

# Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | www.hklaw.com

## Memorandum

**Date:** July 29, 2020  
**To:** Local Government Clients  
**From:** Holland & Knight LLP  
**Re:** HEALS Act: Overview of Senate Republicans' Coronavirus Relief Proposal

---

Senate Republican leadership on July 27, 2020, unveiled the Health, Economic Assistance, Liability Protection, and Schools Act (HEALS Act), a draft plan to provide \$1 trillion in coronavirus relief funding. Senate Majority Leader Mitch McConnell (R-Ky.) outlined the pillars of the proposal, which include another round of \$1,200 in direct payments to individual Americans, more money for the Paycheck Protection Program (PPP), a reduction in pandemic federal unemployment benefits, liability protection and more than \$100 billion for reopening schools and colleges.

A package of individual bills, the proposal provides the option of passing parts of the agenda now – such as extensions of unemployment insurance or schools funding – and leaving the others for later action. The introduction of the bills was the first step toward negotiating a compromise plan with House Democrats, who approved their \$3.5 billion relief plan, the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act), on May 15, 2020. (See Holland & Knight's previous alert, "[Local Government Provisions of Interest in the HEROES Act](#)," May 15, 2020.)

The package of bills includes the following:

- a \$306 billion [emergency appropriations package](#), introduced by Senate Appropriations Committee Chairman Richard Shelby (R-Ala.)
- 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-Texas)
- the [Safely Back to Work and Back to School Act](#), introduced by Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-Tenn.)
- the [American Workers, Families, and Employers Assistance Act](#), introduced by Senate Finance Committee Chairman Chuck Grassley (R-Iowa)

- the [Continuing Small Business Recovery and Paycheck Protection Program Act](#), introduced by Senate Small Business and Entrepreneurship Committee Chairman Marco Rubio (R-Fla.) and Sen. Susan Collins (R-Maine)
- 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-S.C.)

### **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

### **Liability Protections**

Sen. Cornyn's SAFE TO WORK Act 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.

### **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 GOP proposal – as part of the American Workers, Families, and Employers Assistance Act – 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.

Pandemic-related federal supplemental unemployment benefits for millions of Americans expires at the end of July. The Republicans proposal will temporarily lower expanded unemployment benefits, then shift states to a wage-replacement model.

### **Labor and Employment**

The GOP emergency appropriations proposal would provide \$2.5 billion to the U.S. Department of Labor (DOL), including \$1.15 billion to assist state unemployment insurance operations as well as \$500 million for grants to help workers find new employment.

### **Paycheck Protection Program (PPP)**

The GOP proposal would raise the cap to \$750 billion and extends 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 GOP proposal 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.

- **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).

### **School Funding**

The legislation would provide \$105 billion, with \$70 billion for elementary, middle and high schools; \$29 billion for colleges and universities; and \$5 billion to a flexible fund. Two-thirds of the money would go to schools that institute reopening plans and the rest to schools generally. One-third of the funds would be distributed under existing federal formulas.

The proposal would require a detailed timeline of when in-person instruction would begin and information on how many days per week students would attend face-to-face classes. It would also mandate proportional funding of private schools based on the number of their students in each state, and authorize spending for school choice through tax credit scholarships.

The Republican plan would provide one-time emergency funding through scholarship-granting organizations for families to pay for homeschool or private education.

The legislation would provide scholarships, through the [Education Freedom Scholarship](#), that can be used by parents who send their children to private schools or by parents who decide they want to send their children to private schools while public schools are closed.

Higher education grants would be doled out based on full-time enrollment of Pell Grant recipients (90 percent FTE Pell; 10 percent Non-Pell) and could be used for coronavirus-related expenses, as well as financial aid for students. Institutions could use the money for lost revenue, reimbursement for expenses already incurred, technology costs associated with online learning and payroll, as well as faculty and staff training. The money could also be used to provide financial aid grants to students, including those studying online exclusively.

Colleges and universities that paid the endowment tax in 2019 would receive less money and would only be allowed to use the funding for student aid.

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 GOP plan would allow student borrowers to delay [loan repayments](#) and then cap loan payments at 10 percent of income minus housing costs.

### **Child Care Aid**

The GOP proposal establishes the [Back to Work Child Care Grant](#), which provides short-term assistance to child care centers, operators and providers. Grants would be based on need and fixed costs incurred by child care providers because of the coronavirus.

The bill provides \$15 billion for child care programs. (See U.S. Department of Health and Human Services section below).

## **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 Sen. Graham 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.

## **Additional Emergency Appropriations for Coronavirus Health Response and Agency Operations**

### **Commerce, Justice, Science, and Related Agencies: \$4.747 billion**

U.S. Department of Commerce (DOC): \$968 million

- U.S. Census Bureau – \$448 million: The bill provides additional funding for field operations and data processing related to the 2020 Census.

### **Labor, HHS, Education, and Related Agencies: \$226.202 billion**

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

- Substance Abuse and Mental Health Services Administration (SAMHSA): The Republican 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.
- 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.

U.S. Department of Labor (DOL): \$2.5 billion

- 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.

### **U.S. Department of Homeland Security: \$3.014 billion**

- Federal Emergency Management Agency (FEMA) – \$150 million
  - 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.

### **Transportation, HUD, and Related Agencies: \$13.351 billion**

#### U.S. Department of Housing and Urban Development – \$3.2 billion

- 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 (DOT) – \$10.151 billion

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 Sen. Mitt Romney (R-Utah) 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



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.