Senate Republicans Release COVID-19 Relief Bill, the HEALS Act

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On July 27, Senate Republicans unveiled their $1 trillion plan for the next coronavirus aid package, known as the Health, Economic Assistance, Liability Protection and Schools (HEALS) Act. The aid package serves as an opening bid in negotiations with Democrats. Major elements of the package include a second round of tax rebate checks, slimmed-down unemployment benefits, a second round of forgivable small-business loans, education relief, and liability protection for employers. Congress’ goal is to reach a deal and pass another aid package by the end of next week before the scheduled congressional August recess; however, that goal will be difficult to meet since Democrats have denounced the package as too little, too late. Republican Senators have also voiced concerns with the large price tag of the bill as well as some provisions contained in the package, such as one that would allocate nearly $2 billion in funding for a new FBI headquarters. This early discord within the Republican party is indicative of how difficult it will be to hammer out a final deal. Democrats have already thrown their support behind the House-passed HEROES Act, a $3.5 trillion aid package, which contained $1 trillion in aid to state and local governments.

The HEALS Act is made up of half a dozen separate bills, some of which touch upon different aspects of coronavirus response and relief, and others that represent additional congressional priorities. Below are highlights of some major elements of most interest to research, education, and healthcare communities followed by a more detailed analysis:

- Of the $306 billion in emergency appropriations, the aid package would provide:
  - $29 billion for the Higher Education Emergency Relief Fund (HEERF) to support institutional expenses related to COVID-19 and additional student financial aid needs;
  - $25 billion for the Department of Health and Human Services (HHS) for healthcare provider relief;
  - $16 billion for HHS to support COVID-19 testing, contact tracing, surveillance, containment, and mitigation, including at institutions of higher education;
  - $15.5 billion for the National Institutes of Health (NIH) to support additional COVID-19 research and relief for research institutions to offset the costs associated with productivity losses due to the pandemic; and
  - $307.3 million for the Department of Energy (DOE) to support COVID-19-related research and development activities, and cybersecurity and information technology needs at the Department and national laboratories.
- **Student Loan Repayment:** The aid package offers two federal student loan repayment plans—a standard 10-year repayment plan and an income-based repayment plan, where borrowers would have to pay either 10 percent of their discretionary income or zero if earning less than 150% of the poverty level, combined with loan forgiveness after 20 or 25 years.
- **Liability protection:** The aid package would shield any business from coronavirus-related medical claims through October 1, 2024, if it makes reasonable efforts to comply with public health guidelines and is not engaged in gross negligence or willful misconduct.
• **Research and Security:** HEALS would incorporate the bipartisan *Safeguarding American Innovation Act*, led by Senators Rob Portman (R-IN) and Tom Carper (D-DE), that seeks to address congressional concerns about science and security. The higher education community has raised concerns about the bill’s changes to immigration related to export-controlled technologies, reductions to the reporting threshold to $50,000 on foreign gifts to colleges and universities, and changes to interagency coordination around research security issues. The bill would also change federal grant application processes and disclosure requirements related to foreign compensation and potential conflicts of interest; require criminal penalties for any individual that knowingly prepares, submits, or falsifies a federal grant application that fails to disclose outside compensation, including foreign compensation; place new limitations on education and cultural exchange programs that do not have appropriate safeguards to prevent unauthorized access of export-controlled technologies; and require the Department of Education to go through negotiated rulemaking on any changes to Sec. 117 foreign gift reporting rules.

• **U.S. Leadership in Semiconductors:** The aid package includes the *CHIPS for America Act*, which would expand and create new programs to maintain U.S. leadership in the design, application, and fabrication of semiconductors. One of the main provisions is to expand semiconductor research and development across federal agencies. In particular, it would establish a subcommittee on semiconductor technology and innovation within the National Science and Technology Council with one of its main tasks to develop a national strategy on semiconductor research, development, manufacturing and supply chain. The Commerce Department would also be required to establish a national semiconductor technology center to conduct research, launch a new Manufacturing USA Institute, and develop workforce training programs.

• **Critical Minerals:** The aid package includes the *American Mineral Security Act* that seeks to develop a secure and robust domestic supply chain of critical minerals to reduce current dependence on China. Some of the major provisions include directing the Department of Energy to advance research and development to recycle critical minerals or develop low-cost alternatives, and requiring the National Science Foundation to help institutions of higher education develop curriculum and research programs to build a critical minerals workforce.

**Higher Education**

The Senate bill would include additional funding for higher education through the Higher Education Emergency Relief Fund (HEERF), established by the *CARES Act*, as well as new liability protections and tax provisions of interest to institutions of higher education. The bill would also incorporate student loan repayment modification priorities of Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) and new student aid regulatory flexibilities.

Of the $105 billion provided for the Department of Education (ED) for education stabilization in the Senate bill, the bill would fund $29 billion for higher education through ED’s HEERF mechanism. This differs from the House’s *HEROES Act*, which would provide $27 billion for public higher education via a state government fiscal stabilization fund and provide an additional $10 billion for private institutions, Minority-Serving Institutions, and online institutions. In the *HEALS Act*, similar to the *CARES Act*, determinations of funding allocations through HEERF would be based largely on number of full-time equivalent Pell Grant recipients enrolled at each institution. However, the formula for determining an
institution’s allocation of HEERF would more heavily weigh the Pell Grant population of an institution compared to the CARES Act’s allocation formula. For a majority of institutions, funds from HEERF may be used for expenses related to COVID-19 and to provide emergency financial aid grants to students, including those studying completely online. Unlike the CARES Act, there is no requirement that 50 percent of the HEERF allocation be used for direct student aid purposes in HEALS. Examples of eligible expenses related to COVID-19 and broadened as compared to CARES Act include lost revenue, reimbursement for expenses already incurred, technology costs associated with the transition to distance learning, faculty/staff trainings, and payroll. Within HEERF, $2.9 billion would be set aside for Minority-Serving Institutions and Historically Black Colleges and Universities, and five percent of HEERF funds would be set aside for institutions of greatest need, as designated by the Secretary of Education. Importantly, the Senate bill would limit the allocations of institutions that paid the endowment tax in 2019 and only allow those institutions to use HEERF money for student aid.

The Senate bill would also provide $5 billion for the Governor’s Emergency Education Relief Fund, which allows Governors to dedicate funds to education institutions based on the needs of their state, including institutions of higher education and K-12 schools. In addition, the Senate bill would include $70 billion for the Elementary and Secondary School Emergency Relief Fund and allow for proportional funding for private elementary and secondary schools based on the number of children attending private schools in the state. The bill also includes a maintenance of effort provision that would require assurances that states would maintain spending on elementary, secondary, and higher education for “fiscal years 2020 and 2021 at least at the proportional levels of such State’s support for elementary and secondary education and for higher education relative to such States overall spending in fiscal year 2019.”

Higher Education-related regulatory provisions of interest in the bill include:

- Prohibiting funds granted through HEERF to be used to pay for contractors engaging in pre-recruitment activities, endowments, or capital outlays for facilities used for athletics, sectarian instruction, or religious worship;
- Requiring institutions receiving funds to submit a report that includes details on the use of funds to the Secretary of Education within six months of receipt of funds;
- Allowing institutions that received funds through HEERF from the CARES Act to use those funds under the terms and conditions of this legislation;
- Consolidating federal student loan repayment plans into two options, a standard 10-year repayment plan and an income-based repayment plan, where borrowers would have to pay either 10 percent of their discretionary income or zero if earning less than 150% of the poverty level, combined with loan forgiveness after 20 or 25 years;
- Extending existing CARES Act authorities and flexibilities for campus-based aid, including allowing for the reallocation of Supplemental Education Opportunity Grant or Federal Work Study funds through the end of the 2020-2021 award year or the end of the qualifying emergency; and
- Adding additional information to the FAFSA form for applicants to report incidences of recent income loss and offering greater flexibilities for financial aid administrators to use professional judgment to determine need.
Of interest to institutions of higher education and other employers, the Senate bill includes temporary liability protections via the creation of a federal cause of action governing personal injury claims of coronavirus exposure occurring between December 1, 2019 and the end of the coronavirus emergency declaration or October 1, 2024, whichever is later. The language would set a floor of liability protection, preempting state laws while allowing for stronger state liability limitations and sets a one-year statute of limitations. Entities must provide a reasonable effort to comply with standards and not engage in gross negligence or willful misconduct. The Senate bill also includes a federal cause of action covering medical care providers for the treatment, diagnosis, or care of coronavirus, unless the providers have engaged in willful misconduct or gross negligence. Additionally, the bill would limit liability from injuries arising from workplace coronavirus testing and personal protective equipment (PPE) that has met Food and Drug Administration (FDA) requirements.

Under new tax provisions, the HEALS Act would create a refundable payroll tax credit, available for non-state and government entities, of up to 50 percent of qualified employee protection expenses, including testing for COVID-19, PPE, cleaning supplies and services, workplace reconfiguration, and qualified technology costs. The bill would also expand the CARES Act’s employee retention tax credit (ERTC), increasing the percentage of qualified wages reimbursed through the credit from 50 to 65 percent.

Healthcare and the National Institutes of Health (NIH)

The bill would provide $15.5 billion for the National Institutes of Health (NIH), available through fiscal year (FY) 2024. This amount includes:

- $12.9 billion for the NIH Office of the Director. This amount includes the following:
  - $10.1 billion to offset costs related to reductions in laboratory productivity due to pandemic related disruptions and/or public health measures;
  - $240 million to provide supplements to existing research training awards to support graduate students and postdoctoral fellows whose training has been interrupted by the pandemic;
  - $1.2 billion for the ACTIV public-private partnership to accelerate the development of COVID-19 therapeutics and vaccines; and
  - $1.3 billion to support additional research at Institutes and Centers at the direction of the NIH Director;
- $290 million for the National Heart, Lung, and Blood Institute (NHLBI);
- $200 million for the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK);
- $480.6 million for the National Institute of Allergy and Infectious Disease (NIAID), including $55 million for Regional Biocontainment Laboratories;
- $172.7 million for the National Institute of Child Health and Human Development (NICHD);
- $200 million for the National Institute of Mental Health (NIMH);
- $64.3 million for the National Institute on Minority Health and Health Disparities (NIMHD); and
- $1.2 billion for the National Center for Advancing Translational Sciences (NCATS).

The bill also directs the NIH Director to work with the National Academies of Sciences, Engineering, and Medicine (NASEM) to develop a “decision framework to assist domestic and global health authorities in
planning an equitable allocation of coronavirus vaccines.” That framework should take into account factors including health disparities, access to health care, and vaccine hesitancy.

The Senate bill would provide the Department of Health and Human Services (HHS) additional funding for healthcare provider relief, testing and surveillance activities, and vaccine development efforts. The Senate bill would also advance various policies impacting providers, including extended telehealth flexibilities and new liability protections. More specifically, the Senate bill would:

- Provide HHS an additional $25 billion in provider relief funding;
- Provide $16 billion for COVID-19 testing, contact tracing, surveillance, containment, and mitigation to support various entities, including institutions of higher education;
- Provide $3.4 billion to the Centers for Disease Control and Prevention (CDC) for COVID-19 prevention and response activities, including $1.5 billion for grants to states and localities;
- Provide $4.5 billion to the Substance Abuse and Mental Health Services Administration (SAMHSA) to support various mental health services and substance use prevention and treatment grant programs;
- Provide the Biomedical Advanced Research and Development Authority (BARDA) with $20 billion to support vaccine, therapeutics, and diagnostics development;
- Provide an additional $7.6 billion to the Health Resources and Services Administration (HRSA) to support Community Health Centers; $250 million for Children’s Hospital Graduate Medical Education (CHGME) program; and $225 million for rural health clinics;
- Provide $2 billion to the Strategic National Stockpile;
- Delay the date providers would need to start repaying loans under the Medicare Accelerated and Advance Payment program until January 1, 2021, as well delay the date for which loans must be fully repaid before having to pay interest;
- Continue telehealth flexibilities, including an extension of telehealth waivers through at least the end of 2021, as well as a five-year telehealth extension for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics;
- Provide liability protections for hospitals and providers linked to COVID-related injuries occurring between December 2019 and October 2024; and
- Establish 2021 Medicare Part B premiums and deductibles at the 2020 levels.

National Science Foundation (NSF)

Unlike the House HEROES Act, which included $125 million for the National Science Foundation (NSF) Research and Related Activities account “to prevent, prepare for, and respond to coronavirus,” the Senate bill would not provide any support for NSF.

Department of Defense (DOD)

The Senate’s bill would provide $29.4 billion for the Department of Defense. This funding is largely intended to support defense contractors and military personnel that have been impacted by the coronavirus, and ensure the resiliency and enduring capabilities of the defense industrial base (DIB). This funding is in line with requests made by industry leaders and the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) Ellen Lord, who testified that the DOD needed at least $10
billion to mitigate COVID-19 impacts to the defense industrial base or it would risk eroding readiness and failing to develop critical systems. This funding includes:

- $5.3 billion for purchases under the *Defense Production Act* to prepare for, respond to, and prevent impacts of the COVID-19 pandemic, particularly on small suppliers;
- $22.4 million for research, development, test, and evaluation (RDT&E) for technology investments needed to respond to the COVID-19 pandemic, including:
  - $1.5 million for Air Force RDT&E
  - $21 million for Defense-wide RDT&E
- $10.8 billion to reimburse contractors for providing paid leave for employees who cannot perform work due to the COVID-19 pandemic, as authorized under *Section 3610* of the *CARES Act*. These authorities would be extended for 12 months.
- $705 million for the Defense Health Program to expand prophylactic and therapeutic manufacturing capacity for DOD needs; and
- $8.05 billion for major military systems procurement and acquisition (shipbuilding, aircraft).

**Workforce Development**

Under the *HEALS Act*, the Department of Labor (DOL) would receive $2.5 billion with $950 million of that funding directed to *National Dislocated Worker Grants and Workforce Innovation and Opportunity Act (WIOA)* State Grants to support worker training and community response. The $500 million for National Dislocated Worker Grants includes support for a diverse array of training including work-based learning, as well as additional support for remote training services through existing “one-stop” centers that “lead to employment in high-skill, high-wage, or in-demand industry sectors or occupations, including health care, direct care, and manufacturing.”

**Small Business and Economic Development**

The bill would provide additional support for small businesses, non-profit organizations, and economic development initiatives, including reforms to popular assistance programs created under the *CARES Act*. Some highlights include:

- Authorizing $190 billion for the Small Business Administration (SBA) Paycheck Protection Program (PPP), which provides forgivable loans to small businesses and certain non-profits including 501(c)3 organizations, and make numerous changes to the program, such as: extending eligibility to certain 501(c)6 organizations for loans of up to $500,000; broadening expenses allowed under PPP to include personal protective equipment and other workplace investments to comply with safety guidelines; creating Second Draw Loans, which allows certain previous recipients of PPP loans to receive another loan; simplifying the application process for loans under $150,000; extending the covered period for loan forgiveness; and prohibiting the use of PPP funding for lobbying activities;
- Creating a new long-term loan program that would provide up to $10 million for qualifying “recovery sector businesses,” including seasonal businesses and certain businesses that are located in low-income census tracts that saw a 50 percent reduction in gross revenues; and
• Providing $10 billion in support for registered SBA Small Business Investment Companies (SBICs) that “invest in small businesses with significant revenue losses from COVID-19, manufacturing startups in the domestic supply chain, and in low-income communities.”

Department of Homeland Security (DHS)

The Senate’s emergency appropriations supplemental bill would provide $3.014 billion to DHS and better support the Federal Emergency Management Agency’s (FEMA) efforts. Specifically, the bill would provide:

• $150 million to FEMA to enhance agency operations, networks, and facilities needed to address active disaster declarations in states and territories;
• $930 million in FEMA emergency grants split between Assistance to Firefighter Grants ($365 million) for the purchase of PPE, Staffing for Adequate Fire and Emergency Response Grants ($365 million), and the Emergency Food and Shelter Program ($200 million);
• $1.6 billion to Customs and Border Protection to offset fee shortfalls to continue immigration processing and customs activities;
• Authority for $1.222 billion in federal loans for the United States Citizenship and Immigration Services; and
• $53 million for the Cybersecurity and Infrastructure Security Agency (CISA) to increase network defenses for federal agencies involved in COVID-19 vaccine development.

National Endowment for the Humanities (NEH), National Endowment for the Arts (NEA) Institute for Museum and Library Sciences (IMLS)

Unlike the Heroes Act, the Senate bill would not provide any supplemental funding to NEH, NEA or IMLS. The Heroes Act would have provided $10 million each to NEH and NEA, and $5 million to IMLS for grant to organizations.

United States Department of Agriculture (USDA)

Similar to provisions in previous relief packages, including the HEROES Act, the Senate bill would focus on supporting vulnerable elements of the food supply chain, with no funding for research relief or competitive research.

Specifically, the bill would provide:

• $20 billion in additional funding to support producers, growers, and processors impacted by COVID-19;
• $245 million for Agriculture Quarantine and Inspection Service for salary expenses;
• $133.4 million to Rural Development for salaries and expenses ($20 million) and the Rental Assistance (RA) Program ($113.4 million) to provide RA to all currently assisted wage-earning residents who are unable to pay rent due lost wages;
• $76.4 million for the Farm Service Agency to support temporary staff and overtime costs;
• $2 million for the Foreign Agricultural Service (FAS) to cover the cost of relocating FAS employees stationed abroad; and
• $250,000 for the Food and Nutritional Service to cover the costs of overtime for employees.
Unlike the HEROES Act, where billions of dollars were proposed for USDA’s nutrition assistance programs, there is no funding included the Senate’s bill.

U.S. Geological Survey (USGS)

Unlike the HEROES Act, which included $40 million for the U.S. Geological Survey (USGS) “Surveys, Investigations, and Research” account for “technical assistance, biosurveillance of wildlife and environmental persistence studies and related research, database development,” and activities related to the National Wildlife Health Center and wildlife-borne disease activities, the HEALS Act would not provide any support for USGS.

U.S. Environmental Protection Agency (EPA)

Unlike the HEROES Act, the Senate bill would not provide any supplemental funding to EPA. The HEROES Act would provide an increase of $50 million to support Environmental Justice (EJ) grants in response to coronavirus, which would bring EJ’s total funding to more than six times the FY 2020 enacted level of $9.6 million.