

COVID relief legislation update (Phase 4/CARES 2.0):

While pressure on Congress and the White House grows, partisan posturing continues with little progress toward a deal

4 August 2020

As we proceed into August, pressure continues to mount for Congress to provide additional relief to Americans impacted by the physical and economic fallout from the pandemic. Chief drivers of the potential stimulus package include the expiration, last week, of the CARES Act's US\$600 per week enhanced benefit for the unemployed and a national moratorium on evictions; the Department of Commerce's release of economic data showing an [annualized GDP decline of 32.9 percent](#); and coronavirus cases continuing to spike across various states – including [some](#) that had initially contained the spread.

Notwithstanding the pressure to act and several rounds of meetings, Republicans and Democrats thus far remain far apart as to what should be included in further relief legislation. Senate Republicans introduced their proposal – packaged as The Health, Economic Assistance, Liability Protection and Schools (HEALS) Act – last week. This legislative package is supported by Senate Majority Leader Mitch McConnell, his supporters in (though not all of) the Senate Republican conference, and the White House. The HEALS Act differs significantly in size and scope from the Democrat-supported Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which was passed by the House of Representatives in mid-May. Reconciling the HEALS and HEROES Acts, which differ in both substance and funding levels, has proven to be an extremely difficult challenge.

It is a given that the HEALS Act will not be enacted into law as introduced, as Leader McConnell [does not have the full backing](#) of his Republican conference for another major stimulus package, let alone Democratic support. At least 20 Senate Republicans are opposed to significant additional deficit spending. Introduction of the HEALS Act represents an effort by Leader McConnell, backed by the White House, to begin negotiations with Congressional Democrats over a successor stimulus package to the CARES Act, which was signed into law in late March.

In order to reach a deal on a new stimulus package, Leader McConnell will need to forge a coalition between moderate Republicans and Senate Democrats. Senate Minority Leader Chuck Schumer will wield enormous leverage in these negotiations, as will House Speaker Nancy Pelosi.

While Leader McConnell has pushed for limiting the size of the package to close to US\$1 trillion, Congressional Democrats have pushed for a much larger package, embodied in the US\$3 trillion-plus HEROES Act. More recently, as discussions between the sides have stalled, Senate Republicans have suggested that Congress pass a short-term extension of unemployment insurance (UI) benefits. House Speaker Nancy Pelosi has rejected this short term UI extension proposal and urged Republicans to work with Democrats to pass a comprehensive relief package.

Although it is still possible that Congress and the White House will be unable to reach a deal, (i.e. on a bill that will get 60 bipartisan votes in the Senate, pass the House, and be signed by the President), we continue to believe there is a high likelihood that Congress will reach an agreement within the next two weeks. The political pressures on both parties to do something should force Congress to continue working on a relief package through August until an agreement is reached.

While both the HEROES Act and HEALS Act contain a number of provisions that may never be included in a final package (nor are they seriously expected to even by their proponents) — there are several proposals at the heart of the negotiations that will need to be resolved in the final legislation, including:

- **Extension of UI benefits.** In the HEROES Act, Democrats proposed extending the CARES Act's supplemental US\$600/week UI benefits through January 2021. The Republican-backed HEALS Act includes a supplemental US\$200/week benefit through September 30, and requires that states pay 70 percent of lost wages to unemployed persons from October 1 through the end of 2020.
- **Funding to help states and localities shore up beleaguered budgets.** This is the top demand made by Democrats in the HEROES Act—and that was completely ignored in the HEALS Act. Many Senate Republicans strongly oppose providing what they perceive as bailouts to poorly managed states and localities. On Sunday, Secretary of the Treasury Steven Mnuchin [stated](#) that Democrats “are insisting on over US\$1 trillion to state and local governments, and that’s something we’re not going to do.” There is no doubt state and local funding will be a highly contested provision of the final package.
- **Liability protection for businesses and schools.** Senate Republicans have insisted upon establishing liability protection for employers, businesses, and schools, and health care workers in order to guard against COVID-related claims. While liability protection is part of the Republican HEALS Act, and has been identified by Senate Majority Leader McConnell as a must-have in the final package, President Trump recently indicated that he could support a package that does not include liability protections. The HEROES Act does not include any liability protections.
- **Funding tied to students returning to schools.** All sides agree that significant funding (US\$100 billion in HEROES and US\$105 billion in HEALS) is needed to assist K-12 schools across the country respond to the COVID threat. However, the Republican proposal would tie two-thirds of that funding to schools reopening. Last Friday, 30 Senate Democrats signed on to a [letter](#) addressed to Senate Leadership and the Senate Appropriations Committee Chair and Ranking Member “to oppose conditioning education funds in the next coronavirus relief package on the reopening of elementary and secondary schools for in-person instruction.” Reopening schools this fall is central to the White House’s plan to reopen the economy — making this a significant sticking point in reaching a deal on the next relief package.
- **Additional fiscal stimulus.** Senate Republicans, the White House, and Congressional Democrats all support some form of direct payments to Americans, and/or tax credits to

encourage businesses to keep furloughed workers on payrolls and to offset the costs of COVID prevention measures. The HEALS package also includes additional funding for, and revisions to, the small business Payroll Protection Program (PPP); HEROES did not include any additional PPP funding, but this is an area that could end up receiving Democratic support. Working out these details is another hurdle negotiators from all sides will need to overcome.

If Congressional and Trump administration negotiators can reach agreement on these five pillars, it is likely that less contentious provisions from HEROES and HEALS could be agreed to as well.

Below are the major provisions included in the HEALS Act and how they compare to the HEROES Act.

Small Business Assistance

- Provides US\$190 billion (US\$90 billion in new funds and US\$100 billion from unused funds) for an additional disbursement from the PPP for businesses under 300 workers with at least 50 percent lost revenue.
- Expands what borrowers can spend PPP loans on to include certain operations costs; property damage costs from 2020 public demonstrations that insurance does not cover; payments to suppliers for goods already under contract that the business needs; and costs for complying with COVID-19 health guidelines such as buying PPE.
- Provides US\$100 billion for recovery sector loans through the Small Business Administration's 7(a) loan program. Recovery Sector Businesses can receive two times their annual revenue, with a limit of US\$10 million. The loan has a 1 percent interest rate and a 20-year maturity, and borrowers can defer payments for up to two years.
- Provides US\$10 billion for an equity investment facility through the SBA's Small Business Investment Company program.
- Allow eligible businesses in bankruptcy proceedings, with court approval, to access PPP loans.

Notably, the HEROES Act did not provide additional funding for PPP.

Tax provisions

The HEALS Act would:

- Increase the Work Opportunity Tax Credit (WOTC) for employers from US\$2,400 to US\$5,000 per newly hired employee and allow the tax credit to apply to hiring employees who were affected by COVID-19.
- Expand the Employee Retention Tax Credit (ERTC) from the CARES Act from 50 percent of up to US\$10,000 wages per year to 65 percent of up to US\$10,000 in qualified wages per quarter (with a US\$30,000 annual cap) for companies with at least a 25 percent decline in revenue.
- Provide a refundable payroll tax credit equal to 50 percent of an employer's qualified employee protection/workplace reconfiguration/workplace technology expenses, with the credit capped based on the number of employees.
- Increase the business meal deduction from 50 percent to 100 percent.

By contrast, the HEROES Act would increase the ERTC included in the CARES Act from 50 percent of up to US\$10,000 in qualified wages per year to 80 percent of up to US\$15,000 in

qualified wages per quarter (with a US\$45,000 annual cap) with a phase-in beginning for companies with at least a 10 percent decline in revenue. The Democratic proposal would also provide a 50 percent refundable payroll tax credit for qualified fixed costs, including rent and mortgage obligations and utility payments of impacted businesses with fewer than 1,500 employees.

Liability protections

The HEALS Act would:

- Provide a five-year safe harbor from lawsuits to businesses, schools, non-profits, and frontline health care workers that follow public-health guidelines.
- Establish liability only for instances of intentional misconduct or proven gross negligence.

By comparison, the HEROES Act does not provide liability protection for employers but would instead require the Occupational Safety and Health Administration (OSHA) to issue an emergency temporary standard to protect workers at occupational risk of exposure to COVID-19.

Unemployment insurance (UI)

The HEALS Act would:

- Reduce the current enhanced unemployment benefit from US\$600 per week to US\$200 per week for August and September 2020, then require states to transition to paying 70 percent of lost wages, capped at US\$500 per month, from October through December 2020.
- Allow states to apply for a waiver for up to two additional months of the flat US\$200 benefits before transitioning to the wage replacement standard.

The HEROES Act would extend the current UI enhancement of US\$600 per week until the end of January 2021, and allow a phase out through the end of March 2021.

Stimulus checks to individuals

The HEALS Act would:

- Provide a second round of stimulus checks similar to the CARES Act, but would expand the US\$500 dependent credit to include adult dependents.

The HEROES Act would provide an expanded round of US\$1,200 stimulus checks.

Health care funding

The HEALS Act would:

- Provide US\$118 billion for the Department of Health and Human Services (HHS), including:
 - US\$25 billion for hospitals and health care providers.
 - US\$16 billion in new funding for states to conduct testing and contact tracing.
 - US\$20 billion for vaccine, therapeutic, and diagnostic development.
 - US\$16 billion for National Institutes of Health (NIH) research and labs.
 - US\$7.6 billion for community health centers.
 - US\$6 billion for vaccine distribution.

- US\$4.5 billion to Substance Abuse and Mental Health Administration (SAMSA) for mental health, suicide prevention, and overdose response programs.

By comparison, the HEROES Act would provide approximately US\$207 billion for HHS, including:

- US\$100 billion for hospitals.
- US\$75 billion for testing, contact tracing, and other activities necessary to effectively monitor and suppress COVID-19.
- US\$7.6 billion for community health centers.
- US\$4.7 billion for NIH.
- US\$3.5 billion for therapeutics and vaccines.
- US\$3.0 billion for SAMSA.

Education funding

The HEALS Act would:

- Provide the Department of Education US\$105 billion through the Education Stabilization Fund, allocated as follows:
 - US\$1 billion for the Bureau of Indian Education.
 - US\$5 billion for the Governors Emergency Education Relief (GEER) Fund.
 - US\$70 billion for the Elementary and Secondary School Emergency Relief (ESSER) Fund.
- Two-thirds of which would be tied to costs of reopening schools, with funding awarded based on meeting “certain minimum opening requirements.”
 - US\$29 billion for the Higher Education Emergency Relief (HEER) Fund.

The HEROES Act provided —

- US\$90 billion for public schools.
- US\$10 billion for colleges.

Additional agency emergency appropriations

- Department of Agriculture, US\$20 billion for assistance to farmers and ranchers.
- Department of Commerce, US\$968 million, including US\$500 million for assistance to fisheries participants and the seafood industry.
- Department of Defense, US\$29.4 billion, including:
 - US\$2.6 billion for Operation and Maintenance costs across the military uniformed services.
 - US\$83.8 million for Procurement to support teleworking, distance learning, and training capabilities, including the procurement of equipment.

- US\$5.3 billion for Defense Production Act purchases.
- US\$22.4 million for Research, Development, Test and Evaluation across the military uniformed services.
- US\$1.78 billion for Defense Working Capital Funds.
- US\$10.8 billion to continue payments to federal defense contractors who cannot perform work at their duty -station or telework because of the nature of their jobs due to COVID-19.
- US\$8.050 billion for procurement and acquisition efforts to support the defense industrial base.
- US\$705 million for Defense Health Programs.
- Department of Energy, US\$307.3 million to further support COVID-19-related research and development activities, including equipment, enabling technologies, and personnel at national laboratory scientific user facilities; and for related cybersecurity and information technology needs.
- Federal Communications Commission (FCC), US\$1 billion for the Secure and Trusted Communications Networks Reimbursement Program to provide small telecommunications providers funds to offset the cost of removing prohibited equipment that pose national security risks to their networks and replacing it with more secure technology.
- Department of Homeland Security, US\$3.014 billion, including:
 - US\$208 million for the Transportation Security Administration.
 - US\$73 million for the Secret Service.
 - US\$53 million for the Cybersecurity and Infrastructure Security Agency.
 - US\$150 million for the Federal Emergency Management Agency (FEMA).
 - US\$930 million for FEMA emergency grant programs.
- Department of Labor, US\$2.5 billion, including:
 - US\$1.15 billion for state unemployment insurance and employment service operations.
 - US\$500 million for Dislocated Worker Grants.
 - US\$450 million for Workforce Innovation and Opportunity Act grants to states.
- Department of State, US\$425 million for Consular and Border Security Programs to mitigate the impact of declining visa and passport revenue.
- U.S. Agency for International Development (USAID), US\$4.01 billion.
- Department of Transportation, US\$10.151 billion, including:
 - US\$10 billion for the Federal Aviation Administration's Airport Improvement Program.
 - US\$75 million to maintain existing Essential Air Service to rural communities.

- Department of Housing and Urban Development (HUD), US\$3.2 billion, including:
 - US\$2.2 billion for tenant-based assistance.
 - US\$1 billion for the Public Housing Operating Fund.

Notable provisions from HEROES Act not included in the HEALS Act

- US\$14 billion for food assistance programs, including child nutrition programs.
- US\$3.6 billion for election assistance.
- US\$25 billion for the U.S. Postal Service.
- US\$15 billion for state Departments of Transportation.
- US\$15.75 billion for transit agencies.
- US\$190 billion for hazard pay.
- US\$52 billion for retirement and pension assistance.
- Housing assistance, including:
 - US\$100 billion for rental assistance.
 - US\$75 billion for mortgage assistance.
 - Extension of the federal eviction and foreclosure moratorium.

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