Ask the Financial Experts: Fiscal Navigation in 2022

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2:00 - 2:45 PM

[Jon Cohen, CAPLAW]
I see people are getting in getting let in now. Hi, everybody. My name is Jon Cohen. I'm a staff attorney with CAPLAW. And you are here for Ask the Financial Experts: Fiscal Navigation in 2022. And we're just gonna jump right in because our time is relatively short here. And I know a lot of you have some burning questions. And so we're lucky enough to be joined today by our two financial experts, Denes Tobie who is a certified public accountant and partner in Wipfli, Wipfli LLP's nonprofit practice. She's got a lot of experience working with nonprofits and with community action agencies, and is a frequent contributor at our conferences and our webinars and so we're happy to have her. We're also joined by Kay Sohl of Kay Sohl Consulting. Kay is a licensed public accountant and she has provided trainings and consultations for executive directors, CFOs boards, over 8,500 nonprofit organizations throughout the US and again, has a vast array of experience with community action agencies and with the partners in the network. And so thank you both for being here today and for joining us to talk about these important issues. This, this session will be recorded and will be available at a later date. So keep an eye out for that. We're going to go as quickly as we can through the questions that we received prior. But also, if you have questions, please submit them in the chat. And we will, we will address those hopefully as they come in. We've got somewhat of an order here, but I'm always open to the questions that come in from the chat that are relevant to the conversation and even those that might not be and take us in a different direction. So please ask, ask away on that.

There are a few questions we received beforehand, related to detection of fraud and compliance issues. We're not going to directly address those here because we have other resources that we have for that and thought we can save time by putting those in the chat. In addition, there were some questions about fundraising and unrestricted funds, and so we have other resources on that that I'll put in the chat momentarily so you can see those. And so those are there as well. But we just kind of want to jump in now to the topics and questions that we received. And I will stop talking, because you're not here to hear me talk, but to hear our experts. And we really wanted to start by talking about an issue that we think is pretty big in network right now and that a lot of people are getting, asking questions about and that relates to the employee retention credit that is available. And just to ask a question as the basis for discussion. And we'll start with Denes on this one, someone asked, we expect to receive 1.8 million from the employee retention credit related to fiscal year 2020, 2021, which the organization paid with grant funds. And the person was wondering, do we need to contact grantors about that. And so Denes, wanted to start with you about this particular issue, and to get your thoughts on and your experience on it.

[Denes Tobie, Wipfli LLP]
Great. Thank you, Jonathan. And thank you CAPLAW for giving us this opportunity to share information. Yeah, I can't tell you how big the employee retention credit issue is right now. I've had many, many

conversations with agencies over the last few months, because agencies are being told that this is a great opportunity for you to apply for this credit based on, you know, the criteria that you have to meet and, you know, and the numbers are substantial that you can, you know, potentially receive back. But there's some things that you have to keep in mind. If you use wages, salaries paid with federal funds, the Uniform Guidance is very clear that those funds go back to the program. Meaning if it is for a grant that is closed, the regulations state that you have to refund those dollars to the funding source. If the grant is open, then it would free up additional program dollars for you to spend in the program. So let's say you used Head Start and CSBG wages paid to generate this credit of a million dollars, that million dollars would go back to those two programs in the proportion that the wages were used to create that credit. And so I know that there are, you know, companies, firms that are approaching organizations and saying you need to do this, this a, you know, a great opportunity for you. And it is if you put, you know, if you use those funds appropriately. And so, you know, the question related to, you know, do I need to contact my funding source because I, you know, claim this credit for 2020? Was it 2020, 2021? Well, chances are those grants are closed. And so the regulations do say that that goes back to the program. And so we've really been cautioning organizations. Because these companies that are approaching you don't know the federal regulations. They just know how to calculate the credit.

[Jon]
Yeah, that's a great point Denes and I'm going to put in the chat a handout of those provisions that you've mentioned from the Uniform Guidance so people have that as a reference as well. And so, just wanted to remind everyone, please, please do submit those questions in the chat when they come to mind. I wanted to talk really quickly about a few of the questions that we received because I think they're rapid fire, quick answer type questions that hopefully, Denes and Kay you can address in quick succession. But, you know, I guess I'll just start with, with you Kay on this on this quick question about expenditures and contracts. Can expenditures or contracts be retroactively approved by a board of directors?

[Kay Sohl, Kay Sohl Consulting]
I would say yes, in general, that's not that unusual that a board didn't approve an agreement, had to revise a budget, but the thing that you want to be really careful about is if what you're doing with a budget revision has to do with compensation and possibly trying to offer incentive compensation, or increased compensation, possibly because you had more money than you thought you were going to. That's where I see potential problems coming up, and where a board retroactive action isn't going to take care of the inherent problems in justifying increased compensation or incentive compensation. And my understanding is that incentive compensation, to be allowable, you actually have to have offered the incentive before the work was done. And so any kind of retroactive approval is probably not going to help. And I don't know if Denes, do you agree?

[Denes]
Yeah, I think, you know, we saw over the last few years, things moving very rapidly. And we need to have policies and procedures in place to accomplish some of the things that we're doing on a rapid basis. And so we may have to receive some of those approvals, not in the order that we would normally see things. Always we just say though document, document, document, and have a written policy.

[Jon]
Great, thank you both. To jump back quickly to the employee retention credit issue, we got a couple of comments on that one, one person said, “The firm we engaged with is aware and is excluding those funds from the calculations.” So there’s that and I guess they are aware of some of those issues. And then someone else asked, “Do the credits have to go back to wages?”

[Denes]
Um, technically it’s a payroll tax credit. So you, the way you file it is through amending your 941. And so I would allocate those credits to where I allocate my payroll taxes.

[Jon]
Okay, great. Denes, I’ll ask you, what’s the best way to allocate space. So if you share space what’s the best way to do that?

[Denes]
Well, I’m gonna assume that they are talking on a direct basis, because if you’re going to have a negotiated indirect cost rate, that space, that shared space, that would be administrative space would go into your indirect cost pool. But typically, we see square footage is the way to allocate space. And one of the things that I always stress when we are training on the regulations is the flexibility that Uniform Guidance has as far as reasonableness. Now, we could say square footage, you know, is a reasonable basis. Is it exact? No, but the regulations don’t say exact, they say, an approximation based on benefit using a reasonable documented basis. So people can use square footage. My only caution is, you know, I sometimes it’s been done years ago, and we never revisit it. So. You know, just make sure that your allocations are current.

[Kay]
And I would add to that, that I think in smaller organizations where we have a lot of staff that are working on multiple grants, doing multiple functions, that sometimes it may be more effective to use FTE as a basis. Because otherwise, you’ve got people trying to figure out well, I’ve got one office, I’ve got one person, but they’re being charged multiple programs as they do multiple activities. So I think I think you want to choose the method that is most practical for your organization.

[Jon]
Similar, we got another question in the chat related to time allocation, it says, “All of our allocations are based upon number of children for Head Start and Early Head Start and/or number of staff. Can we use the same allocation method for time, parentheses wages and fringe rather than having to allocate based upon time spent on the grant?

[Kay]
Well I think we still have the expectation that if we have staff that are performing multiple functions we’ve got to have time records to justify it, but I think in Head Start we’re talking about a classroom where there might be several grants that are funding the children in that classroom and as long as we have the time

record that was spent in that classroom I don't see a problem in saying the further allocation is based on the percentage of children being charged to each award.

[Denes]
Yeah, the only caution I always put around that is, it should be actual enrollment not funded in case you're not fully enrolled, that can skew your numbers.

[Kay]
But in both cases, Denes's point about you've got to update these allocation formulas. You cannot go with some analysis that you did two years ago, either space or labor or funded positions in a classroom. It's supposed to reflect what really happened.

[Denes]
And the regulations don't talk about time studies anymore. They talk about actual activity—that your allocations have to be based on actual activity. So what happened last year or last month doesn't have any basis for what's happening today. So be careful that you're not using historical information because that doesn't necessarily, you know, represent what's actually happening. Jonathan, I see some more employee retention credit [questions in the chat], you want me to hit them real quick?

[Jon]
Yeah, sure.

[Denes]
Is the ERC considered a grant? No, it is not a grant; it is a credit. If you look at the regulations that Jonathan attached, where they talk about applicable credits, and then the provision on tax credits—that is in there too. That says, "If you use expenses related to a federal award, any credits generated from that go back to the program." So it is a credit.

Where does one find the regulations for the retention credit? The only regulations that apply to it are the regulations to claim it. And so there's a plethora of documentation out there—word of the day—for you to understand it. And it is complicated. You know, some can even make an argument that, you know, whether or not, which programs actually qualify for the credit.

The guidance around ERC refers to grant revenue and not reducing wages…I'm not sure I know exactly what you're talking about. But again, I'm following the Uniform Guidance that applies to what you have to do with those credits.

You have Head Start—can you put it to the current year and not have to go back to a closed year? No, you cannot take the credit in the current year. You could possibly ask your funding source if you could carry that over, but the regulations say that if a grant has closed, a close out does not affect the requirement of the non-federal entity to repay any funds generated as a result of a later credit. Sad that I can repeat it, but…[laughs]

[Jon]
Great, keep those questions coming. Denes, I'll just follow up with you quickly about a quick question we had. Someone asked about the treatment of 401k forfeitures. I was wondering if you could speak to how those are treated.

[Denes]
It goes back to your policy. You need to have a policy around them and what happens to them. Typically, agencies have a policy that says that forfeitures get distributed, you know, redistributed to the current employees. It would reduce what you would have to contribute cash-wise in the current year.

[Jon]
Great. Next question for you, Kay. What are we supposed to do if we do not receive an indirect cost rate agreement on time?

[Kay]
Well, it does depend a little bit on what agreement you're trying to get. The most common question I get is, "We have a provisional rate. We submitted our proposal to have it made final and nothing is happening. What are we supposed to do?" And I believe the answer to that question is that your provisional rate is going to remain in place until you get a determination on the final rate. At that point, you're going to have to follow the determination. But I also thought this question might have come from someone who is applying for the first time for a provisional rate and encountering the delays that are happening in getting that rate. My understanding is that you will be safe if you charge the 10 percent de minimis while you wait. And that if you do get that provisional ruling—it will come eventually—that you then can go back and use it for the period that the rate is awarded for. And so I have seen some of the negotiators make that award period parallel what you applied for. And so you may be able to go back. But of course, the problem is you probably have awards that are opening and closing throughout that period while you're waiting. I have had people run into difficulty with other funding organizations—often a state funder—saying, "Well, your provisional rate is expired because the original time period has been exceeded." But I have been able to persuade those funders that in fact, because of the delays in getting those final rates, it is still in effect. And I've had some success with actually writing to the negotiating agency and asking them to affirm that. So Denes, what are you what are you seeing?

[Denes]
Well, I do know that there's significant delays in getting responses from the indirect cost rate "negotiator"—I say in quotations, because it is not a negotiation—my caution with, you know, the whole thing around the 10% de minimis rate is that if your agency has ever had a negotiated rate, you're not allowed to use the 10% de minimis rate if you have HHS money. Because HHS has not adopted the changes that OMB made that said you could use the de minimis rate. And so…

[Kay]
So you might not be able to?

[Denes]
You might not be able to. And I don't know when HHS will or will not adopt those changes. So we're living in kind of in this parallel world of rules for some programs and different rules for other programs. What we tell people is, as Kay said, follow your provisional rate. However, if your actual rate is significantly different than that provisional rate, you should be charging your actual. Because let's say your provisional is 19%, and you're running at 16%; if you've charged 19%, to your programs—again, the regulations address this—if you've overcharged, you owe money back to your funding sources. And we hear, "Well, but that grant closed." And once again, the regulations say close out does not affect your responsibility to repay funds. So it's, you know, they're backlogged. Do the best you can and document what you're doing.

[Kay]
And I just want to reaffirm something that Denes said, because I think that's the most important thing. Even though you might have applied for that rate to make everything easier, you have to keep calculating your actual indirect cost rate using whatever method you used in your proposal. Because you have to know ahead of time whether your actual rate is going to turn out to be lower than your approved rate. Because if you if you keep billing at that higher rate, you're going to have a kind of an unhappy ending when you do get the final rate.

[Jon]
Ok great. Thought that was going to be a quick answer, but it was a little more involved, as many of the issues tend to be. I'll back up real quick to a question we got in the chat. "WIC is saying that we cannot allocate our fiscal office rent within our weekly reimbursements. We are only allocating the portion that is relative to the time our fiscal staff spend directly on WIC. We allocate everything directly. They say they are a fully funded program, but it will cause us to use unrestricted funds due to us not being able to claim that portion of rent under other programs. How are we supposed to handle this?"

[Denes]
I haven't heard anything to the contrary about them not covering fiscal space. Kay, have you heard anything with WIC?

[Kay]
No. I mean, my first response is it's an administrative cost. The fiscal function is an administrative cost. And the definition of an administrative cost includes not only the personnel costs, but the space—people have to work somewhere. So I wonder if this is a conflict about how to claim the cost and some sort of imposition of an administrative limit?

[Denes]
Yeah, and one of the things that we always recommend too is, you know, sometimes funding sources may not fully understand (a) what you're doing or (b) the regulations. We suggest saying "Show me in the regulations where it says I can't. Help me understand this so that we can…" And I would say, you know, don't be controversial, don't be defensive. It's "I want to learn more. So please show me in the regulations where it says WIC won't pay for this."

[Jon]
Yeah, I think that's a great strategy. A good approach. Getting back to one of those questions we thought would be a relatively quick answer. Can an agency set up a cost center for internal use laptop purchases and charge its programs for using the laptops? Maybe we'll start with Kay on this one.

[Kay]
That sounds like a use allowance. I think what you could do, I mean, for one thing, the laptops may be cheap enough that you can just charge the purchase and not get into any kind of capital cost item on it and charge it to whichever program is going to use them. But I'm assuming that this is an organization that's going to have a set of laptops that they allow different programs to use at different times. And in that case, it seems to me the way to recover the cost of those laptops is probably through depreciation if you had to capitalize them. And it would be an allocated cost. And we just can't use the old use allowance method. I think the reasoning behind that is that some of us were trying to get a little profit center out of having this equipment, and just keep charging the use allowance again, and again, long after we recovered the cost of purchasing it. That's been gone for a while, so if you haven't been able to charge the purchase directly as an expense when you made the purchase, then I think depreciation is your strategy.

[Denes]
Well, I just want to caution that, you know, laptops are considered a supply in the regulations. So there wouldn't be depreciation.

[Kay]
Right, they would be charged at the time they're purchased.

[Denes]
So, there is no depreciation to charge, because they wouldn't meet the definition of equipment greater than $5,000.

[Kay]
Pretty powerful.

[Jon]
Great. So, I wanted to get into really the impact of staff vacancies, because we know that's an issue that a lot of CAA's have dealt with during the pandemic and in recent times. And of course, that has some very real impacts on fiscal related matters. So I wanted to touch on that subject with a couple of questions. The first being, how do you go about as an agency covering indirect costs when there are so many open positions at organizations? I was wondering if you could address that one.

[Kay]
I think when we're talking about this problem, it's important to realize that vacancies are going to have two impacts. And you've got to be prepared to deal with both. If those vacancies are in positions that

are direct cost positions, they are going to impact what your indirect rate turns out because your base is going to shrink with the unfilled positions. And they're also going to impact if you're doing cost allocation and direct charging, because again, the ratios that you did your whole estimate of how you're going to charge various administrative functions on, are going to be thrown off by these vacant positions.

So, the first thing is to realize they're going to create a problem. In the charging of both direct and indirect costs. I think we already talked about one strategy for the indirect costs, which is you just do have to continuously compute your actual indirect cost rate, and be sure that you are not charging awards at a higher rate, even though your approved rate might be higher than that. I think the other problem that everyone is dealing with is, in both indirect and direct positions, is just how are we going to spend down the grant funds because personnel is typically the largest costs. If we have a number of vacant positions, we are going to have unexpended funds. And so, considering what other alternatives alternative might exist for spending those funds seems to be the strategy and the other thing that I think is very difficult in this time, many of my clients just can't hire. And so I think for positions where it is possible to use temporary agencies and temp positions, I definitely would look at that. I don't know Denes, I hope you have some great strategies here.

[Denes]
You know, I don't think it's something that's going to be rectified in the near future. I was listening to an economist talking about that. It's not just, you know, the problem we're dealing with now, it's that those entering the workforce keep shrinking every year. It's like 300,000 less every single year, entering the workforce. So this is something that's going to, unfortunately, plague us for some time. But as Kay was talking about that I was thinking, you know, if you have a negotiated rate, there are three different bases that you can choose from. One is salaries, one is salaries and fringe, and one is modified total direct. And so maybe think about when you apply for your next rate, going from salaries or salaries and fringe, because that's very limiting, to maybe going to modified total direct, which could at least help stabilize your base a little bit. Does that make sense, Kay, what I'm saying?

[Kay]
Yeah, although I've had clients that had difficulty with their negotiator when they attempted to change base method, with the negotiator, just being incredibly resistant to that change, I still think it might be a good idea to push forward on. I guess I wanted to acknowledge one other piece of this problem that I'm seeing, which is, okay, we are living through this year, I've been charging at my actual indirect rate, because I've been keeping track of it. Now, I'm ready to have the rate set for next year. And I am anticipating that we're going to be closer to full employment on our positions than we were this year. And I'm having some people with difficulty in negotiation with the negotiator saying, well, no, look, we looked at your records for this year, your rate dropped from 19 to 16. We don't want to approve a 19% rate for next year, based on your proposed spending. And I think that is creating problems. And I don't know, Denes, do you have an answer to that problem with a negotiator who says, well, I think the past is a better predictor than your proposal?

[Denes]
Yeah. The only thing that I suggest is, you know that you create a pretty powerful narrative because, you know, it says that you when you apply, you use last year's audited information, plus any anticipated changes. And so, if you can maybe put some data to the narrative. If you can demonstrate that, you

know, for most of the year, we were 80% staffed, but in the last two months, we were 95% staffed. And so that year isn't really reflective of what we are going to be into the next year. So, you know, again, I documentation, documentation, documentation.

[Kay]
I think it's a really good point, because so often the person preparing the proposal is just basically doing a spreadsheet, and they're not thinking about making a case.

[Jon]
A little bit related to that, we got a question about basically discovering that you've been sharing costs and allocating costs incorrectly, in the middle of, of the year. And the question really was, how do we start doing it correctly? We've been doing it wrong, what do we need to do to fix it? And so this might be a relevant time to address that one.

[Denes]
Yeah. You know, I will tell you to whoever wrote that question, you are not alone. I think that there are unfortunately, agencies that are using maybe methods that are not an allowable method, and are fearful for what it is going to mean to fix it. One of the things that we always say during training is if you change your method, you'll get a different result. And you have to understand that. So let's say you are allocating based on salaries, which is a monetary base, which is not allowable, and you switch to FTEs, which is non-monetary, which is allowable. You're gonna get two different numbers. But I think, you know, making sure that you're doing it correctly. Because if you're, you know, if you're using an incorrect method and somebody calls you on it, you potentially could have to repay some questioned costs. And so, documenting why you changed it, documenting your policies and to correct. Would I go back and restate prior years? I would not.

[Kay]
But you would make the change during this current year rather than waiting for the beginning of next year?

[Denes]
I would. Again, though, you're gonna have to run the numbers and it could significantly sway your budgets.

[Jon]
Okay, somebody just asked, can you use different allocations based on what the expense is? Based on FTE, depreciation, or capture on square footage?

[Denes]
Yeah, as long as you're using something that relates to benefit. You wouldn't use, I don't know...

[Kay]
Square footage on personnel time.

[Denes]
Thank you Kay. That's why we work well together. We know what the other one's thinking.

[Jon]
Excellent.

[Kay]
Yeah. But then one other thing we have to say is, yes, you can use a reasonable method, but you've got to be sure that that's what's in your cost allocation plan. And if you're going to change method in the middle of the year, then you've got to revise the cost allocation plan. And that's another one of those, you know, some great document that somebody approved two years ago isn't really important, you've got to match with what you're actually doing.

[Jon]
Okay, this next one relates to a little bit to the staff vacancies issues as well. Someone was asking, what are some best practices for capturing or retaining the fiscal lessons that were learned from COVID? Given that there's been a lot of staff turnover? Do you have thoughts on strategies for doing that, or best practices?

[Kay]
Well, I would say now is the time to realize you need to pay better. That is a lesson that I hope every Headstart program has learned. And, and my experience over many years is organizations hesitate to do significant pay increases, because they are concerned that they won't be able to sustain them with the next year's funding. But I think I hope everybody has learned a lesson that in this economy, you can go too low, and no one will take the jobs or keep the jobs. And that actually, my experience is once you raise the pay significantly, it actually does become possible to sustain that, because most funders see that it would be an impractical strategy to reduce wages, especially in this economy. So, I hope that's a lesson that we've learned.

[Denes]
Another thing is, you know, organizations streamlined processes, because they didn't maybe have six people around to sign off on an invoice or approve an invoice. And so, you know, we found ways to be more efficient, which is fine. Just make sure that what you're doing matches what your policies and procedures say. But also keep in mind, your internal controls, segregation of duties - don't minimize it so much that you're putting the agency at risk by having less than ideal internal controls. But, you know, look at what worked well, and build upon those things. And, again, document, document, document.

[Jon]
Good points. With regard to what you were saying, Kay, about compensation and paying people, do you have thoughts on ways that - the question that came in was about ways that COVID funds can be used to compensate employees, and now we're running up against a little bit of time on those.

[Kay]
I would just say, you know, basically, you got to be able to demonstrate that the position you're compensating did carry out the work of the COVID funding or whatever other grant funding. I think the bigger question is about this idea of incentive compensation. And I think it's a tricky one because it cannot be a bonus. It has to be something where there is something measurable that you can say, we agreed to pay more if something happened, and it's got to - I think it's got to be set up in advance of the person working so I think we're probably going to have some difficult audit issues because in fact, some of what has happened is bonuses. It is using excess funds to try to compensate. I have had clients that have approached this subject by saying that having this sudden influx of COVID and other funds has forced staff to have greatly increased workloads. And so when we're talking about staff that are not paid hourly and could not be compensated for overtime, I have seen some attempts to make arguments that the position has doubled in the demands placed on staff, and that would justify a significant increase. So I'm sort of interested in your thoughts, Denes, on that approach to it.

[Denes]
Yeah. Yes, I agree with the word bonus. Regulations don't talk about bonus, so we do, you need to use the word incentive, you need to have a written policy. You know, we have seen the Office of Head Start, and OCS talked about using funds for retention and recruitment. And there's a lot of flexibility there. With the funds expiring, you know, you're not going to be able to necessarily have, you know, long-term increases in someone's salary or wages, because there won't be the money to sustain it. So using those funds for incentive, for recruitment, for retention, you know, they've all talked about it being reasonable, you know, it's a reasonable amount. You know, I've heard one agency say, "we gave everybody $50". And another agency said, "we gave everybody $5,000". And so, you know, and I'm not saying either one of those are right or wrong. It depends on your organization, depends on your funding, depends on your situation, because they all talked about using something to base your decision on - some type of comparable to base your decision.

[Jon]
That's great. Another question about projecting and allocating funds when there continued to be extensions and different end dates. Wondering if you can speak to strategies for doing that. What some of the challenges are with regard to that question?

[Denes]
Well, I think one of the things to be concerned about is, you know, don't rely or assume that it is going to be extended, you need to have a plan to pay down or to utilize the funds based on the timing that you have. And then, you know, if there is an extension, you know, great, then you have, you know, some additional time, but, you know, this new money that we've seen over the last couple of years will have an end date, it's not going to continue and continue and continue. There are provisions where you can ask for a no cost extension, there are provisions that, you know, but for most of them, it's going to end. And so we need to more focus on making sure that we're utilizing those resources in the time period that we have.

[Kay]
And I think that's just another reminder that nothing can be static, that you have to continually do an analysis of what you have this month and what you're going to have next month, in the next three months, because it's not going to be the same thing for 12 months if there's going to be this constant flux. And if you're - whether you're dealing with an indirect cost rate, or whether you're doing cost allocation for direct charging, any of those changes, either significant increases, or significant reductions, are going to mess up your allocation formulas, and you're gonna have to be staying on top of it. Rather than having programmed in some rate that was developed by how things were at the beginning of the budget year. I just think it's made our jobs tougher. And I think it's made all of us need to look again at what our software can actually do to have this responsive allocation rather than a fixed formula allocation. And a lot of the programs now can do that. We just need to set it up to use that feature.

[Jon]
Okay, we've got a few minutes left, and so if anyone has any burning questions, please do put those in the chat before we run out of time. I'll ask one of the questions that did come into the chat. It says "we pay daycares for TANF and low-income clients. This is a mix of different federal and state funds. Would we be required to go through the complex process of having to calculate which CFDA numbers the funds each daycare received were if those daycares asked for it? My thought is that we are not acting as a pass through to them. So I don't see why they would need that information. We do have a contract with them, but they are just a vendor and paid per child per day."

[Denes]
Yeah, this goes back to, whether they're a contractor/vendor or their sub-recipient. And it sounds like in your example, that they are a contractor/vendor. I say that because uniform guidance doesn't use the word vendor. So we use them interchangeably. Have a document - document your approach to these types of situations and why you consider them, you know, your vendor and not a sub-recipient. And you're right, if they're a vendor, they don't need that information.

[Kay]
It's a real argument for being explicit in your contractual agreements. Either explicitly, you are a sub-recipient, or explicitly, this is a contract. And although it has federal funds, it meets the test to be a contractor or vendor agreement.

[Denes]
And I always do caution people, though, because the regulations say that the substance of the relationship is more important than the form of the agreement. If you consider them a contractor/vendor, don't treat them as a sub-recipient. Okay. So, you know, you pay your phone company to provide services, you don't go out and monitor your phone company, you don't ask them to send copies of receipts, you need to treat them as a vendor as you do anybody else. Because if you start, you say, they're contractor or vendor, and you treat them as a sub-recipient, the substance of the relationship is more important than the form of the agreement.

[Jon]
Very good point. Got a couple of minutes left, anyone type into the chat any questions you have. As you're doing that, I'll just briefly mention, with regard to, I think, maybe one of the first questions I asked that you answered, Kay, on the issue of retroactive Board approval was brought up. And just to say, as a sort of a cautious attorney here, be a little careful with retroactive approval. You know, one thing to keep in mind when doing it, is doing so, you know, shouldn't really be a regular practice. I think it's permitted, but once that contract is signed, the organization is bound by it. So in some senses, retroactive approval is a bit of a formality. So, again, that's just my attorney take on that really quickly. Someone asked, actually, while I was talking, "does contracting a fiscal officer fall into the area just discussed?" I think they're talking about what you discussed, Denes?

[Kay]
Vendor agreement, yeah.

[Denes]
Yeah, it sounds like that would be a vendor/contractor again, you know, also goes back to employee independent contractor roles, too. So just be careful that you're not putting them in the employee category and paying them as an independent contractor.

[Kay]
Right. I mean, I think we're seeing more and more community action agencies and nonprofits actually engage outsourced accounting firms to perform fiscal functions. And those seem to be really clear contracts or vendor agreements. The ones that I'm cautious about is where somebody is basically functioning as an employee, they're using the organization's office space, their equipment, they are included in all staff meetings, they're functioning as employees and to say well that's an independent contractor relationship I think is dangerous and that you really want to get some advice on the the standards for who is an employee and who is a contractor.

[Jon]
Very, very briefly, either of your feelings about returning unspent funds that have been freed up because of all of these vacancies?

[Denes]
You know, I just hate seeing money go back. I think you can, you know, try to do a budget amendment and use those funds in other - for other - means within the program.

[Jon]
Alright, I think that's a -

[Denes]
Quick question on incentives and base for next year, again, put in your narrative and back them out.

[Kay]
Yeah, back them out and explain why, because that could distort it.

[Jon]
Excellent. We are a little over time. But thank you for the very fast webinar, “Ask the Experts.” It’s a very important topic, of course, and generated a lot of interest from our network, and so greatly appreciate you being here. I wanted to mention, I don’t think I mentioned at the beginning, CAPLAW did offer this webinar in collaboration with the National Community Action Partnership. So thank you to them as well for collaborating on this. And thank you, Denes, and thank you, Kay, as always, for your expertise on these issues. And for your clear and very informative answers. We really appreciate all of your efforts on this and everything else that you assist the network with. So thank you very much.

[Denes]
You’re welcome. And thank you CAPLAW for the great work that you do for the network.

[Kay]
Yeah, thank you.

[Jon]
Thank you, everyone. And as mentioned in the chat, this will be available as a recording relatively quickly, so stay tuned for that as well. Thanks, everyone.

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