

## Overview of the Negotiations Process and Comparison of the Senate Republicans’ proposed coronavirus relief package to the Democrats’ HEROES Act

On July 27, Senate Republicans introduced a series of bills – comprising the “**Health, Economic Assistance, Liability Protections, and Schools (HEALS)**” legislative package – as their latest stimulus proposal in response to the coronavirus, which is estimated to total approximately \$1 trillion (See page 13 for links to text and summaries of bills). The HEALS package is seen as a marker bill for negotiations with House Democrats, who passed an approximately \$3.5 trillion relief package - **H.R. 6800, the “Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act”**<sup>1</sup> – in mid-May. Additionally, negotiations on a final relief package include the White House and Senate Democrats, who introduced their own \$430 billion proposal – **S. 4112, the “Coronavirus Child Care and Education Relief Act (CCCERA)”**<sup>2</sup> – focused on providing relief for child care providers, K-12 schools, and institutions of higher education (IHEs) in June.

The summary below provides **topline information on early childhood, K-12, and higher education funding provisions included in the HEALS package in comparison to the HEROES Act**, since the bill passed the House.<sup>3</sup> Additionally, the summary provides an **overview of the negotiations process** to help understand key differences that must be resolved to reach a final agreement, as well as possible outcomes for those funding and policy provisions.

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### **Overview of the Negotiations Process:**

- Senate Republicans have highlighted that the \$1 trillion **HEALS package focuses on “kids, jobs, and health care.”**<sup>4</sup> According to Senate Majority Leader Mitch McConnell (R-KY), the HEALS package is, “**a tailored and targeted draft** that will cut right to the heart of three distinct crises facing our country -- **getting kids back in school, getting workers back to work, and winning the healthcare fight against the virus.**”<sup>5</sup> Instead, **House Democrats took a broad approach** providing approximately \$3.5 trillion for the HEROES Act to support a comprehensive list of Democratic relief priorities. **House Speaker Nancy Pelosi (D-CA)** said when introducing the bill that, “**The [HEROES] Act focuses on three pillars: opening our economy safely and soon; honoring our heroes; and, then, putting much-needed money into the pockets of the American people.**”<sup>6</sup>

<sup>1</sup> The text of the HEROES Act can be found [here](#). A summary of the appropriations provisions of the bill, as prepared by the House Democratic Appropriations Committee, can be found [here](#). A fact sheet of the authorizing provisions of the of the bill, as prepared by the House Democratic Education and Labor Committee, can be found [here](#).

<sup>2</sup> The text of CCCERA can be found [here](#). A fact sheet on the bill, as prepared by the Senate Democratic HELP Committee, can be found [here](#).

<sup>3</sup> This should not be considered a comprehensive summary of both bills. For instance, both bills would also provide direct payments to individuals, relief to unemployed workers and small businesses, support for health research, and liability protections for employers, schools, and health care providers.

<sup>4</sup> <https://www.republicanleader.senate.gov/newsroom/remarks/mcconnell-outlines-historic-relief-proposal-for-an-important-crossroads-in-this-battle->

<sup>5</sup> *Ibid.*

<sup>6</sup> <https://www.speaker.gov/newsroom/51220-0>

- Following the introduction of the HEALS package, nearly daily, **bipartisan negotiations kicked off between the White House and House and Senate Democratic leadership**, with House and Senate Republican leadership being kept informed of discussions. Despite pressure to reach a deal due to the expiration of expanded unemployment insurance (UI) benefits on July 31 and a moratorium on evictions from properties backed by federal mortgage loans on July 24, there was **little initial progress in negotiations**. There were indications on August 1 that negotiations were improving with **Senate Minority Leader Chuck Schumer stating, “Well, this was the longest meeting we’ve had and it was more productive than the other meetings;”**<sup>7</sup> however, **White House Chief of Staff Mark Meadows quickly followed this up on August 2 saying, “I’m not optimistic that there will be a solution in the very near term.”**<sup>8</sup> With the congressional August recess looming (House went out of session on July 31, but Members were put on alert that the House could meet in August to consider a bill with 24-hours’ notice; Senate recess is scheduled to begin August 7) and schools already returning or preparing to go back into session, there is **hope that Republicans and Democrats can reach an agreement in the coming days**. The most positive sign came on August 4 with news that negotiators have **agreed to a timeline to try to reach a deal by the end of this week and hold a vote in Congress next week.**<sup>9</sup> It is clear this could be the **last coronavirus relief package that we see prior to the November election**, which may also help carry a final deal over the finish line.
- With bipartisan negotiations underway, the **ability to reach a final stimulus deal hinges** on Democratic and Republican Members of Congress and the White House being able to resolve differences around several key issues, including, but not limited to:
  - **Overall Funding Relief Level, including State and Local Relief:** The **Republican plan would cap funding at approximately \$1 trillion**, while the **HEROES Act is estimated to cost \$3.5 trillion**. Additionally, the **HEROES Act includes specific funding for state and local fiscal relief**, while the **Republican plan does not** (See below for further information). Some Senate Republicans appear to be growing weary of continued deficit spending. This could make it challenging for a final package that has a higher level of funding than the Republican plan to secure the votes to pass the Senate; however, Republicans have failed to show a united front for even \$1 trillion in overall spending, which strengthens the hand of Democrats in negotiations who have coalesced around the need for a level of funding closer to the HEROES Act. The White House will also play a role in determining an overall funding level and providing cover for Republican support if a final level is above the HEALS package level.
  - **Liability Protections:** Senate Majority Leader Mitch McConnell (R-KY) has drawn a red line on liability protections being part of a final package expressing, **“One thing I can tell you will certainly be in the bill -- it’s not negotiable -- liability protection for hospitals, doctors, nurses, businesses, universities, K-12 related to the coronavirus.”**<sup>10</sup> While negotiations are happening between House and Senate Democratic leadership and the White House -- which may not be as strongly committed to liability protections as Senator McConnell<sup>11</sup> -- the Senate Majority Leader controls whether legislation is brought to the Senate floor for a vote ensuring that some form of liability protections is likely to be part of a final package.
  - **Funding for K-12 Schools:** The HEALS package and HEROES Act provide for K-12 schools approximately \$70 billion and \$58 billion, respectively; however, House Democrats have expressed that the level provided in the HEROES Act is now insufficient as the pandemic has continued to unfold. While the two sides are likely to be able to agree on some level of funding

<sup>7</sup> <https://www.speaker.gov/newsroom/8120>

<sup>8</sup> <https://www.cbsnews.com/news/transcript-mark-meadows-on-face-the-nation-august-2-2020/>

<sup>9</sup> [https://www.washingtonpost.com/politics/lawmakers-say-they-cant-return-home-without-coronavirus-deal-while-white-house-aides-are-split-on-use-of-executive-powers/2020/08/04/b19e7404-d688-11ea-b9b2-1ea733b97910\\_story.html](https://www.washingtonpost.com/politics/lawmakers-say-they-cant-return-home-without-coronavirus-deal-while-white-house-aides-are-split-on-use-of-executive-powers/2020/08/04/b19e7404-d688-11ea-b9b2-1ea733b97910_story.html)

<sup>10</sup> <https://www.washingtonpost.com/us-policy/2020/06/29/pelosi-schumer-call-mcconnell-start-negotiations-new-coronavirus-relief-bill-economic-worries-continue/>

<sup>11</sup> <https://www.washingtonpost.com/business/2020/07/31/liability-shield-congress-bailout/>

for K-12 schools, key sticking points that will need to be resolved include **whether some funding should be conditioned on schools re-opening for in-person instruction and how much funding should be allocated toward non-public schools** (See below for further information).

- The **White House has been using its bully pulpit to strongly advocate for schools to reopen for in-person instruction**, while Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Patty Murray (D-WA) has expressed, “**Any attempt to condition funds on physically reopening is a non-starter for Democrats.**”<sup>12</sup> The **HEALS package would set-aside two-thirds of funding** remaining under the Elementary and Secondary School Emergency Relief (ESSER) Fund (following a reservation for assistance to non-public schools) for K-12 schools that plan to provide at least, in part, in-person instruction.
- The White House has called for allowing funding in a next relief package to be used for scholarships to attend private schools. While the HEALS package would only *authorize* funding for scholarships to attend private schools -- as opposed to providing funding for this purpose -- the **Republican plan would require funding to be reserved for assistance to non-public schools**. Of the \$70 billion for K-12 schools, each state would need to reserve funding for non-public schools based on the percentage of students enrolled in private schools in the state. In response, **Senate HELP Committee Ranking Member Patty Murray (D-WA)** has expressed, “It is also **shameful Senate Republicans are using this pandemic as an excuse to advance [U.S. Department of Education (USED)] Secretary [Betsy] DeVos’s ideological school privatization agenda** by taking critical funding from public schools. **Not only does this proposal send money directly to private schools, but this ‘freedom scholarship’ is just a re-packaged version of same unacceptable voucher program** that Congress has repeatedly rejected.”<sup>13</sup>
- **Unemployment Insurance (UI) Benefits:** Through July 31, the Coronavirus Aid, Relief, and Economic Security (CARES) Act<sup>14</sup> provided an additional payment of \$600 per week to individuals receiving UI benefits. The HEALS package would reduce the enhanced UI benefit to \$200 per week through September. Beginning in October, unemployed workers under the HEALS package would receive a payment, when combined with a state UI payment, which would replace only 70% of lost wages. The HEROES Act would continue the enhanced UI payment at \$600. Reaching an agreement on how to move forward regarding UI benefits, is **one the biggest hurdles to reaching a deal**. To date, a compromise on how to resolve the different approaches on UI benefits has not been announced, but **negotiators are trying to reach an agreement by the end of this week on UI benefits.**<sup>15</sup> Additionally, the **White House was said to be considering issuing an Executive Order to extend the enhanced UI benefits** that recently expired, which may have proved to be an **incentive to lawmakers to agree on a timeline to reach a deal** wanting to avoid such a scenario.<sup>16</sup>

### **State and Local Fiscal Relief**

**The HEALS package does not provide funding specifically for state and local fiscal relief.** The Republican approach would instead modify the provisions of the CARES Act to provide flexibilities to state and local governments around the use of previously awarded funding. Specifically, the HEALS package would extend the timeline over which CARES Act funding could be used to cover expenditures and expand the allowable use of funds to cover revenue shortfalls.

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<sup>12</sup> <https://www.politico.com/news/2020/07/21/democrats-trump-school-funding-reopening-376186>

<sup>13</sup> <https://www.help.senate.gov/ranking/newsroom/press/murray-scott-republican-k-12-proposal-is-a-recipe-for-more-chaos-and-illness->

<sup>14</sup> The text of the CARES Act can be found [here](#). A summary of the appropriations provisions of the CARES Act, as prepared by the Senate Appropriations Committee, can be found [here](#). A summary on the authorizing provisions of the CARES Act, as prepared by the Senate HELP Committee, can be found [here](#).

<sup>15</sup> [https://www.washingtonpost.com/politics/lawmakers-say-they-cant-return-home-without-coronavirus-deal-while-white-house-aides-are-split-on-use-of-executive-powers/2020/08/04/b19e7404-d688-11ea-b9b2-1ea733b97910\\_story.html](https://www.washingtonpost.com/politics/lawmakers-say-they-cant-return-home-without-coronavirus-deal-while-white-house-aides-are-split-on-use-of-executive-powers/2020/08/04/b19e7404-d688-11ea-b9b2-1ea733b97910_story.html)

<sup>16</sup> <https://www.politico.com/news/2020/08/04/trump-executive-order-coronavirus-391305>

**Comparison to the HEROES Act:** The HEROES Act provides \$500 billion for state fiscal relief and \$375 billion for local fiscal relief or approximately 25% of overall funding in the Democratic plan. Given the Democratic emphasis on providing state and local fiscal relief, there is the possibility that a final package could include specific funds for this purpose, which would then flow through state and local governments to likely be used, in part, to support education, including early childhood education.

### **Early Childhood Education**

The HEALS package would provide a total of \$15 billion to support families and child care providers. Specifically, funding includes:

- **\$5 billion through the Child Care and Development Block Grants (CCDBG)**, including for continued payments and assistance to child care providers in the case of decreased enrollment or closures related to the coronavirus and to ensure child care providers are able to remain open or reopen as appropriate and applicable.
- **\$10 billion for Back to Work Child Care Grants**, which would provide nine months of financial assistance to child care providers aimed at stabilizing the child care industry. Funding could be used to help child care providers reopen and maintain safe operations with grants being provided based on need and fixed costs incurred due to the coronavirus.
- **Allowable use:** Providing child care and early childhood education services is permitted under the Governor’s Emergency Education Relief (GEER) Fund. While financial aid grants under the Higher Education Emergency Relief (HEER) Fund can be used for emergency costs that arise due to the coronavirus, child care costs are not explicitly specified as an allowable use. (See below for further information on the GEER Fund and the HEER Fund).

**Comparison to the HEROES Act:** The HEROES Act provides \$7 billion through CCDBG to support families and child care providers. While funding through CCDBG under the HEALS package could be used for the same purpose under the HEROES Act, the HEROES Act also explicitly notes that funding can be used for relief from copayments and tuition payments for families and for paying a portion of the child care provider’s cost ordinarily paid through family copayments. The HEROES Act also provides \$850 million for child care for front line workers. The HEROES Act would, similar to the HEALS package, **allow Governors** to use funding under an Education State Fiscal Stabilization Fund for early childhood education programs and services. Different from the CARES Act, the HEROES Act explicitly states that funding could be used for child care costs of students at IHEs.

Additionally, on July 29 the House passed **H.R. 7027, the “Child Care is Essential Act,”<sup>17</sup> which would create a \$50 billion Child Care Stabilization Fund** to provide funding to child care providers to stabilize the child care sector and assist providers in safely reopening and operating. Separately, the House also passed on July 29, **H.R. 7327, the “Child Care for Economic Recovery Act,”<sup>18</sup> supporting additional federal investments and tax subsidies in child care**, including an increase in funding for the Child Care Entitlement to States from \$2.9 billion to \$10 billion each year from fiscal year (FY) 2020 to FY2024, \$10 billion for child care safety infrastructure improvements, and an enhanced child and dependent care tax credit, among other provisions.

### **Education Stabilization Fund**

The HEALS package includes a total of \$105 billion for an Education Stabilization Fund, which would provide additional funding through the Governor’s Emergency Education Relief (GEER) Fund, the Elementary and Secondary School Emergency Relief (ESSER) Fund, and the Higher Education Emergency Relief (HEER) Fund created by the CARES Act. This funding level is slightly above the **total of \$100.15 billion provided in the HEROES Act** to support education activities, including \$90 billion for a State Fiscal Stabilization Fund and \$10.15 billion for private, non-profit

<sup>17</sup> <https://www.congress.gov/116/bills/hr7027/BILLS-116hr7027ih.pdf>

<sup>18</sup> [https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/CC.008\\_xml\\_xml.pdf](https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/CC.008_xml_xml.pdf)

IHEs and Minority Serving Institutions (MSIs). Funding through the State Fiscal Stabilization Fund in the HEROES Act would flow directly to Governors for support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services, rather than through the relief funds created by the CARES Act.

Regarding the **Education Stabilization Fund included in the HEALS package**, funding would be awarded in the following manner:

- **Approximately \$5 billion for the Governor’s Emergency Education Relief (GEER) Fund**
  - Timeline: Governors with an approved application must be awarded funding within 30 days of enactment of the bill. Governors must make all awards within 6 months of receiving funding (or funding will be reallocated to other states) and are required to submit a report on the use of funding within 6 months.
  - Distribution of Funding: As with the CARES Act, States would receive funding based on 60% of their relative population of individuals aged 5 through 24, and 40% on their relative number of children counted under Title I of the Elementary and Secondary Education Act (ESEA).
  - Use of Funds: Funding can be used to support grants to local educational agencies (LEAs) and IHEs that the state determines have been most significantly impacted by the coronavirus. Funding could also be used to support any other LEA, IHE, or education related entity that the Governor deems essential for carrying out emergency educational services to students. This includes any of the activities allowed under the ESSER Fund (See below for further information), ESEA, the Higher Education Act (HEA), child care and early childhood education services, social and emotional support, career and technical education, adult education, and the protection of education-related jobs. Notably, the Individuals with Disabilities Education Act (IDEA) and services for homeless youth are not specified under the GEER Fund; however, funding could be used for this purpose given that services for children with disabilities and homeless youth are an allowable activity under the ESSER Fund.

**Comparison to the HEROES Act:** The HEROES Act provides approximately \$4.4 billion for Governors to maintain or restore state and local fiscal support for elementary, secondary, and postsecondary education.

- **Approximately \$70 billion for the Elementary and Secondary School Emergency Relief (ESSER) Fund**
  - Timeline: State education agencies (SEAs) with an approved application must be awarded funding within 15 days of enactment of the bill (See below for a timeline of when funding must be awarded to LEAs and non-public schools). States must make all awards within 4 months of receiving funding (or funding will be returned to the Treasury) and are required to submit a report on the use of funding within 6 months.
  - Distribution of Funding: As with the CARES Act, states will receive funding in the same proportion as each state receives funds under Title I, Part A of ESEA. Each state must then reserve funding for assistance to non-public schools (See below for further information). After reserving funding, each state must then allocate:
    - Not less than 90% (the same percentage as in the CARES Act) of the remaining funding as subgrants to LEAs (including charter schools) in the proportion that each receives funding under Title I, Part A of ESEA. Different from the CARES Act, of this amount:
      - **One-third must be awarded to LEAs within 15 days of states receiving funding;**
      - **Two-thirds will be awarded only after LEAs submit "comprehensive school reopening plans for 2020-2021"** (See below for further information) to their Governor and Governors must approve plans that meet the below requirements within 30 days of being submitted. Under the requirements of the HEALS package:

- LEAs submitting plans to provide **in-person instruction for at least 50 percent of students, no less than 50 percent of the school-week**, will have their plans **automatically approved**.
- LEAs submitting plans to **not provide in-person instruction to any students are not eligible to receive grants**.
- LEAs submitting plans to **provide in-person instruction to at least some students**, but do not satisfy the 50/50 requirement (outlined above), shall have their **allocation reduced on a pro rata basis as determined by the Governor**.
  - With the remaining funds (up to 10%), a state may reserve not more than 5% (up from 0.5% in the CARES Act) for administrative costs and has flexibility to use the rest to address emergency needs in response to coronavirus.
- Comprehensive School Reopening Plans for 2020-2021: In addition to any criteria determined by the Governor, in consultation with the SEA, comprehensive school reopening plans must include:
  - A **detailed timeline for when in-person instruction will be provided**, including goals and criteria for providing full-time in-person instruction to all students;
  - A **description of how many days of in-person instruction per calendar week** the LEA plans to offer during the 2020-2021 school year; and
  - An assurance that the **LEA will offer students as much in-person instruction as is safe and practicable**, consistent with maintaining safe and continuous operations aligned with challenging state academic standards.
- Assistance to Non-Public Schools: Different from the CARES Act, a **SEA must reserve funding equal to the percentage of students enrolled** in non-public elementary and secondary schools in the state. As a note, the percentage of students enrolled in private schools nationally is approximately 10%, but this will vary by each state. Governors must then allocate not less than 50% of the funding to non-public schools within 30 days of receiving an award from the USED Secretary and the remaining 50% not less than 4 months after receiving an award from the USED Secretary. Funding will be **awarded to a non-public school based on the number of low-income students enrolled in the non-public school** as a share of all low-income students enrolled in non-public elementary and secondary schools in the state, subject to the following requirements:
  - A non-public school that provides in-person instruction for at least 50% of its students, no less than 50% of each school-week, as determined by the non-public school prior to the coronavirus emergency, is eligible for the full amount of assistance per student.
  - A non-public school that does not provide in-person instruction to any students is only eligible for one-third of the amount of assistance per student.
  - A non-public school that provides in-person instruction to at least some students, but do not satisfy the 50/50 requirement (outlined above), shall have their amount of assistance reduced on a pro rata basis.
- Use of Funds: The HEALS package **outlines how schools may use funds in two buckets** – one for funds awarded to all schools and another for funds awarded to schools based on if they plan to partially reopen – with activities largely overlapping, but with some key differences in comparison to the CARES Act. **Newly added for both buckets is a use of funds for activities to support returning to in-person instruction**, including purchasing personal protective equipment, implementing flexible schedules to keep children in isolated groups, purchasing box lunches so that children can eat in their classroom, purchasing physical barriers, providing additional transportation services, repurposing existing school rooms and space, and improving ventilation systems. While **funds awarded to all schools could continue to be used for planning and coordinating during long-term closures** (including how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out the requirements of IDEA), this is **not specified as an allowable activity for funds awarded to schools based on if they plan to partially reopen**. Relatedly, funds awarded to schools based on if they partially reopen could **only be used for providing classroom instruction with regard to**

**summer learning and afterschool programs**, continuing the ability to provide on-line learning under these programs only with funds awarded to all schools.

Additionally, the HEALS package in comparison to the CARES Act eliminates allowable uses of funds under both buckets for (1) **LEAs to maintain operations** (including **continuing to employ existing staff**) and (2) **any activities authorized** by ESEA, IDEA, the Adult Education and Family Literacy Act, the Carl D. Perkins Career and Technical Education (CTE) Act, and part of the McKinney-Vento Homeless Assistance Act. While an **allowable activity is continued** under both buckets to **provide services to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth**, it appears that funding would be able to be used less broadly than under the CARES Act. It is also important to note that the GEER Fund includes a cross-reference to allow funds to be used for any activities under the ESSER Fund meaning that the elimination of funds being able to be used for any authorized activities under the above statutes will also limit how funding can be used by Governors; however, as noted above, the GEER Fund does specify funds can be used for authorized activities under ESEA, career and technical education, and adult education, just not IDEA and part of the McKinney-Vento Homeless Act. The GEER Fund would cross-reference to funding being able to be used to provide services to address the unique needs of the above populations.

The HEALS package would also allow funding under both buckets to be used to **expand healthcare and other health services (including mental health services and supports), including for children at risk of abuse or neglect**. The CARES Act limited allowable funding to providing mental health services and supports. (See below footnote for information on additional allowable activities under ESSER).<sup>19</sup>

- **Additional Assurances:** States, SEAs, and LEAs must provide an assurance that they will **maintain and expand access to high-quality schools, including high-quality public charter schools** and will not enact policies to close or prevent the expansion of these schools to address revenue shortfalls. They also must commit to not disproportionately reduce funding to charter schools or otherwise increase funding gaps between charter schools and other public schools.

**Comparison to the HEROES Act:** The HEROES Act **provides approximately \$57.9 billion for K-12 schools**. The HEROES Act **does not condition any funding being awarded on schools committing to reopen**. Regarding assistance to non-public schools, the HEROES Act would **clarify that “equitable service”<sup>20</sup> funding in the CARES Act is to be determined based on the number of low-income students attending private schools**. Additionally, House Democrats seek to limit the authority of the USED Secretary by **prohibiting the establishment of a priority or preference not specified in the HEROES Act and imposing limits on the use of such funds not specified in the**

<sup>19</sup> Additional activities permitted (beyond those specified above) for both buckets of funding under the ESSER Fund and cross-referenced by the GEER Fund include: Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs or non-public schools, including coordination with state, local, tribal, and territorial public health departments, and other relevant agencies; providing principals and other school leaders with the resources necessary to address the needs of their individual schools; training and professional development for staff of LEAs or non-public schools on sanitation and minimizing the spread of infectious diseases; purchasing supplies to sanitize, clean, and disinfect the facilities of LEAs or non-public schools, including buildings operated by such agency; purchasing educational technology (including hardware, software, and connectivity) for students who are served by LEAs or non-public schools that aid in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

<sup>20</sup> Generally, “equitable services” refers to a provision under Title I of ESEA that requires LEAs to provide services to eligible private school students and their teachers that are equal in comparison to those provided eligible public-school children and their teachers. In the past, students eligible for such services under ESEA have been disadvantaged and at-risk private school students. Regarding funding provided through the CARES Act, the Department issued an interim final rule -- which is being challenged in the courts -- providing LEAs two options: (1) to use CARES Act funding to support all students in public schools and then calculate funding for equitable services for all students enrolled in private schools; or, (2) to use CARES Act funding to only support students in Title I schools and then calculate funding for equitable services for only Title I eligible students enrolled in private schools.

**Act.** Regarding the use of funding under the HEROES Act, allowable activities would **also largely align to those permitted under the CARES Act** but would **not add a new allowable use to support returning to in-person instruction**. The HEROES Act would also **continue supports for online learning** and the **ability to use funds for any authorized activities in the above specified statutes**, as well as to maintain operations (including continuing to employ existing staff). The HEROES Act would also require states to provide assurances, but for different purposes than the HEALS package. For instance, states would be required to provide **assurances that all students with disabilities are afforded their full rights** under IDEA, including all rights and services outlined in individualized education program (IEPs).

- **Approximately \$29 billion for the Higher Education Emergency Relief (HEER) Fund**
  - **Timeline:** The HEALS package does not specify a timeline for the USED Secretary to release funding under the HEER Fund. Any funds allocated to an IHE under the 85% and 10% set-asides (See below for further information) which are not applied for within 60 days of the publication of a notice inviting applications will be relocated to IHEs that have submitted an application. IHEs receiving funding are required to submit a report on the use of funding within 6 months.
  - **Distribution of Funding:** Funding would be awarded to IHEs in the following manner:
    - **85% (down from 90% under the CARES Act) or approximately \$24.7 billion** for public and private, non-profit IHEs and postsecondary vocational institutions. Awards to IHEs will be based on:
      - 90% (up from 75% under the CARES Act) of their relative share of full-time students who received Pell Grants who were not exclusively enrolled in distance education courses prior to the coronavirus emergency; and
      - 10% (down from 25% under the CARES Act) of their relative share of full-time students who did not receive Pell Grants who were not exclusively enrolled in distance education courses prior to the coronavirus emergency.
    - **10% (up from 7.5% under the CARES Act) or approximately \$2.9 billion** for additional awards under the Strengthening Institutions program, the Strengthening Historically Black Colleges and Universities (HBCUs) program, Hispanic Serving Institutions program, Promoting Postbaccalaureate Opportunities for Hispanic Americans program, and Masters Degree Programs at HBCUs and Predominantly Black Institutions;
    - **5% (up from 2.5% under the CARES Act) or approximately \$1.5 billion** for grants to IHEs, **that the USED Secretary determines**, through an application process and after allocating funds under the 85% and 10% set-asides, have the greatest unmet needs related to coronavirus. The Secretary shall prioritize IHEs, including for-profit IHEs, that were not eligible to receive an award under the 85% set-aside and that otherwise demonstrate significant needs related to coronavirus that were not addressed by funding allocated under the 85% and 10% set-asides.
    - **Institutions that paid the endowment tax in 2019 would receive 50% of their allocation and could only use funding to provide financial aid grants to students.**
  - **Use of Funds:** Funding could be used by IHEs to:
    - **Defray expenses associated with coronavirus** (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll); and
    - **Provide financial aid grants to students** (including students exclusively enrolled in distance education), which may be used for any component of the student's cost of attendance or for emergency costs that arise due to coronavirus.

**Comparison to the HEROES Act:** Through a combination of funding under the State Fiscal Stabilization Fund and additional funding for private, non-profit IHEs and Minority Serving Institutions (MSIs), the HEROES Act provides a total of **approximately \$36.85 billion for IHEs**. The HEROES Act **requires funding to be used for grants to students and for education and general expenditures**, while under the HEALS package, IHEs may use funding in this way. The **formula to allocate funding to public IHEs** differs under the HEROES Act with **75% of funding based**

**on an institution's relative share of Pell Grant recipients** who were not exclusively enrolled in distance education courses prior to the coronavirus emergency and **25% based on an institution's total enrollment** who were not exclusively enrolled in distance education courses prior to the coronavirus emergency. The **HEALS package would more heavily weight the distribution of funding to IHEs based on their relative share of Pell Grant recipients** than the HEROES Act does for IHEs. Additionally, the HEROES Act **limits funding to public and private, non-profit IHEs**, while the HEALS package allows for-profit IHEs to access some funding.

The HEROES Act also **prohibits the USED Secretary from being able to impose restrictions on the population of students who may receive funds** under the CARES Act. This is aimed at statutorily overturning an interim final rule issued by the Department limiting funds under the CARES Act to students eligible for student aid, excluding Deferred Action for Childhood Arrivals (DACA) students and undocumented students from eligibility.

- **Approximately \$1 billion for the Bureau of Indian Education and outlying areas**

**Comparison to the HEROES Act:** The HEROES Act provides **approximately \$900 million** for the Bureau of Indian Education and outlying areas.

- **Maintenance of Effort:** The HEALS package requires that a state **provide assurances to receive funding through the GEER Fund and the ESSER Fund** that they will **maintain support for elementary and secondary education and for higher education in FY2020 and FY2021 at least at the proportional levels** of a state's support for elementary and secondary education and for higher education relative to a state's overall spending in FY2019.

**Comparison to the HEROES Act:** To receive funding through the Education State Fiscal Stabilization Fund within the HEROES Act, states **must maintain their percent of total spending on elementary, secondary, and postsecondary education in FY2019 for FY2020, FY2021, and FY2022**. Additionally, the HEROES Act requires states to provide assurances that they will maintain **support for elementary, secondary, and higher education in FY2020, FY2021, and FY2022 at least at the average level of such support in the three fiscal years preceding enactment** of the bill. States must also provide an assurance that their support for higher funding -- calculated as spending for public higher education per full-time equivalent student -- shall be the same in FY2022 as in FY2019.

### **Key K-12 Provisions**

The HEALS package includes several authorizing provisions related to elementary and secondary education. The following is a summary of those key provisions:

- **National Emergency Educational Waivers:**
  - Similar to the CARES Act, the HEALS package includes several **waivers intended to provide districts greater flexibility in use of federal funding** to support their response efforts.
  - **Does not include any authority for the USED Secretary to waive requirements related to assessment and accountability for the 2020-2021 school year**, nor does it include any authority for the USED Secretary to create expedited waivers. The CARES Act previously authorized the Secretary to create expedited waivers for states and districts to forgo statewide assessments for the 2019-2020 school year.
  - **Provides that the USED Secretary may grant waivers related to the following:** maintenance of effort (Sec. 1118a, 8521 of ESEA); prohibitions on carrying over funds from one fiscal year to the next (Sec. 1127 of ESEA); completion of a district needs assessment to support Title IV of ESEA funding uses (Sec. 4106(d) of ESEA); limitations on uses of Title IV of ESEA funding, including limits on technology purchases (Sec. 4016(e), 4109(B) of ESEA); and the definition of professional development (Sec. 8101(42) of ESEA).

- **Does not provide** the USED Secretary the authority to **waive restrictions on districts' use of Title I of ESEA funds to support schoolwide programming**. This was previously authorized by the CARES Act.
- **Authorizes the USED Secretary to waive requirements** related to infants, toddlers, and children up to age three receiving services provided under **Part C of IDEA**.
  - Specifically, the HEALS package allows the USED Secretary to provide that children receiving Part C services may continue to do so if there is a delayed evaluation timeline, which is required for a child to receive Part B services (for children age three and above). This would ensure that **children who turn three years-old will still continue receiving services until an evaluation can be completed and an eligibility determination is made**.
- **Prohibits the USED Secretary from waiving** any statutory or regulatory requirements related to **applicable civil rights laws**, as did the CARES Act.
- **Requires state and district applications for waivers, rather than allowing the USED Secretary to create an expedited waiver application**. Instead of expedited waiver authority provided the USED Secretary in the CARES Act, the HEALS package requires states and districts to demonstrate the following in their applications:
  - Which federal programs and requirements will be affected by the requested waiver; and,
  - How the emergency prevents or otherwise restricts the ability to comply with statutory or regulatory requirements.
- The **Secretary must make a determination within 30 days of receiving a request** and must publish any approval decisions within 30 days of granting the waiver request. **Waivers may not exceed 1 academic year without additional approval from USED**.

**Comparison to the HEROES Act:** The HEROES Act **did not address waivers related to elementary and secondary education**.

- **Emergency Education Freedom Grants:**
  - **While the HEALS package authorizes Emergency Education Freedom Grants, funding is not included for the program**. Specifically, the HEALS package **authorizes the USED Secretary to award one-time funding to states for support of scholarship-granting organizations (SGOs)**, which are non-profit entities that operate state-sponsored scholarships programs (also referred to as school voucher programs).
  - SGOs must use **at least 95 percent of their subgrant to provide scholarships to K-12 students** for use to pay for qualified expenses, including **private school tuition and home-schooling expenses**.
  - States would receive allotments, after applying for funds, that are based on the number of individuals aged 5 through 17 in the state (20% of the allotment) and based on the number of individuals aged 5 through 17 below the poverty line (80% of the allotment).
  - States with existing tax-credit scholarship programs must award subgrants to SGOs within 30 days of receiving funds; whereas states that have not created tax-credit scholarship programs must award subgrants to SGOs within 60 days of receiving funds.

**Comparison to the HEROES Act:** Democratic leadership of education authorization and appropriations committees **strongly oppose** an authorization for Emergency Education Freedom Scholarships (See above for further information under the Overview of the Negotiations Process). The HEROES Act would **prohibit funding** from being used to provide **financial assistance to students to attend private schools** (except for certain students with disabilities).

- **Career and Technical Education, and Workforce Investment provisions:**
  - The HEALS package provides various authorities, including **waivers allowing for limited flexibility in the use of current funds** under the Perkins CTE Act, the Adult Education and Family Literacy Act,

and the Workforce Innovation and Opportunity Act (WIOA), related to career and technical education and workforce investment programs.

**Comparison to the HEROES Act:** The HEROES Act also **provides additional legislative flexibilities to use current resources** under the Perkins CTE programs and Adult Education and Literacy programs to respond to the coronavirus pandemic.

### **Key Student Financial Assistance Provisions**

The HEALS package includes provisions aimed at assisting student loan borrowers; however, the main focus of the Republican plan would **not provide new benefits to borrowers, instead simplify the student loan repayment process**. Key student financial assistance provisions in the HEALS package include, but are not limited to:

- **Student Loan Repayment Simplification:** Aimed at streamlining the current student loan repayment system, the HEALS package would newly **reduce to two options – down from the current nine options – plans for repaying federal student loans**. Federal student loan borrowers, who enter repayment or want to switch repayment plans, beginning October 1, 2020, could choose from two repayment options:
  - **A standard, 10-year repayment plan;** or
  - **an income-based repayment plan dependent on the borrower's annual income.** With this option borrowers would **pay 10% of their discretionary income** over 20 years for undergraduate students and 25 years for graduate students. Discretionary income is defined as all income above 150% of the poverty level (currently \$19,140 for an individual); however, the lower repayment amounts would begin to phase out at 800% of the poverty level. As with current options, borrowers would **not need to make repayments during periods when they have no income or earn less than 150% of the poverty level.**
- **Federal-Work Study:** The CARES Act, among other provisions, allowed IHEs to can continue to make Federal Work-Study payments to students who were unable to fulfill their work-study obligations for up to one academic year. The Republican plan **extends existing CARES waivers for Federal Work-Study into 2020-2021 award year.**
- **FASFA Reporting:** Adds a question to the 2020-2021 and 2021-2022 Free Application for Federal Student Aid (FASFA) to **allow applicants to report incidences of recent income loss** to financial aid administrators.
- **Financial Aid Administrator Flexibilities:** When circumstances impact an individual's or family's ability to contribute to the cost of an education, financial aid administrators have discretion or "professional judgment" to adjust the FASFA form to more accurately reflect current finances. The HEALS package would **allow financial aid administrators to consider as part of the professional judgement process if an individual or their family members are recently unemployed** rather than needing to look to previous tax data. Additionally, the package adjusts program review criteria for IHEs to account for an expected increase in the use of professional judgments during this time.

**Comparison to the HEROES Act:** A key difference between the Republican plan and the HEROES Act is how each would handle an upcoming expiration of the suspensions of student loan payments and interest accrual on loans held by USED for both Direct Loans and Federal Family Education Loans Programs (FFELP). The **HEROES Act would extend the suspension of payments and interest accrual for student loans from September 30, 2020 to September 30, 2021**, including newly for private loans and Perkins Loans. Alternatively, the HEALS package would not extend the suspensions instead allowing federal student loan borrowers, who enter repayment or want to switch plans, two simplified, repayment plan options. Relatedly, President Donald Trump emphasized on July 30, that the **White House could again, without Congressional action, suspend student loan payments beyond**

**September 30, 2020.**<sup>21</sup> The HEROES Act would also provide **\$10,000 in student loan forgiveness to borrowers who were “economically distressed” as of March 12, 2020.** The HEROES Act would similar to the HEALS package maintain flexibility for institutions to **pay students receiving Federal Work-Study benefits even if they are unable to work.** The HEROES Act would also **slightly alter the student aid application process** to facilitate access to financial aid for recently unemployed students albeit in a different manner than the Republican plan.

### **Liability Protections**

Key highlights of the liability protections – strongly championed by Senate Majority Leader Mitch McConnell (R-KY) – included in the HEALS package are:

- **Temporarily protects schools, colleges, nonprofits, churches, and businesses from the liability** from personal injuries that arise from alleged coronavirus exposure. These protections are provided if the entity made reasonable efforts to comply with public health guidelines and the organization did not engage in willful misconduct or grossly negligent behavior. Additionally, plaintiffs must present clear and convincing evidence to satisfy a claim.
  - These protections would cover coronavirus exposure injuries that take place between **December 1, 2019 and October 1, 2024.**
- **Creates procedural requirements to limit litigation in federal court** by requiring notice of suit, limiting punitive damages to findings of willfulness, and fee arrangement disclosures for class action lawsuits.
- **Ensures that employers are not liable under federal labor and employment laws** for complying with coronavirus-related guidance (such as stay-at-home orders) and **protects employers from liability for injuries related to workplace coronavirus testing.**

**Comparison to the HEROES Act:** The HEROES Act **does not include liability protections.**

### **Improvements to the Paycheck Protection Program**

The Paycheck Protection Program (PPP) was designed to provide small businesses, including child care providers and non-profit organizations, with resources to assist in maintaining their payroll, hiring back employees, and partially covering overhead expenses. Unfortunately, the child care industry faced challenges to being able to access PPP loans.<sup>22</sup> The HEALS package would build on the current PPP program; however, would include new requirements related to reductions in gross revenues. Specifically, the HEALS package would, in part:

- **Authorize \$100 billion to recovery sector businesses,** which include seasonal businesses and businesses located in low-income census tracts that meet the Small Business Administration (SBA) revenue size standard, have no more than 500 employees, and demonstrate at least a 50% reduction in gross revenues.
- **Provide \$190 billion to support PPP and PPP Second Draw Loans.**
  - Defines eligibility for PPP Second Draw loans as small businesses that meet the SBA revenue size standard, have no more than 300 employees, and demonstrate at least a 50% reduction in gross revenues.
  - Includes a \$25 billion set-aside for entities with 10 or fewer employees and a \$10 billion set-aside for loans made by community lenders.
- **Expand forgivable expenses** to include covered supplier costs, covered worker protection expenditures, and covered operations expenditures.

**Comparison to the HEROES Act:** The HEROES Act **does not include additional funding or make changes to PPP.** At the time that the HEROES Act passed, the PPP had recently received \$310 billion in additional funding, which remains available until August 8. Additionally, there was talk that separate legislation modifying the PPP would

<sup>21</sup> <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing-july-30-2020/>

<sup>22</sup> [https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/our-work/public-policy-advocacy/child\\_care\\_and\\_the\\_paycheck\\_protection\\_program.pdf](https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/our-work/public-policy-advocacy/child_care_and_the_paycheck_protection_program.pdf)

be needed to extend the period of loan forgiveness and ease restrictions on allowable expenses. These changes became law in early June. This explains, in part, why additional funding and modifications are being considered that were not included in the HEROES Act.

### **Additional Funding**

- **No funding is included in the HEALS package to improve broadband access** to the Internet to address the homework gap. The **HEROES Act provides \$5.5 billion** to help students connect to the Internet through schools and libraries and to assist families in receiving broadband service.
- **No funding or policy changes are included in the HEALS package for the Supplemental Nutrition Assistance Program (SNAP).** The **HEROES Act provides \$10 billion** for SNAP to support anticipated increases in participation, a 15% increase in benefits through FY2021, and program cost increases due to allowing continued flexibilities, among other activities. The HEROES Act also includes \$3 billion for Child Nutrition programs and \$1.1 billion for Special Supplemental Nutrition Program for Women Infants and Children (WIC).
- **No funding is included for the U.S. Department of Housing and Urban Development’s (HUD) Homeless Assistance Grants in the HEALS package.** The **HEROES Act provides \$11.5 billion** for this purpose. Relatedly, there is a **bipartisan effort calling for homelessness funding to be provided through the Administration of Children and Families (ACF)** of the U.S. Department of Health and Human Services (HHS) **targeted toward children and families** in a final package.
- \$40 million for Student Aid Administration is included in the HEALS package. No funding for this purpose is included in the HEROES Act.
- \$65 million for the Institute of Education Sciences for carrying out the National Assessment of Educational Progress (NAEP) is included in the HEALS package. No funding for this purpose is included in the HEROES Act.
- \$8 million for Departmental Management within USED is included in the HEALS package. No funding for this purpose is included in the HEROES Act.
- \$7 million for the Office of Inspector General within USED is included in the HEALS package. No funding for this purpose is included in the HEROES Act.

### **Information for the HEALS Package**

Below is information on the series of bills introduced by Senate Republicans comprising the HEALS package. This is not the comprehensive list of the bills that are included under the Republican plan. Instead, the bills below are those relevant to provisions that are highlighted in this summary.

- **S. 4317, the “Safeguarding America’s Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy (SAFE TO WORK) Act.”** This bill outlines liability protections under the Republican plan.
  - [Bill Text](#)
  - [Press Release](#) as prepared by Senator John Cornyn (R-TX)
  - [Section by Section](#) as posted by the National Association of Counties
- **S. 4318, the “American Workers, Families, and Employers Assistance Act.”** This bill outlines UI benefits and direct payments provisions under the Republican plan. This bill also provides flexibilities for state and local government in the use of prior funding awarded under the CARES Act.
  - [Bill Text](#)
  - [Section by Section](#) as prepared by the Senate Republican Finance Committee
- **S. 4320, the “Coronavirus Response Additional Supplemental Appropriations Act, 2020.”** This bill outlines funding provisions under the Republican plan.
  - [Bill Text](#)
  - [Section by Section](#) as prepared by the Senate Republican Appropriations Committee

- **S. 4321, the “Continuing Small Business Recovery and Paycheck Protection Program Act.”** This bill builds on and expands the Paycheck Protection Program (PPP) under the Republican plan.
  - [Bill Text](#)
  - [Section by Section](#) as prepared by Senators Marco Rubio (R-FL) and Susan Collins (R-ME)
  - [One pager](#) as prepared by Senators Marco Rubio (R-FL) and Susan Collins (R-ME)
- **S. 4322, the “Safely Back to School and Back to Work Act.”** This bill outlines the education authorizing provisions under the Republican plan.
  - [Bill Text](#)
  - [Section by Section](#) as prepared by the Senate Republican HELP Committee
  - One Pagers on [Student Loans](#), [School Choice](#), and [Child Care](#) provisions of the HEALS package as prepared by the Senate Republican HELP Committee

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