

From: Travis Johnson
 tjohnson@1607strategies.com
 202-230-1203
 Date: July 29th, 2020
 Subject: Comparison of HEALS Act and HEROES Act



Small Business Provisions

There are a number of provisions included in the bill that directly address the needs of small businesses as the pandemic continues. Among these is incorporation of the [Continuing Small Business Recovery and Paycheck Protection Program Act](#) from Senators Rubio (R-FL) and Collins (R-ME) that amends the PPP and also establishes a new loan program that would provide working capital and is targeted at low-income communities, minority-owned, and seasonal businesses.

PPP and other Small Business Provisions

HEALS Act (Republican Legislation)	HEROES Act (Democratic Legislation)
<ul style="list-style-type: none"> • Simplified loan forgiveness for small loans under \$150k • Institutes a secondary process for forgiveness for loans less than \$2 million • Expands eligible expenses that qualify for forgiveness to include operations expenses, property damage, supplier costs, and worker protection • Second round of PPP loans of up to \$2 million available for businesses under 300 workers or other small businesses with 50% lost revenue (Rubio-Collins) • PPP set-asides for small entities, including \$2b for those with fewer than 10 employees and \$10b for community institutions (Rubio-Collins) • New working capital loan program as an alternative to a second PPP loan (Rubio-Collins) • Simplifies the forgiveness application process for small loans (Rubio-Collins) • New allowable loan uses, which include working capital, fixed asset acquisition, and existing debt refinancing (Rubio-Collins) • Hold harmless provision for PPP lenders that no enforcement action could be taken against a lender who in good faith provides a loan based on borrower certifications or documentation (Rubio-Collins) 	<ul style="list-style-type: none"> • Expansion of loan forgiveness terms without loan-size based simplification • Extended 8-week limit for spending PPP funds to a 24-weeks • Eliminates the 75/25 rule on use of loan proceeds • PPP eligibility expanded to all nonprofits • Funding set-asides focused on underserved communities and nonprofits • Expanded data collection requirements including total amount of fees paid to lenders • Improved coordination between PPP and Employee Retention Tax Credit • Increases the annual lending limit of the 7(a) program from \$30 billion to \$75 billion • Guarantees that principal and interest assistance on PPP and other assistance loans is not treated as taxable income • Clarifies the hold harmless provision for lenders

In addition, while not explicitly small business-related, there are substantial liability protections contained in the bill that protect employers from liability under federal labor and employment laws (including ADA, OSHA, and Civil Rights Act of 1964) for actions taken to

comply with Coronavirus-related public health guidance and regulations. It does so by incorporating the [SAFE to WORK Act](#) from Senators Cornyn (R-TX) and McConnell (R-KY), which also creates a federal cause of action related to COVID-19 for “natural persons, schools, colleges, charities, churches, government agencies, associations, and businesses,” and time limits this cause from December 2019 through September 2024.

While cases can be brought in state or federal courts, only one standard of liability would apply and defendants would be allowed to move cases filed in state courts to federal district courts. Doing so would up the requirements for plaintiffs, who would then have to show that the defendant was grossly negligent or engaged in willful misconduct *and* did so in violation of state or local public health guidelines in place at time of the incident. Even if shown, the protections would also limit compensatory damages to economic losses and outright prohibits punitive damages, except in cases where intentional misconduct can be shown. In contrast, the HEROES Act contains no provisions related to these protections.

Finally, in terms of miscellaneous provisions that would impact small businesses, the HEALS Act incorporates the [American Workers, Families, and Employers Assistance Act](#) from Senator Grassley (R-IA), which would expand the Work Opportunity Tax Credit to \$10k/year for the hiring of employees who had previously received COVID-19-related unemployment assistance. In contrast, the HEROES Act incorporates Representative Scott’s [COVID-19 Every Worker Protection Act of 2020](#) which would require employers to develop and implement a COVID-19 exposure control plan, comply with OSHA regulations, and prohibit retaliation against workers for reporting health and safety hazards.

Direct Assistance to Individuals

The HEALS Act also contains provisions related to direct financial assistance to individuals. The most straightforward of these is a second round of stimulus payments that will be made under the same terms as the prior spring payments¹, aside from the removal of the age limit on child dependents that applied to those prior payments. It also simplifies the federal student loan repayment programs, reducing the options available to a standard 10-year repayment plan or an income-based repayment plan.

While the stimulus payment provision is similar in the Democratic proposal, it does up the child dependent payment from \$500 per child to \$1,200 per child with a limit of \$6k per household. There is a drastic difference between the two proposals beyond that, however, with the HEROES Act expanding the Earned Income Tax Credit and Child Tax Credit, and putting in place a number of consumer protections that, among other things provides \$200b in hazard pay for essential workers; expands the previously instituted COVID-19-related paid leave policies to all employers while extending them until December 2021; the elimination of the State and Local Tax Deduction (SALT) cap for 2020 and 2021 tax years; and a 100% subsidy for COBRA premiums for workers who would otherwise lose job-based coverage due to loss of employment or reduction in hours

In terms of assistance for getting back to work or school, the HEALS Act incorporates Senator Lamar’s (R-TN) [Safely Back to School and Back to Work Act](#). In doing so, the HEALS Act

¹ \$1,200 for single filers with under \$75k in income and a phaseout up to \$99k; \$2,400 for married filers with \$500 plus ups for each child dependent, an income limit of \$150k, and phaseouts up to \$198k.

would provide Emergency Education Freedom Grants to students to use for educational expenses. In contrast, the HEROES Act would increase funding for Social Services Block Grants that help pay for child and family care and would provide additional flexibility for child welfare programs.

Perhaps the biggest difference in direct assistance, however, comes in the two bills' treatment of unemployment assistance. While the HEROES Act includes a straightforward reauthorization of the \$600/week pandemic payments through January 2021 (March 2021 for gig workers, independent contractors, part-time, and the self-employed), the HEALS Act's treatment is more complicated. Beginning with a \$200/week payment for each week in August and September 2020, the legislation would then allow for a payment of **up to** \$500/week from October to December 2020 if, in combination with the state's baseline unemployment payment, the total amount doesn't exceed 70% of a worker's lost wages².

Debt Collection, Forbearance, and Credit Restriction Provisions in the HEROES Act

Of particular note in the HEROES Act are provisions that the HEALS Act contains no analogues of which would suspend the reporting of negative consumer credit events and institute a moratorium on consumer debt collection during and 120 days after the end of a declared national emergency (including the current pandemic). The Act goes on to define mandatory consumer repayment options once the moratorium is lifted that are rigidly defined based on the size of the loan and forbearance that is automatic once a consumer attests to their financial hardship.

These provisions are notable not just because of the broadening of restrictions on debt collection and reporting under the Fair Debt Collection Practices Act (FDCPA), or the fact that they cover all individuals (not just those impacted by the pandemic), but also because of its increase in fines for violations during an emergency (10 times the normal FDCPA penalties) and its expansion of the FDCPA's definition of a debt collector to include creditors themselves (banks, credit unions, and loan origination companies). It would also limit the ability of credit scoring agencies to introduce new credit models which would negatively impact borrower's credit scores which, taken together with the moratorium on creditors reporting adverse information, could drastically impact the value of a credit score in evaluating risk and limit the availability of credit more broadly.

Setting aside these provisions, the HEROES Act also includes a number of sections related to forbearance, eviction, and foreclosure. The main takeaway is that the bill would institute an extension to the eviction and foreclosure moratoriums for 12 and 6 months, respectively. Evictions would require a 30-day notice once the moratorium concludes, and the forbearance provisions would be automatic for the first 60 days with renewals available by request at the 60 and 180 day marks. The bill attempts to mitigate impacts of these provisions and the pandemic's broader economic effects by also authorizing \$75 billion for a homeowner assistance fund, \$100 billion for a rental assistance program, and tasking the Federal Reserve and Treasury Department with establishing a mortgage servicer liquidity facility at the Federal Reserve similar to the credit facilities established for other industries, states, and municipalities.

² To help states comply with this provision, the bill authorizes \$2b for state unemployment program upgrades

Finally, the HEROES Act would extend the suspension of interest and payments for most federal student loans through September 2021 and requires private loan providers to offer the same terms as Direct Loan borrowers receive. While the bill also allows for the Treasury department to cancel/repay up to \$10,000 of a financially distressed borrower’s federal or private student loans, the bill also contains a vague prohibition preventing debt collectors from applying “pressure”³ to a borrower to apply those repayments to private student loans.

Healthcare related provisions

In order to address the healthcare needs prompted by the pandemic, the HEALS and HEROES Act both include numerous sections related to healthcare provision or manufacturing. (Links are to related or incorporated legislation)

HEALS Act (Republican Legislation)	HEROES Act (Democratic Legislation)
<ul style="list-style-type: none"> • Facilitation of the availability, development, and production of domestic resources to meet national PPE and material needs, including investment credits for PPE manufacturers. • Relaxes the terms of loans from Medicare • Prevents Medicare telehealth options from expiring until Congress can determine what should be made permanent • Extends CARES Act provision that pays clinics and health centers for telehealth for five years (rural service-related) • Freezes Medicare premiums at 2020 levels to head off a predicted spike next year • Emergency support for nursing homes • Refundable payroll tax credit for employer purchases of testing, personal protective, and other safety equipment. 	<ul style="list-style-type: none"> • Requires the National Academies of Science, Engineering, and Medicine (NASEM) to hold a symposium to discuss recommendations to encourage domestic manufacturing of certain drugs • Further increases Federal Medical Assistance Percentages (FMAP) by an additional 14 % for the period of July 2020 through June 2021 • Provides increased funding for Home and Community Based Services through Medicaid • Temporarily increases Medicaid allotments for disproportionate share hospitals by 2.5% • Provides \$25 million to combat waste, fraud, and abuse in both the Medicaid and Medicare program • Requires the President to use all available authorities under the Defense Production Act to mobilize a federal response to the pandemic

State, Local, and Community Funding Provisions

The topline takeaway on state and local funding provisions contained in the two bills is that the HEALS Act contains no direct funding of the sort, whereas the HEROES Act provides \$500b for state fiscal relief and \$375b for local fiscal relief (a total of \$1 trillion for the full fiscal year). However, the HEALS Act does incorporate provisions from Mr. Lamar’s previously mentioned Back to School and Work bill that would provide resources to states to help child care centers and schools reopen safely, and direct short term assistance to child care centers, operators, and providers.

³ “...any communication, recommendation, or other similar communication, other than providing basic information about a borrower’s options, urging a borrower to make an election (with regards to their \$10,000 in student loan debt relief).”

Miscellaneous Provisions

Finally, both bills contain a handful of miscellaneous provisions, with HEALS including [the establishment](#) of a Federal Research Security Council and [the creation of semiconductor incentive grants](#) to spur advancements in semiconductor research and design. A list of remaining provisions include:

Miscellaneous provisions	
HEALS Act (Republican Legislation)	HEROES Act (Democratic Legislation)
<ul style="list-style-type: none"> • Standardization of state tax liability for work travel, and a temporary solution for state tax withholding rules for large employers with remote workers • Expanded Employee Refundable Tax Credit for employers with significant decrease in receipts. • An increase in the business meal deduction from 50% to 100% • Creation of a process to provide economic relief to each of the major endangered trust funds, such as the Highway Trust Fund, Social Security Old-Age & Survivors Insurance Trust Fund, and Medicare Part A. 	<ul style="list-style-type: none"> • Support for both multi- and single- employer pension plans • Expansion of the employee retention tax credit (ERTC) • Changes to the net operating loss (NOL) provision

Major Appropriations Included in each Bill

HEALS Act (Republican Legislation)	HEROES Act (Democratic Legislation)
<ul style="list-style-type: none"> • \$25 billion for hospitals/providers • \$20 billion for vaccine-related measures • \$29.4 billion for defense • \$20 billion for farmers • \$15 billion for child care • \$1.5 billion for NASA • \$150 million for FEMA • \$1.222 billion in loan authority for USCIS • \$1.6 billion for Customs and Border Protection (CBP) • \$3.4 billion to the CDC to support federal, state, and local public health agencies • \$15.5 billion to the NIH • \$4.5 billion to Substance Abuse and Mental Health Services Administration • \$16.7 billion to provide supportive and social services for families and children • \$78.1 billion for Public Health and Social Services Emergency Fund, including \$25b for Provider Relief Fund, \$16b for testing and contact tracing, \$6b for vaccine distribution and \$2b for the Strategic National Stockpile • \$105 billion to the Department of Education to help get students back to school including \$5b for the Governors Emergency Education Relief Fund, \$70b for the Elementary and Secondary School Emergency Relief Fund (33% to all K-12 schools regardless of their plans next year and 66% for K-12 schools with a physical reopening plan that is approved by the governor), and \$29b for the Higher Education Emergency Relief Fund • \$4.01 billion to United States Agency for International Development (USAID) • \$10.151 billion for transportation, including \$75m to Essential Air Service (EAS), \$50m to FAA operations, and \$10b to Airport Improvement Program (AIP) • \$2.2 billion for Tenant-Based Rental Assistance • \$1 billion for Public Housing Operating Fund 	<ul style="list-style-type: none"> • \$100 billion for hospitals/providers • \$3.5 billion for vaccine-related measures • Reduced funding for defense • \$100 million for farmers • \$1.3 billion to FEMA • \$10 billion for SNAP • \$600 million in Pandemic Justice Response Act Grants • \$2.1 billion to the CDC to support federal, state, and local public health agencies • \$4.745 billion to the NIH • \$3 billion to Substance Abuse and Mental Health Services Administration • \$10.1 billion to provide supportive and social services for families and children • \$175 billion for Public Health and Social Services Emergency Fund, including \$100b in grants for hospitals and health care providers and \$75b for testing, contact tracing, etc. • \$10 billion in grants to small businesses • \$1 billion to CDFIs • \$1.5 billion for increased broadband • \$100.15 billion to Department of Education, including \$90b for a State Fiscal Stabilization Fund and \$10.15b for colleges • \$2 billion to support worker training • \$925 million to assist states in processing unemployment insurance claims • \$7.6 billion to support expanded health care services for underserved populations • \$25 billion for Postal Service • \$3.6 billion for grants to States for planning and preparing for elections • \$31 billion for transportation (no funding for airports, but provides Airport & Airway Trust Fund relief), including \$75m for FAA operations, \$15b for highways, and \$15.75b for transit emergency relief • \$4 billion for Tenant-Based Rental Assistance • \$2 billion for Public Housing Operating Fund • \$5 billion for Community Development Block Grant • \$100 billion for Emergency Rental Assistance • \$11.5 billion for Homeless Assistance Grant