

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Telephone: 213 623-9300
Facsimile: 213 623-9924

Attorneys for the Post-Effective Date
Debtor and the Co-Liquidating Trustee

Jeffrey N. Pomerantz (Bar No. 143717)
Steven W. Golden (Admitted Pro Hac Vice)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: 310-277-6910
Facsimile: 310-201-0760
Email: jpomerantz@pszjlaw.com
sgolden@pszjlaw.com

Attorneys for the Co-Liquidating Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re

BORREGO COMMUNITY
HEALTH FOUNDATION,

Debtor and Debtor in
Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

**STIPULATION BY AND AMONG THE
LIQUIDATING TRUST, THE
CO-LIQUIDATING TRUSTEES, AND
U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES - HEALTH
RESOURCES AND SERVICES
ADMINISTRATION REGARDING
CLAIM NO. 218**



220238425032000000000001

1 Borrego Community Health Foundation, the Liquidating Trustee (the
2 “Liquidating Trustee”) of the Borrego Community Health Foundation Liquidating
3 Trust (the “Liquidating Trust”), the Co-Liquidating Trustees of the Liquidating
4 Trust (the “Co-Liquidating Trustees”) and U.S. Department of Health and Human
5 Services – Health Resources and Services Administration (the “Claimant”, and
6 collectively, the “Parties”) hereby enter into this *Stipulation By and Among the*
7 *Liquidating Trust, the Co-Liquidating Trustees and U.S. Department of Health and*
8 *Human Services – Health Resources and Services Administration Regarding Claim*
9 *No. 218.*

10 **RECITALS**

11 1. On or about March 13, 2023, Claimant filed Proof of Claim No. 218
12 (“Claim 218”) in the amount of \$17,454,814.22, a copy of which is attached hereto
13 as **Exhibit A**. Claim 218 was filed in connection with HHS Provider Relief Fund
14 payments, ARP Rural Funds, UIP Funds and Section 330 grant funds.

15 2. An audit of Debtor’s use of grant award H80CS00287 revealed
16 \$116,227.23 in unallowable costs charged to the grant.

17 3. Debtor paid the \$116,227.23 disallowance on December 12, 2024.

18 **STIPULATION**

19
20 **NOW THEREFORE**, subject to the approval of the Court, the Parties
21 hereby agree and stipulate as follows:

22 1. Claim 218 has been satisfied.

23
24
25
26
27 [Remainder of Page Intentionally Left Blank]
28

2. The Court shall retain jurisdiction over all matters relating to the interpretation and enforcement of this Stipulation.

Dated: March 20, 2025

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By /s/ Tania M. Moyron
Tania M. Moyron

Attorneys for the Post-Effective Date
Debtor and the Co-Liquidating Trustee

Dated: March 20, 2025

PACHULSKI STANG ZIEHL & JONES
LLP
Jeffrey N. Pomerantz
Steven W. Golden

By /s/ Steven W. Golden
Steven W. Golden

Attorneys for the Co-Liquidating Trustee

Dated: March 20, 2025

U.S. Department of Health and Human
Services – Health Resources and Services
Administration

By /s/ Leslie M. Gardner
Leslie M. Gardner
Assistant U.S. Attorney

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

EXHIBIT A

Fill in this information to identify the case:

Debtor Borrego Community Health Foundation

United States Bankruptcy Court for the: Southern District of California
(State)

Case number 22-02384

Official Form 410
Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>See summary page</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) Contact phone _____ Contact email <u>peter.cooper@hhs.gov</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) See Addendum See Addendum See Addendum, See Addend See Addend
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6.	Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>0021</u>	
7.	How much is the claim? \$ <u>0.00</u>	Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).	
8.	What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Debts arising from PRF, ARP Rural, and UIP Payments</u>		
9.	Is all or part of the claim secured? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.	Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable	
10.	Is this claim based on a lease? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____		
11.	Is this claim subject to a right of setoff? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Identify the property: <u>Debts, if any, owed to Debtor by USA and its agencies.</u>		



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check all that apply:☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.☒ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 03/13/2023

MM / DD / YYYY

/s/Peter Cooper

Signature

Print the name of the person who is completing and signing this claim:

Name

Peter Cooper

First name

Middle name

Last name

Title

Assistant Regional Counsel

Company

U.S. Department of Health and Human Services, Office of the General Counsel
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0670 | International (310) 751-2670

Debtor: 22-02384 - Borrego Community Health Foundation District: Southern District of California, San Diego Division		
Creditor: U.S. Department of Health and Human Services - Health Resources and Services Administration 90 - 7th Street, Suite 4-500 San Francisco, CA, 94103 Phone: Phone 2: Fax: Email: peter.cooper@hhs.gov	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: See Addendum See Addendum See Addendum, See Addend, See Addend Phone: Phone 2: Fax: E-mail: DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Debts arising from PRF, ARP Rural, and UIP Payments	Last 4 Digits: Yes - 0021	Uniform Claim Identifier:
Total Amount of Claim: 0.00	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: Yes, Debts, if any, owed to Debtor by USA and its agencies.	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Peter Cooper on 13-Mar-2023 2:46:15 p.m. Eastern Time Title: Assistant Regional Counsel Company: U.S. Department of Health and Human Services, Office of the General Counsel		

**HEALTH RESOURCES AND SERVICES ADMINISTRATION
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Federal Assistance Management
Division of Financial Integrity
5600 Fishers Lane, 11N18
Rockville, MD 20857**

ADDENDUM TO PROOF OF CLAIM

In Re Borrego, 3:22-bk-02384-LT11 (Bankr. S.D. Cal.).

Debtor Name & Address: Borrego Comm. Health Foundation
a/k/a Desert Home Care
587 Palm Canyon Dr., Ste. 206
Borrego Springs, CA 92004

Part 1

1. Health Resources and Services Administration; U.S. Department of Health & Human Services.
3. *Return PRF funds*: There is a two-part process to return funds. Part 1 is to complete an online form via the [Return Unused PRF Funds Portal](#).¹ Next, you will be redirected to Part 2 to transfer the funds via Pay.gov. Refer to the instructions for returning unused funds for more information.²

Return interest earned on PRF funds: In addition to returning unused PRF funds, for PRF payments that were held in an interest-bearing account, the provider must return the accrued interest associated with the amount being returned to HHS via the Return Unused PRF Funds Portal. However, if the funds were not held in an interest-bearing account, there is no obligation for the provider to return any additional amount other than the PRF payment being returned to HHS.

¹ <https://na3.docusign.net/Member/PowerFormSigning.aspx?PowerFormId=69f95520-438e-48be-878e-09c9be4aa6b9&env=na3&acct=dd54316c-1c18-48c9-8864-0c38b91a6291&v=2>

² <https://na3.docusign.net/Member/PowerFormSigning.aspx?PowerFormId=45c01db6-78db-403a-baa3-480c1950f596&env=na3&acct=dd54316c-1c18-48c9-8864-0c38b91a6291&v=2>

To return accrued interest, visit [Pay.gov](https://www.pay.gov).³ On the webpage, locate “Find an agency” in the blue bar at the bottom of the page and select “*Health and Human Services (HHS) Program Support Center HQ.*” Verify that the description is “*PSC HQ Payment*” and form number is “*HSHQ*,” then click continue. You will then need to complete the following steps:

Step 1: Preview the form, then click “Continue.”

Step 2: Indicate whether you are completing on behalf of an individual or business and enter the following information.

Business Name Field: Legal name of organization that received the payment

Invoice or Ticket Number Field: “HHS-COVID-Interest”

Contract/Agreement Number Field: Tax Identification Number (TIN) of organization or provider that received the payment

Point of contact: Business contact information

Payment Amount: (The payment amount must match the interest earned on the PRF payment received.)

Step 3: Verify the interest return payment amount and select to pay by ACH or debit/credit card, then select “Continue.”

Step 4: Enter the required information to complete the payment, then select “Review and Submit.”

Step 5: Ensure that all information is correct and select “Submit.”

Technical assistance: For additional assistance with repaying PRF funds, please contact the Provider Support line at (866) 569-3522 (for TTY dial 711). Hours of operations are 7 a.m. to 10 p.m. Central Time, Monday through Friday.

Part 2

7. HRSA has a contingent, unliquidated claim arising from the Debtor’s receipt of \$17,454,814.22 in HHS Provider Relief Fund payments, ARP Rural Funds, and UIP Funds. Per the Court’s ePOC FAQ instructions for claims of unknown amount, and for this reason only, the amount is stated as “0.00” because it is a contingent, unliquidated debt.

³ <https://www.pay.gov/public/home> (Pay.gov is compatible with Internet Explorer® 9 and newer or current versions of Microsoft Edge®, Google Chrome®, Mozilla FireFox®, and Apple Safari®.)

HEALTH RESOURCES AND SERVICES ADMINISTRATION
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Federal Assistance Management
Division of Grants Management Operations, HRSA
5600 Fishers Lane, Room 12A-07
Rockville, MD 20857

DECLARATION IN SUPPORT OF PROOF OF CLAIM

Borrego Community Health Foundation
No. 22-02384-11 (Bankr. District of Southern California, San Diego)

Debtor Name & Address: Borrego Community Health Foundation
a/k/a Desert Home Care
587 Palm Canyon Dr., Ste. 206
Borrego Springs, CA 92004

Total debt due the Health Resources and Services Administration (“HRSA”), U.S. Department of Health and Human Services (“HHS”), as of September 12, 2022, the date that the Debtor filed for bankruptcy: Contingent, unliquidated debt up to **\$17,454,814.22**.

I, Sandra Seaton, in the City of Rockville, State of Maryland, declare that:

1. I am the Director of Division of Financial Integrity in the Office of Federal Assistance Management, HRSA, and am duly authorized to make this claim.
2. The Office of Federal Assistance Management assures the financial integrity of HRSA’s programs and provides oversight to ensure that HRSA’s resources are being properly used and protected.
3. I certify that records of HRSA currently show that the Debtor named above, namely Borrego Community Health Foundation, which has filed for bankruptcy in *In re Borrego Community Health Foundation*, Docket No. 22-02384-11 (Bankr. S.D. CA), is indebted to HRSA in the amount stated above as of the date of that filing.

HHS Provider Relief Fund, American Rescue Plan (ARP) Rural, and COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment, and Vaccine Administration for the Uninsured Program (UIP)

4. In response to the coronavirus pandemic, Congress has made available relief funds through the Public Health and Social Services Emergency Fund to reimburse eligible health care providers for health care-related expenses or lost revenues attributable to coronavirus. Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. 116-136, Div. B, Title VIII, 134 Stat. 281, 560-64 (Mar. 27, 2020); see; Paycheck Protection Program and Health Care Enhancement Act (“Paycheck Protection Act”), Pub. L. 116-139, Div. B, Title I, 134 Stat. 620, 622-28 (Apr. 24, 2020); and *see also* Coronavirus Response and Relief

Page 2 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

Supplemental Appropriations Act, 2021 (“CRRSA Act”), Pub. L. 116-260, Div. M, Title III, 134 Stat. 1182, 1920-21 (Dec, 27, 2020).

5. HHS funded several activities under these appropriations, including the Provider Relief Fund.
6. Additionally, Congress made funds available to reimburse rural providers or suppliers for health care-related expenses or lost revenues attributable to Covid-19. *See* American Rescue Plan (ARP) Act of 2021, Pub. L. 117-2, 135 Stat. 4, Title X, Subtitle N, § 9911 (Mar. 11, 2021), *codified as* 42 U.S.C. § 1320b-26(e)(1).
7. The Provider Relief Fund and ARP Rural Distributions are administered by HRSA.
8. Among other potential bases for eligibility, an entity may be eligible to receive Provider Relief Funds and ARP Rural payments if it participates in the Medicare program, provides services to individuals with possible or actual cases of Covid-19, and meets other requirements. *See* CARES Act, Pub. L. 116-136, 134 Stat. at 563 (defining “eligible health care providers”); Paycheck Protection Act, Pub. L. 116-139, 134 Stat. at 623; and ARP Act of 2021, Pub. L. 117-2, 135 Stat. 4, Title X, Subtitle N, § 9911 (Mar. 11, 2021), *codified as* 42 U.S.C. § 1320b-26(e)(1).
9. HRSA has made PRF and ARP Rural payments in various distributions. Each payment must be used within a certain period of time after receipt thereof:

Period	Payment Received Period	Period of Availability ¹
1	April 10, 2020, to June 30, 2020	January 1, 2020, to June 30, 2021
2	July 1, 2020, to December 31, 2020	January 1, 2020, to December 31, 2021
3	January 1, 2021, to June 30, 2021	January 1, 2020, to June 30, 2022
4	July 1, 2021, to December 31, 2021	January 1, 2020, to December 31, 2022
5	January 1, 2022, to June 30, 2022	January 1, 2020, to June 30, 2023
6	July 1, 2022, to December 31, 2022	January 1, 2020, to December 31, 2023
7	January 1, 2023, to June 30, 2023	January 1, 2020, to June 30, 2024

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/post-payment-notice-reporting-requirements-october-2022.pdf> (last visited March 2, 2023)

10. Recipients of PRF payments must meet certain requirements, including submitting reports and maintaining documentation as determined by the Secretary, to demonstrate that all Provider Relief Funds were used appropriately. *See* CARES Act, Pub. L. 116-136, 134 Stat. at 563; Paycheck Protection Act, Pub. L. 116-139, 134 Stat. at 622-23.

¹ The opportunity to apply PRF payments (excluding the NHIC Distribution) and ARP Rural payments for lost revenue will be available only until the conclusion of the quarter in which the Public Health Emergency expires.

Page 3 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

11. Recipients of ARP Rural payments must also maintain documentation and submit reports as the Secretary determines is necessary to ensure compliance. *See* ARP Act of 2021, Pub. L. 117-2, 135 Stat. 4, Title X, Subtitle N, § 9911 (Mar. 11, 2021), codified as 42 U.S.C. § 1320b-26(e)(1).
12. In addition, Debtor agreed to certain terms and conditions in connection with accepting each PRF and ARP Rural payment. *See generally* <https://www.hrsa.gov/provider-relief/compliance/terms-conditions#terms-and-conditions>.
13. Recipients who received one or more PRF and ARP Rural payments that exceed, in the aggregate, \$10,000 must report on payments received in Periods 1-7 within the following reporting time periods:

Period	Payment Received Period (Payments Exceeding \$10,000 in Aggregate Received)	Reporting Time Period
1	April 10, 2020, to June 30, 2020	July 1, 2021, to September 30, 2021
2	July 1, 2020, to December 31, 2020	January 1, 2022, to March 31, 2022
3	January 1, 2021, to June 30, 2021	July 1, 2022, to September 30, 2022
4	July 1, 2021, to December 31, 2021	January 1, 2023, to March 31, 2023
5	January 1, 2022, to June 30, 2022	July 1, 2023, to September 30, 2023
6	July 1, 2022, to December 31, 2022	January 1, 2024, to March 31, 2024
7	January 1, 2023, to June 30, 2023	July 1, 2024, to September 30, 2024

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/post-payment-notice-reporting-requirements-october-2022.pdf> (last visited March 2, 2023)

14. Recipients of PRF payments may be subject to additional auditing to ensure the accuracy of the data submitted. *See* CARES Act, Pub. L. 116-136, 134 Stat. at 563 (“[N]othing in this section limits the authority of the Inspector General or the Comptroller General to conduct audits of interim payments at an earlier date”); Paycheck Protection Act, Pub. L. 116-139, 134 Stat. at 623; 45 C.F.R. part 75, subpart. F (audit requirements for non-federal entities with total annual federal award expenditures in excess of \$750,000); 45 C.F.R. §§ 75.216(d), 75.501(i),(k) (options for commercial organizations with annual total federal award expenditure in excess of \$750,000).
15. Recipients of PRF and ARP Rural payments do not need to repay the Provider Relief Funds and ARP Rural funds if the recipients meet the terms and conditions for each payment, and all other applicable requirements, including, but not limited to proper use and accounting for such payments.
16. A recipient identified as having received Provider Relief Funds and ARP Rural payments in excess of the amount to which the recipient is finally determined to have appropriately

Page 4 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

obtained and expended owes a debt to HHS and may be subject to an administrative offset against other reimbursements or other legal action.

17. Within the Public Health and Social Services Emergency Fund, a portion of the Provider Relief Fund supported the COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment, and Vaccine Administration for the Uninsured Program (“COVID-19 Uninsured Program” or “UIP”). Additionally, the Families First Coronavirus Response Act or FFCRA (P.L. 116-127) and the Paycheck Protection Program and Health Care Enhancement Act or PPPHCEA (P.L. 116-139), appropriated funding to reimburse providers for conducting COVID-19 testing and providing testing-related items and services for uninsured individuals and the American Rescue Plan Act of 2021 (ARPA, P.L. 117-2) allocated additional funding to reimburse providers for COVID-19 testing and testing-related services for the uninsured.
18. The UIP provided claims reimbursement to health care entities who conducted COVID-19 testing of uninsured individuals, provided treatment to uninsured individuals with a COVID-19 primary diagnosis, or administered an FDA-authorized or licensed COVID-19 vaccine to uninsured individuals on or after February 4, 2020, generally at Medicare rates, subject to available funding.
19. The UIP is administered by HRSA.
20. Recipients of UIP payments must meet certain requirements, including submitting reports and maintaining documentation as the Secretary requires to demonstrate that all funds were used appropriately. *See* CARES Act, Pub. L. 116-136, 134 Stat. at 563; Paycheck Protection Act, Pub. L. 116-139, 134 Stat. at 622-23.
21. In addition, Debtor agreed to certain terms and conditions in connection with the receipt of UIP payments. *See generally* <https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/uninsured-program-terms-conditions-6-21.pdf>.
22. Recipients of UIP payments may be subject to additional auditing to ensure the accuracy of the data submitted. *See* CARES Act, Pub. L. 116-136, 134 Stat. at 563 (“[N]othing in this section limits the authority of the Inspector General or the Comptroller General to conduct audits of interim payments at an earlier date”); Paycheck Protection Act, Pub. L. 116-139, 134 Stat. at 623; 45 C.F.R. part 75, subpart. F (audit requirements for non-federal entities with total annual federal award expenditures in excess of \$750,000); 45 C.F.R. §§ 75.216(d), 75.501(i),(k) (options for commercial organizations with annual total federal award expenditure in excess of \$750,000).
23. Recipients of UIP payments do not need to repay the UIP payments, provided applicable terms and conditions are met and except when it is later determined that the payments were to ineligible providers or for ineligible beneficiaries or costs.

Page 5 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

24. A recipient identified as having received UIP funds in excess of the amount to which the recipient is finally determined to have appropriately obtained and expended owes a debt to HHS and may be subject to an administrative offset against other reimbursements or other legal action.

Debtor's HHS Provider Relief Funds, ARP Rural Funds, and UIP Funds

25. Since the PRF was created in April 2020, Debtor received a total of \$17,068,363.54 in PRF and ARP Rural payments. The Debtor has not yet reported on its use of \$6,011,481.10 of these funds.
26. Debtor's report to HRSA regarding Debtor's use of the \$6,011,481.10 in PRF and ARP Rural funds (\$5,341,364.11 PRF Phase 4 payment that it received on December 16, 2021, and \$670,116.99 ARP Rural Payment that it received on November 23, 2021), is due between January 1, 2023, to March 31, 2023, as reflected in paragraph 10. *See* <https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/post-payment-notice-reporting-requirements-october-2022.pdf> (last visited March 2, 2023)
27. HRSA may audit the Debtor's use of PRF and ARP Rural funds. The Debtor's PRF report and/or an audit thereof may reveal that PRF funds have not been exhausted on allowable PRF expenditures or lost revenues.
28. A review of Debtor's compliance may result in part or all of the PRF payments becoming a debt.
29. Since the UIP was created in April 2020, Debtor received a total of \$386,450.68 in UIP funds.
30. Debtor is subject to any audits and/or assessments the Secretary of Health and Human Services, the Inspector General, or Pandemic Response Accountability Committee conducts to ensure compliance with the terms and conditions of the UIP. Any such audits and/or assessments may reveal that UIP payments were to ineligible providers or for ineligible beneficiaries or costs, which may result in part or all of the UIP payments becoming a debt.
31. Thus, HRSA has a contingent, unliquidated claim arising from the Debtor's receipt of \$17,454,814.22 in PRF, ARP Rural, and UIP payments.
32. In accordance with the Court's ePOC FAQ instructions addressing claims of unknown amount, and for this reason only, the amount is stated in the ePOC claim as "0.00" because it is a contingent, unliquidated debt.

Section 330 Grant Funding

33. HRSA awards grants pursuant to section 330 of the Public Health Service ("PHS") Act, 42

Page 6 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

U.S.C. § 254b (hereinafter “section 330”) under the Health Center Program.

34. Recipients of grant awards under section 330 are non-profit private or public entities that serve designated medically underserved populations or areas, and/or special medically underserved populations comprised of migrant and seasonal farmworkers, the homeless or residents of public housing. *See* 42 C.F.R. part 51c (grants for community health centers).

35. The Debtor is a grant award recipient through HRSA’s Health Center Program and has received section 330 funding from September 1, 2002 to present.²

36. HRSA records indicate that Debtor has been awarded the following Health Center Program grants:

<u>Grant Name</u>	<u>Grant Period</u>		<u>Project Period</u>		<u>Cumulative Award Amount</u>
	<u>Start</u>	<u>End</u>	<u>Start</u>	<u>End</u>	
Base Health Center H80CS00287	9/1/02	2/28/26	3/1/23	2/28/26	\$4,973,751
Expanding Capacity for Coronavirus Testing H8ECS37907	5/1/20	4/30/23	5/1/20	4/30/23	\$4,106,464
American Rescue Plan Funding for Health Centers H8FCS40338	4/1/21	3/31/23	4/1/21	3/31/23	\$36,903,375
American Rescue Plan Health Center Construction and Capital Improvements C8ECS44273	9/15/21	9/14/24	9/15/21	9/14/24	\$3,439,299
Local Community-Based Workforce to Increase	7/31/21	7/31/23	7/31/21	7/31/23	\$1,000,000

² Since the Debtor receives funding under, and is compliant with the requirements of section 330, it has been designated as a “federally qualified health center” (FQHC) under Titles XVIII (Medicare program) and Title XIX (Medicaid program) of the Social Security Act. *See* 42 U.S.C. § 1395x(aa)(4)(A); 42 U.S.C. § 1396d(l)(2)(B) (Medicaid). FQHC status generally allows grantees to received enhanced Medicare and Medicaid reimbursements. The Centers for Medicare & Medicaid Services (CMS), another HHS agency, has filed a separate proof of claim that addresses Medicare’s interests.

Page 7 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

COVID-19 Vaccine Access G32HS42583					
Expanding COVID Vaccination H8GCS48566	12/1/22	5/31/23	12/1/22	5/31/23	\$1,132,546

37. Grant funds and property acquired with those grant funds are subject to various federal requirements, which include PHS Act provisions, implementing regulations, 45 C.F.R. part 75 (uniform HHS grant requirements for nonprofit grantees), HHS grant policy, and the specific terms and conditions of the grant.

HRSA Grant Audit Process

38. For each grant, HRSA approves a project period, during which the grantee submits annual budgets for each budget period or “Program Year.” For each Program Year, HRSA approves a Financial Assistance Award (FAA).

39. During the year, the FAA may be amended to reflect the award of additional HRSA grant funds for various purposes, to modify the authorized use of funds for a new purpose or for a different budget period, or for other reasons.

40. The approved budget, remarks, and other financial information reflect the financial award information for that particular Program Year of the grant.

41. Grantees are subject to record-keeping and audit requirements. *See* 42 U.S.C. § 254b(n),(q). Federal audits may result in disallowances of claimed costs and overpayment determinations. 42 C.F.R. § 51c.112(a),(c); *see* 42 C.F.R. § 51c.107(a) (the uniform administrative requirements, cost principles, and audit requirements for HHS awards, including for section 330 awards, are found at 45 C.F.R. part 75).

42. Such debts are subject to common law recoupment, as well as to such other rights of offset or recoupment available under federal law.

Proposed Disallowances

43. Currently, HRSA’s records do not indicate any final prepetition overpayment debts related to the grants described in paragraph 36.

44. However, HRSA notes that subsequent audits of prepetition budget period expenditures could result in overpayment determinations in the future. Consequently, it is possible that overpayments for the prepetition period may be determined upon the audit and settlement of Debtor’s cost reports for these fiscal periods.

Page 8 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

Notice of HRSA's Federal Interest in Property

45. The doctrine of federal sovereign immunity further protects federal funds in the hands of a federal grantee against seizure by judgment or other creditors because “it is as much the money of the United States as if it had not been drawn from the treasury.” *Neukirchen v. Wood County Head Start, Inc.*, 53 F.3d 809, 812 (7th Cir. 1995) (quoting *Buchanan v. Alexander*, 45 U.S. 20 (1846)).
46. HRSA grant funds given to a nonprofit organization like the Debtor may be expended solely for carrying out the approved project in accordance with the PHS Act, HRSA regulations, the terms and conditions of the award, and applicable uniform HHS grant regulations in 45 C.F.R. part 75.
47. Under such circumstances, where an HHS agency awards federal grant funds to acquire property to be used to implement the federal objectives of the award, “property purchased with federal grant funds constitutes federal property.” *Neukirchen*, 53 F.3d at 811.
48. Federal grant funds and grant-acquired property in which the government has a federal interest are not assets of the bankruptcy estate to the extent of that interest. *See In re Joliet-Will County Community Action Agency*, 847 F.2d 430, 431 (7th Cir. 1988).
49. HRSA wants to ensure that the Debtor’s creditors are on notice that any HRSA grant funds in the possession of the Debtor remain property of the federal government.
50. The Debtor’s creditors should further be advised that HRSA has a federal interest in equipment, supplies and other property that was acquired with grant funds for the purpose of being used for grant-related purposes.
51. In light of the HRSA grant awards outlined above, HRSA’s Federal Interest in supplies, equipment and other assets may be substantial.
52. HRSA therefore hereby provides notice of its Federal Interest in the Debtor’s property and accounts as described above.

No Waiver of Rights

53. The filing of this proof of claim is not to be construed as a waiver of any claim or any right whatsoever that the United States or any agency or instrumentality thereof has or may have against the bankrupt, Debtor, the trustee, or any other person. For example, and without intending any limitation on the foregoing:
 - a. The filing of this claim is not to be construed as a waiver of the right of the United States, or any agency or instrumentality thereof, to follow any property, or the proceeds thereof, into the hands of any person, including the trustee in

Page 9 *In re Borrego Community Health Foundation*, Docket No. 22-02384-11

bankruptcy.

- b. The filing of this claim shall not be construed as a waiver of the United States' claims and defenses concerning jurisdiction.

54. No note or other negotiable instrument has been received for the claim presented in this Proof of Claim or for any part thereof. No judgment has been rendered thereon.

55. The United States and HRSA reserve the right to amend this proof of claim:

- a. As additional evidence regarding Debtor's receipt of Provider Relief Funds becomes available;
- b. As additional evidence regarding Debtors submission of claims and receipt of payments from HRSA section 330 grant funding becomes available;
- c. To assert subsequently discovered liabilities; and
- d. To assert that any amended claim is secured by rights of offset and/or recoupment.

CERTIFICATION: Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.



Sandra Seaton
Director, Division of Financial Integrity
Office of Federal Assistance Management
Health Resources and Services Administration
Department of Health and Human Services
5600 Fishers Lane, Room 13C-24
Rockville, Maryland 20857
Phone No. (301) 443-2432
sseaton@hrsa.gov

Date: March 13, 2023