

Summary of Nonprofit Provisions in the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES) Act

On May 12, 2020, House Democrats unveiled their latest proposal to confront the public health, economic, and societal consequences of the COVID-19 pandemic. Dubbed the *Health and Economic Recovery Omnibus Emergency Solutions—HEROES—Act*, the roughly \$3 trillion bill is perhaps a starting point for negotiations once all parties can be coaxed to the table. Below are the provisions relevant to the nonprofit sector.

Unemployment Insurance

Extension of emergency relief and technical corrections for governmental entities and nonprofit organizations.

The legislation would extend the financial relief provided to reimbursable (self-funding) employers in the CARES Act through January 31, 2021 and make technical corrections to ensure that states can choose to waive the 50% amount owed by such employers. It does not increase the relief beyond 50% as many nonprofit organizations have urged.

Paid Sick Leave Mandate

Emergency paid sick leave

The legislation eliminates the exemption for employers with over 500 employees from the paid sick leave requirements in the Families First Coronavirus Response Act (Families First Act), and clarifies that nonprofit organizations are covered employers. It ensures that full-time and part-time employees earn full wage replacement (up to \$511 per day) for all emergency paid sick leave uses. Concerningly, it prohibits these large nonprofits and other employers from claiming the payroll tax credits created by the Families First Act.

Loan Programs

Changes to the Paycheck Protection Program

- Extends program to December 31, 2020
- Expands PPP program to all types and sizes of nonprofit organizations, not just 501(c)(3)s under 500 employees
- Provides a 25% set aside of PPP loan funds for nonprofit borrowers, with not more than 12.5% used for loans to nonprofits with 500 or more employees
- Allows nonprofit critical access hospitals to get PPP loans
- Sets a minimum maturity for loans at 5 years (with a 10-year maximum maturity)
- Clarifies that the interest charged is non-compounding interest
- Requires SBA to provide weekly data on PPP loans including details on nonprofit borrowers
- Allows businesses receiving Paycheck Protection Program loan forgiveness to defer payment of payroll taxes under Section 2302 of the CARES Act.

Main Street Lending Program Requirements

- The legislation mandates that the Federal Reserve's Main Street Lending

Program, which was established utilizing CARES Act funds and is backstopped by the Treasury Department, include nonprofit organizations as eligible borrowers, and stipulates that the Fed immediately offer a low-cost loan option tailored to the unique needs of non-profit organizations with deferred payments, and the loan may be forgiven solely for nonprofits predominantly serving low-income communities that are ineligible for a PPP loan.

- The legislation mandates that the Federal Reserve, through the Main Street Lending Program, shall provide at least one low-cost loan option that small businesses and small non-profits are eligible for that does not have a minimum loan size, overriding the current \$500,000 minimum loan size to participate in the program.

Restrictions on collections of debt during a national disaster or emergency

The legislation provides a temporary moratorium on small business and nonprofit debt collection during this COVID-19 crisis, and for 120 days thereafter.

Repayment period and forbearance for small businesses and nonprofit organizations

The legislation ensures reasonable forbearance and repayment options for small businesses and nonprofit organizations when payments resume following the debt collection moratorium.

Payroll credits

Payroll credit for certain pandemic-related employee benefit expenses paid by employers

- Provides a 30% refundable payroll tax credit for expenses reimbursed or paid for the benefit of an employee for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of the presidentially declared disaster related to COVID-19.
- The credit percentage is 50% for expenses paid to employees if a substantial portion of the services performed by the employee is essential work, as defined for pandemic premium pay reimbursable from the COVID-19 Heroes Fund.
- No credit is allowed if the expenses are provided in a manner which discriminates in favor of highly compensated employees.

Payroll credit for certain fixed expenses of employer subject to closure by reason of COVID-10

- Provides a 50% refundable payroll tax credit for qualified fixed costs. Qualified fixed costs include covered rent obligations, covered mortgage obligations, and covered utility payments. These terms have the same definitions as the definitions provided in section 1106 of the CARES Act, relating to forgiveness of Paycheck Protection Program loans. For each quarter, qualified expenses eligible for this credit are limited to 25% of qualified wages (as defined in the employee retention credit) or 6.25% of 2019 gross receipts (which annualizes to 25%), with an absolute maximum of \$50,000.

- This credit is limited to employers with no more than 1,500 full-time equivalent employees or no more than \$41,500,000 in gross receipts in 2019. Additionally, employers must be subject to a full or partial suspension due to a COVID-19 government order or have a decline in gross receipts of at least 20% compared to the same calendar quarter of the preceding year. This credit is phased in for employers with a decline in gross receipts between 10% and 50%.
- The section applies to qualified fixed expenses paid or accrued from March 12, 2020 until December 31, 2020.

Election Safety and Security

Provides \$3.6 billion in election assistance funding and expands access to early voting and voting by mail

- Requires at least 15 consecutive days of early voting for federal elections. Goes into effect in the November 2020 election and for each succeeding federal election.
- Ensures that every voter can access no-excuse absentee vote-by-mail.
- Ensures that voter registration application forms, absentee ballot application forms, and absentee ballots in federal elections are mailed to voters with prepaid postage.
- Amends the Help America Vote Act of 2002 to ensure that all eligible individuals can register to vote on the same day that they vote.

Broadband Internet Access

Support for Wi-Fi Hotspots, Other Equipment, and Connected Devices During Emergency Periods Related to COVID-19

Appropriates \$1.5 billion (but authorizes up to \$5 billion) in funding for a temporary disbursement to be administered through the Federal Communications Commission's (FCC) E-rate Program to provide internet service in a technologically neutral way to students and teachers, prioritizing those without internet access at home.

Benefit for Broadband Service During Emergency Periods Relating to COVID-19

Entitles households in which a member has been laid off or furloughed to get a \$50 benefit, or a \$75 benefit on tribal lands, to put toward the monthly price of internet service during the COVID-19 public health emergency.

Pandemic Premium Pay

COVID-19 Heroes Fund grants

Provides that employers that apply for and receive grants will pay essential workers \$13 per hour premium pay on top of regular wages. Essential workers are eligible for up to \$10,000 for work performed from January 27, 2020 until 60 days after the last day of the COVID-19 Public Health Emergency. Defines "essential work" as involving regular interaction with others or items handled by others, and occurring in any of 33 enumerated areas of work. These areas include health care work, family and child care, social services, public health, education, elections work, and clinical research.

“Recovery Rebates” aka Economic Impact Payments

Changes to Recovery Rebates under the CARES Act

Makes all dependents eligible for the \$500 qualifying child amount in the Economic Impact Payments made under the CARES Act, previously only applicable to children below age 17. Also allows Economic Impact Payments to be made to an individual who provides a Taxpayer Identification Number, rather than a Social Security Number. These provisions are effective retroactively to the date of enactment of the CARES Act.

Additional Recovery Rebates

Provides a \$1,200 refundable tax credit for each family member that shall be paid out in advance payments, similar to the Economic Impact Payments in the CARES Act. The credit is \$1,200 for a single taxpayer (\$2,400 for joint filers), in addition to \$1,200 per dependent up to a maximum of 3 dependents. The credit phases out starting at \$75,000 of modified adjusted gross income (\$112,500 for head of household filers and \$150,000 for joint filers) at a rate of \$5 per \$100 of income.

Other Provisions

Relief for Non-Federal Governments

- \$500 billion to state governments, spread over approximately 2 years
- \$375 billion to local governments, spread over approximately 2 years
- \$20 billion to territorial governments
- \$20 billion to tribal governments

Extending and Expanding Loan Relief to all Federal Student Loan Borrowers

Amends the CARES Act to define the term “Federal student loan” to include Direct Loans, Department- and commercially-held Federal Family Education Loans (FFEL), Department- and institutionally-held Perkins loans, and others. Further Amends the CARES Act to extend suspension of payments for Federal student (as newly defined) loans through September 30, 2021. Adds a provision that requires the Secretary to make the borrowers with loans that were excluded from the CARES Act whole as if those loans were part of the original CARES Act.

Emergency mental health and substance use training and technical assistance center

The legislation establishes a technical assistance center at the Substance Abuse and Mental Health Services Administration (SAMHSA) that will support public or nonprofit entities and public health professionals seeking to establish or expand access to mental health and substance use services associated with the COVID-19 public health emergency.

National Service Expansion Feasibility Study

Requires the Corporation for National and Community Service to conduct a study on the feasibility of increasing the capacity of national service programs to respond to the economic and social impacts of COVID-19.

Additional Funding

Supplemental Nutrition Assistance Program (SNAP)

Provides \$10 billion to support anticipated increases in participation and to cover program cost increases related to flexibilities provided to SNAP by the Families First Coronavirus Response Act.

Special Supplemental Nutrition Program for Women Infants and Children (WIC)

Provides an additional \$1.1 billion to provide access to nutritious foods to low income pregnant women or mothers with young children who lose their jobs or are laid off due to the COVID19 emergency.

The Emergency Food Assistance Program (TEFAP)

Includes \$150 million to help local food banks meet increased demand for low income Americans during the emergency. Including funding provided by the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), TEFAP has received a total of \$1 billion.

Child Nutrition Programs

Includes \$3 billion in additional funding to provide emergency financial relief to school meal providers and USDA's Child and Adult Care Food Program.

Census Bureau, Periodic Censuses and Programs

\$400 million for expenses due to delays in the 2020 Decennial Census in response to the coronavirus.

Census Bureau, Current Surveys and Programs

\$10 million for expenses incurred as a result of the coronavirus.

Indian Health Service

\$2.1 billion to address health care needs related to coronavirus for Native Americans.

Bureau of Indian Affairs

\$900 million to meet Tribal government needs necessary to prevent, prepare for, and respond to coronavirus.

National Endowment for the Arts

\$10 million for the National Endowment for the Arts for grants to support the general operations of recipients and language to permit the waiver of matching requirements.

National Endowment for the Humanities

\$10 million for the National Endowment for the Humanities for grants to support the general operations of recipients and language to permit the waiver of matching requirements.

Administration for Children and Families

\$10.1 billion to provide supportive and social services for families and children through

programs

Institute of Museum and Library Services

\$5 million to support libraries and museums with costs and expenses associated with coronavirus, including operational supports and providing technology and resources for their communities.