

TO: Early Learning Coalitions
FROM: Matt Mears
Chancellor of Early Learning, Florida Department of Education
DATE: February 17, 2022
RE: Limits on Using Covid-19 Relief Funding to Pay for Overtime and Supplemental Payments for Early Learning Coalition Staff

Congress passed the Covid Response and Relief Supplemental Appropriations Act (CRRSA) and the American Rescue Plan Act (ARP) to address the pandemic's impact on the economy and public health sector. These statutes provide relief funding to support the early learning and child care market. The Florida Department of Education, Division of Early Learning (DEL), in consultation with outside counsel Brustein & Manasevit, PLLC (the Firm), offers guidance on the use of CRRSA and ARP funds by addressing three questions: (1) Are CRRSA and ARP funds subject to the administrative cost limitations of CCDF programs? (2) Can CRRSA and ARP funds be used to pay overtime to administrative staff at ELCs? And, (3) Can CRRSA and ARP funds be used to pay bonuses or provide supplemental payments to compensate salaried administrative staff for additional duties during the pandemic?

Question 1. Are CRRSA and ARP funds subject to the administrative cost limitations of CCDF programs?

Yes. CRRSA imposes a five percent cap on administrative costs. And, although ARP provides for a ten percent total administrative cost cap, DEL has reserved five percent for future initiatives and passed the remaining five percent to ELCs. Thus, for the ELCs, a five percent administrative cost cap applies. See CRRSA Guidance, Information Memorandum CCDF-ACF-IM-2021-01 at p. 11 (available at <https://www.acf.hhs.gov/sites/default/files/documents/occ/CCDF-ACF-IM-2021-01.pdf>) and ARP-Discretionary Guidance, Information Memorandum CCDF-ACF-IM-2021-03 at 5 (available at <https://www.acf.hhs.gov/sites/default/files/documents/occ/CCDF-ACF-IM-2021-03.pdf>).

Question 2. Can CRRSA and ARP funds be used to pay overtime to administrative staff at ELCs?

Yes, both CRRSA and ARP funds may be used to pay administrative overtime related to the pandemic, but the exact requirements will vary by program.

CRRSA provided a supplemental allocation of Child Care and Development Funds (CCDF) for distribution to child care providers to help “prevent, prepare for, and respond to coronavirus.” CRRSA Pub. L. No. 116-260, 134 Stat 1909, 1914 (2020). These funds are meant to support the child care sector and “help providers afford increased operating expenses during the COVID-19 public health emergency.” CRRSA Act at 1914. In an Information Memorandum issued 04-14-2021, HHS clarified that the “efficient and effective use of CRRSA Act funds, including tracking and reporting on their use, may require additional administrative staff and expenses. CRRSA

Guidance, at p. 11. Accordingly, the supplemental allocation of CRRSA funds may be used to support overtime payments for ELC administrative staff if the increased workload is related to preventing, preparing for, or responding to COVID-19 or administering the CRRSA CCDF award.

ARP provided two different sources of funding: ARP-Stabilization and ARP-Discretionary. ARP-Discretionary grants are meant to supplement the fiscal year 2021 CCDF appropriation and, unlike the ARP-Stabilization allocation, these costs are not restricted to responding to the COVID-19 public health emergency. ARP-Discretionary Guidance, at 5. Accordingly, ARP-Discretionary funds may be spent on any allowable administrative activity under 45 CFR § 98.54 which includes salaries and related costs of ELC staff engaged in the administration and implementation of the ARP-Discretionary program. In contrast, ARP-Stabilization funds are restricted to costs of responding to the COVID-19 public health emergency.

Note that, as of the date of this memo, ARP-Discretionary funds have not yet been released through the budget amendment process.

ARP-Stabilization grants may also be used to provide overtime payments to ELC administrative staff. In fact, HHS indicated in an Information Memorandum that agencies “are strongly encouraged to use a portion of their [administrative] set-aside to cover the cost of staffing and systems necessary to administer and process the subgrants in a timely, transparent, and effective manner...” ARP-Stabilization Guidance, Information Memorandum CCDF-ACF-IM-2021-02 at 5 (available <https://www.acf.hhs.gov/sites/default/files/documents/occ/CCDF-ACF-IM-2021-02.pdf>). Therefore, any administrative overtime required to administer and process ARP-Stabilization grants could be an allowable use of these funds.

Regardless of funding source used, ELCs must ensure that all costs charged to federal awards meet the cost principles in the Uniform Grant Guidance (UGG) and are necessary to carry out the federal award and reasonable in cost. 45 CFR 75.403(a). In this instance, overtime costs are necessary to the extent they are required to administer each of the grant programs. Examples of allowable administrative salary costs and job activities can be found at 45 CFR § 98.54(a)(1). Compensation costs are reasonable to the extent that they are consistent with that paid for similar work in other activities of the non-Federal entity or else comparable to market rates for labor. 45 CFR 75.430(b). In addition, overtime pay must be adequately documented, consistent with 45 CFR 75.430(i).

Question 3. Can CRRSA and ARP funds be used to pay bonuses or provide supplemental payments to compensate salaried administrative staff for additional duties during the pandemic?

Whether CRRSA and ARP funds can be used to pay bonuses or provide supplemental pay will depend on the type of pay. Hiring and retention bonuses are prohibited by the grant award terms and conditions for all CCDF programs including the three programs funded by CRRSA and ARP and thus are not an allowable use of grant funds.

Other types of bonuses or supplemental pay, such as hazard pay or pay for additional duties, can be an allowable cost under all three programs. As noted in Question 2 above, HHS has recognized under both the CRRSA and the ARP programs the ELCs will likely face increased administrative costs related these programs and encourages agencies to use a portion of their administrative

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funding to ensure the efficient operation of the grant award. CRRSA Guidance, at p. 11 and ARP Act Guidance, at 4. Accordingly, bonuses or supplemental pay for salaried employees can be an allowable use of CCDF administrative funds.

Unlike overtime payments, however, bonus or incentive compensation is only allowable to the extent that the overall compensation of the employee is determined to be reasonable. In addition, these costs must be paid pursuant to a written agreement between the ELC and the employees before the services are rendered. 45 CFR 75.430(f). Therefore, ELCs must enter into agreements with their employees to provide supplemental pay or bonuses to compensate those employees for the additional time and job duties required to administer the CRRSA or ARP Act programs. Please note that these costs will be subject to the five percent administrative caps discussed above in Question 1.