Breakout Session

Health Centers

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PRESENTER: TED WATERS

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- Well known for his expertise in federal grants, government reimbursement, payment and administrative issues, and his strategic handling of organizations facing crises, Ted has been selected again as a "Super Lawyer" for Health Care in Washington, DC.
- Ted has been counsel to countless Head Start programs and other recipients of federal grants as well as state, national and regional grantee associations in the past 25 years. During his time at the Firm, he has represented clients in front of federal and State courts, legislative bodies, administrative tribunals, Offices of Inspector General and federal agencies.
- Ted has been Managing Partner of Feldesman Tucker since 2003 and has taught the first law school class in the country on federal grant programs at the George Washington University School of Law for the past several years. He is a member of the National Grants Management Association (NGMA) where he served on the Board for many year and served two terms as Chair and is also a member of the National Association of College and University Attorneys (NACUA).

AGENDA

- Unique Aspects of Section 330 funding
- Business Unusual – Highlights of the 5+ Short Term COVID funding
- What are you worried about? Discussion Time.
  - Raise hand, and I will call on you
  - Then, please unmute yourself and let's talk!

START WITH AMOUNT OF YOUR H80 GRANT

(e)(5) Amount –

(A) In general - The amount of any grant made in any fiscal year under subparagraphs (A) and (B) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of-

(i) State, local, and other operational funding provided to the center [Include COVID $]; and

(ii) the fees, premiums, and third-party reimbursements, which the center may reasonably be expected to receive for its operations in such fiscal year.

SO IT LOOKS LIKE THIS …
HEALTH CENTER “STANDARD” BUDGET
[PRE COVID-19]

$10 MILLION

$3 Million Section 330 (H80 Funds)

$7 Million “Non-Grant” Revenue including other Grants for “Health Care Operations”

PROGRAM INCOME / NONGRANT FUNDS

- Standard Rule (45 C.F.R. § 75.307):

Revenue generated through grant funded activities must be expended in accordance with the administrative requirements applicable to federal grant funds, as well as the cost principles.

- Health Centers:

Special statutory flexibility (42 U.S.C. § 254b(e)(5)(D)) –

> "Use of nongrant funds. Nongrant funds described in clauses (i) and (ii) of subparagraph (A) [which includes patient service revenue], including any such funds in excess of those originally expected, shall be used as permitted under this section, and may be used for such other purposes as are not specifically prohibited under this section if such use furthers the objectives of the project."

PROGRAM INCOME / NONGRANT FUNDS

Legislative History:

Senate Report 104-186 (Committee on Labor and Human Resources, Dec. 15, 1995)

"The committee has . . . included in the bill provisions to clarify that, although the level of nongrant funding available to a health center for an approved project would continue to be considered by the Secretary in computing the amount of the Federal grant, the restrictions that apply to a center's use of Federal grant funds under the Federal cost principles and the procurement and property standards would no longer apply to the center's use of nongrant funds." S. Rep. 104-186 at 10.

COMPLIANCE MANUAL – CHAPTER 17

- **Element e:** Health center can document that "excess program income" (program income generated in excess of what is projected in budget) was used as permitted under Section 330 to further project objectives "**by benefiting the current or proposed patient population**" and was not used for purposes specifically prohibited
- **Element e – SVP:**
  - Documents reviewed: Applicable policies, procedures and systems that govern and track use of non-grant funds

Commentary – this rule is for Grants made under Sect. 330(e) – more on this later…

PRACTICAL CONSIDERATIONS: CONSTRUCTING A SECTION 330 BUDGET

- Step 1 – Clearly identify what you will pay with Nongrant funds because of difficulties of paying such costs with federal funds, such as:
  - Salaries above the Cap (Executive Level II)
    - Incentive compensation
  - Facilities (purchase, major renovation, construction)
    - Mortgage payments
  - Equipment
  - Related Party Transactions
    - Less-than-arms-length
  - Lobbying costs (but NO electioneering)
  - Fundraising
    - Marketing
  - Cash Reserves – Not a cost in the first place!
  - Bid and Proposal Costs

STEP 2: HOW TO USE FEDERAL FUNDS

- Options on how to propose charging federal 330 funds
  - Consistent split between grant and nongrant?
    - Such as charging XX% of all allowable costs to grant
    - Clearly separate out allowable/unallowable costs
  - All on one cost such as:
    - Salaries?
    - Rent?
- Remember Each Approach Has Advantages and Disadvantages - intentionality

HEALTH CENTER "STANDARD" OPERATIONS

$11 MILLION Funded

$1 Million "Excess" P.I.

$3 Million for Section 330 (H80 Funds)

$7 Million "Expected" Program Income A.K.A. "Non-grant" Revenues

FAQS TO COMPLIANCE MANUAL

- HRSA comments to draft Manual: "Non-grant funds in excess of what is necessary to support the HRSA-approved total Health Center Program project budget **may be utilized to fund out-of-scope programs**, as long as the use furthers the objective of the Health Center Program project by benefitting the current or proposed patient population and is not specifically prohibited."

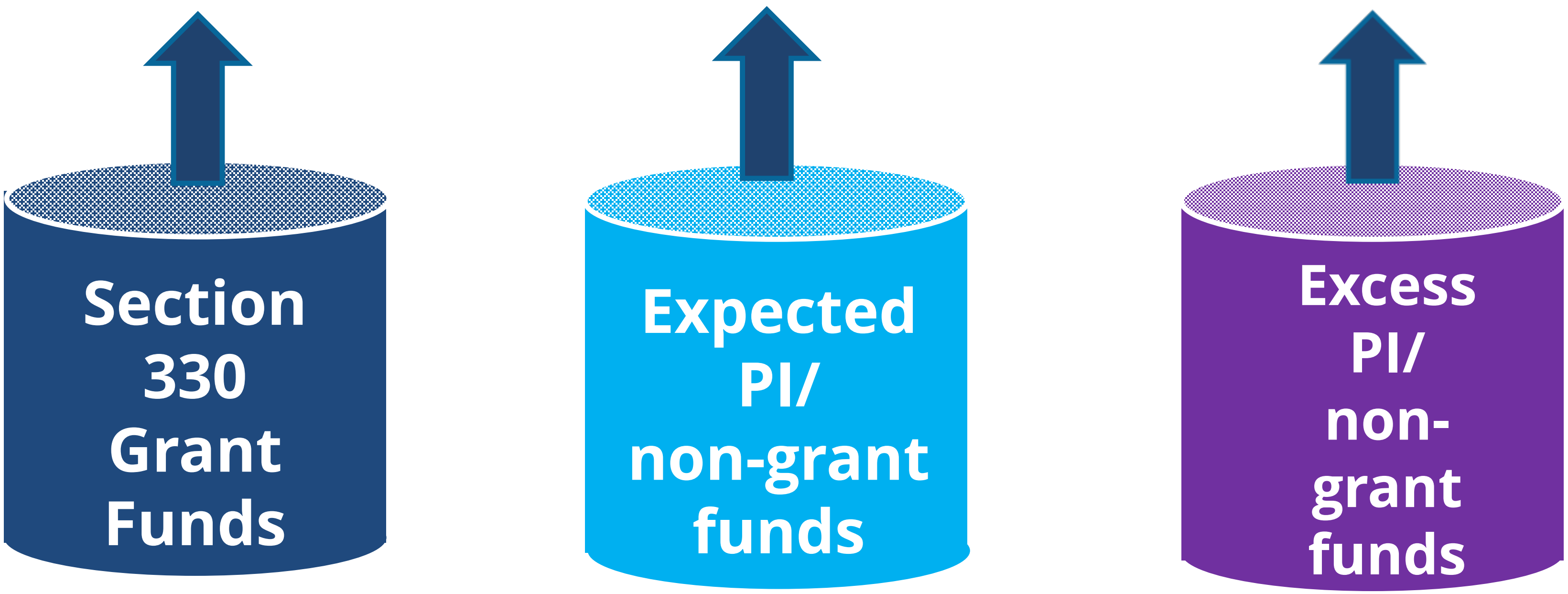
- https://bphc.hrsa.gov/sites/default/files/bphc/programrequirements/pdf/healthcentercompliancemanual-comments.pdf - Lots of Reinforcing comments on P.I. in this!

330 IN A NUTSHELL – THREE "BUCKETS"

Use for allowable costs (in-scope)

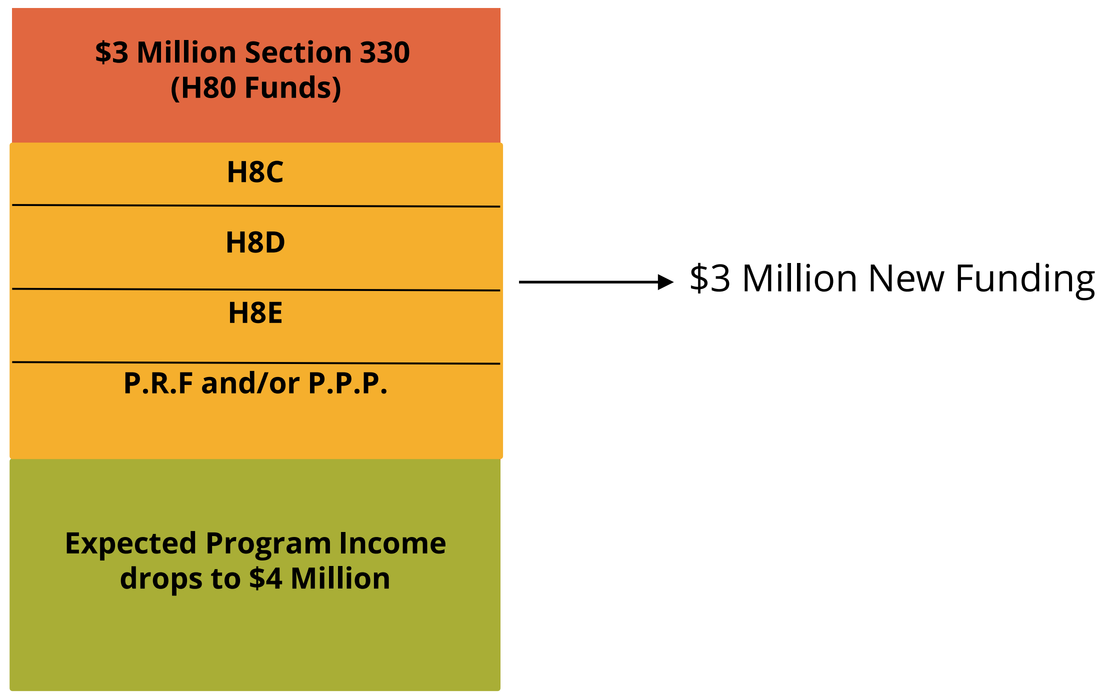
Use for allowable and unallowable costs (in-scope)

Use for allowable, unallowable and out-of-scope activities that further patient/target population



HEALTH CENTER POST COVID-19

$10 MILLION EXAMPLE



WHAT TO DO NEXT READING…

- Recent HRSA Guidance (August 4, 2020 newsletter)
  - https://content.govdelivery.com/accounts/USHHSHRSA/bulletins/298b7d3
- Here is HRSA FAQs on carryover that was updated in April and referenced in the newsletter
  - https://bphc.hrsa.gov/programrequirements/faqs.html/health-center-program-carryover-unobligated-balances-faqs

RULES OF TARGETED / SUPPLEMENTAL FUNDING AND WHY

1. Spend specific funds first, if possible, and save H80 funds for later even if in carry-over. The Primary Health Care Digest says why – "Note that any carryover funds, regardless of amount, must be used for the original approved purpose(s) of the award."
2. So, even if HRSA allowed these funds to be carried over, they will still have to be used for this pandemic fighting purpose.
3. H80 grant, on the other hand, has a broad purpose – funding for preventive and primary care in a medically underserved area, or for a medically underserved population.
4. In short, when those funds are carried over to another period, the Health Center is not "stuck" with still needing to spend the dollars on pandemic related purposes.

EXPANDED FLEXIBILITIES

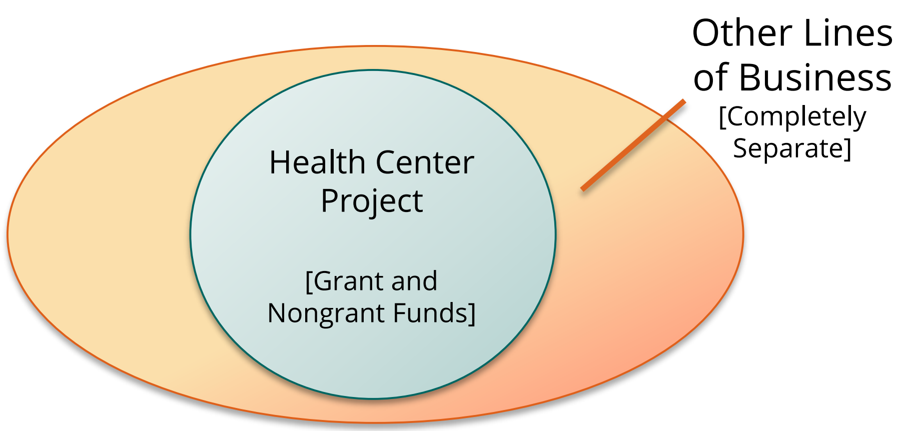
- Per FAQs, due to the expanded flexibilities granted to all federal agencies by OMB, for carryover requests for less than 25% of the grant award, Health Centers can simply include a notation on the Federal Financial Report to carryover the funds: "As part of the "Expanded Authority" HRSA is providing to health centers, you do not need to request prior approval from HRSA to carry over UOB that are 25% or less of the total amount awarded for the budget period. You can simply identify and request this carryover through the annual Federal Financial Report. . . . If the unobligated balance is 25% or less of the total amount awarded, select the first option in EHBs to request carryover of the UOB amount covered under expanded authority. No additional action is necessary." For amounts greater than 25%, the normal "prior approval" rules and all the work that entails, still apply.

AND DON'T FORGET ABOUT PROGRAM INCOME

- Look at your H8D or H8E NOA
- Box 15 on Use of Program Income
- "A" meaning additive method
- These grants are made pursuant to Sect 330(d) not (e), so no flexibility
- Entirely possible that you will generate P.I. meaning spend first, on allowable costs, and reported on FFR

AND FINALLY OTHER LINES OF BUSINESS

Health Centers may engage in activities entirely outside the scope of their project. HRSA describes these as "other lines of business." They are not subject to federal requirements, but also cannot be supported by federal funds. *See* Compliance Manual, p. 70.



<u>Issues</u>:

- Health Center benefits likely unavailable (examine case by case)
- Allocable overhead
- Accounting separation

"If plan A doesn't work, the alphabet has 25 more letters — 204 if you're in Japan."

— Claire Cook

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