

# On the Horizon for 2021 — Paycheck Protection Program and Provider Relief Fund Reporting Requirements and Audits

If your radiology practice received payments from the U.S. Department of Health and Human Services (HHS) Provider Relief Fund (PRF) or a loan under the Paycheck Protection Program (PPP) in 2020, you are likely aware of the reporting requirements and potential audits looming on the horizon for 2021.

We have summarized the key information you need to know regarding upcoming reporting requirements and audits, as well as how to begin preparing for such obligations. Be aware that the parameters and guidance surrounding PRF payments and PPP loans are constantly evolving, and the information provided here is subject to change.

## PRF REPORTING REQUIREMENTS

The CARES Act restricts the use of the PRF payments to health care-related expenses or lost revenues attributable to the coronavirus. In order to ensure that all providers who received PRF payments have used their funds consistent with these use restrictions and other terms and conditions associated with such payments, HHS is requiring all recipients to comply with certain reporting requirements.

### General Reporting Requirements

All recipients of PRF payments are required to comply with the reporting requirements described in the terms and conditions applicable to their distribution. See [HHS' website](#) to obtain a copy of your terms and conditions.

### Recipients of Over \$10,000

Any recipient of more than \$10,000 in PRF payments is also required to report use of funds and other data elements. These data elements, at a high level, include the following:

- **DEMOGRAPHIC INFORMATION** — Each recipient will be required to submit demographic information including its Tax Identification Number (TIN), Social Security Number (SSN), or Employer Identification Number (EIN) (depending on the recipient's entity type), as well as its fiscal-year end date and federal tax classification.
- **EXPENSES ATTRIBUTABLE TO CORONAVIRUS** — For the 2020 calendar year only, recipients must report all expenses attributable to the coronavirus that are not reimbursed by other sources. Note that recipients who received \$500,000 or more in PRF payments will have heightened reporting requirements in specified sub-categories.
- **LOST REVENUES ATTRIBUTABLE TO CORONAVIRUS** — Recipients will be required to provide revenue and expense information for HHS to calculate lost revenues attributable to coronavirus (i.e., revenue that you as a health care provider lost due to coronavirus).
- **NON-FINANCIAL DATA (PER QUARTER)** — Recipients will be required to provide certain non-financial data for each quarter, including facility, staffing, and patient care metrics, change in ownership information, and whether the reporting entity is subject to the single audit requirement in 2020.

- **ASSISTANCE RECEIVED FROM OTHER SOURCES IN 2020** — Recipients will be required to report any other assistance received in 2020, including, without limitation, any PPP loans, FEMA CARES Act assistance, CARES Act Testing, local or state government assistance, business insurance, etc.

## REPORTING STEPS

Recipients who received \$500,000 or more will be required to submit more detailed reports, but at a high level, HHS has instructed that recipients will be required to report — and may therefore appropriately use PRF funds — as follows:

### Step 1

A recipient should total its 2020 expenses attributable to COVID-19 that another source has not reimbursed and is not obligated to reimburse. These expenses include general and administrative (G&A) expenses and health care-related operating expenses. A recipient should apply its PRF funds to these 2020 expenses first.

### Step 2

If a recipient's PRF funds are not fully expended on 2020 expenses (see step one), then it should apply them to 2020 lost revenue. We have walked a long and winding road of guidance from HHS regarding what constitutes lost revenue, and the definition of this term has changed significantly several times since the first Frequently Asked Question (FAQ) on this concept was made available by HHS on the evening of June 2, 2020. Most recently, the Consolidated Appropriations Act, 2021 (the Act) — passed by both the Senate and House on December 21, 2020, and signed into law by former President Donald Trump on December 27, 2020 — moved the ball on this definition yet again, reverting back to HHS' original June 2, 2020, guidance. The Act essentially overrules the current position held by HHS, which had required providers to calculate lost revenue by comparing 2019 actual patient care revenue to 2020 actual patient care revenue.

Instead, the Act now instructs that providers may calculate lost revenues “using the [FAQ] guidance released by [HHS] in June 2020, including the difference between [a] provider's budgeted and actual revenue budget if such budget had been established and approved prior to March 27, 2020.” The Act does not specify which June 2020 FAQs it is referring to, but we believe the intent may be to reference this June 2, 2020, FAQ, which described the expenses or lost revenues that are eligible for reimbursement with PRF funds.

This FAQ was subsequently modified on June 19, 2020, and again on October 28, 2020. In short, it provides that **lost revenue is broadly defined as “any revenue that you as a health care provider lost due to coronavirus.”** HHS instructed on June 2, 2020, that providers could use PRF payments to cover “any cost that the lost revenue otherwise would have covered, so long as that cost prevents, prepares for, or responds to coronavirus.” HHS further instructed that these costs “do not need to be specific to providing care for possible or actual coronavirus patients, but the lost revenue that the [PRF] payment covers must have been lost due to coronavirus.”

The June 19, 2020, modifications to this FAQ also included the key statement that PRF recipients could “use any reasonable method” for estimating coronavirus-related lost revenue. HHS gave an example of this sort of reasonable method, commenting that if a PRF recipient had a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between the recipient's budgeted revenue and its actual revenue. As we have already learned, **the guidance regarding lost revenue is constantly evolving**, and we anticipate that further clarifications from HHS will be forthcoming to crosswalk the new requirements of the Act with its prior June 2020 FAQs.

### Step 3

If a recipient did not expend all of its PRF funds in full by December 2020, it will have an additional six months — between January 1, 2021, and June 30, 2021 — to use its remaining amounts toward expenses attributable to COVID-19 or to offset 2021 lost revenue.

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**Key Reporting Deadline: July 31** – This is the final reporting deadline for providers who did not fully expend PRF payments prior to December 31, 2020, and therefore expended the remainder of their funds between January 1, 2021, and June 30, 2021.

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**Again, we expect that HHS will likely clarify its guidance regarding calculation of lost revenue for 2021 in light of the new requirements of the Act.**

## AUDITS — PRF, PPP, AND SINGLE AUDIT REQUIREMENTS

### PRF — Audits

In addition to PRF reporting requirements, recipients of one or more PRF payments should also prepare for a potential audit by HHS to ensure the accuracy of the data submitted for payment. If audited, you will be required to provide certain records and cost documentation to substantiate that you used all PRF payments appropriately (i.e., for approved health care-related expenses or to cover lost revenues attributable to the coronavirus). Any provider identified as having provided inaccurate information to HHS will be subject to payment recoupment and other legal action.

### PPP Loan — Audits

The Small Business Association (SBA), in consultation with the Department of the Treasury, has decided that it will audit all PPP loans in excess of \$2 million following a lender's submission of a borrower's loan forgiveness application, and it reserves the right to "spot check" any PPP loan in a lesser amount at its discretion. This means any recipient of a PPP loan may be audited. If audited, the SBA will consider your:

- **ELIGIBILITY** — i.e., whether you were eligible for a PPP loan under the CARES Act and any of the SBA rules and guidance available at the time of your application
- **LOAN AMOUNT** — i.e., whether you calculated your loan amount correctly
- **LOAN USE** — i.e., whether you used your loan to keep workers paid and employed, which may include costs associated with payroll, interest on mortgages, rent, utilities, and interest on debt obligations
- **LOAN FORGIVENESS** — i.e., whether you calculated your expected loan forgiveness amount on your initial application properly

### Single Audit Requirements

In addition to PRF reporting requirements and potential HHS and SBA audits, any entity that has expended \$750,000 or more in federal financial assistance in 2020 (including PRF payments and other federal financial assistance) will also be subject to Single Audit requirements. Note that PPP loans are not subject to Single Audit requirements since such loans are provided through local financial institutions. Accordingly, you should not consider your PPP loan when calculating whether you meet the \$750,000 Single Audit threshold.

For more information on how to respond to audits, see [Developing Your Strategic Response to COVID-related Government Audits on page 8 \(of the digital edition\)](#).

## HOW TO PREPARE FOR UPCOMING REPORTING AND AUDITS

So, what can you do now to prepare for upcoming reporting deadlines and potential audits? We recommend that you begin to collect the information noted and document, organize, and be prepared to defend your need for and use of each form of financial assistance received.

*For more information on how to prepare for upcoming reporting obligations and audits, and for assistance on navigating these processes, contact [Courtney Keehan](#) or a member of our [Chambliss Audit Counsel](#) or [Health Care](#) teams.*

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View the article in the [Chambliss Connection: Radiology Spring 2021 digital edition](#) on pages 2 -7.

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