

Finance Office Hours for Health Centers

Questions and Answers from the April 3, 2020 Session

Presented by: Jeff Allen, Partner, BKD; Mike Tracy, OMNI Human Resource Management (HRM); Mike Holmes, Cook Area Health Services/Scenic Rivers Health Services; Gervean Williams, NACHC

Question Responses from: Jeff Allen and David Fields, BKD; Mike Tracy, OMNI HRM; Mike Holmes, Cook Area Health Services/Scenic Rivers Health Services; Noori Ali and Michael Glomb, Feldesman Tucker Leifer Fidell (FTLF)

Background

This document summarizes questions received via the chat during the finance office hours for health centers. The session was attended by 486 participants from health centers, primary care associations, health center controlled networks, and national cooperative agreement entities funded by the Health Resources and Services Administration. Experts participating in the session have shared their responses to these questions. This document is organized into the three categories of questions received:

- I. Small Business Administration (SBA) Paycheck Protection Program (PPP)
- II. Families First Corona Virus Response Act (FFCRA) and Family Medical Leave Act (FMLA)
- III. Other Topics

Disclaimers

BKD is providing guidance based on a current understanding of the rules. The guidance from COVID stimulus and relief funding is changing almost daily and you should always consult the rule making authorities before making final decisions. We are not attorneys nor are we qualified to provide legal advice.

Feldesman Tucker: The opinions expressed in these materials are solely the views of FTLF attorneys and are presented with the understanding that the authors are not engaged in rendering legal or other professional services. If specific legal advice or other expert assistance is required, the services of a competent professional should be sought.

Information from this document was accurate as of April 3, 2020. Please check appropriate sources for more current and up to date information.

Questions

I. Small Business Administration (SBA) Paycheck Protection Program (PPP)

For PPP loan information, check Capital Link's resources here: <http://caplink.org/covid-19>. It has links to the SBA PPP instructions as well as an Excel template for calculating eligible amounts for PPP.

Question: One of my CFO's asks: On the SBA Paycheck Protection Program, I read that if used for payroll expenses it is a forgivable loan. By taking this forgivable loan:

- 1. Does it affect any other grant? (like HRSA grants)?**
- 2. And, if we take the emergency sick leave paid credit, would that make us ineligible to take the Payroll Protection Loan or other credits or grants?**

You are eligible for a Paycheck Protection Loan even if you receive grant funds for payroll costs as long as you certify that the loan is necessary to support ongoing operations. However, you cannot use grant funds to support the same expenses paid for by the loan. Therefore, it may be necessary to re-allocate grant-supported payroll costs to other allowable costs, consistent with HRSA requirements. You cannot use Payroll Protection loan proceeds for sick and family leave wages for which a credit is allowed, but the loan proceeds could be used for other payroll costs covered by the loan.

1. The PPP loan is forgivable provided you meet certain requirements. See Section 2o of the PPP interim final rule for current guidance.¹ Part of the requirement that at least 75% must be qualifying payroll costs.
2. Federal grant costs should not be included as a cost of another federally financed program. While no definitive guidance has been put forth on how forgiven PPP loans will be treated for a CHC (e.g. could it be federal funds?), the general guidance provided by HRSA and Uniform Grant Guidance rules indicate you may not charge a cost to the grant and use the cost to apply for loan forgiveness.
3. The CARES Act expressly excludes qualified sick and family leave wages for which a credit is allowed under the FFCRA (direct quote from Treasury Fact Sheet).

Question: How do we handle the PPP loan with salaries that are being partially paid by our 330 grant?

You are eligible for a Paycheck Protection Loan even if you receive grant funds for payroll costs as long as you certify that the loan is necessary to support ongoing operations. However, you cannot use grant funds to support the same expenses paid for by the loan. Therefore, it may be necessary to re-allocate grant-supported payroll costs to other allowable costs, consistent with HRSA requirements.

You should not "double dip" or ask for forgiveness for expenses that are paid with grant

¹ SBA PPP IFRN section 2o: Can my PPP loan be forgiven in whole or in part? Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

funds. The goal then is to be strategic with how you are obligating your funds with recent influx of capital. Things to consider include:

1. You have eight weeks to incur qualifying expenses on the PPP forgiveness.
2. Should you divert costs away from the CHC grant during the 8 week window you will likely need to re-budget based on the amounts shifted and how you budgeted initially.

Question: Why would there be any relation to a SBA Loan and our HRSA Grant related to payment of salaries? Two different government entities. Even if our grant didn't cover salaries, we would try to get a loan for cash to pay our payroll costs.

You are eligible for a Paycheck Protection Loan even if you receive grant funds for payroll costs as long as you certify that the loan is necessary to support ongoing operations. However, you cannot use grant funds to support the same expenses paid for by the loan. Therefore, it may be necessary to re-allocate grant-supported payroll costs to other allowable costs, consistent with HRSA requirements.

The emphasis is on tracking what you are charging to the grant as well as what you are claiming to qualify for PPP forgiveness. Avoiding a "double dip" on costs needs to be top of mind, as does the potential need to re-budget for the CHC grant. The overall principle behind this is the Uniform Grant Guidance principles that do not allow you to use grant funds for multiple sources. This was mentioned in a HRSA update that there should not be double dipping.

Question: We may have already cut our personnel numbers/expenses by 25% or more. If so, what is the implication for the PPP loan forgiveness?

My understanding from the SBA documents is that 2/15/20 is the 'watermark' date for number of employees and wages against which the June 30, 2020 statistics will be measured. Reductions after 2/15/20 need to be recouped (use of the loan money) in order to meet requirements for number of employees and wages by June 30, 2020. Reductions *prior* to 2/15/20 w/be reflected in the calculation of your monthly payroll 'watermark' figures.

Please look for further administrative guidance from the Federal government on this issue. However, a recent Treasury Department PPP Fact Sheet framed it in this manner: *You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. It is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs. You will owe money if you do not maintain your staff and payroll.*

1. *Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount;*
2. *Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019;*
3. *Rehiring: You have until 6/30/2020 to restore your full-time employment salary levels for any changes made between 2/15/2020 and 4/26/2020.*

Question: Our bank suggested we apply even though we are over 500 employees. We submitted with a letter stating why we should be considered, doesn't hurt, but we need something for larger FQHC's.

You may qualify for an SBA loan based on other small business standards in the CARES Act. You should work with your bank to see if you fit in there. Capital Link also can help you with that.

Given the administrative strain on banks and SBA, I would encourage caution. As someone who serves CHCs, I am personally an advocate for them, but the current SBA application has numerous attestation requirements of the applicant. I would urge caution in too much reliance on the bank given the volume of applications. Additional options for those > 500 employees include EIDL loans (apply through SBA) or the yet-to-be rolled out mid-sized business emergency loan program. Both have very favorable terms but no forgiveness.

Question: Are there financial criteria that determines whether you can be approved for the loan? For example, do you have to show cash need such as low days cash on hand, etc.? And, how does current financial position impact the amount that can be forgiven?

Assuming that this question refers to the Paycheck Protection Program, we are seeing in practice that banks are permitted and have different documentation requirements during the application process, so experiences may vary. However, the forgiveness terms are outlined in the SBA PPP IFRN section 2o, and they do not mention an entity's current financial position. The forgiveness calculation should be consistent across the program regardless of lender.

See PPP IFRN section 2o for discussion of forgiveness terms and/or requirements. The banks servicing the loans may have additional requirements for applicants. However, the PPP IFRN states the minimum required application documentation is:

1. SBA Form 2483 PPP Application Form and
2. Payroll documentation demonstrating a borrower had employees for whom the borrower paid salaries and payroll taxes.

The lender has to follow Bank Secrecy Act regs, so expect some of the standard documentation to apply.

Question: If we get forgiven PPP, for say Jul and Aug, can we not allocate HRSA to those months and then allocate 2 months pro-rata HRSA to say Sept and Oct?

Correct. If PPP proceeds cover payroll costs for a period, you will have to re-allocate grant funds awarded for those costs to other allowable grant costs, consistent with HRSA requirements. You cannot use grant funds to cover costs already paid for by the loan.

The PPP loan forgiveness period begins at the origination date for the loan and lasts for 8 weeks. The current and expected future guidance is that you are not allowed to double dip expenses. If you wish to claim HRSA grant dollars for salary expenses, then they would be re-budgeted so as to not include SBA PPP loan funds. This is most likely to be accomplished by shifting costs outside of the PPP 8 week period. If you choose to

use other costs within the PPP 8 week period, then please consider cost principles considerations (i.e. time and effort reporting) if you are going to be splitting an employee's time between multiple federal funding streams.

Question: Can you apply for the PPP through different banks since Wells Fargo and Bank of America are not accepting applications now?

The PPP IFRN states you cannot apply for more than one PPP loan. We recommend using those existing relationships to make sure they have a spot for you and will get the application processed.

Question: I don't understand the last section on the last page which applies to ER's 500+ employees... how do we apply for this?

I believe this question is in reference to the Public Health & Social Services Emergency Fund. This \$100B fund is available to all health care providers and is sure to be competitive, as some funds can be used to replace foregone revenue. As of 4/10/20, \$30 billion was distributed to the entire health care industry utilizing Medicare payment information.

Question: If our HRSA grant budget is allocated to Payroll, are we eligible to apply for the payroll loan? If so, would HRSA allow the use of those funds to replace revenue in this situation?

You are eligible for a Paycheck Protection Loan even if you receive grant funds for payroll costs as long as you certify that the loan is necessary to support ongoing operations. However, you cannot use grant funds to support the same expenses paid for by the loan. Therefore, it may be necessary to re-allocate grant-supported payroll costs to other allowable costs, consistent with HRSA requirements.

Please use federal cost principles, re-budgeting, and clear expense matching with revenue sources (CHC grant, COVID grant, PPP loan, etc.) to maximize the benefit. If you just budgeted the CHC grant to personnel costs, you will need to re-budget in order to move some of those costs around -OR- you may charge personnel costs more aggressively (i.e. greater than the 1/12th for base funding typically seen), should you have the personnel costs to do so. The replacement of revenue will not meet federal cost principles and will not be approved by HRSA.

Question: I do use my H80 grant for approximately 23% of my payroll. Would it be considered double dipping if I used the PPP loan for additional percentage of payroll? Both funding sources would not reimburse for all of the payroll. I'm looking at this on an annual basis. Should I just be looking at the payroll expense for the 3 months?

This does not sound like double dipping as presented. A couple things to consider: would it be easier to document and support the use of 100% of your payroll (and some other qualifying costs) on the PPP program and then shift your H80 funds once the PPP forgiveness is "earned"? If you pursue this, are you putting any of your H80 money at risk based on your grant budget period and the knowledge base funding carry over is at risk? If you run these programs concurrently, will you have adequate cost to cover the

PPP forgiveness requirement? We encourage reconsidering and managing your risk.

Question: I use my HRSA 330 grant for payroll, which covers about 40% of payroll costs. I'm planning to apply for a PPP loan. If I am able to get all or part of the PPP loan forgiven, will that be considered "double dipping" on those salaries?

This does not sound like double dipping as presented. A couple things to consider: would it be easier to document and support the use of 100% of your payroll (and some other qualifying costs) on the PPP program and then shift your H80 funds once the PPP forgiveness is "earned"? If you pursue this, are you putting any of your H80 money at risk based on your grant budget period and the knowledge base funding carry over is at risk? If you run these programs concurrently, will you have adequate cost to cover the PPP forgiveness requirement? We encourage reconsidering and managing your risk.

Question: If the majority of payroll costs are covered by state/federal grants and only a portion of salaries is covered by program income/insurance income, can we apply for a PPP loan and only use it for salaries that are not covered by grants? The applications look like you have to put total salaries on the application form to calculate the amount of the loan. However, we don't need to have the total salaries covered.

1. Can you apply for the total and then only use a portion of it?
2. Or, somehow can you only apply for a portion of your salaries?

You can apply for a portion of the salary. But you also could apply for all payroll costs eligible under the loan program and then re-allocate grant funds to other allowable expenses, consistent with HRSA, and applicable state requirements.

There is a cap on the amount to be borrowed under PPP but no apparent floor. Without seeing the application, total salaries may be helping them establish a baseline for number of staff and level of payroll. Should you find that you borrowed too much, take some comfort in knowing the interest rate is 1.00% (fixed), payments are deferred for 6 months, and it is a 2-year term. Speak to your lender about the logistics of applying for less than the cap.

Question: Talked to our lenders, they are stating that they do not have directions yet for the SBA Forgiveness/1% CARES loans. Is it just our lender?

Many lenders have been working diligently to gather the necessary documentation to effectively administer the loans. There is new and clarifying guidance that is being released every couple of days. Expect that patience will be required as we all wait for things to be finalized.

Question: We were told today that the PPP application process would be available today, however, our bank Wells Fargo is not. Do you know how this funding works? Is it first come first serve, or does each bank get an allocation of funds?

Many banks are only providing loans to their existing customers, so approach your local bank first. If your local bank says no, contact jchapman@caplink.org who can help you find a lender.

This is a first-come, first-serve process once the application reaches the SBA, but banks are likely taking care of their existing relationships first. Public statements from the federal government indicate a willingness to get significant additional funding should the designated fund run out, but this had not been voted on as of 4/9/20.

Question: First-come, first-served on PPP loan meaning they'll process first ones first, or there is a limited amount of funding available? Thank you.

The CARES Act provides \$349 billion for this program. Congress may add funds in the future.

There is a limited fund set aside. Public statements from the federal government indicate a willingness to get significant additional funding should the designated fund run out, but this had not been voted on as of 4/9/20.

Question: If you only charge gross wages to the HRSA grant, you could use the loan funds to pay taxes/benefits for those employees, correct?

Yes, to a certain extent. You also could use loan proceeds to cover all payroll costs and then re-allocate the grant award to other allowable expenses, consistent with HRSA requirements.

Per the PPP IFRN, payroll costs consist of compensation to employees (long list of types), tips, payment for vacation or leave, allowance for separation or dismissal, payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees. The most notable omission from this list is federal taxes on compensation of employees. Our recommendation, however, as indicated in the webinar and additional questions is to consider rebudgeting grant cost to allow you to more fully utilize the SBA PPP loan forgiveness.

Question: If we are lucky enough to get awarded the Payroll Protection Program, how will that impact order of spending? Our year end is May 31, 2020 and we have applied for \$3.3 million. Do these funds have to be spent before federal dollars?

This is a complex and nuanced question. Under the SBA PPP program you have 8 weeks from the origination of the loan to accumulated expenditures that qualify for the forgiveness of funds and the current guidance is that you may NOT double dip or count expenses for grants and forgiveness. As previously discussed, the current recommendation is to re-budget expenses. In the case of a 5/31/20 CHC grant year-ended a rebudgeting would likely involve rebudgeting so that the CHC grant expenditures for salaries are now accumulated prior to the SBA PPP loan origination date. So you would accumulate those expenses from 6/1/19 to the loan origination date in April. The strategy discussed currently is to spend the most restrictive dollars in a particular period first and to rebudget other expenditures out of the restricted period. If you would like a more detailed and nuanced answer, then it will require a phone call.

Question: What NAICS number do FQHC's use?

BKD uses and believes 621111 is the correct NAICS number.

Question: By definition, are telephones considered utilities?

Note that there must have been a service agreement in place by February 15, 2020, and not more than 25% of the total loan proceeds can be used for non-payroll costs.

The CARES Act defines covered utility payment as payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020

II. Families First Corona Virus Response Act (FFCRA) and Family Medical Leave Act (FMLA)

Overall Guidance from HRSA Bureau of Primary Health Care: *Please refer to the [Department of Labor](#) for information on common issues employers and employees face when responding to COVID-19 and its effects on wages and hours worked under the Fair Labor Standards Act (FLSA), job-protected leave under the Family and Medical Leave Act (FMLA), and paid sick leave and expanded family and medical leave under the Families First Coronavirus Response Act (FFCRA).*

Question: Are those FMLA subsidies only for employers under 500?

FFCRA is for hours paid beginning on 4/1. FFCRA sick leave and expanded family and medical leave only applies to orgs less than 500 (with very few exceptions in different industries).

Question: Department of Labor says healthcare workers are excluded from the 10 days of sick leave? Is this correct? I guess CEO's can decide to participate or not?

The Act states: *With a finding of good cause, Labor may (1) exclude certain health care providers and emergency responders from eligibility for emergency paid sick leave.* There should be consideration to the 'With good cause' statement in this exemption. Employers of health care providers may choose whether or not to use this exception, but make judicious use of this exemption and not just consider this a 'blanket' exemption.

See FAQ #56 on the link below: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Some health centers are still granting this leave.

Question: Our labor attorney has advised as "health care provider" we are exempt from these requirements. In addition, it has been confirmed that "healthcare provider" applies to all our employees. CCNK's (Kansas PCA) has also provided such confirmation.

Health care providers are excepted from sick pay and the expanded family and medical leave under the FFCRA. The definition of health care provider includes health care providers as defined under the FMLA as well as an expanded definition released by the Department of Labor in its April 1, 2020 regulations.

See FAQ #56 on the link below: <https://www.dol.gov/agencies/whd/pandemic/ffcra->

[questions](#)

Some health centers are still granting this leave.

Question: Since the DOL definition of health care provider includes anyone who works at a doctor's office....aren't we exempt from having to pay them under the FMLA Expansion?

See FAQ #56 on the link below: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Some health centers are still granting this leave.

Question: Regarding the Families First Corona Virus Response Act, is there an exemption/exclusion for healthcare and emergency response organizations from paid FMLA expansion?

Yes. The exclusion for health care providers and emergency responders applies to both the paid sick leave and expanded FMLA provisions of the FFCRA.

See FAQ #56 on the link below: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Some health centers are still granting this leave.

Question: Question regarding family first care act, as we know employer of health care provider can choose to exempt from this rule, but could an employer pick and choose to apply the rule to only non-provider (like admin and other staffs) in the organization?

Yes, you can pick and choose selected staff. And, organizations under 25 employees may opt out all together. The Act says: *to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A); and (B) to exempt small businesses with fewer than 50 employees from the requirements of section 102(a)(1)(F) when the imposition of such requirements would jeopardize the viability of the business as a going concern.*

See FAQ #56 on the link below: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Some health centers are still granting this leave.

Question: Is FFCRA for hours paid beginning 4/1 or can it include hours for payrolls paid on or after 4/1?

FFCRA is for hours paid beginning on 4/1. FFCRA sick leave and expanded family and medical leave only applies to orgs less than 500.

Question: Is FFCRA for hours worked beginning 4/1 or payrolls paid on or after 4/1?

We're tracking and counseling 'hours worked' after 4/1, regardless of payroll date.

III. Other Topics

Question: How and when will the \$1.32B of Emergency Funding for Health Centers be distributed?

HRSA has indicated that it will be on the same timeline as the first supplement funding. That should be by mid-April.

Question: Do you anticipate the CARES Act CHC supplemental funding to be allocated in a similar way to the HRSA supplemental funding? Thank you.

HRSA has indicated that it will be similar to, but not the same formula.

Question: I keep reading conflicting informaton regarding Medicare telehealth reimbursement. Our we getting our PPS rate (office visit reimbursement) or a FMV rate for telehealth CPT codes?

The Medicare payment will be based on a composite rate that is similar to the payment that applies to payment for comparable telehealth services under the physician fee schedule. This rate will not be the PPS rate.

CMS is still working to clarify this guidance. While we recognize it is frustrating for FQHCs, we will need to wait for that guidance for clarity of the reimbursement rate.

Question: Would you have the ability to utilize the HRSA grant to support employees salary over 100k?

Yes, assuming it is an allowable expense under the grant budget but still subject to the Federal Executive Pay Scale Level II rate (the salary cap). The most recent figure I have seen (effective 1/2020) is \$197,300. Be mindful of any cost principles that would come into play if you are using multiple federal programs to support an employee's salary.

Question: Can you have more focus on larger FQHC's with over 500 employees?

NACHC did a webinar on this topic on April 8. You may want to download those materials from the [NACHC COVID-19 Resources website](#).

Question: Is the Noddlepod for Covid different or the same as the pharmacy noddlepod?

The 340B noddlepod is different from the COVID channel.

All recordings and materials from each session of this series are posted at: <http://www.nachc.org/trainings-and-conferences/financialoperations-management/finance-office-hours-for-health-centers/>