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American Rescue Plan and Other Coronavirus Funding Updates

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July 27, 2021

American Rescue Plan Act of 2021 (ARP)

- ❑ March 11, 2021
- ❑ Provides \$1.9 trillion of funding for COVID-19 response
- ❑ Includes Elementary and Secondary School Emergency Relief (ESSER)
- ❑ Includes significant healthcare provisions

Other Coronavirus Funding Updates

- Provider Relief Funds
- Employee Retention Credit
- FFCRA
- Paycheck Protection Program (PPP) loan forgiveness
- And single audit as applicable

American Rescue Plan Act of 2021 (ARP)

Elementary and Secondary School Emergency Relief (ESSER)

Elementary and Secondary School Emergency Relief Fund (ESSER) under ARP

- ❑ Public Law 117-2
- ❑ Enacted on March 11, 2021
- ❑ Issued Interim Final Rule
- ❑ Any comments were to be received by May 24, 2021
- ❑ Third round of ESSER COVID-19 related funding:
 - ESSER Fund under CARES Act
 - ESSER Fund under Coronavirus Response & Relief Supplemental Appropriations Act (CRRSA)
 - ESSER Fund under American Rescue Plan Act (ARP)

ESSER under ARP

- ARP provides nearly \$122 billion to States and school districts to help safely reopen and sustain safe operation of schools and address the impact of coronavirus pandemic on nation's students

- ARP Act also includes the following
 - \$3 billion for special education;
 - \$850 million for outlying areas;
 - \$2.75 billion to support non-public schools; and
 - Additional funding for homeless children and youth.

ESSER under ARP

Period of Performance

- ❑ Funds should be obligated by September 30, 2024
- ❑ Grant activities may continue beyond 9/30/24 if obligated 9/30/24
- ❑ ESSER funds must be liquidated within 120 calendar days after end of performance period (9/30/24)

ESSER under ARP General Restriction

- ❑ Local Educational Agencies (LEAs) must reserve 20% of funds to address learning loss
 - Must be completed through evidence-based interventions
 - Interventions must respond to students' social, emotional, and academic needs
 - Must also address the disproportionate impact of COVID-19 on underrepresented student subgroups

ESSER ARP - Examples of Allowable Activities for Remaining Funds

- ❑ Modifying facilities to allow for social distancing
- ❑ Communicating CDC policies regarding safe school reopening
- ❑ Improving ventilation
- ❑ Contact tracing in combination with isolation and quarantine
- ❑ Diagnostic and screening testing
- ❑ Efforts to provide vaccinations to school communities
- ❑ Appropriate accommodations for children with disabilities with respect to health and safety policies
- ❑ Providing mental health services and supports
- ❑ Above list is not all inclusive

Passcode #1

ESSER Compliance Requirements

- ❑ Assistance listing number (CFDA #) 84.425D
- ❑ Uniform Guidance requirements apply
- ❑ Some important requirements that apply
 - Cost principles - all expenditures must be necessary, reasonable, and properly documented
 - Pre-award costs – costs incurred prior to effective date of award are only allowable with prior written approval
 - Time distribution records – an LEA must maintain time distribution records for employees only working a portion of their time on ESSER program

ESSER Compliance Requirements (continued)

- ❑ Uniform Guidance important requirements continued
 - Cash management – must comply with requirements under CMIA
 - Construction
 - Approved construction projects must comply with applicable Uniform Guidance requirements, as well as the Department’s regulations regarding construction at 34 CFR § 76.600.
 - Must comply with Davis-Bacon prevailing wage rates for construction contracts over \$2,000

American Rescue Plan Act of 2021 (ARP)

Significant Health Provisions

American Rescue Plan Act of 2021 (ARP)

- COBRA
- Medicaid and CHIP
- State/Locality Relief funding
- COVID-19 vaccine, testing, tracing funds
- Other funds for health care initiatives
- Marketplace

American Rescue Plan Act of 2021 (ARP)

☐ COBRA

- Temporary 100% premium assistance for individuals who lose employer-sponsored coverage
- subsidizes 100% of the COBRA premiums during the period beginning the first month after ARP enactment until September 30, 2021
- premiums used to determine the credit for COBRA premium assistance as provided under Code. Sec. 6432 are eligible for PPP loan forgiveness

American Rescue Plan Act of 2021 (ARP)

☐ COBRA

- Premium payee claims the credit via payroll tax form 941
- Only assistance to eligible individuals qualifies for subsidy
- IRS Notice 2021-31
- DOL FAQs April 7, 2021

American Rescue Plan Act of 2021 (ARP)

- ❑ Medicaid and CHIPP - Improve access and expand coverage
 - Provides a 1-year, 10 percentage point FMAP increase for specified Medicaid HCBS
 - States must enhance, expand, or strengthen HCBS; new funding must supplement, not supplant, state spending

American Rescue Plan Act of 2021 (ARP)

- Other funds for health care initiatives
 - \$8.5 billion for rural providers.
 - Funding for mental health/ substance use programs.
 - Other public health initiatives

Passcode #2

Other Coronavirus Funding Updates

Provider Relief Funds (PRF)

Provider Relief Funds (PRF)

- ❑ PRF is a federal program established under the CARES Act to assist healthcare entities (i.e., governments, not-for-profits, and for-profits)
- ❑ Subject to single audit, but those audits have been delayed due to previous delays in the HHS PRF Reporting Portal launch
- ❑ PRF reporting portal opened for submissions on July 1
- ❑ Revised reporting requirements issued June 11
- ❑ HHS updated FAQs dated 7/15/2021

Provider Relief Funds (PRF)

- Key Updates clarifying timing of single audits with PRF and the amounts to be reported on the schedule of expenditures of federal awards
- First single audits that will include PRF are for June 30, 2021 year-ends and later
- Recent HHS guidance supersedes previous HHS guidance which had indicated that PRF would be included in 12/31/20, year-end single audits

Provider Relief Funds (PRF)

- Key Updates period of availability and reporting:
 - The period of availability of funds is based on the date the payment is received (rather than requiring all payments be used by June 30, 2021, regardless of when they were received).
 - Recipients are required to report for each Payment Received Period in which they received one or more payments exceeding, in the aggregate, \$10,000 (rather than \$10,000 cumulatively across all PRF payments).
 - Recipients will have a 90-day period to complete reporting (rather than a 30-day reporting period).
 - The reporting requirements are now applicable to recipients of the Skilled Nursing Facility and Nursing Home Infection Control Distribution in addition to General and other Targeted Distributions

Provider Relief Funds (PRF)

Summary of Reporting Requirements

	Payment Received Period (Payments Exceeding \$10,000 in Aggregate Received)	Deadline to Use Funds	Reporting Time Period
Period 1	From April 10, 2020 to June 30, 2020	June 30, 2021	July 1 to September 30, 2021
Period 2	From July 1, 2020 to December 31, 2020	December 31, 2021	January 1 to March 31, 2022
Period 3	From January 1, 2021 to June 30, 2021	June 30, 2022	July 1 to September 30, 2022
Period 4	From July 1, 2021 to December 31, 2021	December 31, 2022	January 1 to March 31, 2023

Provider Relief Funds (PRF)

- ❑ Single audits of FYEs on or after June 30, 2021
 - Reporting of PRF on the SEFA continues to be tied to the amounts reported in the portal
 - Draft of the 2021 Compliance Supplement section for PRF has been submitted to OMB in its final form
 - Includes a detailed list of key line items in the PRF Reporting Portal submission on which auditors will focus
 - Supplement will advise that auditors should consider delaying the commencement of the compliance audit of the PRF program until recipients have completed the PRF report

Provider Relief Funds (PRF)

☐ Resources

- [Reporting Requirements and Auditing | HHS.gov](#)
 - Links to HRSA TA session recording and slides
 - Links to updated reporting requirements, FAQs and much more

Other Coronavirus Funding Updates

Employee Retention Credit (ERC)

ERC

- ❑ Created by the CARES Act in March 2020
- Set to expire December 31, 2020
- A borrower cannot use the same wages for PPP forgiveness and ERC
- Authoritative guidance on wages paid March 13 - December 31, 2020 is [IRS Notice 2021-20](#)

ERC

- ❑ Taxpayer Certainty and Disaster Relief Act December 2020
 - Enhanced rules and extended credit to June 30, 2021
 - Authoritative guidance on wages paid January 1 – June 30, 2021 is [IRS Notice 2021-23](#)
 - Rules on the election to use alternative quarter to calculate gross receipts

ERC

- ARP in March of 2021
 - Enhanced rules and extended credit to December 31, 2021
 - Authoritative guidance on wages paid July 1 – December 31, 2021 is pending
 - May be clues to the guidance in the draft revised instructions for the form 7200 – Advance payment of employer credits

ERC

- ❑ Qualifying reasons
 - Closures related to a governmental order
 - Gross receipts test
 - For 2020 see Section III.E. of IRS Notice 2021-20
 - For 2021 see section III.C. of IRS Notice 2021-23
 - NO updated IRS FAQs

ERC

- Use full time employees to determine the number of employees (average at least 30 hrs./week or 130 in a month)
- Aggregation rules apply to affiliated entities, but they are not the same as the PPP aggregation rules
- The credit is claimed via a reduction of the payroll tax deposits, file form 941 or through amended returns filing 941-X or an advance by filing form 7200
- Are PPP loan forgiveness proceeds included in gross receipts?

Other Coronavirus Funding Updates

Families First Coronavirus Response Act

Families First Coronavirus Response Act

- ❑ FFCRA was a collection of laws including Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Acts.
 - Emergency Paid Sick Leave Act: provided up to two weeks (capped at 80 hours) of additional paid sick leave for employees who met a qualifying COVID-19 related condition.
 - Expanded FMLA: provided up to 10 weeks of expanded FMLA leave at 2/3 of regular pay rate for employee to care for child whose school or place of care was closed/unavailable due to COVID-19.

- ❑ These two FFCRA leaves expired on December 31, 2020.

American Rescue Plan Act - Paid Leave Credit

- ❑ The American Rescue Plan does not mandate that employers provide COVID-19 related emergency paid sick leave or emergency family and medical leave.
- ❑ The Act does provide a 100% FICA tax credit to employers who voluntarily provide FFCRA leave (subject FFCRA caps) from April 1, 2021 through September 30, 2021.
- ❑ For the first time, state and local government employers that continue to voluntarily provide FFCRA leave are eligible to get this FICA tax credit.

American Rescue Plan Act - Paid Leave Credit (continued)

- ❑ In addition to the reasons originally outlined in the FFCRA, tax credits are also now available to cover leave (subject to the overall FFCRA caps) related to obtaining a COVID-19 vaccination or a COVID-19 vaccine-related injury or illness.
- ❑ Tax credit not available if leave is provided in a way that discriminates in favor of “highly compensated employees . . . full-time employees, or employees on the basis of employment tenure with such employer.”

Other Coronavirus Funding Updates

PPP Loan Forgiveness

PPP Data – pandemicoversight.gov

11.77M

Loans

4.1M

Loans Forgiven

\$798.7B

Total Loan Amount

\$394.6B

Amount Forgiven

90.3M

Jobs Reported as Retained

HOW BORROWERS USED THEIR LOANS



\$776.9B
Payroll



\$7.9B
Rent



\$7.0B
Utilities



\$3.1B
Health Care



\$2.8B
Mortgage Interest



\$576.5M
Debt Interest



\$302.2M
Refinance EIDL



\$10.5M
Not Provided



\$798.7B
Total

Passcode #3

How and when to apply for forgiveness

- ❑ Can apply once all the loan **proceeds for which borrower is requesting forgiveness have been used**
- ❑ Can apply for forgiveness any time **up to the maturity date of the loan...**
- ❑ If borrowers **do not apply for forgiveness within 10 months** after the last day of the covered period, then the loan **payments are no longer deferred**
 - Borrowers will be required to begin making loan payments to their lender.
- ❑ Borrowers of second draw loans **exceeding \$150,000 must submit their first draw forgiveness application** (even though no amount of forgiveness is requested) either **before or simultaneously with the second draw forgiveness application.**
 - Apply for first draw and second draw loans on separate forms.

Forgiveness of a first or second draw PPP loan

Borrowers can **qualify for forgiveness** of PPP loans up to the full principal amount of the loan and accrued interest if:

- ❑ The loan proceeds are used for **forgivable purposes during the borrower's covered period**
 - **Covered period:** Between 8 and 24 weeks, at borrowers election
 - **Covered period start date:** Begins on the day funds are received
 - No longer an alternative covered period
- ❑ And **employee and compensation levels are maintained** or, if not, an applicable safe harbor or exemption applies.
- ❑ And at least **60 percent of the potential forgiveness amount is used for payroll costs.**

Loan forgiveness overview

Step 1 – Calculate eligible costs incurred and paid during the covered period.

Step 2 – Determine if loan forgiveness must be reduced due to a salary/hourly wage reduction of more than 25%. Consider if any reduction is remedied by meeting the safe harbor.

Step 3 – Determine whether a full-time equivalent (FTE) reduction occurred. Consider whether FTE reduction exceptions or FTE reduction safe harbor 1 or 2 applies.

Step 4 – Calculate potential forgiveness amount based on steps 1, 2 and 3 plus requirement that 60% be used for payroll.

Step 5 – Determine which forgiveness form is applicable.

Step 1 – Expenses eligible for forgiveness

- ❑ **Payroll costs** (or owner income replacement for self-employed borrowers)
 - Eligible costs are payroll costs paid and payroll costs incurred during the Covered Period
 - Note the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period.
 - Other limitations on payroll costs apply including limits on non-cash benefits for owner-employees.
 - The instructions to Forgiveness forms and the Forgiveness IFR provide details.
- ❑ **Interest on mortgages** dated before February 15, 2020
 - Mortgage interest paid to related parties is not eligible for forgiveness

Step 1 – Expenses eligible for forgiveness

- ❑ **Rent on leases** dated before February 15, 2020
 - **NOTE:** Rent to related parties is subject to limitations based on the amount of mortgage interest the related party pays during the covered period.

- ❑ **Utilities** for service the began before February 15, 2020
- ❑ Covered **operations expenditures***
- ❑ Covered property damage costs*
- ❑ Covered supplier costs*
- ❑ Covered **worker protection expenditures***

Step 2 – Calculate any salary/hourly wage reductions

- ❑ Generally, a reduction in the rate of pay for certain employees affects the forgiveness of the loan.
- ❑ If a borrower decreases salaries and wages by more than 25% for any employee who made less than \$100,000 annualized in 2019, loan forgiveness will be reduced.
 - This reduction calculation is performed on a per employee basis, not in the aggregate.
 - **Use rate of pay – not total wages**
 - **Does not apply to employees who made \$100,000 annualized or more in 2019 or owner-employees.**
- ❑ Safe harbor: If the borrower restored salary/hourly wage levels, the Borrower may be eligible for elimination of the Salary/Hourly Wage Reduction amount.
 - For a loan made before Dec. 27, 2020, restoration date safe harbor is Dec. 31, 2020.
 - For a loan made after Dec. 27, 2020, the restoration date safe harbor is the last day of the Covered Period.

Examples of salary/hourly wage reduction calculations

Example 1: Salary reduction

Covered period in weeks (A)	24	8
Employee salary per week during Q1 2020	1,000	1,000
Employee salary per week during covered period	700	700
Reduction in salary/week	300	300
Threshold of 25%	250	250
Excess salary reduction per week (B)	50	50
Reduction in loan forgiveness = (A) times (B)	1,200	400

Example 2: Hourly wage reduction

Covered period in weeks (A)	24	8
Employee hourly wage during Q1 2020	20	20
Employee hourly wage during covered period	14	14
Reduction in hourly wage	6	6
Threshold of 25%	5	5
Excess wage reduction (B)	1	1
Age hours per week during most recent full quarter (C)	10	10
Reduction in loan forgiveness = (A) times (B) times (C)	240	80

Step 3 – Calculate any FTE reductions

- ❑ Generally, a reduction in the number of employees affects the forgiveness of the loan.
- ❑ If a borrower reduces their FTEs during the covered period, their loan forgiveness amount will be reduced by the same percentage by which they reduced their FTEs. This is called the FTE Reduction Quotient.
- ❑ Calculated by comparing the borrower’s average FTEs during the covered period to their average FTEs during a “reference period” of their choosing:
 - Feb. 15, 2019 through June 30, 2019,
 - Jan. 1, 2020 through Feb. 29, 2020, or
 - In the case of a seasonal employer, either #1 or 2 above, or a consecutive 12-week period between Feb. 15, 2019 and Feb. 15, 2020.
- ❑ The options for choices of reference periods are the same for both first and second draw loans.
 - FTE reductions that took place before a borrower took a 2021 first or second draw loan could correspondingly reduce their forgiveness amount.

FTE Reduction Mitigation

- ❑ FTE Reduction Exceptions – position-by-position exception to reduce any FTE reduction penalty.
- ❑ Any positions for which the Borrower made a good-faith, **written offer to rehire** an individual who was an employee on February 15, 2020 and the Borrower was unable to hire similarly qualified employees for unfilled positions on or before (a) December 31, 2020; for a PPP loan made before December 27, 2020 or (b) the last day of the Covered Period, for a PPP loan made after December 27, 2020
- ❑ Any positions for which the Borrower made a good-faith, **written offer to restore any reduction in hours**, at the same salary or wages, during the Covered Period or the Alternative Covered Period and the employees rejected the offer
- ❑ Any employees who during the Covered Period (a) **were fired for cause**, (b) **voluntarily resigned**, or (c) **voluntarily requested and received a reduction of their hours**.
- ❑ Use these to offset a reduction in FTEs if the position was not filled by a new employee.
- ❑ Maintain documentation if using these exceptions.

Eliminating the impact of FTE reductions

FTE Reduction Safe Harbors – exempt from any loan forgiveness reduction based on a reduction in FTE employee levels:

- 1. Operating restrictions:** Borrower is **unable to operate** between Feb. 15 and end of Covered Period **at the same level of business activity as before Feb. 15** due to compliance with requirements established or guidance issued March 1 – Dec. 31 (or, for a PPP loan made after December 27, 2020, between March 1, 2020 and the last day of the covered period) by the HHS Secretary, the CDC Director, or OSHA related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement **related to COVID-19**.
- 2. “Restore” date:** Borrower reduced FTE employee levels b/w Feb. 15 and Apr. 26, 2020; and then
 - Restores their FTEs to the level maintained during the pay period that included Feb. 15, 2020 by Dec. 31, 2020.
 - If the loan was made on or after Dec. 27, 2020, the restoration can take place by the end of the covered period.

What does the operating restrictions safe harbor mean?

- ❑ **Example:**
- ❑ Borrower has online sales and a physical store.
- ❑ During the covered period, local government orders all non essential businesses, including the borrower's, to shut down based in part on COVID-19 guidance issued by the CDC in March.
- ❑ Borrower's business activity during the covered period was reduced compared to its activity before Feb. 15, 2020.
- ❑ Borrower satisfies the safe harbor.
- ❑ **Forgiveness amount is not reduced because of a reduction in FTEs.**
- ❑ Required in good faith to **maintain records** regarding the
 - Reduction in business activity and
 - Local government shutdown orders referencing a COVID Requirement or Guidance

Step 4 – Calculate forgiveness

PPP Loan Forgiveness Calculation			
Payroll and Nonpayroll Costs			
Payroll costs	Line 1	-	
Business mortgage interest payments	Line 2	-	
Business rent or lease payments	Line 3	-	
Business utility payments	Line 4	-	
Covered operations expenditures	Line 5	-	
Covered property damage costs	Line 6	-	
Covered supplier costs	Line 7	-	
Covered worker protection expenditures	Line 8	-	
Total eligible costs		-	
Add: Accrued Interest on PPP Loan			
Adjustments for FTE and Salary/Hourly Wage Reduction			
Total salary/hourly wage reductions	Line 9	-	
Subtotal	Line 10	-	
FTE reduction quotient	Line 11	-	
Potential Forgiveness Amounts			
Modified total	Line 12	-	
PPP Loan Amount	Line 13	-	
Payroll cost 60% requirement	Line 14	-	
Forgiveness amount (smallest of lines 12, 13 and 14)	Line 15	-	
Net amount of eligible loan forgiveness			-
Remaining loan balance after forgiveness		\$	-

1. Calculate total eligible costs
2. Subtract salary/hourly wage reductions
3. Multiply remaining eligible costs by FTE reduction quotient
4. Was 60% used for payroll? If yes, compare eligible costs to loan amount.

Passcode #4

Step 5 – Determine which form to file

- ❑ Form 3508S – for loans of **\$150k or less**.
 - Don't total 1st and 2nd draw in calculating \$150k.
- ❑ Form 3508EZ – for loans of more than \$150k and borrower did not reduce the annual salary or hourly wages of any employee (whose annualized salary was \$100,000 or less) by more than 25% during the covered period, compared to the most recent full quarter preceding the covered period, **and**:
 - Did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the covered period, **or**
 - Was unable to operate during the covered period at the same level of business activity as prior to February 15, 2020 due to compliance with government health and safety requirements or guidance issued during specific timeframes.
- ❑ Form 3508 – for use by all borrowers ineligible to use Forms 3508S and 3508EZ.
- ❑ Form 3508D – Borrower's Disclosure of Certain Controlling Interests required in limiting instances involving borrowers with controlling interest by the President, the Vice President, the head of an Executive department or a member of Congress and spouses. For loans prior to Aug. 8, 2020.

Form 3508S: for loans of \$150,000 and less

- ❑ Borrower will be required to provide documentation to substantiate 25% reduction in revenue when applying for forgiveness of a second draw loan if not provided with loan application.
- ❑ Borrowers with loans of \$50,000 or less for an individual first draw or second draw loan are exempt from reductions in forgiveness due to reductions in either FTEs or salary/hourly wages.
- ❑ Does not apply to borrowers of \$50,000 or less that together with their affiliates received First Draw or Second Draw loans totaling \$2 million.
- ❑ Borrowers with loans of more than \$50,000 and Borrowers of \$50,000 or less that together with their affiliates received First Draw or Second Draw loans totaling \$2 million or more are subject to reductions in forgiveness due to reductions in either FTEs or salary/hourly wages.
- ❑ If FTE or salary reductions are applicable, the Borrower must follow SBA Form 3508 and its instructions to calculate its requested loan forgiveness amount. Borrower can still file using Form 3508S, but must follow SBA Form 3508 and its instructions. (Lenders may require Form 3508)

Questions? Contact me!



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