



Memo: Health, Economic Assistance, Liability Protections and Schools (HEALS) Act

Prepared by: Austin Hall (ahall@bosepublicaffairs.com)
Camille Kaye (ckaye@bosepublicaffairs.com)
Evelyn Bond (ebond@bosepublicaffairs.com)

Date: July 31, 2020

On July 27, Senate Republican leadership introduced a \$1 trillion COVID-19 relief bill, the Health, Economic Assistance, Liability Protections and Schools Act (HEALS Act). The bill was created in response to the House's \$3 trillion [Health and Economic Recovery Omnibus Emergency Solutions \(HEROES\) Act](#) which was passed by House Democrats on May 15th. This legislation marks a next step in negotiating legislative action to address the COVID-19 pandemic on Capitol Hill. Since March 1, Congress has passed four major pieces of legislation totaling almost \$3 trillion dollars in new spending to support all elements of the American economy during the pandemic.

The HEALS Act is structured as a package of individual bills, including:

- a \$306 billion [emergency appropriations package](#), introduced by Senate Appropriations Committee Chairman Richard Shelby (R-AL)
- [the Safeguarding America's Frontline Employees to Offer Work Opportunities Required to Kickstart the Economy Act](#) (SAFE TO WORK Act), introduced by Sen. John Cornyn (R-TX)
- [the Safely Back to Work and Back to School Act](#), introduced by Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN)
- the [American Workers, Families, and Employers Assistance Act](#), introduced by Senate Finance Committee Chairman Chuck Grassley (R-IA)
- [the Continuing Small Business Recovery and Paycheck Protection Program Act](#), introduced by Senate Small Business and Entrepreneurship Committee Chairman Marco Rubio (R-FL) and Sen. Susan Collins (R-ME)
- the [Time to Rescue United States' Trusts \(TRUST\) Act of 2020](#), introduced by Sen. Mitt Romney (R-Utah)
- the [Restoring Critical Supply Chains and Intellectual Property Act](#), introduced by Sen. Lindsey Graham (R-SC)

While getting all the Coronavirus supplemental bills across the finish line over the past several months has not been easy, nor did it follow “regular order” (e.g., the process was almost entirely controlled by top House and Senate leadership, with some input from Committee Chairmen and Ranking Members, and the normal committee process and regular order were bypassed), this fifth package, or “CARES 2” as some are calling it, is going to be much more challenging than the previous measures. As of Friday, negotiations between Republicans and Democrats remain deadlocked, and even the White House does not seem to be completely behind McConnell’s package as introduced, with President Trump describing the bill in a tweet as “sort of semi-irrelevant.” Many in McConnell’s Republican caucus are not happy with the package believing there is a need for fiscal constraint. Senator John Kennedy (R-LA), for example, urged his colleagues to get rid of “spending porn” in the bill while Senators Ted Cruz (R-TX) and Rand Paul (R-KY) maligned the bill, stating it was full of “progressive” priorities such as continuing enhanced unemployment benefits and providing state and local funding.

Taking a much different view, Democrats remain united in supporting a more encompassing bill and rejected an offer from the Administration for a short-term extension of federal unemployment benefits which expires today (July 31) and keeping an eviction moratorium in place.

The following summarizes notable provisions of the package separated by stakeholders and significant issue areas. For more in-depth analysis or guidance regarding specific provisions to the package, the Bose Public Affairs Group team is well equipped to consult on these issues. Please contact the team for additional information.

Contents

Relief to Individuals and Families 3

Municipalities..... 3

Healthcare..... 5

 Healthcare Appropriations 5

Education 5

Labor 7

Relief to Industry..... 9

Conclusion..... 11



Relief to Individuals and Families

Direct Payments to Americans

The legislation provides \$1,200 stimulus payments to individuals with incomes of \$75,000 or less, or \$150,000 for couples. Republicans propose to enhance benefits for adult dependents. Filers with dependents of any age would receive an additional \$500 payment, whereas CARES Act additions for dependents were only for those dependents under age 17. The eligibility guidelines are the same as those in the CARES Act.

Unemployment Insurance

The proposal extends federal pandemic unemployment compensation benefits at a rate lower than the \$600 per week provided in the CARES Act. For two months (or by Oct. 5, 2020), the benefits would be set at \$200 per week on top of state-level benefits, which vary. After that, states would provide benefits equal to 70 percent of previous wages, with the federal supplement additionally capped at \$500 per week. States would be allowed to apply for a waiver to secure up to two additional months to transition to the new calculation.

Municipalities

Aid for State and Local Governments

The bill does not include additional, direct assistance to state and local governments. Rather, the bill extends the time frame in which recipients of the Coronavirus Aid, Relief, and Economic Security Act's (CARES Act) \$150 billion Coronavirus Relief Fund (CRF) can utilize the funding while also providing more flexibility – allowing some funds to be used to cover revenue shortfalls.

Specific provisions in the GOP proposal:

- extension of the period over which CARES Act relief funds can be used by 90 days beyond the end of a state/local government's 2021 fiscal year (e.g., fiscal year end of June 30, 2021, means that the government has until Sept. 30, 2021, to expend funds)
- expansion of the allowable uses of relief funds to cover revenue shortfalls; a government receiving CARES Act relief funds can use up to 25 percent of those funds to cover revenue shortfalls
- The bill does include a maintenance of effort provisions, requiring that recipients of CRF funds shall use funds that it receives to supplement, but not supplant, any non-federal funds that the recipient would otherwise provide, distribute, or use for assistance to other units of government.

Notable Appropriations for Municipalities

- **(Labor) State Unemployment Insurance and Employment Service Operations** – \$1.15 billion for states to process unemployment claims and make needed information technology (IT) upgrades to their unemployment systems.
- **Federal Emergency Management Agency (FEMA)** – The proposal provides \$150 million to enhance operations and improve networks and facilities to respond to an unprecedented number of active disaster declarations, including those in all states and territories.

- **FEMA Grants** – \$930 million for emergency grant programs, including:
 - \$365 million for Assistance to Firefighter Grants (AFG),
 - \$365 million for Staffing for Adequate Fire and Emergency Response Grants (SAFER),
 - and \$200 million for the Emergency Food and Shelter Program.

- **U.S. Department of Housing and Urban Development Programs** – \$3.2 billion, including:
 - Tenant-Based Rental Assistance (TBRA) – \$2.2 billion to maintain current Section 8 voucher rental assistance for low-income families who are experiencing a loss of income from the coronavirus, which is approximately half of what was considered in the HEROES Act.
 - Public Housing Operating Fund – \$1 billion for assistance to Public Housing Agencies to maintain their public housing programs and help contain the spread of coronavirus in public housing properties. This funding supplements coronavirus-related reduced tenant rent payments.
 - Directs HUD to renew all projects with existing grants expiring during calendar year 2021 funded through the Continuum of Care program.
 - Does not contain any extension of the national eviction moratorium.

- **U.S. Department of Transportation Programs (DOT)** – \$10.151 billion total. The GOP proposal extends the obligation period for 2018 Better Utilizing Investments to Leverage Development (BUILD) grant funding through Sept. 30, 2021. Another part of the bill, from Senator Mitt Romney (R-UT) and others, would provide a series of bipartisan "supercommittees" charged with finding ways to make certain federal trust funds – including the Highway Trust Fund – solvent once again.
 - **Office of the Secretary** – \$26.2 million for the Office of the Secretary's increased administrative expenses to implement activities related to coronavirus, including telework 9 and cybersecurity needs, CARES Act oversight, improving the transportation operations center and purchasing PPE.
 - **Essential Air Service (EAS)** – \$75 million to maintain existing EAS service to rural communities, which is necessary to offset the reduction in overflight fees that help pay for the EAS program.
 - **Federal Aviation Administration (FAA) Operations** – \$50 million for the FAA's administrative costs related to air traffic control tower cleanings, janitorial services and supplies, and IT costs resulting from employees working from home.
 - **Airport Improvement Program (AIP)** – \$10 billion to maintain operations at our nation's airports that are facing a record drop in passengers. Funding will be distributed by statutory entitlement and enplanements formulas and may be used for operating expenses and debt service. Funding is also set aside to maintain contract tower operations.
 - **Federal Motor Carrier Safety Administration (FMCSA), Motor Carrier Safety Assistance Program (MCSAP) Operations and Programs** – \$238,500. The proposal provides additional funding for increased administrative expenses to implement activities related to coronavirus.

Healthcare

Personal Protective Equipment (PPE)

As part of the Restoring Critical Supply Chains and Intellectual Property Act, the legislation proposes to "end dependence on foreign manufacturers" for PPE. The plan developed by Senator Lindsey Graham (R-SC) would create tax credits to spur manufacturing to help the federal government reach the goal of 100 percent domestic sourcing within five years.

All PPE such as clothing, sanitizing supplies, ancillary medical supplies (wipes, bedding, test swabs, etc.) and other textile equipment must be grown, reprocessed, reused or produced in the United States. The GOP proposal establishes a \$7.5 billion medical manufacturing project tax credit to buildout and retrofit factories to meet increased PPE demand. It permits qualifying PPE manufacturers to receive a credit of 30 percent of a qualified investment for PPE production.

Testing

The GOP plan provides \$16 billion for testing, contact tracing and surveillance in states. This new funding, when combined with approximately \$9 billion that remains unallocated from the Paycheck Protection Program and Health Care Enhancement Act, would make \$25 billion available for these purposes.

Healthcare Appropriations

U.S. Department of Health and Human Services (HHS): \$118.4 billion

- **Public Health and Social Services Emergency Fund** - \$78.1 billion, including:
 - Testing - \$16 billion for testing, contact tracing, and surveillance in states.
 - BARDA - \$20 billion for vaccine, therapeutic, and diagnostic development
 - Vaccine Distribution - \$6 billion to develop and execute a new COVID-19 vaccination distribution campaign coordinated through CDC
 - Strategic National Stockpile - \$2 billion
 - Community Health Centers - \$7.6 billion
 - Children's Hospital Graduate Medical Education - \$250 million
 - Rural Health Clinics - \$225 million
 - Poison Control Centers - \$5 million
 - Direct Workers Training - \$5 million
- **Centers for Disease Control and Prevention (CDC)** – \$3.4 billion for the CDC, including \$1.5 billion to continue supporting state, local and territorial public health needs; \$500 million to enhance seasonal influenza vaccination efforts; \$200 million to enhance global public health security efforts; and \$200 million to modernize public health data reporting.

- **National Institutes of Health (NIH)** - \$15.5 billion, including:
 - \$10.1 billion to reopen NIH-funded research laboratories and reconstitute lost research
 - \$1.24 billion for the ACTIV public-private partnership to prioritize and speed the development of treatments and vaccines
 - \$240 million to provide resources targeted young researchers who need additional research time as post-doctoral candidates because of lost research/training due to COVID-19
 - \$1.33 billion for COVID-19 specific research to smaller ICs at the direction of the NIH Director
- **Substance Abuse and Mental Health Services Administration (SAMHSA)** – The proposal provides \$4.5 billion, including:
 - Mental Health Services Block Grant – \$2 billion, of which, no less than 50 percent of funds shall be directed to behavioral health providers
 - Substance Abuse and Prevention Treatment Block Grant (SABG) – \$1.5 billion
 - Certified Community Behavioral Health Clinics (CCBHC) – \$600 million
 - Suicide Prevent Programs \$50 million
 - Project AWARE (Advancing Wellness and Resiliency in Education) – \$100 million to support mental health once children return to school
 - Emergency Grants to States – \$250 million for flexible emergency grants to states
- **Centers for Medicare and Medicaid Services (CMS)** – \$150 million: The proposal includes \$150 million for CMS to increase survey frequency of skilled nursing facilities and nursing facilities.
- **Administration for Children and Families (ACF)** – \$16.7 billion: The proposal provides \$16.7 billion, including:
 - Low Income Home Energy Assistance Program (LIHEAP) – \$1.5 billion to help low-income households pay home heating and cooling bills
 - Child Care and Development Block Grant (CCDBG) – \$5 billion for child care, including direct support for child care providers to help ensure working parents have access to child care so that they can work or return to work; and \$10 billion for Back to Work Child Care Grants
 - Children and Families Services Programs – \$190 million for family violence prevention and child welfare programs to support services for particularly vulnerable families and populations
- **Administration for Community Living** – \$75 million for services targeted to older Americans and the disability community, including caregiver support, protection and advocacy, and home- and community-based support services.
- **(DOD) Coronavirus Defense Production Act Purchases:** The bill appropriates \$5.3 billion, to remain available until expended, for purchases under the Defense Production Act of 1950, to prevent, prepare for, and respond to coronavirus, domestically or internationally.

Education

A full summary of education provisions from the Bose team can be found [here](#).

Education Stabilization Fund – \$105 billion. The proposal provides \$105 billion to help get students back to school and provide for the continued learning of all students in elementary and secondary education and higher education, as follows:

- \$1 billion for the Bureau of Indian Education and outlying areas;
- \$5 billion for the Governors Emergency Education Relief Fund;
- \$70 billion for the Elementary and Secondary School Emergency Relief Fund; and
- \$29 billion for the Higher Education Emergency Relief Fund.

Governors Emergency Education Relief Fund (GEERF)

The GEERF would provide grants to Governors of each state that submit an approved application. Governors could use the funds to provide emergency support grants to school districts, public and private universities, and other education-related entities that have been most significantly impacted by COVID-19 or deemed essential for providing emergency services to students. The Secretary must award funds to Governors with an approved application within 30 days of the bill's enactment. The bill would require the Secretary to allocate grants to each state as follows:

- (1) 60 percent on the basis of the relative population of individuals aged 5-24; and
- (2) 40 percent on the basis of the relative number of children counted under Title I of the *Every Student Succeeds Act* (ESSA).

These allocation requirements are similar to those in the CARES Act, but the funding is nearly doubled.

Elementary and Secondary School Emergency Relief Fund

The ESSERF would provide grants for states to award subgrants to local school districts and private schools to respond to the COVID-19 crisis, of which 90 percent must be subgranted to local education agencies (LEAs) that receive funds under Title I of ESEA.

Unlike CARES Act or HEROES Act funding, LEA eligibility for ESSER funds is dependent on district reopening plans:

- **One-third of funds (\$23 billion):** available immediately to all LEAs, regardless of reopening plans for the 2020–21 school year; and
- **Two-thirds (\$46 billion):** available only to LEAs that submit a reopening plan for the 2020-2021 school year, which must be approved by the Governor. The plan must include:

- at least half of students receiving in-person instruction at least half of each school week (LEA eligible for full allocation); or
- some in-person instruction for less than half of students or for less than half of each school week (LEA eligible for reduced allocation on a pro-rated basis, determined by the governor).

Private schools would receive proportional funding based on the number of students attending private school in the state. Governors must award funds equally to each private school based on the number of low-income students enrolled in the private school as a share of all low-income students enrolled in private schools across the state.

Liability Protections

K–12 schools would be shielded from legal liability in coronavirus-related litigation. Plaintiffs would have to show that school officials were grossly negligent or demonstrated willful misconduct, and that they violated relevant state and local public health guidelines.

Emergency Education Freedom Grants

The HEALS Act authorizes a new grant program—but does not fund—one-time, emergency “education freedom” grants for scholarship-granting K-12 organizations, which families could use to pay tuition at private schools or cover expenses of homeschooling.

Higher Education Emergency Relief Fund (HEERF)

The **HEERF** would provide grants directly to public and private universities to cover the costs associated with closures or significant changes to the delivery of instruction due to the coronavirus. The bill would require these funds to be used for emergency grants to students to help defray cost of attendance (i.e., food, housing, course materials, technology, health care, and child care) and to institutions to cover expenses and lost revenue related to COVID-19. Of note, the bill would no longer require institutions to use 50 percent of the relief funds for emergency financial aid grants to students, a significant change from the CARES Act. The fund also includes \$2.9 billion in dedicated funding for Historically Black Colleges and Universities (HBCUs), as well as Minority Serving Institutions (MSIs). The plan would allow student borrowers to delay loan repayments and then cap loan payments at 10 percent of income minus housing costs.

Other Notable Provisions

NASA STEM Engagement- The bill provides \$4.9 million for the National Aeronautics and Space Administration (NASA) STEM engagement program, which supports youth engagement in STEM education activities to promote potential careers in STEM fields.

Back to Work Child Care Grant-This proposed grant provides short-term assistance to childcare centers, operators and providers. Grants would be based on need and fixed costs incurred by childcare providers because of the coronavirus. The bill provides \$15 billion for childcare programs.

Labor

Liability Protections

The bill includes provisions that would shield businesses, schools, nonprofits, government agencies and other organizations from COVID-19-related lawsuits through Oct. 1, 2024, as long as they make "reasonable" efforts to follow public health guidelines and do not commit acts of "gross negligence" or "intentional misconduct." In addition, the Occupational Safety and Health Administration (OSHA) will not cite an employer that has been "relying on and generally following" government standards and guidance. OSHA has already instructed its inspectors that employers who are following guidance from the agency or the Centers for Disease Control and Prevention (CDC) will not be cited under the Occupational Safety and Health Act's general duty clause.

Key provisions and details in the SAFE TO WORK Act:

- The proposal would give employers temporary protection from lawsuits stemming from workplace coronavirus testing. This shield would supersede any local statute or regulation related to personal injury lawsuits stemming from coronavirus exposure, but it would not preempt broader local liability reforms or workers' compensation systems.
- The proposed liability shield would cover claims from Dec. 1, 2019, until Oct. 1, 2024.
- The bill clarifies that when a business provides training, personal protective equipment (PPE) or other assistance to an independent contractor or a franchisee's employee, those actions cannot be used as evidence of an employer-employee relationship.
- The proposal would place a cap on damage awards; compensatory damages would be limited to the economic losses incurred as a result of the injury, as long as the harm wasn't a result of "willful misconduct."
- Businesses would not be liable for claims related to violations of the Worker Adjustment and Retraining Notification Act (WARN Act), as long as the job loss took place during the pandemic. The federal law requires companies to give workers at least 60 days' notice before plant closures or mass layoffs lasting more than six months.

Labor and Employment Appropriations

The GOP emergency appropriations proposal would provide \$2.5 billion to the U.S. Department of Labor (DOL). This includes:



- Dislocated Worker Grants (DWG) – \$500 million for employment and training activities, including individual training accounts, incumbent worker training, transitional jobs, customized training and on-the-job training.
- Workforce Innovation and Opportunity Act (WIOA) State Grants – \$450 million. The proposal provides \$450 million for adult, youth and dislocated state grants for states and communities to respond to the workforce impacts and layoffs resulting from the coronavirus.
- State Unemployment Insurance and Employment Service Operations – \$1.15 billion for states to process unemployment claims and make needed information technology (IT) upgrades to their unemployment systems.
- Employment Service – \$350 million for reemployment services, job search assistance, placement assistance for job seekers, and services offered to employers such as referral of job seekers and special recruitment services.

Relief to Industry

Paycheck Protection Program (PPP)

The proposal would raise the cap to \$750 billion and extend the program through Dec. 31, 2020. Among other provisions, the bill includes:

- Long-Term Recovery Sector Loans. The bill would create a guaranteed long-term, low-interest working capital product by improving the terms of 7(a) loans for seasonal businesses and businesses located in low-income communities. The loans would equal two times the borrowers' annual revenues, up to \$10 million, with a maturity of up to 20 years at an interest rate that is fixed at 1 percent to the borrower. Eligibility for the loan would be businesses with 500 or fewer employees that have seen their revenues decline by 50 percent or more in the first or second quarter this year compared to the same respective quarter last year.
- PPP Second Draw Loans. The bill would provide funds to allow the hardest-hit small employers to receive a second PPP loan (i.e., those that have seen their revenues decline by 50 percent or more in the first or second quarter this year compared to the same respective quarter last year). It would limit these second forgivable loans to entities with 300 or fewer employees and create an additional set aside of funds for businesses with 10 or fewer employees to ensure equitable access to forgivable loans. The bill also includes a \$10 billion set aside for community lenders to access second draw funds.
- PPP Programmatic Improvements. The bill would allow businesses to utilize forgivable PPP funds for personal protective equipment for workers, adaptive investments needed for businesses to operate safely amid the COVID-19 pandemic and additional expenses. It would also simplify the forgiveness application and documentation requirements for smaller loans less than \$150,000. Additionally, it would further expand eligibility to certain 501(c)(6) organizations with 300 or fewer employees as well as favorable loan calculations for farmers and ranchers.



To date, Congress has appropriated approximately \$652 billion for the U.S. Small Business Administration (SBA)'s PPP.

Tax Cuts

A payroll tax cut, which was one of President Donald Trump's priorities, is not included in the package. The HEALS Act does feature the following tax cuts:

- **Enhanced Employee Hiring and Retention Payroll Tax Credit.** In an effort to try to get more businesses to take advantage of the tax break, the legislation includes an expanded version of the employee retention tax credit for businesses that keep workers on their payrolls. The tax break covers 65 percent of wages (up to \$30,000 per worker). The current program covers 50 percent of the first \$10,000 in wages.
- **Work Opportunity Tax Credit.** In an effort to promote the rehiring of workers, the bill offers businesses a 50 percent tax break on the first \$10,000 of wages paid to employees that had previously been receiving unemployment benefits. 5
- **Safe and Healthy Workplace Tax Credit.** The proposal establishes a refundable payroll tax credit equal to 50 percent of an employer's "qualified employee protection expenses" (i.e., what companies spend on testing, personal protective equipment, workplace cleaning and retrofitting facilities to adhere to distancing guidelines).

Conclusion

A path forward to a compromise bill that can pass the House, Senate and get signed by President Trump is looking to be long and winding. The HEROES Act has more than \$3 trillion in new spending, while the HEALS package comes in right around \$1 trillion. Negotiations between the White House, Congressional Republicans, and Congressional Democrats will not get very far until they agree on a target spending level for the overall bill as well as a framework of which issues will and will not be included.

Congress could pass a short-term (four to six week) bill to address expiring provisions of the CARES Act and delay consolidation of HEROES/HEALS into a final package until the end of the fiscal year (September 30) but such a deal is being reported as unlikely. Instead, it is expected that negotiations between leadership will take five to twelve days. **The current forecast on the next package making it through Congress and to the President's desk is sometime between August 7 and August 14.**

The Bose Public Affairs Group team will continue to monitor all relevant developments and provide additional updates as necessary.

