999-2](#), HWTF administers 25 percent of North Carolina's annual MSA payment. HWTF grants may be awarded to State government entities; local governments or other political subdivisions of the State; or nonprofits that have a significant purpose promoting the public's health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use. HWTF may use up to 2.5% of annual receipts or \$1 million, whichever is less, for the administrative and operating expenses of the Commission and its staff.

### Tobacco Trust Fund Commission

Established in 2000 by the North Carolina General Assembly ([Article 75 of Chapter 143](#)), per Section (6) of [S.L. 1999-2](#), the [Tobacco Trust Fund Commission](#) administers 25 percent of North Carolina's MSA funds. TTF is located within the Department of Agriculture and Consumer Services but exercises its powers independently of the Commissioner of Agriculture. The Commission is made up of 18 members, appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. By statute, at least half of the members of the Commission must be tobacco farmers. TTF operates two grant programs:

#### *Indirect Compensatory Programs*

- **Purpose:** To compensate and indemnify persons engaged in tobacco-related businesses who have suffered actual economic losses due to lost quota, the decline in value of tobacco-related personal property assets, and declining market conditions resulting from the MSA.
- **Eligibility:** Entities that serve groups of individuals who qualify for compensation.

### *Qualified Agricultural Programs*

- **Purpose:** To support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy, particularly the segment adversely affected by the MSA. The objective of these programs is to reduce unemployment, improve the local tax bases, and encourage economic stability.
- **Eligibility:** Federal, State, and local governmental units; 501(c)(3) and other non-profit organizations; and for-profit corporations.

TTF may use up to 2.5% of annual receipts or \$1 million, whichever is less, for the administrative and operating expenses of the Commission and its staff.

### Golden LEAF Foundation

Authorized in [S.L. 1999-2](#) and established by charter in 1999, the [Golden LEAF Foundation](#) is a non-profit organization formed for the purpose of receiving 50% of the annual MSA payment. A 15-member board appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives oversees Foundation operations.

Unlike HWTF and TTF, Golden LEAF is a private nonprofit. It is not a State entity; its employees are not State employees; its funds do not pass through the State Treasury. Another distinction is that its MSA distributions are placed into an endowment and the income generated from that endowment funds the Foundation's activities. Golden LEAF's Articles of Incorporation state that Golden LEAF "shall endeavor to preserve and enhance its principal assets, with economic impact assistance to be provided, to the extent feasible and circumstances allow, through the use of income generated by such assets."

As of December 2010, Golden LEAF's endowment had a value of approximately \$600 million. Income from the endowment varies with the performance of the investments and with the size of the endowment. In FY 2006-07, income from the endowment was over \$101 million; however, in FY 2007-08 and FY 2008-09, the value of the endowment fell with the market, accumulating over \$150 million in losses. By FY 2009-10, investment income was once again positive, with income of \$66.8 million.

Golden LEAF funds must be used for charitable, scientific, educational, or tax-exempt public purposes. Government entities and nonprofits are eligible for

Golden LEAF grants. To accomplish this, Golden LEAF provides grants to support tobacco-dependent, economically distressed, or rural communities in North Carolina working to transition to more prosperous and stable economies.

### **Use of North Carolina's MSA Payments**

North Carolina has received over \$1.7 billion in MSA payments since FY 1999-2000. Golden LEAF, HWTF, and TTF have distributed nearly \$707 million as grants to entities across North Carolina. Aside from these grants, the General Assembly has reallocated \$534.4 million in MSA funds for non-grant purposes.

### Grants

Between FY 1999-2000 and FY 2009-10, 1,713 grants have been awarded for a total of approximately \$707 million, with an average grant size of \$331,000. While the average grant size across the entities are within a fairly small range, between \$374,000 and \$269,000 excluding two outliers discussed below, the number of grants given by the three entities varies more significantly; Golden LEAF has given over 950 grants, HWTF has awarded over 580, and TTF has awarded fewer than 175 (See Table 2). The variation in number of grants awarded is primarily the result of the fact that the North Carolina General Assembly has reallocated MSA payments to HWTF and TTF for non-grant purposes, thereby reducing funding available for grants.

### *Award Values*

All three entities give grants ranging from a few thousand dollars to multiple millions. The largest grant provided from MSA funds was provided in FY 2007-08 by Golden LEAF to the North Carolina Global Transpark Authority in the amount of \$100 million. The second largest grantee, the Flue-Cured Tobacco Cooperative Stabilization Corporation, received \$41 million from TTF in FY 2000-01. These two large grants are outliers for these organizations.

Excluding these outliers, Golden LEAF's largest grants awarded \$35.5 million to NC State University to establish the Biomanufacturing Training and Education Center. TTF's second largest grant provided \$6m to the North Carolina Rural Economic Development Center for the NC Drought Response Program. Lastly, HWTF's largest grant provided \$7 million to the Department of Health & Human Services' Office of Rural Health and Community Care. Table 2 provides the total number, value, and average size of grants awarded for the three entities, excluding the two outliers. The average award for all

three entities falls within a fairly small range, from \$269,000 to \$374,000.

**Table 2. Count and Value of Grants Awarded by Entity**  
*FY 2000 - 2010, \$ in thousands, excludes outliers*

	Number of Awards	Value of Awards	Average Award
Golden LEAF	953	\$ 356,689	\$ 374
TTF	171	\$ 51,459	\$ 301
HWTF	587	\$ 157,720	\$ 269
<b>Overall</b>	<b>1,711</b>	<b>\$ 565,869</b>	<b>\$ 331</b>

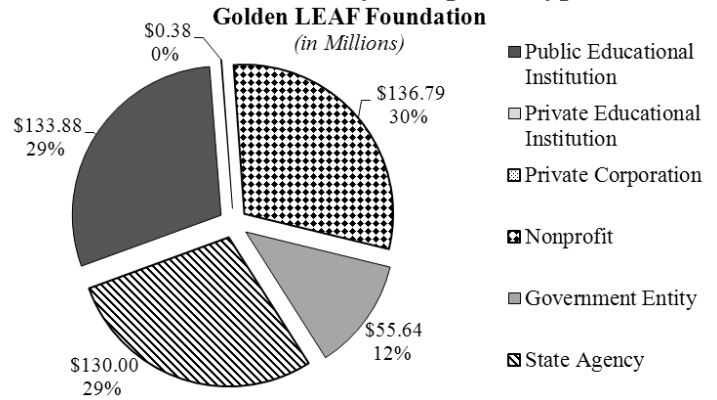
**Award Recipients**

Nonprofits and government entities (from state agencies to councils of government) are eligible for grants from all three entities. In addition, TTF provides grants to individuals and private corporations.

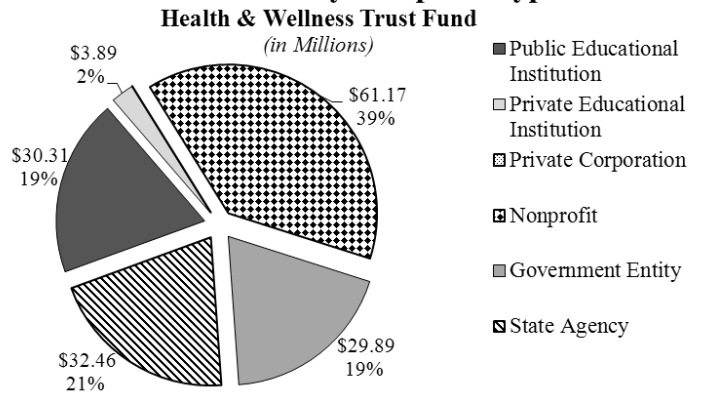
The following charts show the value of grants provided to the major categories of recipients: Public Educational Institutions; Private Educational Institutions; Private Corporations; Nonprofits; Government Entities, and State Agencies.

Across all entities, nonprofits are the single largest recipient of grant funds, receiving over 39 percent of total funds. Combined, Public Educational Institutions and State Agencies make up over 50 percent of total grant value, receiving 23.6 percent and 23.4 percent of total funds respectively. The charts below provide the value of awards by recipient type for each of the MSA organizations.

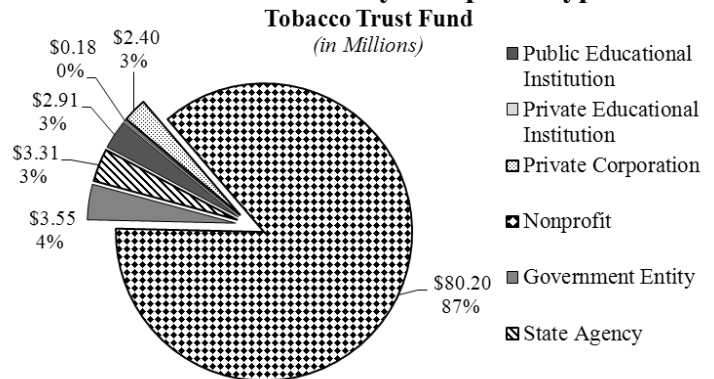
**Value of Awards by Recipient Type**



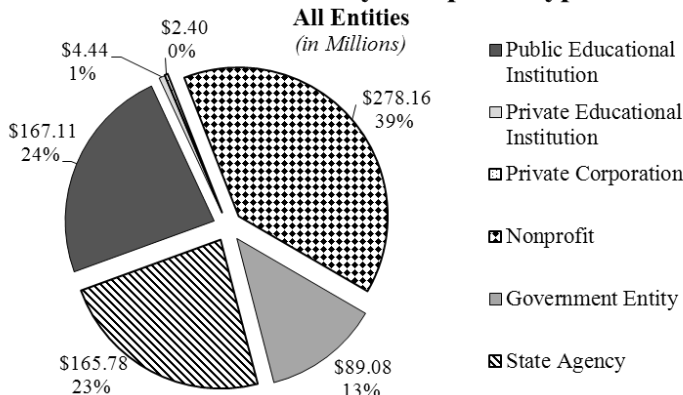
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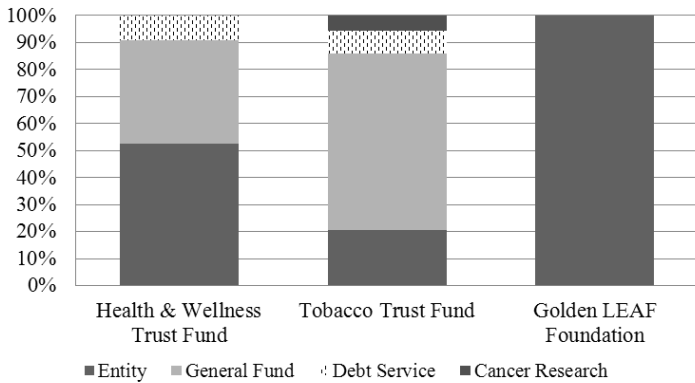


**Other Uses**

While the 1999 General Assembly established the three entities to make grants with the MSA payments, subsequent General Assemblies have reallocated MSA funds for other, non-grant purposes. These reallocated funds, often called “diversions”, have been used to balance the budget, to finance capital projects, and to fund cancer research. The chart and table below show, in total dollars and as a percentage of total funds, how MSA payments have been used by each organization.

“Entity” means that the organization received the funds and used them for their designated purpose; the other categories show the use of diverted funds. “General Fund” indicates that the funds were diverted to the General Fund for general availability or to balance the budget; “Debt Service” shows the percent of total funds used to fund debt authorized in S.L. 2004-179; “Cancer Research” is the percent of funds used for research purposes. A discussion of each of these uses follows the graphic and table.

**Use of MSA Funds  
FY 1999-2000 to FY 2009-10**



**Table 3. Use of MSA Funds**

*\$ in thousands*

	HWTF	TTF	Golden LEAF	Total
Entity	\$ 244,176	\$ 88,795	\$ 867,319	\$ 1,200,290
<i>Percent of Total</i>	<i>56%</i>	<i>20%</i>	<i>100%</i>	<i>69%</i>
General Fund	\$ 152,303	\$ 283,684	\$ -	\$ 435,987
<i>Percent of Total</i>	<i>35%</i>	<i>65%</i>	<i>0%</i>	<i>25%</i>
Debt Service	\$ 37,180	\$ 37,180	\$ -	\$ 74,361
<i>Percent of Total</i>	<i>9%</i>	<i>9%</i>	<i>0%</i>	<i>4%</i>
Cancer Research	\$ -	\$ 24,000	\$ -	\$ 24,000
<i>Percent of Total</i>	<i>0%</i>	<i>6%</i>	<i>0%</i>	<i>1%</i>
<b>Total Funds</b>	<b>\$ 433,659</b>	<b>\$ 433,659</b>	<b>\$ 867,319</b>	<b>\$ 1,734,638</b>

As shown in Table 3, MSA funds distributed to both HWTF and TTF have been diverted and used for non-entity specific purposes, but no funds have been diverted from Golden LEAF. Nevertheless, the General Assembly has the legal authority to redirect MSA payments to Golden LEAF but it must do so before the MSA payment is received. With regards to the Foundation’s endowment, unless Golden LEAF voluntarily directs its assets to the State, the General Assembly cannot acquire the Foundation’s endowment without dissolving the corporation.<sup>5</sup>

<sup>5</sup> For additional information on this matter, [click here](#) for the legal opinion written by Walker Regan, Director of the Research Division

*General Fund Availability*

Both the Governor and the General Assembly have directed that funds from HWTF and TTF be used to bolster the General Fund. Pursuant to the Governor’s constitutional emergency duty and power, funds were diverted during the State’s fiscal crisis in 2001 and again during this recent economic downturn to balance the budget. The General Assembly has also chosen to use a portion of the MSA payments to support the General Fund appropriations. Table 4 provides General Fund diversions by entity by year as well as the authority for the action.

**Table 4. Actual General Fund Diversions by Year**

*\$ in thousands*

	HWTF	TTF	Authority
<b>1999-2000</b>	\$ -	\$ -	
<b>2000-01</b>	\$ -	\$ -	
<b>2001-02</b>	\$ 32,005	\$ 82,005	Executive Order
<b>2002-03</b>	\$ 40,001	\$ 38,000	NCGA, S.L. 2002-126
<b>2003-04</b>	\$ 25,900	\$ 37,147	NCGA, S.L. 2003-284
<b>2004-05</b>	\$ 25,000	\$ 35,000	NCGA, S.L. 2004-124
<b>2005-06</b>	\$ -	\$ 32,134	NCGA, S.L. 2005-276
<b>2006-07</b>	\$ -	\$ 30,000	NCGA, S.L. 2005-276
<b>2007-08</b>	\$ -	\$ -	
<b>2008-09</b>	\$ 5,000	\$ 5,000	NCGA, S.L. 2008-107
<b>2008-09</b>	\$ 19,398	\$ 19,398	Executive Order
<b>2009-10</b>	\$ 5,000	\$ 5,000	NCGA, S.L. 2009-451
<b>Total</b>	<b>\$ 152,303</b>	<b>\$ 283,684</b>	

*Debt Service*

In 2003-04, the General Assembly passed [S.L. 2004-179](#), requiring TTF and HWTF to provide the debt service for ten health, education, and youth facilities. The debt finances the following facilities:

- A Cancer Rehabilitation and Treatment Center at the UNC Hospitals in Chapel Hill;
- A Cardiovascular Diseases Institute at East Carolina University;
- A Bioinformatics Center at UNC Charlotte;
- A Pharmacy School located at Elizabeth City State University;
- A Center for Health Promotion and Partnership at UNC Asheville, now known as the Mountain Area Health Education Center;
- A Center of Excellence of Teaching and Nursing at Fayetteville State University;



- A joint Millennial Campus for NCA&T and UNC Greensboro;
- An Optometry School for UNC Pembroke (the funds are now being used to build the UNC Pembroke School of Nursing);
- The North Carolina Center for Health and Aging at Western Carolina University, now known as the Health and Gerontological Sciences Building; and
- A Piedmont-Triad Research Park including a Center for Design Innovation at Winston-Salem State University.

reports contain information on funds distributed during the fiscal year by amount, purpose, and category of recipient as well as other information as requested by the Joint Legislative Commission on Government Operations. For Golden LEAF, the annual report must include information on the fiscal year's activities, accomplishments, and expenditures as well as planned activities, goals, and expenditures for the next fiscal year. If needed, copies of these reports may be requested from the Fiscal Research Division.

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Per S.L. 2004-179, HWTF and TTF are authorized to spend up to 65% of receipts for the fiscal year on debt service. Since FY 2005-06, HWTF and TTF have each spent over \$37.1 million, or 19.6% of the MSA payments for those years, on debt service payments. Debt service requirements have increased each year, reaching \$15.3 million in FY 2009-10, up from \$2 million in FY 2005-06. In FY 2009-10, servicing the debt utilized 41.8% of the MSA payments. These payments service six different debt issuances that are scheduled to mature in FY 2028-29. Another debt issuance is expected in FY 2010-11 and will increase payments and extend this timeframe.

### *Cancer Research*

Since FY 2007-08, TTF has transferred \$24 million, or \$8 million per year, to the University Cancer Research Fund. This action is pursuant to S.L. 2007-323, Section 6.23(b) which amended G.S. 116-29.1 to establish a \$50 million University Cancer Research fund funded by \$8 million annually from TTF, certain taxes on tobacco products, and the General Fund. Monies from the University Cancer Research Fund can be allocated at the discretion of the Cancer Research Fund Committee and are to be used only for the purpose of cancer research under UNC Hospitals, the Lineberger Comprehensive Cancer Center, or both.

### **Conclusion**

Since MSA payments began in FY 1999-2000, North Carolina has benefited from the influx of over \$1.7 billion in MSA payments. While this fiscal brief provides a high level overview of the administration and uses of these funds, more detailed information on specific grants or program operations is available. All three organizations are required to submit an annual report to the Joint Legislative Commission on Governmental Operations. For HWTF and TTF, these

