

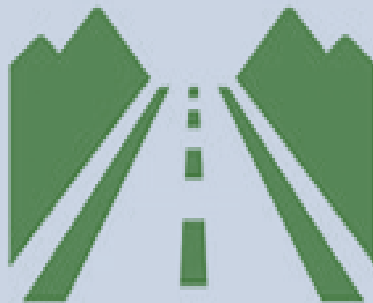
DHHS COVID Grants, Loans and Financial Management Primer

*An **AHCA/NCAL** Road to Recovery and Reinvention©*

Phase 1 Resource

Version 1

April 27, 2020



Acknowledgements

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Disclaimer

This primer and that accompanying calculator are basic guides to COVID-19-related federal grants, loans, and other programs available to health care providers. The document and calculator offer a general framework for approaching grant and loan opportunities and financial management. The information is based upon federal agency summary materials, AHCA/NCAL staff discussions with federal officials and interpretations of federal guidance. In no way does this primer supplant guidance from Certified Public Accountants and/or Legal Counsel.

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Overview

Very likely in the coming years, the skilled nursing facility (SNF) sector will be responding, and adapting, to the effects of COVID-19 virus in an ongoing manner. This response will occur over multiple phases, and require a strategic plan. AHCA/NCAL is developing a “Road to Recovery and Reinvention[®]” plan at the operator and industry level. It’s challenging for leaders to focus on recovery now because they are in survival mode; scrambling for protective personal equipment (PPE), protecting staff and residents while revenue declines significantly and costs increase. However, as the country gradually travels down **the road to recovery and reinvention**, so will the industry.

AHCA is preparing a comprehensive program—The Recovery & Reinvention Roadmap[®]—to help members get back on stable footing and position for success in each of these phases. As part of the program, members will have access to industry outlooks and advice, member best practices and learnings, and specific tools to help operators assess and recalibrate operations and strategy. The program will include relevant content in a variety of formats—virtual webinars (e.g., virtual leadership summits), podcasts (e.g., interviews with successful members), worksheets, and market data reports. Together, AHCA and its members will pool learnings, best practices, and efforts to adapt clinical and administrative practices to best serve patients and residents.

This document and the accompanying COVID-Related Loss and Costs Calculator are part of the first phase of AHCA/NCAL resources in the Association’s **Reimbursement Recovery & Reinvention Road Map[®]**. The Road Map is a year-long guide divided into four Phases:



Phase 1: Surviving the Surge

- Managing COVID-19 relief grants and loans
- Ensuring maximum accuracy in billing to bolster cash flow via Billing 101 Training
- Market Positioning in a COVID Environment via AHCA’s P3 Resource
- Audit Guidance
- Re-defining SNF care relative to COVID in the near-term



Phase 2: Managing through Reoccurrence

- Developing new hospital communication approaches
- Retooling staffing and operations
- Developing new operating costs



Phase 3: Restructure to Recovery

- Cost Reporting to refine SNF reimbursement in a COVID environment
- PDPM coding to ensure adequate and appropriate reimbursement
- Continuing market positioning within SNF current



Phase 4: Redesign to Reality

- New Service Lines
- Specialty Units or Buildings in Including COVID-Positive Focused
- Possible Elements of the Unified Post-Acute Care Payment System Concept to modernize SNF care

In the coming weeks, AHCA/NCAL will release more information on the ***Road to Recovery and Reinvention*** initiative and related member supports.

The remainder of this document contains: a) general federal accounting and reporting guidelines as defined by the Office of Management and Budget; b) COVID Financial Management Recommendations; c) grant-by-grant and loan-by-loan overview table; d) guidance on which types of loans may be combined and which may not; and e) preliminary FAQ on the CARES Act Provider Relief Fund Terms and Conditions.

AHCA/NCAL recommends using this guide in tandem with the Association's COVID-Related Loss and Costs Calculator also available at the Reimbursement Policy & Market Strategy COVID Webpage.



- ***Double Check Guidance & Read the Fine Print:*** DHHS, SBA, FEMA and other federal agencies are making updates to loan and grant parameters including notable changes to the CARES Act Provider Relief Fund guidance (see page 15 below);
- ***Check Regularly for Availability of New Funds:*** Congress rapidly is moving on the Paycheck Protection Program Increase Act of 2020 which replenishes many funds including the Paycheck Protection Fund. AHCA/NCAL urges members to move quickly when new funds become available.

Federal Grant and Loan Framework

Many AHCA/NCAL members may be unaccustomed to receipt and management of federal grant and loans. Below, are a few basics of internal controls SNF grant and loan managers might consider as they develop policies and procedures for receipt, accounting and reporting on COVID-related financial resources.

Basics of Internal Controls

Every grant/loan manager should be highly focused on the risk of allegations of both grant and loan mismanagement and fraud. In an effort to release federal funds as quickly as possible, many of the COVID-related grants and loans have been made available without the detail on accounting and management of these funds and loans or reporting and requirements. To that end, in preparation for audits and, in some instances, payback, the onus is on recipients to develop the necessary internal controls understanding that each grant and loan which address varied specifications and requirements. Understanding a few basics will help development of the most appropriate Internal Control approach and/or strategy for working with your accounting staff, CPAs, and attorneys.

Control #1: Formal Written Policies and Procedures

- Has your organization formalized written policies and procedures such as who can approve grant spending, how labor is recorded and charged, and the procedures for procuring goods and services?
- Have you reviewed your grant and loan terms and conditions for a list of policies that must be in writing, for example, drug-free workplace requirements, and a process to minimize the time between requesting grant funds and paying suppliers?

Control #2: Adequate Monitoring

- Does your organization check to make sure the existing policies and procedures are actually followed?
- How are you ensuring that charges to the grant or loan are reasonable, allocable, and in compliance with *Federal Cost Principles* (see below) regulations?
- How do you make sure that organizational policies are applied to your grants and loans uniformly uses a collaborative approach to ensuring communication among various staff at any possible home office and/or build-level staff?

Control #3: Reconciliations

- Are your account reconciliations current and updated in a timely manner?
- Do your property records for equipment purchased with grant and loan funds match the accounting records?
- What is your plan to take physical inventories of property purchased with federal funds recently?

Control #4: Secured, Safeguarded Assets

- How is property safeguarded from loss, damage or theft?
- What is done to prevent misuse of credit cards and other assets?
- Is periodic training held for employees on grant and loans requirements to address turn over in staff and to track ongoing federal guidance?

Control #5: Segregation of Duties

- How good is your segregation of duties?
- Do you have different people recording transactions, authorizing transactions, and having custody of the assets? (Or is this handled by one or two people?)
- While specialization is important, how are you ensuring coordination among various loan and grant management staff?

Control #6: Supervisory Review and Approval

- What is the process to have supervisors approve spending on the grant?
- What reviews are done by supervisory personnel?
- How do you demonstrate the approval and reviews were done? (Are the documents signed and dated?)

Control #7: Adequate Documentation

- Are receipts required for reimbursement of spending?
- Do the receipts have enough detail to determine if the costs are allowable to charge the grant? (i.e. itemized receipts)
- Do employee time cards reflect grants and loans funded care and services?

The Goal of Internal Controls in the Federal Grant Environment

As a general rule, the *goal* of internal controls is to provide reasonable assurance that grant and loan requirements are complied with in a timely and cost-effective manner.

But what does reasonable assurance mean?

It is not perfect assurance, but a reasonable bet that the work will be done on your grant and loan effectively and efficiently while staying in compliance with the federal grant regulations.

Meeting this goal involves everyone working directly and indirectly on the federal grants and loans to know the basics of well-developed control systems for your organization.

Federal Cost Principles

The Office of Management and Budget, or OMB, is an agency within the Executive Branch of the federal government that establishes government wide grants management policies and guidelines through circulars and common rules. Anyone authorizing the expenditure of federal funds needs to understand the cost principles contained in federal regulations, published by the Federal Office of Management and Budget (OMB). These principles govern costs that may be charged to the government either directly or indirectly. Generally, AHCA/NCAL members may want to apply these same cost principles to the expenditures of non-federal funds as well, although in some cases non-federal sponsors define allowable/unallowable costs differently than federal sponsors.

OMB's predominant mission is to assist the federal government with overseeing the preparation of the federal budget and to supervise its administration in executive branch agencies. OMB evaluates the effectiveness of agency programs, policies, and procedures, assesses competing funding demands among agencies, and sets funding priorities.

Working cooperatively with federal agencies and non federal parties, OMB establishes government wide grants and loan management policies and guidelines through circulars and common rules. These policies are adopted by each grant making agency and inserted into their federal regulations.

On December 26, 2013, OMB issued [Uniform Administrative Requirements, Cost Principles, and Audit Requirements](#) (Uniform Guidance) for Federal Awards. The Uniform Guidance streamlines and supersedes guidance that was previously contained in eight different OMB Circulars. Included in the new guidance are definitions, uniform administrative requirements both pre and post award, cost principles, and audit requirements.

Based on a review of the OMB requirements, any cost charged to a sponsor must satisfy the following criteria.

1. The cost must be allowable as defined by federal regulations and/or by the terms of your particular award;
2. The cost must be allocable, that is, the services or good purchased which paid the expense must benefit from; and
3. The cost must be reasonable, that is, the cost reflects what a *prudent person* might pay. Or, in our current environment, comparing costs in the current COVID environment with pre-COVID costs. We have attempted to provide a tool for this exercise with the AHCA/NCAL COVID Loss and Cost Calculator.

While OMB does not have long-term care or post-acute care provider-specific guidance, members should examine the OMB guidance for hospitals. Of note, this OMB guidance was updated on April 16, 2020 one day before release of the first CARES Act Provider Relief Fund tranche one.

Financial Management Strategies for Navigating COVID 19

Utilize a calendar to help guide the documentation of major impacts of the COVID 19 pandemic on your Organization.

Document dates of National, State and Local key directives like school closings, shelter in place directives, and emergency declarations that have influenced census and staffing. Calendarize your average daily census, periods of COVID positive residents and staff, and additional responses that may help you evaluate financial impact (related to staffing or supplies for example).

Seek counsel on available sources for financial assistance and carefully evaluate qualifying criteria and restrictions

There are various Federal, State and local programs available. Participation in some programs may preclude participation in others so it is important to evaluate the best options for your Organization. Consider establishing a narrative of “stimulus” funds accessed—both loans and grants - that include a summary of your decision making process, research, and conclusions regarding eligibility, etc. This may be helpful history to have down the road. You should also evaluate whether there are opportunities to access business interruption policies you may have.

Establish Rolling Cash Flow Projections for a minimum period of 3 -6 months

Each facility should establish a three to six-month rolling cash flow projection that contemplates scenario planning for continued COVID impact on census, staffing, supplies and incorporates repayment terms for various cash advances, payment deferrals and loans. This tool will be important in helping Organizations understand recent trend impacts on financial performance, and how different timelines for census recovery may impact the ability to repay advances and loans.

Establish accounting protocols that facilitate capture and validation of the Financial Impact of COVID

The accounting efforts should consider documentation to support validation of both increased cost and lost revenue, as both of these outcomes from the COVID pandemic may be eligible for funding under various Federal, State and local programs. Some grants may require providers to reconcile COVID costs to grants given and repay excess funds.

- Census tracking – establish a new payer subcategory within Medicare and each Medicare Advantage payer that documents days intended to be covered under the 3 day waiver.
- Where possible, establish separate general ledger accounts to track personal protective equipment, nursing supplies, ventilator and other DME costs that have been incurred. Include additional housekeeping, laundry and dietary supplies and

- staffing in your tracking for increased cost.
- Establish a separate general ledger account for any special staffing accommodations like temporary housing or hotels, child care, meals, etc.
- Establish a separate general ledger account for temporary staff costs and bonus payments. When possible, isolate overtime and shift differential costs related to COVID.
- Establish separate general ledger revenue accounts for each source of Grant Revenues
- Establish separate general ledger liability accounts for each source of Cash Advance
- Seek guidance from your accountant on proper financial reporting of grant revenue

Manage and Monitor Loans Obtained through Cash Advances and Payroll Deferrals

- Evaluate whether your existing lender requires notification or approval of any available loans (HUD requires)
- Consider establishing separate bank account for funds to facilitate ease of monitoring utilization and availability of these loans and deferrals
- Consider an “internal escrow” strategy to limit the use of stimulus loans as emergency use only funds
- Evaluate the impact of these items on any other debt covenant requirements

Consider Additional Revenue cycle activities that may be needed

- Validate each managed care payer’s requirements related to 3 day stay waivers, pre- authorizations and other contract terms that may have been modified during the pandemic
- Increase diligence on timeliness and accuracy of Medicaid applications as there may be an increase in pending cases
- Implement a process to account for the temporary halt of sequestration reductions for the period May 1, 2020 through December 31, 2020
- Review documentation protocols to ensure compliance with state and federal requirements related to billing



- ***Work with your State Affiliate on Medicaid Cost Reporting:*** While Medicaid Cost Reporting varies state to state, it is possible states will require providers to account for COVID-related grants and loans in revenue. Watch for: a) new state guidance; and b) work with your state affiliate on any possible future Medicaid rate adjustments due to grants and loans or Medicaid COVID-related rate increases; and
- ***Watch for AHCA/NCAL Guidance on Medicare Cost Reporting:*** Since implementation of a SNF Prospective Payment System, SNF Cost Reporting has become something of an artifact of the previous cost-based reimbursement approach. Cost Report accuracy and completeness now is more important than ever: 1) Possible COVID-Related Updates to the Market Basket-- CMS still uses SNF cost reports to update the SNF Market Basket to reweight cost centers and, in some instances, create new cost centers. So, going forward it is possible CMS could use cost report data to update the market basket; b) DHHS is using Medicare Cost Report data for grant calculations. The Department could continue this practice making accurate and complete Cost Report data critical.

Possible Cost Accounting Detail – Self-Assessment Checklist



Below is a list of questions prepared by the member advisory group for this publication. AHCA/NCAL members should assess and re-assess these questions based upon existing federal guidance and updated federal guidance. As noted in the overview section, federal agencies appear to be updating their grant and loan reporting, tracking and auditing guidelines on a rolling basis particularly the CARES Act Provider Relief Fund grants.

1. How would we create new expense accounts for each COVID related expense (PPE, training, food etc.)?
2. Would creating one new expense account and code all COVID related expenses to that same exact account be easier for us?
3. Related to item two, above, should we simply create a new department and code all COVID related expenses to that department?
4. For multifacility providers, it could be easier to track the COVID related expenses on a spreadsheet by facility and just code to our financials. Is that current practice? *See the AHCA/NCAL COVID Lost Revenue and Costs Calculator for a possible approach.*
5. Check the retro dates for each loan and grant. Who will be responsible for regular checks and ensuring those dates are included in tracking policies and procedures?
6. Reporting periods and report contents may vary. How will your financial team coordinate reporting periods and report contents to reduce administrative burden while ensuring maximum accountability?
7. What is our strategy for reconciliation by loan and grant?
8. Who is the lead on coordinating payback timeframes and revenue cycle? Examples of due date timelines include: a) Payroll Tax Deferral – first payback due in December 2021; b) Accelerated and Advance Payments paybacks in full come due as early as October 2021 depending upon draw down date; c) DHHS has updated their CARES Act Provider Relief Fund guidance to note that unused funds must be refunded to the department.

9. Who is your team lead on grants and loan management to: a) ensuring administrative efficiency in the management of these resources; and b) grant and loan targeted staff communication; and c) regular check-ins on evolving federal guidance and opportunities and related updates to a provider' grant and loan management and oversight?

10. A number of costs and paybacks will come due in the coming months some with dates certain while others are dependent upon rollback of the federal state of emergency and/or state-level emergencies. How will you ensure:
 - a. Adequate cash on hand for payback?
 - b. No interruption of operations once any enhanced payments end (i.e., Medicaid enhanced rates)?
 - c. If the CARES Act Provider Relief Fund grant are taxed, how will you ensure you have funds for taxes on the grants should taxes be imposed?

Below is basic timeline so you may begin mapping out possible payback due dates and changes in reimbursement.



Possible Payback and Revenue Cycle Planning Timeline

October

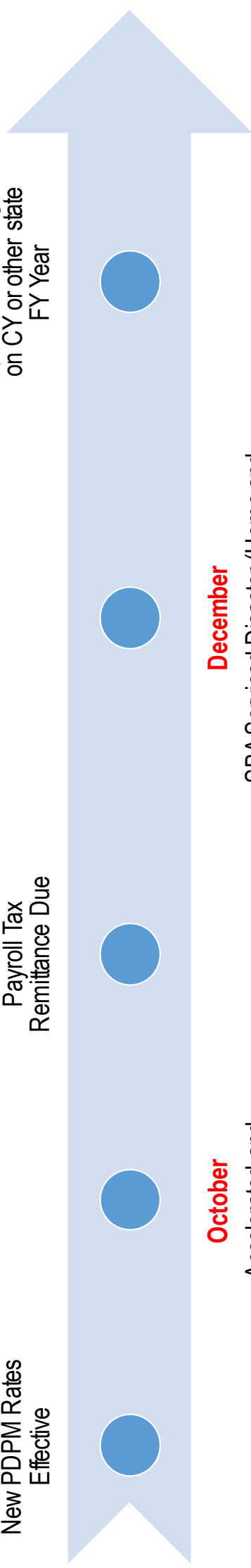
New PDPM Rates Effective

December

50% of Delay of Payroll Tax Remittance Due

January

If your state rebases Medicaid rates do updated rates begin on CY or other state FY Year



October

Accelerated and Advance Payments Early Submission Due in Full

December

SBA Serviced Disaster (Home and Business) Loans: If your disaster loan was in "regular servicing" status on March 1, 2020, the SBA is providing automatic deferments through **December 31, 2020**



- **Federal Emergency:** Monitor the End Date of the Federal Emergency and Possible Implications for Payback or End of Programs (i.e., HUD, Commercial Loans, etc.)
- **State-Level Emergency:** Similar questions also Understand Whether Medicaid COVID-related rates are tied to the state-level emergency or the federal emergency

Overview of Federal Grant and Loan Opportunities

While the array of COVID-related funding opportunities are helpful, the differing loan and grant accounting, management and reporting requirements create new challenges and could increase provider overhead. Additionally, of key importance for management of such funds is identifying those which must be paid back, when payback in full is due and having a financial and revenue cycle management strategies in place to ensure financial stability when federal audits begin and/or when paybacks are due. The table, below, offers a basic guide to the opportunities and recommended action steps to managed and plan for audits and/or payback. At the end of this section which summarizes which funding opportunities may be combined and which cannot.

FUNDING LIKELY AVAILABLE TO ALL PROVIDER TYPES	
Grant/ Loan Overview	Guidance, Requirements and Reporting
<p>Provider Relief Fund Grants. The U.S. Department of Health and Human Services (DHHS) is releasing grants to health care providers from the CARES Act Provider Relief Fund webpage. DHHS is releasing the grants from the Provider Relief Fund in three, possibly four tranches. The grants are based upon net revenue from certain payers including Medicare, Medicaid, and/or specific COVID-related provider needs such as providers located in hotspots.</p> <ul style="list-style-type: none"> - Tranche 1: Medicare FFS - Tranche 2: Medicaid, Medicare Advantage (based on payments made to providers), and providers in COVID hotspots 	<p>Ongoing Challenges with Payments If you are experiencing challenges with grant payments, DHHS has requested that providers call the toll-free CARES Provider Relief Hotline at (866) 569-3522. CARES Provider Relief Hotline provides access to a United Health Group Call Center. The UHG representatives will be able to look up your information and either address your challenge or log it for follow up.</p> <p>Attestation Portal On April 16, 2020, DHHS updated the CARES Act Provider Relief Fund website, adding the CARES Act Provider Relief Fund Payment Attestation Portal. Providers who have been allocated payments must sign an attestation confirming receipt of the funds and agree to the terms and conditions within 30 days of payment. DHHS also has stated under “Who is Eligible for the Initial \$30 billion,” “If you ceased operation as a result of the COVID-19 pandemic, you are still eligible to receive funds so long as you provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19.” AHCA/NCAL anticipates this statement applying to the second and third tranches of funding as well but will provide updates on any changes in the language. Provider Relief Fund Terms and Conditions remain in place and providers should development financial management systems to track and report on grant use.</p>

FUNDING LIKELY AVAILABLE TO ALL PROVIDER TYPES

Grant/ Loan Overview

- Tranche 3: Commercial Insurance, Uninsured and clean up from grant challenges in tranches 1 and 2.

Provider Relief Fund dollars may be used for revenue lost due to COVID, such as declining occupancy, and costs related to COVID but not reimbursable by other funding sources, such as Medicare and Medicaid.

Guidance, Requirements and Reporting

While DHHS has not released detailed reporting instructions, the attestation form includes a statement on how DHHS will determine appropriate use of payments via reporting requirements including maintaining an accounting of payments, and how providers are processing payments from the Fund. Examples of how DHHS will use fund reporting information include, but are not limited to, monitor contractors (and/or to its subcontractor) who has been engaged to perform services on an automated data processing (ADP) system used in processing financial transactions and to be shared with appropriate law enforcement agencies when relevant to an investigation, to the Treasury Department, and to auditing organizations conducting financial or compliance audits. A complete list of routine uses may be found at [here](#). Additional information will be shared as AHCA/NCAL and members explore the [Attestation Portal](#). See **Appendix A** for one interpretation of the Terms and Conditions.

Recommendations/Limitations

As a general approach to use of the funds, providers might calculate the pre-COVID costs of patient care and supply costs, compare the COVID environment costs and use the funds for increased costs not reimbursable or over allowable costs for Medicare and Medicaid. Provider Relief Fund dollars may not be used to repay Payroll Tax Deferrals. Additionally, it is yet unclear if Funds may be used to repay Accelerated and Advance Payments (see below). Due to this lack of clarity, AHCA/NCAL encourages a conservative approach – providers should assume Provider Relief Funds may not be used for Accelerated and Advance Payment repayment until DHHS/CMS provides additional information. Also, Provider Relief Fund and FEMA relief funds are considered duplicative. If a provider applies for and accepts FEMA the provider may should avoid applying for FEMA funding. The FEMA guidance, available [here](#) states, “Each applicant will need to agree to the stipulation in the grant conditions of all FEMA awards that funding is not also being received from another funding source. FEMA is coordinating with HHS to share information about funding from each agency to assist in the prevention of duplication of benefits.”

Grant Guidance Updates & Funding

As noted above, federal agencies appear to be updating loan and grant guidance on a rolling basis. On April 25, DHHS added the following language to the CARES Act Provider Relief Fund webpage: “The [Terms and Conditions](#) also include other measures to help prevent fraud and

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Grant/ Loan Overview

Guidance, Requirements and Reporting

misuse of the funds. **All recipients will be required to submit documents sufficient to ensure that these funds were used for healthcare-related expenses or lost revenue attributable to coronavirus. There will be significant anti-fraud and auditing work done by HHS, including the work of the Office of the Inspector General.** Members should use the most conservative rigorous monitoring, tracking and audit preparation processes in preparation for further updates.

The Paycheck Protection Program Increase Act of 2020 adds \$75 billion for reimbursement to hospitals and healthcare providers to support the need for COVID19 related expenses and lost revenue. Language remains the same as CARES Act. This funding is in addition to the \$100 billion provided in the CARES Act.

Medicare FFS Accelerated and Advance Payments. The CMS Accelerated and Advance (A&A) Payment Program is funded from the Hospital Insurance (Part A) and Supplementary Medical Insurance (Part B) trust funds, which are the same fund used to pay out Medicare claims each day. The advance and accelerated payments are a loan that providers must pay back. Local Administrative Contractors (MAC) are making the payments as providers request payments.

Standard Accelerated and Advance Payment guidance is available [here](#), Section 150. It is important to note that CMS has modified the Accelerated and Advance Payment process for the COVID crisis. Click [here](#) to view the CMS FAQ on the COVID Accelerated and Advance Payment guidance.

Complete and Submit a Request Form

Accelerated/Advance Payment Request forms vary by contractor and can be found on each individual MAC's website. Complete an Accelerated/Advance Payment Request form and submit it to your servicing MAC via mail or email. CMS has established COVID-19 hotlines at each MAC that are operational Monday – Friday to assist you with accelerated payment requests. You can contact the MAC that services your geographic area. To locate your designated MAC, refer to <https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/Downloads/MACs-by-State-June-2019.pdf>.

Payback & Financial Management

The available payments already have been calculated by CMS based upon net Medicare FFS revenue from 10/1/20 – 12/31/20. Provider need only complete the MAC's A&A application form for the funds – no provider calculation are needed. Payback must begin 120 days after disbursement. The majority of hospitals including inpatient acute care hospitals, children's hospitals, certain cancer hospitals, and critical access hospitals will have up to one year from the date the accelerated payment was made to repay the balance. All other Part A providers and Part B suppliers will have up to 210 days to complete repayment of accelerated and advance payments, respectively.

Of note, questions remain about which funds may be used to payback A&A funds. While still unclear, some legal interpretations indicate that CARES Act Provider Relief Fund grants may not be used to pay

FUNDING LIKELY AVAILABLE TO ALL PROVIDER TYPES

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Guidance, Requirements and Reporting

back A&As. To-date, CMS has not released such guidance but, in keeping AHCA/NCAL's message to take a conservative, rigorous approach to financial management, the Association recommends: a) establishing a separate A&A account; b) carefully documenting withdrawals and use; and c) establishing a payback account which does not include Provider Relief Fund dollars.

FEMA Grants.

Under the President's March 13 emergency declaration, and subsequent major disaster declarations, state, local, tribal, and territorial (SLTT) government entities and certain private non-profit (PNP) organizations are eligible to apply for Public Assistance (PA). Eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be reimbursed under the PA program. On March 19, 2020, FEMA released the COVID-19 Emergency Protective Measures Fact Sheet which outlines the types of emergency protective measures that may be eligible under the PA program in accordance with the COVID-19 Emergency Declaration. General eligibility considerations for emergency medical care activities apply to all claimed work and associated costs. They include Applicant, Facility, Work, and Cost eligibility to which all claims are subject under the PA program.

Applicant Eligibility

LTT government entities are eligible to apply for PA. Certain PNP organizations are eligible to apply for PA, including those that own

Limitations & Financial Management

Costs must be directly related to COVID-19 cases. For example, emergency medical care costs related to a non-COVID-19 illness or injury are not eligible. Additionally, costs for personal protective equipment (PPE) for health care providers who are working in a hospital treating COVID-19 patients are eligible, as it is necessary to prevent further spread of the virus and protect health care workers and other patients.

All assistance provided under PA is subject to standard program eligibility requirements, including reasonable cost, procurement, and duplication of benefits requirements.

Procurement requirements differ between state versus non-state entities and by normal versus emergency/exigent circumstances.

FEMA cannot:

Provide assistance under PA that is covered by another funding source.

Duplicate assistance provided by HHS, including the Centers for Disease Control and Prevention (CDC), or other federal agencies. **As noted above, FEMA funds may not be comingled with the CARES Act Provider Relief Fund.**

This includes funding provided by the Public Health Emergency Preparedness Cooperative Agreement Program; the Public Health Crisis Response Cooperative Agreement; the Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases; and grants available from the HHS Office of the Assistant Secretary for Preparedness and Response.

Provide PA funding for emergency medical care costs if they are covered by another source, including private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.

The Applicant must be able to provide documentation verifying that insurance coverage or any other source of funding, including private insurance, Medicaid, or Medicare, has been pursued or does not

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and/or operate medical care facilities. Private for profit entities, including for profit hospitals, are not eligible for assistance from FEMA under PA. SLTT government entities may contract with for profit hospitals to carry out eligible emergency protective measures. FEMA will reimburse the eligible Applicant for the cost of eligible work, and the Applicant will then pay the private entity for the provision of services.

Facility Eligibility

For SLTT governments, evaluating facility eligibility is not necessary for most emergency work. PNPs are generally not eligible for reimbursement for emergency services because they are not legally responsible for providing those services. PNPs that own or operate a medical or custodial care facility are eligible for: a) reimbursement of costs from FEMA related to patient evacuation when such an action is needed; b) in limited circumstances, reimbursement when essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital; and c) reimbursement of costs for emergency medical care, as outlined in the Eligible Emergency Medical Care

Guidance, Requirements and Reporting

exist for the costs associated with emergency medical care and emergency medical evacuations.

Each applicant will need to agree to the stipulation in the grant conditions of all FEMA awards that funding is not also being received from another funding source. FEMA is coordinating with HHS to share information about funding from each agency to assist in the prevention of duplication of benefits.

For more information click [here](#).

Employee Retention Payroll Refundable Tax Credit

- **Credit Provisions**

FUNDING LIKELY AVAILABLE TO ALL PROVIDER TYPES

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- **Eligibility:** Available to small businesses and nonprofit organizations (including Section 501(c)(3), (c)(6) and (c)(4) organizations, among others);
- **Credit Amount:** Refundable payroll tax credit for up to \$5000 per employee: 50% of the qualifying wages (including employer's health plan expenses) paid by the employer between March 22 and December 31, 2020, up to \$10,000 in wages per employee.

- Employers fully or partially shut down by government order or with 50% drop in gross receipts in a quarter compared to prior year (until return to 80%).
- Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit. Qualified wages are reported on the quarterly Form 941 and credit is reconciled to tax deposits made.
- Eligible employers can also request an advance of the Employee Retention Credit by submitting [Form 7200](#).

Employers are **not eligible if they received a Paycheck Protection Program loan.**

Paid Sick Leave Refundable Credit

- **Eligibility:** Available to small and mid-size businesses and nonprofit organizations (including Section 501(c)(3), (c)(6) and (c)(4) organizations, among others) that have fewer than 500 employees and who provide employees with paid sick leave if the employee is unable to work due to a COVID-19 circumstance.
- **Credit Amount:** Refundable payroll tax credit equal to the required sick leave paid for leave during the period beginning April 1 and ending December 31, 2020. This tax credit also includes the employer's share of Medicare tax imposed on those wages and its allocable cost of maintaining health insurance coverage for the employee

• **Credit Provisions**

- The credits covers 100 percent of up to ten days of the qualified sick leave wages (and any qualified health plan expenses allocable to those wages) that an employer paid during a calendar quarter, plus the amount of the employer's share of Medicare taxes imposed on those wages.
- Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit. Qualified wages are reported on the quarterly Form 941 and credit is reconciled to tax deposits made.
- Eligible employers can also request an advance of the Paid Sick Leave Refundable Credit by submitting [Form 7200](#)

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during the sick leave period. In addition, the employer is not subject to the employer portion of social security tax imposed on those wages.

Required Sick Leave under the Emergency Paid Sick Leave Act

- At regular rate of pay up to a maximum of \$511 per day or \$5,111 total over the entire sick pay period for instances of the employee's COVID-19 related illness.
- At 2/3 of regular rate of pay subject to a maximum of \$200 per day or \$2,000 over the entire period for instances of employee caring for someone else, including a child whose school has closed.

Paid Family Leave Refundable Credit

- **Eligibility:** Available to small and mid-size businesses and nonprofit organizations (including Section 501(c)(3), (c)(6) and (c)(4) organizations, among others) that have fewer than 500 employees and who provide employees with paid family leave because of a need to care for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19 circumstance.
- **Credit Amounts Refundable** payroll tax

Credit Provisions

- The credits covers 100 percent of up to ten weeks of the qualified family leave wages (and any qualified health plan expenses allocable to those wages) that an employer paid during a calendar quarter, plus the amount of the employer's share of Medicare taxes imposed on those wages.
- Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit. Qualified wages are reported on the quarterly Form 941 and credit is reconciled to tax deposits made.
- Eligible employers can also request an advance of the Paid Family Leave Refundable Credit by submitting [Form 7200](#)

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credit equal to required family leave paid for leave during the period beginning April 1 and ending December 31, 2020. This tax credit also includes the employer's share of Medicare tax imposed on those wages and its allocable cost of maintaining health insurance coverage for the employee during the sick leave period. In addition, the employer is not subject to the employer portion of social security tax imposed on those wages.

Required Family Leave under the Emergency FMLEA

- At 2/3 the employee's regular rate of pay up to \$200 per day and \$10,000 in the aggregate.

Delay of Payroll Tax Remittance

- **Delays the payment of the employer portion of Social Security (but not Medicare) payroll taxes between March 27 and December 31, 2020**
- **50% due 12/31/2021 and 50% due 12/31/2022** - Does not apply to employers which have loans forgiven under the Paycheck Protection Program

Financial Management & Limitations

- As noted above, CARES Act Provider Relief Funds may not be used to payroll taxes.
- Of note, the 50% initial payback comes due December 2021 and A&A payback, depending upon the draw down date could come due in full as early as October 2021, falling in the same CY quarter as the Payroll payback.

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Paycheck Protection Program (PPP) Loan Guarantee

NOTE: The Payroll Protection Plan Increase Act of 2020 adds \$349 billion and replenishes the fund. However, notable portions of the updated fund already are targeted to certain entities (see below). AHCA/NCAL members are urged to move quickly on the program. The Main Street Loan Fund is a strong alternative to PPP loans. See page 19, below.

- **Eligibility:** Small businesses with fewer than 500 employees, select types of businesses with fewer than 1,500 employees, 501(c)(3) nonprofits with fewer than 500 workers, and some 501(c)(19) veterans' organizations. Applicant must be in operation as of February 15, 2020 and, as of that date, had employees for whom it paid salaries and payroll taxes.
- **Maximum Loan Amount:** Loans are given up to the maximum of the lesser of \$10 million, or 2.5 times the average monthly payroll costs during the one- year period before the date on which the loan was made. Payroll costs include

Suggested Action Steps If/When Re-Funded

Members who were unable to access the first allocation should contact their respective bank intermediaries as soon as replenishment is passed by Congress and signed into law.

Loan Terms

- **Repayment Terms:** Two-year term and payments are deferred up to six to twelve months. There are no prepayment penalties or fees.
- **Interest Rate:** Fixed rate of 1%. No personal guarantee or collateral is required.
- **Loan Forgiveness:** Part of the loan may be forgiven and not counted as income to the borrower if it is spent during the first eight weeks on operating expenses. Loans are forgiven when proceeds are used for any of these costs:
 - Payroll costs, excluding prorated amounts for individuals with compensation greater than \$100,000.
 - Rent pursuant to a lease in force before February 15, 2020.
 - Electricity, gas, water, transportation, telephone, or internet access expenses for services which began before February 15, 2020.
 - Interest on mortgage obligations for mortgages in force before February 15, 2020.
 - Group health insurance premiums, retirement benefits, and state and local taxes on compensation.
- **Restrictions on Loan Forgiveness:**
 - In order for the amounts to be forgiven, the borrower must maintain the same average number of employees for the first eight-week period beginning on the origination date of the loan as it did from February 15, 2019 – June 30, 2019 or from January 1, 2020 – February 15, 2020.
 - Loan forgiveness is reduced proportionally if the employer reduces the number of FTEs.
 - Loan forgiveness also will be reduced if the borrower decreases salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
 - The borrower has until June 30, 2020 to restore full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

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wages for employees making under \$100,000, as well as expenses for paid sick leave, healthcare, some taxes and other benefits.

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- No more than 25% of the forgiven amount may be for non-payroll costs.
- **Requesting Loan Forgiveness:** The borrower must submit a request to the lender servicing the loan. The request must include documents that verify the number of fulltime-equivalent employees and pay rates, as well as the payments on eligible mortgage interest, lease and utility obligations. The borrower must certify that the documents are true and accurate and that the borrower used the forgiveness amount to keep employees and make eligible mortgage interest, rent and utility payments. The lender must make a decision on the forgiveness within 60 days.
- **Application:** Borrower must apply through local banks that already offer Small Business Administration loans. You can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. The application period for small businesses opens on April 3, 2020. While the loan program is open until June 30, 2020, it is recommended that you apply as soon as possible because there is a funding cap and lenders need time to process your loan.

Updates

In addition to replenishing the PPP, the Payroll Protection Replenishment Act of 2020, also sets aside specific amount for specific entities: \$30 billion for loans made by Insured Depository Institutions and Credit Unions that have assets between \$10 billion and \$50 billion; and \$30 billion for loans made by Community Financial Institutions, Small Insured Depository Institutions, and Credit Unions with assets less than \$10 billion.

Economic Injury Disaster Loan

- **Eligibility:** Open to small business owners, including private nonprofit organizations that are NGOs or entities that currently have an effective ruling letter from the IRS recognizing federal tax exemption under sections 501(c),(d), or (e) of the IRS Code (including 501(c)(6) and (c)(4))

Criteria:

- **Restrictions on Loan Use:** Not intended to replace lost sales or profits nor for expansions, refinancing or repayment of other debts.
- **Application:** Loan applications processed through SBA: <https://covid19relief.sba.gov/#/>

Updates

In addition to replenishing the PPP, the Payroll Protection Replenishment Act of 2020 adds \$10 billion to

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organizations), or satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit organized or doing business under State law, or a faith-based organization.

- **Maximum Loan Amount:** Loans up to \$2 million to cover temporary loss of revenue.
- **Repayment Terms:** Up to a maximum of 30-year term. First month's payments are deferred for a full year from the date of the promissory note. Very favorable terms but not a forgivable loan like the Payment Protection Program.
- **Interest Rate:** 3.75% for small businesses, and 2.75% for nonprofits.

this fund.

Economic Injury Disaster Loan Emergency Advance

- **Eligibility:** Open to small business owners, including private nonprofit organizations that are NGOs or entities that currently have an effective ruling letter from the IRS recognizing federal tax exemption under sections 501(c),(d), or (e) of the IRS Code (including 501(c)(6) and (c)(4) organizations), or satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit organized or doing business under State law, or a faith-based organization.
- **Maximum Loan Amount:** Up to \$10,000.

Criteria

- **Repayment Terms:** Does not have to be repaid if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments, or repaying obligations that cannot be met due to revenue loss.
- **Application:** Loan applications processed through SBA: <https://covid19relief.sba.gov/#/>

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Federal Reserve Main Street Lending Program

The [Main Street Lending Program](#) is meant to aid small and medium-sized businesses that were in good financial standing before the pandemic began. And with \$600 billion available to borrowers, the program is larger than the PPP, meaning it should last longer.

- **Eligibility:** Companies up to 10,000 employees and \$2.5 billion in income.
 - Certain restrictions on compensation, stock repurchases, and distribution apply.
 - Borrower attestation required on certain items (reasonable efforts will be made to maintain payroll and staff, restrictions above will be followed, and funds will not be used to pay off other loan balances).
- **Maximum Loan Amount:** Up to \$25 million (or \$150 million with expanded loan sizes)
- **Minimum Loan Amount:** \$1 million

Criteria

- **Repayment Terms:** 4-year loans at adjustable rate of SOFR plus 250-400 basis points. Principal and interest payments can be deferred for up to a year. No prepayment penalties.
- **Application:** Loan applications processed through borrower's bank.
- **Outstanding Questions:** Still, there are some unknowns about the new loan program. For one, it's not clear how exactly the federal government will define EBITDA, Wachen said. The government also has not released regulations for the program, casting uncertainty over its exact specifications. And it's not clear if there will be any restrictions for how providers may spend this money, as the PPP dictated. The good news for borrowers is, because the new loan program has a larger cash pool, and because lenders will have to do due diligence in any loan under the program, the Main Street Lending Program will likely last longer than two weeks.

Housing and Urban Development (HUD) Loans

HUD has issued an array of waivers and delays for loan payments and reporting. The Department, like other federal agencies is updating guidance regularly.

Resources

- **HUD Resource Webpage:**
<https://www.hud.gov/sites/dfiles/Housing/documents/OHP%20Corona%20QA%20FINAL.pdf>
- **Appendix C:** AHCA/NCAL FAQs Dated April 27, 2020 (check regularly for updates)

FAQs -- Can I apply for more than one type of assistance and are there limitations on combining funding?

- Payroll Deferral may not be paid back using Provider Relief Fund grants.
- While as yet not definitive, it is likely Accelerated and Advance Payments may not be paid back using Provider Relief Funds. AHCA/NCAL recommends providers take a conservative approach and assume use of Provider Relief Funds for Accelerated and Advance Payments repayment is not permissible.
- FEMA grants may not be applied for if a provider has accepted Provider Relief Fund grant dollars.
- Yes, but only for the Paycheck Protection Program and an Economic Injury Disaster Loan – so long as the funds are used for different purposes; no double-dipping.
- You may also apply for the FFCRA tax credits but may not apply for both the retention credit and a leave credit for the same wage payments.
- You may receive tax credits for qualified leave wages under the FFCRA and a Paycheck Protection Program loan, but the wages for which the tax credits are received are not considered wages for purposes of receiving loan forgiveness.
- Federal Reserve Main Street Lending program is available to borrowers that have also received SBA PPP funds.
- Using the Lost Revenue and COVID-Related Cost Calculator, you must ensure CARES Act Provider Relief Fund grant dollars cleared documented as not being used for care and goods considered allowable, reimbursed costs under other payment sources such as Medicare and Medicaid.

Appendix A
CARES Act Provider Relief Fund FAQs

CARES ACT RELIEF FUNDS: FREQUENTLY ASKED QUESTIONS

(Version 1 -- April 15, 2020)

Division B, title VIII of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136 (March 27, 2020), appropriated \$100 billion to the Public Health and Social Services Emergency Fund in order “to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus[.]” The CARES Act imposes certain eligibility requirements and restrictions with respect to such funds (“Relief Funds”) and gives the Secretary of Health and Human Services significant discretion in how and when Relief Funds may be distributed and in what amounts.

On April 10, 2020, the Department of Health and Human Services (“HHS”) issued its first guidance regarding Relief Funds in conjunction with distributing \$30 billion of those funds to providers that received Medicare fee-for-service payments in 2019.¹ At the same time, HHS released its Relief Fund Payment Terms and Conditions (“Relief Terms and Conditions”) that recipients of Relief Funds must agree to be bound by within 30 days of receiving Relief Funds in order to retain such funds.² While HHS’s April 10 guidance and Relief Terms and Conditions address certain issues, many remain unresolved. Below we provide our initial views regarding certain issues in the form of frequently asked questions (“FAQs”).

* * *

1. I’ve heard that Relief Funds come with “no strings attached.” Is that correct?

No. The CARES Act imposes restrictions on the use of Relief Funds. For example, the CARES Act contains a proviso (the “Other-Sources Proviso”) stating that Relief Funds “may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse[.]” Moreover, the Relief Terms and Conditions impose a host of requirements and restrictions. For example, the recipient must certify that Relief Funds “will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the [provider] only for health care related expenses or lost revenues that are attributable to coronavirus.”

That being said, HHS’s guidance states unequivocally and in bold letters: **“These are payments, not loans, to healthcare providers, and will not need to be repaid.”**

¹ See Dep’t of Health & Human Servs., CARES Act Provider Relief Fund, <https://www.hhs.gov/provider-relief/index.html>; see also Dep’t of Health & Human Servs., Press Release, HHS to Begin Immediate Delivery of Initial \$30 Billion of CARES Act Provider Relief Funding (Apr. 10, 2020), <https://www.hhs.gov/about/news/2020/04/10/hhs-to-begin-immediate-delivery-of-initial-30-billion-of-cares-act-provider-relief-funding.html>.

² See Relief Fund Payment Terms and Conditions, <https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions-04132020.pdf>. An initial version of the Relief Terms and Conditions released on April 10, 2020, was superseded by a new version released on April 13, 2020.

2. I received Relief Funds but don't have the time or the inclination to review the Relief Terms and Conditions within the next 30 days. Can I delay doing so?

No. Per HHS's guidance: "If a provider receives payment and does not wish to comply with these Terms and Conditions, the provider must do the following: contact HHS within 30 days of receipt of payment and then remit the full payment to HHS as instructed." Moreover, a provider that knowingly retains Relief Funds without executing and submitting the Relief Terms and Conditions on a timely basis may subject itself to liability under the False Claims Act, among other statutes.

3. What are the Relief Terms and Conditions?

All providers receiving and retaining Relief Funds should review the Relief Terms and Conditions (available here) carefully. In short, there are two key requirements. First, within 30 days of receiving the payment, providers must sign an attestation confirming receipt of the Relief Funds and agreeing to the Relief Terms and Conditions. The CARES Act Provider Relief Payment Portal for signing the attestation will be open beginning the week of April 13, 2020, and available here. Second, providers must comply with the Relief Terms and Conditions. Among other things, the recipient of the Relief Funds must certify:

- That it billed Medicare in 2019; provides or provided after January 31, 2020, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; is not currently terminated from participation in Medicare; is not currently excluded from participation in Medicare, Medicaid, and other federal health care programs; and does not currently have Medicare billing privileges revoked;
- That the payment will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the recipient only for health care related expenses or lost revenues that are attributable to coronavirus;
- That it will not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse; and
- That it shall submit reports as the Secretary determines are needed to ensure compliance with conditions that are imposed on the payment of Relief Funds, and such reports shall be in such form, with such content, as specified by the Secretary in future program instructions directed to all Relief Funds recipients.

4. Can I negotiate changes to the Relief Terms and Conditions?

Probably not. While the HHS guidance does not address this issue, most of the Relief Terms and Conditions reflect legal requirements imposed by the CARES Act or other statutes. The fact that agency resources are already stretched thin because of the current public health emergency, it is very likely the Relief Terms and Conditions are offered on a take-it-or-leave-it basis.

5. Generally speaking, for what purposes can I use Relief Funds?

The Relief Terms and Conditions require that the provider certify that Relief Funds "will *only* be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the [provider] *only* for health care related expenses or lost revenues that are attributable to coronavirus." (Emphasis added.) The CARES Act

provides the following illustrative examples: “building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity[.]”

6. Can Relief Funds be used for costs incurred before the receipt of Relief Funds?

Most likely yes. HHS’s guidance does not address this issue, but the CARES Act contains a proviso stating that the payment of Relief Funds may include “pre-payment, prospective payment, or *retrospective payment*, as determined appropriate by the Secretary[.]” (Emphasis added.) Moreover, Congress understood that when it enacted the CARES Act, many providers had already incurred significant costs as a result of responding to coronavirus.

7. Can Relief Funds be used to pay back payments received under the Accelerated and Advance Payment Program administered by CMS?

HHS’s guidance suggests that the answer is “no.” The guidance asserts: “The CMS accelerated and advance payments are a loan that providers must pay back.” While that assertion is correct as a general matter, the CARES Act provides that Relief Funds may be used to reimburse eligible health care providers for “lost revenues that are attributable to coronavirus[.]” To the extent advanced Medicare payments left over and otherwise subject to repayment reflect decreased Medicare utilization caused by coronavirus (e.g., through the cancellation of elective procedures), one may be able to argue that Relief Funds can be used to pay back such remaining amounts because they reflect lost revenue attributable to coronavirus. For the time being, however, HHS’s guidance suggests that the agency takes a contrary view.

8. What effect, if any, does loan forgiveness under the new Payroll Protection Program have on Relief Funds?

The CARES Act’s Other-Sources Proviso states that Relief Funds “may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse[.]” An unrelated provision of the CARES Act creates a Paycheck Protection Program by which small business concerns and certain other employers can obtain loans through a new program administered by the Small Business Administration. Loan amounts used for such things as payroll costs will be forgiven under certain circumstances. Although HHS’s guidance does not address this issue, available evidence suggests that in so far as a provider receives such loan forgiveness in connection with expenditures that were reimbursed with Relief Funds, the provider would need to refund the Relief Funds in question or identify other qualifying expenditures.

9. Can Relief Funds be used to renovate a facility?

That depends on the underlying reason for the renovation. The Relief Terms and Conditions require that the provider certify that Relief Funds “will *only* be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the [provider] *only* for health care related expenses or lost revenues that are attributable to coronavirus.” (Emphasis added.) The CARES Act provides illustrative examples, including “building or construction of temporary structures” and “retrofitting facilities.” Therefore, to the extent improvements are necessary to respond to coronavirus (e.g., to maintain social distancing), the Relief Funds can be used for that purpose.

10. Do I have to apply for the Relief Funds?

At this time, no. The payments to Medicare fee-for-service health care providers will be made automatically by UnitedHealth Group (“UHG”). If you receive payments electronically, UHG will make the deposit via Automated Clearing House account information on file with UHG or the Centers for Medicare & Medicaid Services (“CMS”). The automatic payments will come to providers via Optum Bank with “HHSPAYMENT” as the payment description. If you normally receive a paper check for reimbursement from CMS, you will receive a paper check in the mail.

However, the CARES Act states that in order to be eligible for Relief Funds, a provider “shall submit [to the Secretary] an application that includes a statement justifying the need of the provider for the payment[.]” Neither the HHS guidance nor the Relief Standard Terms and Conditions speak to the application issue. We anticipate HHS will issue further guidance on this issue and will likely require a provider to submit a statement justifying the need for Relief Funds. Notably, the Relief Terms and Conditions state that a provider “shall submit reports as the Secretary determines are needed to ensure compliance with conditions that are imposed on” the payment of Relief Funds.

11. How did HHS calculate the amount of Relief Funds in the first wave?

HHS calculated the amount of Relief Funds paid to a provider by dividing the provider’s 2019 Medicare fee-for-service payments by the amount of all Medicare fee-for-service payments in 2019 (approximately \$484 billion), and then multiplied the ratio by \$30 billion. Needless to say, the calculation chosen by HHS disadvantaged those providers whose 2019 revenues included significant percentages paid under systems other than fee-for-service Medicare (e.g., HHS’s calculation did not take into account Medicaid payments or payments received under Medicare Advantage). However, according to HHS: “The Administration is working rapidly on targeted distributions that will focus on providers in areas particularly impacted by the COVID-19 outbreak, rural providers, providers of services with lower shares of Medicare reimbursement or who predominantly serve the Medicaid population, and providers requesting reimbursement for the treatment of uninsured Americans.”

12. Do I have to pay the Relief Funds back?

No. Unlike the Accelerated and Advance Payment Program administered by CMS, this is not a loan. As noted above, these are payments, not loans, to health care providers, and will not need to be repaid if they are used for eligible expenses or eligible lost revenues.

13. Can I appeal the amount of Relief Funds I received?

Probably not. Although HHS’s guidance does not address this issue, the CARES Act gives the Secretary nearly unlimited discretion in determining how to distribute Relief Funds and in what amounts. That being said, nothing in the CARES Act, HHS’s guidance, or the Relief Terms and Conditions precludes a provider from requesting more Relief Funds. It remains to be seen whether or to what extent HHS will entertain such requests on a case-by-case basis.

14. Do I need to maintain records and documentation of how I use Relief Funds?

Yes. The Relief Terms and Conditions require that recipients “maintain appropriate records and cost documentation.” These records include, as applicable, documentation required by federal award financial

management regulations (45 C.F.R. § 75.302) and federal award record retention and access regulations (45 C.F.R. §§ 75.361–75.365), as well as such “other information required by future program instructions to substantiate the reimbursement of costs under this award.” The overarching goal of these requirements is to ensure that Relief Funds are spent for their intended purpose. Therefore, establishing systems that show how Relief Funds are spent and for what purpose will help providers guard against second-guessing by federal regulators potentially years after the COVID-19 pandemic ends.

15. While providers await future program instructions from HHS on how to substantiate the use of Relief Funds, are there steps providers can take now to ensure compliance with the applicable record-keeping and cost-documentation requirements?

Yes. While there is no one-size-fits-all approach to demonstrating compliance with the applicable record-keeping and cost-documentation requirements, recipients of Relief Funds should consider certain best practices around these requirements now to help ensure compliance. Chief among those best practices is to begin by evaluating the recipient’s financial management systems to ensure they are designed to maintain effective control over, and accountability for, the expenditure of Relief Funds, and to produce reports capable of demonstrating that Relief Funds were expended solely for authorized purposes. See 45 C.F.R. § 75.302. Recipients should also consider segregating Relief Funds from all other funding sources, such as by maintaining Relief Funds in a separate bank account, so that the expenditure of Relief Funds may be more easily tracked. Finally, recipients should track all expenditures of Relief Funds. For example, recipients should track the cost of coronavirus-related expenses, such as those associated with personal protective equipment, training, and staffing (e.g., agency staff, overtime, retention bonuses), as well as coronavirus-related revenue losses such as those associated with the cancellation of elective medical procedures. Ultimately, while recipients have discretion as to how they design and implement their financial management and record-keeping systems, implementing the aforementioned best practices will help ensure that recipients of Relief Funds can adequately substantiate their expenditures.

16. Can commonly owned providers aggregate the Relief Funds they received and redistribute the funds to those affiliated providers most impacted by COVID-19?

It is unclear at the moment. The HHS guidance and the Relief Terms and Conditions do not speak to this specific issue. However, the Relief Terms and Conditions might be interpreted as not permitting aggregation and redistribution. The Relief Terms and Conditions use the defined term “Recipient” as the particular provider that receives Relief Funds and requires certifications that are Recipient-specific. We anticipate HHS will address this issue in future guidance

Appendix B
Links to Additional Resources

Links to General FAQs re CARES and FFCRA

- i. U.S. Small Business Administration:
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- ii. U.S. Treasury Department: <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- iii. IRS <https://www.irs.gov/coronavirus/coronavirus-tax-relief-for-businesses-and-tax-exempt-entities> and FAQs for employee retention credit:
<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>
- iv. U.S. Chamber of Commerce Foundation:
<https://www.uschamberfoundation.org/reports/coronavirus-emergency-loans-guide-and-checklist-small-businesses-and-nonprofits>
- v. American Society of Association Executives:
<https://www.thepowerofa.org/coronavirusadvocacy/FFCRA>:
- vi. Federal Reserve:
<https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>
- vii. U.S. Department of Labor:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- viii. Housing and Urban Development
<https://www.hud.gov/sites/dfiles/Housing/documents/OHP%20Corona%20QA%20FINAL.pdf>

Appendix C
HUD Loan FAQs

April 27, 2020 Update

HUD Loan FAQs

Q: Are financial statements due on 3/31/20 and 4/30/20 in FASSUB?

A: HUD has issued approval for a **30-day extension** of all borrower entity submissions having due dates of 3/31/20 and 4/30/20, through HUD's Financial Assessment Subsystem (FASSUB). Such financial statements with a due date of 3/31/20 will now be due on 4/30/20, and those with a due date of 4/30/20 will now be due on 5/30/20. This applies to all borrower entity FASS submissions with those due dates, both audited and unaudited.

Q: Will HUD temporarily defer REAC inspections, and how will HUD notify Owners?

A: Until further notice, OHP is **postponing** all HUD-initiated property inspections and reviews for all residential care facilities. Where there is an exigent circumstance or reason to believe that there is a threat to life or property at a specific location, inspections will be conducted by HUD quality assurance inspectors in compliance with CDC guidelines.

Q: What are HUD's underwriting requirements for the third-party site inspections during the COVID-19 National Emergency?

A: ORCF is aware that most residential care facilities, including but not limited to skilled nursing facilities, have prohibited non-healthcare workers from entering their facilities. The Centers for Medicare & Medicaid Services (CMS) has restricted visitors and non-essential health care personnel, except for end-of-life situations (with strict conditions) in all of the nation's nursing homes. These restrictions extend to individuals who need access to nursing homes to conduct on-site inspection to comply with the Section 232 insurance requirements.

In an effort to continue to support healthcare facility financing in this difficult time, ORCF has made **temporary modifications** to the established processes for on-site inspections published in Mortgagee Letter 2020-10. Please see [ML 2020-10](#) for further details.

Q: Will HUD be flexible as to the use of Reserve for Replacement or Other Escrow Account funds during the COVID-19 response?

A: Yes. In light of the Presidentially Declared National Emergency and in response to recommendations from the industry, **effective immediately and through June 30, 2020**, Lenders are authorized to approve the following types of transactions for Section 232 insured facilities impacted by COVID-19, without the need for HUD review or approval, provided that HUD has not notified the Lender that the subject property is with ORCF's Risk Mitigation Branch. If the Lender has been notified that the project is with the Risk Mitigation Branch, then HUD approval is required:

1. Suspend monthly deposits to the Replacement Reserve through July 31, 2020, at which time the deposits will resume unless HUD grants a further extension of the authority. Such suspension shall specify that, at the conclusion of the suspension period, the sum of such suspended payments shall be paid into the Reserves for Replacement in equal monthly increments over the next 12 consecutive months.
2. Use Operating Deficit funds to meet debt service payments, subject to repayment provisions, if any, contained in the subject escrow agreement.
3. Use Debt Service Reserves to meet debt service payments;

subject to repayment provisions, if any, contained in the subject escrow agreement. 4. Use Replacement Reserve accounts to meet debt service payment requirements so long as the account balance does not fall below \$1,000 per unit.

In order to exercise this authority, Borrowers must demonstrate, to the Lender's satisfaction, that their request is for a bonafide need resulting from the impacts of COVID-19. While HUD approval will not be required, the Lender is expected to consult with their assigned Account Executive to report and discuss new risks at the facility that have emerged. See Q2 above that includes discussion of Servicer's Notification to HUD of Risks to Healthcare Project and Action Plan for Remedy, Section 232.

On a case-by-case basis, HUD will consider requests from Borrowers for other non-conventional uses of escrow funds. Balances in these accounts are typically not significantly larger than the projected amounts needed for those accounts' intended purposes. Moreover, the balances are not likely substantial enough to significantly offset COVID-19 operating revenue and expense impacts.