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HEROES IN THE HOUSE: Congress Begins Consideration of a 5th COVID-19 Response Package Totaling \$3 Trillion in New Spending

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Executive Summary

The House of Representatives introduced the HEROES Act on Tuesday, May 12, formally kicking off the process to pass the fifth major piece of federal legislation to support the American economy and respond to the COVID-19 pandemic. The first four COVID-19 bills passed Congress without going through the regular order of committee mark-ups and floor amendments. In each instance, the chamber moving first forced the other chamber to accept their product without any changes, in part due to the sense of necessity for unity and urgency. Passed in late March, the CARES Act is one of the most expensive bills in American history. The CARES Act was assembled and negotiated by just a handful of senators, representatives and senior Trump Administration officials over a period of just three weeks. Passage of the first four bills was an overwhelmingly bipartisan activity because of the urgent need to act and to show leadership in a time of crisis.

The process of passing the fifth COVID-19 bill will be much different, much more political in nature, and therefore much more difficult to complete. The Senate is back in session, and the House is inching towards a full-time return in the weeks ahead. Rank and file representatives and senators, largely shut out of the process for drawing up the first four bills, have been extremely vocal and active in pushing specific ideas for inclusion in the next package, as they seek to respond to the urgent needs of their constituents. There are now clear political differences about how to handle many elements of the pandemic and recovery -- who wears a mask

where/when, what restrictions are unreasonable, whether we are reopening too quickly/too slowly, what to do if/when there is a second wave, etc. -- and those political differences color the debate about future legislation.

After the CARES Act passed, the conventional wisdom was Congress would likely pass two more major pieces of legislation addressing the COVID-19 crisis - a May package designed to handle the remaining needs of the shutdown period, and a summer package designed to turbocharge a V-shaped economic recovery. Now, it seems much more likely that Congress will not finalize the next major legislation until June, and there is a small chance political differences will prevent such major legislation from reaching the President's desk at all. Furthermore, the chances of a "summer economic recovery package" seem much less likely now that political divisions about how best to recover are more evident every day. In short, this next bill could be the last major COVID-19 response bill that moves through Congress for some time and thus the stakes are enormously high for every industry that needs to see its solutions addressed in order to survive the pandemic.

Introduction

Congress has passed four major pieces of legislation in the first 90 days of the COVID-19 pandemic, creating massive new programs designed to support multiple sectors of the American economy as it dealt with the shutdown. On Tuesday, May 12, the House of Representatives introduced the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act). The HEROES Act weighed in at more than \$3 trillion, almost the same amount of money the federal government has spent addressing the pandemic in the first four response bills combined.

The Process: The HEROES Act is notable for how it was created. House Speaker Nancy Pelosi (D-CA) continues to exercise tight control over the House side of the process, basically drawing up the legislation out of her office, with input from nine key Committee Chairmen, each of whom is an original co-sponsor of the bill.¹ Rank and file members worked hard to have their concerns heard in the process of drawing up the HEROES Act, generating thousands of Dear Colleague letters in the House to lobby each other for specific ideas to be included, but the rank and file were still handicapped by the lack of committee hearings and markups leading to the drafting of the bill.

The first four COVID-19 response bills were passed by one chamber of Congress doing most of the debate and drafting, and the other chamber simply agreeing to what the first chamber did. This gives a significant first mover advantage to whichever chamber takes control of the process. Senate Majority Leader Mitch McConnell (R-KY) used this tactic to great advantage for the third response bill, the CARES Act. For that bill, Senator McConnell assembled a bill first amongst his own Republican conference and the Trump Administration, and then used that bill as a base to negotiate with Senate Democrats. In the CARES Act, Speaker Pelosi and House Democrats were largely shut out of the negotiating process until the final days.

Speaker Pelosi has now flipped the script for the HEROES Act - she has assembled a bill that included no House Republican input and no negotiations with the Trump Administration. She has no problem passing the HEROES Act on a party-line vote in the House. In passing the bill, she is laying down several important political markers she believes will serve her well in the next few weeks. First, she is betting that having a

¹ Those Chairmen are: Nita Lowey (D-NY), Chairman of the House Appropriations Committee; Eliot Engel (D-NY), Chairman of the House Foreign Affairs Committee; Carolyn Maloney (D-NY), Chairman of the House Oversight and Reform Committee; Jerrold Nadler (D-NY), Chairman of the House Judiciary Committee; Frank Pallone (D-NJ), Chairman of the House Energy and Commerce Committee; Bobby Scott (D-VA), Chairman of the House Education and Labor Committee; Mark Takano, Chairman of the House Veterans' Affairs Committee; Nydia Velazquez (D-NY), Chairman of the House Small Business Committee; and Maxine Waters (D-CA), Chairman of the House Financial Services Committee. It is interesting to note that Richard Neal (D-MA), Chairman of the tax-writing Ways and Means Committee, is not a co-sponsor of the HEROES Act.

finished package passed out of the House, gives Senate Democrats more leverage in the negotiations to come on a final deal. Second, she is hoping that public perception that the Senate is “holding things up” while the House has worked its will, will create pressure to move the House bill or to adopt large chunks of it into the final deal. Finally, she is creating political leverage for the 2020 election cycle by being able to point to any spending reductions between the HEROES Act and final legislation as a “cut” imposed by Republicans who are insensitive and out of touch with the needs of their constituents.

Despite the political advantages of being the first mover with the HEROES Act, Senate Majority Leader McConnell is likely to believe the process is now working to the advantage of his party. If HEROES passes without Republican support in the House, it is dead on arrival in the Senate, and the Majority Leader is free to begin assembling a package in the same manner he used to develop the CARES Act, or to use some form of committee engagement in select committees. Senator McConnell has said Congress needed more time before passing the next major bill, to see what is and is not working from the first four packages. He will now have several weeks in May to look at the data points of states reopening and considering what legislative steps can best assist them in the process.

The Policy Differences: After the passage of the CARES Act, almost all pandemic lobbying has boiled down to one or more of three basic COVID-19 policy arguments. The first argument is generally that CARES took the right steps to help an industry or company, but it did not put enough money in to handle the job and so more money is needed in the next bill. The second argument has been that the CARES Act intended to help an industry, but the details were not right and need to be fixed to cover that industry the way Congress actually intended. The third argument has been that an industry is so uniquely important and harmed in the pandemic that Congress needs to single it out for specific relief in the next bill.

The HEROES bill handles all three arguments: (1) much of the appropriated funding essentially re-fills pots of money created in the CARES Act or other prior response bills; (2) there are innumerable tweaks to programs created in CARES or existing federal laws, all designed to expand eligibility for assistance to various industries and economic sectors; and (3) there are a few industry/sector specific carveouts but they are generally the same large buckets that existed in CARES, as the House has resisted most requests to create special new funds. While the HEROES Act is unlikely to be the final bill that makes it to the President’s desk, we do anticipate the Senate will adopt many of the House approaches on the issues of expanding eligibility for support and limiting the sectors/industries that get specific and special relief.

In addition, two new important policy debates have developed in the last month. First, how much money can we afford to spend to support industries in the pandemic and recovery period? There are many who take the position that there is no limit to what should be spent but, particularly in the Senate, there is growing concern that spending going forward needs to be much more targeted. For example, Senate Republicans are concerned the additional \$600 premium paid for people on unemployment is spending that is actually discouraging people from going back to work because they make more on unemployment. Conversely, House Democrats pushed for the HEROES Act provisions that spend billions in new federal pay supplements for essential industries whose workers sustained us through the crisis.

Second, what are we going to do about the inevitable situations where people return to work or engage in everyday acts of commerce only to be exposed to the virus and get sick? President Trump and Senate Majority Leader McConnell have made it clear they consider liability protections for businesses to be a “red line” necessity for future legislation - they fear businesses will not open again without the assurance they won’t face lawsuits for everyday activities that lead to illness. Conversely, Speaker Pelosi and Senate Minority Leader Chuck Schumer (D-NY) strongly oppose liability waivers, which they view as a way corporation can avoid taking responsibility for the health and safety of their workers and customers.

These two policy issues -- how much money is enough, and how do we allocate the health/safety risk of reopening commerce -- are addressed in the HEROES Act. At more than \$3 trillion in spending, the House bill takes the approach there is no limit on what needs to be spent in the pandemic. HEROES does not change existing law with regard to legal liability for exposing someone to the virus at work or in commerce.

The Senate and the White House will spend much of their time negotiating on the parameters of these two big issues - how much to spend and how to share the risk of reopening. A deal on final legislation will not be reached until answers to those two questions are known.

The Politics: The HEROES Act was created without any substantive conversations between Speaker Pelosi and the Trump Administration. In the prior four bills, Treasury Secretary Steve Mnuchin has been the White House's lead player in negotiations, and he has forged important relationships with Congressional Democrats that led to the final deals. We expect Secretary Mnuchin will again play a leading role in negotiations when the legislative process heats up in the Senate.

Inside the House, Speaker Pelosi crafted a bill designed to meet the divergent needs of the two wings of her party. The moderates who hold the swing seats that put Democrats in the majority are concerned about the impression rank and file members have not been visibly engaged in drafting the prior pandemic response bills. They also have some concerns about the overall price tags of the bills and have been reluctant to support non-emergency items being attached to the pandemic response bills. Conversely, House progressives have been pushing hard for major items that would set the stage for systemic post-pandemic change in sectors like financial services, education, and healthcare. Most notably, progressives are frustrated that the HEROES Act does not include their proposals for direct financial support for job preservation.

In the Senate, the Majority Leader and the Minority Leader are two of the best political tacticians in a generation. They are playing a complex game of political chess that also involves leading players at the White House and Speaker Pelosi, but they know the contours of a deal are reachable once they address the two key questions we outlined above - how much can we spend now, and how do we manage the risk of reopening commerce.

As we reach the second half of May in a Presidential election year, both political parties have reason to think they might emerge in November with complete control of the White House and Congress. Thus, politics is now much more visible in the Congressional debate about how best to respond to the pandemic. In addition, there are emerging red state/blue state differences in how to handle the reopening of each state, and the political fallout of those decisions also impacts how Congress will handle the next major pandemic response bill.

Forecast: Our sense is that the House will pass the HEROES bill on a near party-line vote and it will not be considered at all in the Senate. Instead, Majority Leader McConnell will reconstitute much of the process he used in the CARES Act to cobble together the next big package, gambling that anything that can pass the Senate is something the House will be forced to accept. We think it is likely going to take another three to six weeks for the Senate to work through the process, meaning we project the next bill will land on the President's desk in early to mid-June.

HEALTHCARE

Healthcare Appropriations - Department of Interior

Office of Insular Affairs: The bill appropriates \$1 billion, to remain available until expended, for assistance to territories to prevent, prepare for, and respond to coronavirus, \$945 million of which are for Capital Improvement Project grants for hospital and other critical infrastructure and \$55 million of which is for territorial assistance.

Healthcare Appropriations - Department of Health and Human Services

Indian Health Services: The bill appropriates \$2.1 billion for Indian Health Services to prevent, prepare for, respond to, and provide health services related to coronavirus.

Health Resources and Services Administration (HRSA): The bill appropriates \$7.6 billion for the Health Centers Program through September 30, 2025, for expenses to prevent, prepare for, and respond to coronavirus and \$10 million for the Ryan White HIV/AIDS Program to remain available until September 30, 2022 to prevent, prepare for, and respond to coronavirus.

Centers for Disease Control and Prevention (CDC): The bill appropriates \$2.1 billion for CDC-wide Activities and Program Support to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally. Of this total amount, \$1 billion is allocated for Public Health Emergency Preparedness cooperative agreements, and \$130 million for public health data surveillance and analytics infrastructure modernization.

National Institutes of Health (NIH): The bill appropriates \$500 million for the National Institute of Allergy and Infection Diseases (NIAID) and \$200 million for the National Institute of Mental Health to prevent, prepare for, and respond to coronavirus, to remain available until September 30, 2024. Additionally, this bill appropriates \$4 billion to the Office of the Director to prevent, prepare for, and respond to the coronavirus, domestically or internationally, \$3 billion of which is to be for offsetting the costs related to reductions in lab productivity resulting from the coronavirus pandemic or public health measures related to the coronavirus pandemic and \$1 billion for additional scientific research or the programs and platforms that support research.

Substance Abuse and Mental Health Services Administration (SAMHSA): The bill appropriates \$3 billion for Health Surveillance and Program Support to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, \$1.5 billion of which is for grants for the substance abuse prevention and treatment block grant program. Further, \$1 billion is directed for grants for the community mental health services block grant program, \$100 million of which is for activities and services under Project AWARE, \$10 million is for the National Child Traumatic Stress Network, \$265 million of which is emergency response grants to address immediate behavioral health needs, and \$25 million is for the Suicide Lifeline and Disaster Distress Helpline.

Centers for Medicare & Medicaid Services (CMS): The bill appropriate \$150 million for CMS program management to remain available through September 30, 2022, to prevent, prepare for, and respond to coronavirus, for State strike teams for resident and employee safety in skilled nursing facilities and nursing facilities.

Administration for Children and Families (ACF): The bill appropriates \$1.5 billion to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus and for making payments under the Low Income Home Energy Assistance program and \$7 billion for payments to states for the Child Care and Development Block Grant. The bill additionally appropriates \$1.5 billion for the Children and Families Services

Program, \$50 million of which is for Family Violence Prevention and Services grants, \$20 million is for community-based grants for the prevention of child abuse and neglect, \$20 million for the Child Abuse Prevention and Treatment Act State Grant, and \$1.5 billion for the Low-Income Household Drinking Water and Wastewater Assistance program.

Administration for Community Living (ACL): The bill appropriates \$100 million for Aging and Disability Services Programs to remain available until September 30, 2021, to prevent, prepare for, and respond to the coronavirus.

Office of the Secretary Public Health and Social Services Emergency Fund: The bill appropriates \$4.575 billion for the Public Health and Social Services Emergency Fund to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally, including the development of necessary countermeasures and vaccines, prioritizing platform-based technology with U.S.-based manufacturing capabilities, the purchase of vaccine, therapeutics, diagnostics, and necessary medical supplies. Of this fund, \$3.5 billion shall be available to the Biomedical Advanced Research and Development Authority (BARDA) for research, development, manufacturing, production, and purchase of vaccines and therapeutics, \$500 million of which is for the construction, renovation or equipping of U.S.-based next-generation manufacturing facilities, and \$500 million of which is available for BARDA innovation in antibacterial research and development.

Public Health and Social Services Emergency Fund: The bill appropriates \$175 billion to the Public Health and Social Services Emergency Fund to prevent, prepare for, and respond to coronavirus, \$100 billion of which is for the Health Care Provider Relief Fund and \$75 billion for the COVID-19 National Testing and Contact Tracing Initiative.

General Provisions

The bill allows funds appropriated in this title to be used by the Secretary of Health and Human Services (HHS) to appoint candidates needed for positions to perform critical work relating to coronavirus by giving public notice and determining that a public health threat exists.

The bill allows funds made available in this title to be used to enter into contracts with individuals for the provision of personal services to support the prevention of, preparation for, or response to coronavirus, domestically and internationally. The authority made available by this section expires on September 30, 2024.

The bill requires the Secretary of HHS to provide a detailed spend plan of anticipated uses of funds made available to HHS to the House Committee on Appropriation no later than 30 days after enactment of this Act. The report must include each contract obligation incurred that exceeds \$5 million.

The bill requires the remaining unobligated balances of funds made available through September 30, 2020, under the heading "National Institutes of Health" in the Public Law 116-94 are permanently rescinded no later than September 30, 2020, and an amount of additional new budget authority of an equivalent amount rescinded from each account is appropriated to that account, to remain available until September 30, 2021.

The bill requires funds made available in Public Law 113-235 to the accounts of the National Institutes of Health (NIH) that were available through fiscal year 2015 and were obligated for multi-year research grants shall be available through fiscal year 2021 for the liquidation of valid obligations if the Director of NIH determines the project suffered an interruption of activities attributable to COVID-19.

The bill requires \$75 million of the funds appropriated by this title for the Public Health and Social Services Emergency Fund to be transferred to, and merged with, funds made available to the Office of the Secretary,

Office of Inspector General, and must remain available until expended on oversight activities support with funds appropriated to HHS.

Healthcare Revenue

Employee Benefit Flexibility: The proposed legislation would allow: (1) cafeteria plans and health flexible spending arrangements to carry over \$2,750 in unused benefits or contributions to 2021; (2) cafeteria plans and dependent care flexible spending plans to carry over dependent care assistance benefits to 2021; and (3) cafeteria plans to allow participants to carry over paid time off to 2021. The legislation also would allow cafeteria plan and health flexible spending plan participants to make a one-time election to change health FSAs or to paid time off arrangements. The bill also would extend plan grace periods to twelve months following the 2020 plan year, allow for participants who cease plan participation to receive reimbursements for the remainder of the year, and would permit for retroactive amendments to cafeteria and other benefit plans in line with these changes.

Medicaid

COVID-19 Related Temporary Increase of Medicaid FMAP: The bill temporarily increases the Federal Medical Assistance Percentage (FMAP) payments to State Medicaid by 14 percentage points beginning on July 1, 2020, and ending on June 30, 2021.

Limitation on Additional Secretarial Action With Respect to Medicaid Supplemental Payments

Reporting Requirements: The bill prevents the Secretary of HHS from finalizing or implementing any provision contained in the Medicaid Fiscal Accountability Rule (MFAR) until the end of the COVID-19 public health emergency period.

Additional Support for Medicaid Home and Community-Based Services During the COVID-19

Emergency Period: The bill temporarily increases the FMAP payments to State Medicaid by 10 percentage points to support home and community-based services (HCBS), beginning on July 1, 2020, and ending on June 30, 2021. The bill identifies specific areas of HCBS improvement including, but not limited to, increasing rates for home health agencies to provide home and community-based services, providing paid sick leave, paid family leave, and paid medical leave for home health workers, and providing hazard pay, overtime pay, and shift differential pay for home health workers.

Coverage at No Cost Sharing of COVID-19 Vaccine and Treatment: The bill prohibits cost sharing for COVID-19 vaccines or treatments for Medicaid and Children's Health Insurance Program (CHIP) beneficiaries diagnosed or presumed to be infected with COVID-19 during the COVID-19 public health emergency period.

Optional Coverage at No Cost Sharing of COVID-19 Treatment and Vaccines Under Medicaid for

Uninsured Individuals: The bill creates option coverage for uninsured individuals for no cost sharing of COVID-19 vaccines or treatments during the COVID-19 public health emergency period, where states have opted to cover these individuals through the new Medicaid eligibility program.

Extension of Full Federal Medical Assistance Percentage to Indian Health Care Providers: The bill increases the FMAP payments for services rendered by Indian Health Care Providers to be matched at 100 percent beginning July 1, 2020, and ending on June 30, 2021.

Restoring Medicaid Coverage for Citizens of the Freely Associated States: The bill creates a Medicaid exception for citizens of the Freely Associated States, which includes the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, so that FAS citizens residing in the U.S. may be eligible for Medicaid coverage.

Temporary Increase in Medicaid DSH Allotments: The bill temporarily increases the Medicaid Disproportionate Share Hospital (DSH) allotments by 2.5 percent during the COVID-19 public health emergency.

Extension of Existing Section 1115 Demonstrations: The bill extends approval, upon request by a state, of current Section 1115 waiver and expenditure authorities for demonstration projects until December 31, 2021.

Allowing for Medical Assistance Under Medicaid for Inmates During 30-day Period Preceding Release: The bill extends Medicaid eligibility to incarcerated individuals 30 days prior to their release.

Medicaid Coverage of Certain Medical Transportation: The bill codifies Medicaid coverage of necessary transportation and extends Medicaid coverage to nonemergency medical transportation (NEMT) and establishes requirements for state NEMT programs.

Medicare Provisions

Holding Medicare Beneficiaries Harmless for Specified COVID-19 Treatment Services Furnished Under Part A or Part B of the Medicare Program: The bill prohibits cost sharing for certain COVID-19 treatments under Medicare Part A and Part B during the COVID-19 public health emergency. The Secretary of HHS shall provide the Centers of Medicare & Medicaid Services \$100 million for the purposes of carrying out this section.

Ensuring Communications Accessibility for Residents of Skilled Nursing Facilities During the COVID-19 Emergency Period: This bill requires reasonable access to the use of a telephone and the internet for residents of skilled nursing facilities to conduct tele-visitations during this COVID-19 public health emergency period.

Medicare Hospital Inpatient Prospective Payment System Outlier Payments for COVID-19 Patients During Certain Emergency Period: This bill provides outlier payments for inpatient payments exceeding the traditional Medicare payments until January 31, 2021, to account for increased costs related to COVID-19.

Coverage of Treatments for COVID-19 at No Cost Sharing Under the Medicare Advantage Program: The bill prohibits cost sharing for Medicare Advantage beneficiaries for COVID-19 treatments for any plan year occurring during any portion of the COVID-19 public health emergency period.

Requiring Coverage Under Medicaid PDPs and MA-PD Plans, Without the Imposition of Cost Sharing or Utilization Management Requirements, of Drugs Intended to Treat COVID-19 During Certain Emergencies: The bill prohibits cost sharing and Utilization Management Requirements for Medicare PDPs and MA-PD beneficiaries for drugs intended to treat COVID-19 during the COVID-19 public health emergency period.

Modifying the Accelerated and Advance Payment Programs Under Parts A and B of the Medicare Program During the COVID-19 Emergency: The bill creates special repayment rules during the COVID-19 public health emergency period, including lowering the interest rates for loans to Medicare Part A and B providers made under the Accelerated and Advance Payment Program, reducing the per-claim recoupment percentage to not exceed 25 percent of the amount of the claim, providing up to one year before repayment obligations begin and not less than two years from the date of the first payment before requiring the outstanding balance to be paid in full. Interest rates for Part A and Part B loans disbursed during the public health emergency would be reduced to 1 percent.

Medicare Special Enrollment Period for Individuals Residing in COVID-19 Emergency Areas: The bill creates a special enrollment period for Medicare to begin no later than July 1, 2020, and ending on the last month of the COVID-19 public health emergency period for individuals residing in an emergency area.

COVID-19 Skilled Nursing Facility Payment Incentive Program: The bill creates a COVID-19 Designation Program that allows skilled nursing facilities meeting certain requirements to be designated a COVID-19 treatment center and receive incentive payments.

Funding for State Strike Teams for Resident and Employee Safety in Skilled Nursing Facilities and Nursing Facilities: The bill makes funds available to states based on the percentage of skilled nursing facilities and nursing facilities in each state that have residents or employees who have been diagnosed with COVID-19. These funds are to be used to establish an implement a strike team to be deployed to these skilled nursing facilities or nursing facilities.

Providing for Infection Control Support to Skilled Nursing Facilities Through Contracts with Quality Improvement Organizations: The bill requires the Secretary of HHS to provide additional infection control support to skilled nursing facilities and to develop and disseminate protocols relating to the prevention or mitigation of COVID-19 and training materials to such facilities.

Requiring Long-Term Care Facilities to Report Certain Information Relating to COVID-19 Cases and Deaths: The bill requires long-term care facilities to report certain information, such as demographic information including the age, race/ethnicity, and preferred language of individuals diagnosed with or who died from COVID-19.

Floor on the Medicare Area Wage Index for Hospitals in All-Urban States: The bill establishes a floor on the area wage index for hospitals in all-urban states until October 1, 2021.

Private Insurance - Health Plans

Special Enrollment Period Through Exchanges; Federal Exchange Outreach and Educational Activities: The bill creates a special enrollment period through the Affordable Care Act private insurance exchanges from one week after enactment of the bill for an 8-week period. The bill also requires outreach and educational activities surround these private insurance exchanges.

Expedited Meeting of ACIP for COVID-19 Vaccines: The bill requires the Advisory Committee on Immunization Practices (ACIP) to meet and issue a recommendation with respect to a vaccine that is intended to prevent or treat COVID-19 within 15 business days of the date a vaccine is licensed.

Coverage of COVID-19 Related Treatment at No Cost Sharing: The bill prohibits private insurance from requiring cost sharing for medically necessary items and services furnished to an individual with or presumed to have COVID-19 used to treat or mitigate the effects of COVID-19 on the individual and the impact to society.

Requiring Prescription Drug Refill Notifications During Emergencies: The bill requires private insurance to notify beneficiaries of whether such plan or coverage will waive any restrictions on any authorized refills during an emergency period, within five businesses days of determination.

Improvement of Certain Notifications Provided to Qualified Beneficiaries By Group Health Plans in the Case of Qualifying Events: The bill requires enhanced notification to qualified beneficiaries who have a qualifying event, such as loss of employer-sponsored health coverage, to ensure awareness of options on the health care exchanges.

Sooner Coverage of Testing for COVID-19: The bill makes the requirement for free coverage of COVID-19 testing retroactive to the beginning of the COVID-19 public health emergency.

Worker Health Coverage Protection

Preserving Health Benefits for Workers: The bill requires premium assistance for COBRA continuation coverage and furloughed continuation coverage for individuals and their families beginning on March 1, 2020, and ending on January 31, 2021, including a special enrollment period following expiration of premium assistance.

Other Health Programs

Prohibition on Copayments and Cost Sharing for Tricare Beneficiaries Receiving COVID-19 Treatment: The bill prohibits copays and cost sharing for TRICARE beneficiaries receiving hospital care or medical services to treat COVID-19.

Prohibition on Copayments and Cost Sharing for Veterans Receiving COVID-19 Treatment Furnished by Department of Veterans Affairs: The bill prohibits copays and cost sharing for veterans receiving hospital care or medical services to treat COVID-19 that is furnished by the Department of Veterans Affairs.

Prohibition on Copayments and Cost Sharing for Federal Civilian Employees Receiving COVID-19 Treatment: The bill prohibits copays and cost sharing for federal civilian employees receiving hospital care or medical services to treat COVID-19.

Public Health Policies - Supply Chain Improvements

Medical Supplies Response Coordinator: The bill requires the President to appoint a Medical Supplies Response Coordinator to coordinate efforts of the Federal Government regarding the supply and distribution of critical medical supplies and equipment related to COVID-19.

Information to be Included in List of Devices Determined to be in Shortage: The bill extends the shelf life dates for essential devices and allows the Secretary of HHS to require the manufacturer of any essential device to submit certain data and information that allows for adequate assessment of the shelf life of the device.

Extended Shelf Life Dates for Essential Devices: The bill authorizes the Food and Drug Administration (FDA) to require manufacturers to provide the agency with information pertinent to an extension of medical device shelf life dates in cases of shortages or material slowdowns during public health emergencies. Device manufacturers would be subject to civil monetary penalties of \$10,000 per violation for failure to submit required information or making required labeling changes.

Authority to Destroy Counterfeit Devices: The bill grants the Secretary of HHS the authority to destroy counterfeit devices valued at \$2,500 or less.

Reporting Requirement for Drug Manufacturers: The bill requires manufacturers to report each foreign establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a specified drug.

Recommendations to Encourage Domestic Manufacturing of Critical Drugs: The bill requires the Secretary of HHS to enter into an agreement with the National Academies of Sciences, Engineering, and

Medicine to establish a committee of experts, convene a public symposium to analyze, recommend, and submit a report with recommendations to encourage domestic manufacturing of critical drugs.

Failure to Notify of Permanent Discontinuance or an Interruption: The bill allows the Food and Drug Administration (FDA) to require manufacturers of certain drugs or active pharmaceutical ingredients to notify the Secretary of HHS of a permanent discontinuance or interruption active pharmaceutical ingredients, and would make the failure to report a prohibited act.

Failure to Develop Risk Management Plan: The bill allows the FDA to require manufacturers develop, maintain, and implement a risk management plan.

National Centers of Excellence in Continuous Pharmaceutical Manufacturing: The bill creates a National Center of Excellence in Continuous Pharmaceutical Manufacturing to support the advancement and development of continuous manufacturing and allow for institutions of higher education to be designated a National Center of Excellence.

Vaccine Manufacturing and Administration Capacity: The bill requires the Secretary of HHS, acting through the Biomedical Advanced Research and Development Authority (BARDA), to appropriate, award contracts, grants, and cooperative agreements to expand and enhance manufacturing capacity of vaccines and vaccine candidates to prevent the spread of COVID-19.

Public Health Policies - Strategic National Stockpile Improvements

Equipment Maintenance: The bill requires the Secretary of HHS to ensure the contents of the stockpile remain in good working order and conduct maintenance services such as equipment maintenance services.

Supply Chain Flexibility Manufacturing Pilot: The bill creates a pilot program to enhance medical supply chain elasticity and establish and maintain domestic reserves of critical medical supplies by increasing emergency stock of critical medical supplies and geographically diversifying production of medical supplies.

Reimbursable Transfers from Strategic National Stockpile: The bill allows the Secretary of HHS to transfer drugs, vaccines, medical devices, and supplies from the strategic national stockpile to other Federal departments or agencies in exchange for reimbursement.

Strategic National Stockpile Action Reporting: The bill requires reports to Congress regarding all State, local, Tribal, and territorial requests for supplies from the Strategic National Stockpile related to COVID-19 every 30 days through the end of the COVID-19 public health emergency period.

Improved, Transparent Processes for the Strategic National Stockpile: The bill requires the Assistance Secretary for Preparedness and Response and the Director of the Centers for Disease Control and Prevention to create an improved, transparent process for the use and distribution of drugs, vaccines, medical devices, and supplies from the strategic national stockpile.

GAO Study on the Feasibility and Benefits of a Strategic National Stockpile User Fee Agreement: The bill requires the Comptroller General to conduct a study to investigate the feasibility of establishing user fees to offset certain Federal costs attributable to the procurement of single-source materials for the strategic national stockpile.

Public Health Policies - Testing and Testing Infrastructure Improvements

COVID-19 Testing Strategy: The bill requires the Secretary of HHS to update the COVID-19 strategic testing plan no later than June 15, 2020, and to submit to Congress certain required information regarding the updated national plan.

Centralized Testing Information Website: The bill requires the Secretary of HHS to establish and maintain a public, searchable webpage identifying all in vitro diagnostic and serological tests used in the US for COVID-19, those for which the developer has notified the FDA of intent to market, and those developed and authorized by a State.

Manufacturer Reporting of Test Distribution: The bill requires manufacturers of in vitro diagnostic or serological COVID-19 tests to submit to the Secretary of HHS, on a weekly basis, the number of tests distributed and the entities to which the tests are distributed.

State Testing Report: The bill requires the head of the department or agency of a State with laboratories developing and performing in vitro diagnostic COVID-19 tests to notify the Secretary of HHS of authorizations and provide weekly reports identifying all laboratories authorized in the state, information regarding laboratory testing capacity, and all in vitro diagnostic COVID-19 tests developed and approved for use.

State Listing of Testing Sites: The bill requires any State receiving funding or assistance under this Act to establish and maintain a public, searchable webpage identifying all sites located in the State that provides diagnostic or serological testing COVID-19 and provide the relevant contact information for such testing sites.

Reporting of COVID-19 Testing Results: The bill requires every laboratory performing or analyzing a test intended to detect COVID-19 to report the daily number of tests performed and the results from each test the Secretary of HHS and the Secretary of Homeland Security.

GAO Report on Diagnostic Tests: The bill requires the Comptroller General to submit to Congress a report on the development, regulatory evaluation, and deployment of diagnostic tests.

Public Health Data System Transformation: The bill expands CDC and state public health departments' capabilities by requiring certain activities related to interoperability and improvement and grants to be awarded to State, local, Tribal, and territories public health departments for the expansion and modernization of public health data systems.

Pilot Program to Improve Laboratory Infrastructure: The bill requires the Secretary of HHS to award grants to States to support the improvement, renovation, or modernization of infrastructure at clinical laboratories to improve COVID-19 testing and response activities.

Core Public Health Infrastructure for State, Local, Tribal, and Territorial Health Departments: The bill authorizes \$6 billion for State public health departments to expand workforce, improve laboratory systems, health information systems, disease surveillance, and contact tracing capacity to account for the spread of COVID-19.

Core Public Health Infrastructure and Activities for CDC: The bill requires the Secretary of HHS, through the CDC, to expand and improve the core public health infrastructure and activities of the CDC to address unmet and emerging public health needs.

Public Health Policies - National Testing and Contact Tracing Initiative

National System for COVID-19 Testing, Contact Tracing, Surveillance, Containment, and Mitigation: The bill requires the Secretary of HHS, through the CDC, to establish and implement a nationwide evidence-based system for testing, contact tracing, surveillance, containment, and mitigation with respect to COVID-19 and offer guidance on voluntary isolation and quarantine.

Grants: The bill requires the Secretary of HHS, through the CDC, to award grants to State, local, Tribal, and territorial health departments to carry out coordinated testing, contact tracing, surveillance, containment, and mitigation of COVID-19.

Guidance, Technical Assistance, Information, and Communication: The bill requires the Secretary of HHS to coordinate with other Federal agencies to issue guidance, provide technical assistance, and provide information to State, localities, Tribes, and territories regarding diagnostic and serological testing of individuals identified through contact tracing for COVID-19, best practices regarding COVID-19 surveillance and contact tracing, information on ways for jurisdictions to establish and maintain testing, contact, tracing, and surveillance, protection of personally identifiable health information, and best practices regarding privacy and cybersecurity protection related to contact tracing.

Research and Development: The bill requires the CDC, in collaboration with the National Institutes of Health, the Agency for Healthcare Research and Quality, the FDA, and CMS, to support research and development on more efficient and effective strategies for the surveillance of COVID-19, for testing and identification of individuals infected with COVID-19, and for tracing of contacts of individuals infected with COVID-19.

Awareness Campaign: The bill requires the Secretary of HHS, through the CDC, to award competitive grants or contracts to public and private entities to carry out multilingual and culturally appropriate awareness campaigns.

Grants to State and Tribal Workforce Agencies: The bill authorizes grants the Secretary of HHS must give to national dislocated workers to assist local boards and community-based organizations in carrying out activities to support the recruitment, placement, and training of individuals seeking employment in contact tracing or related positions.

Application of the Service Contract Act to Contracts and Grants: The bill requires that contracts and grants awarded by the Secretary of HHS that include contact tracing as part of the scope of work, require payment not less than the prevailing wage and fringe rates for the area in which the work is performed.

Authorization of Appropriations: The bill authorizes \$75 billion for these grants.

Public Health Policies - Demographic Data and Supply Reporting

COVID-19 Reporting Portal: The bill requires the Secretary of HHS to establish an online portal for use by eligible health care entities to track data regarding personal protective equipment and medical supply inventory.

Regular CDC Reporting on Demographic Data: The bill requires the Secretary of HHS, in coordination with the CDC, to update and make public, the report to Congress on demographic data such as race, ethnicity, age, sex, gender, and geographic region of individuals tested for or diagnosed with COVID-19.

Federal Modernization for Health Inequities Data: The bill requires the Secretary of HHS to work with Agency for Healthcare Research and Quality, CDC, CMS, FDA, the Office of the National Coordinator for

Health Information Technology, and the National Institutes of Health to support the modernization of data collection methods and infrastructure for the purpose of increasing data collection related to health inequities related to race, ethnicity, socioeconomic background, sex, gender, and disability disparities.

Modernization of State and Local Health Inequities Data: The bill requires the Secretary of HHS, through the CDC, to award grants to State, local, and territorial health departments to support the modernization of data collection methods and infrastructure to increase data related to health inequities, such as racial, ethnic, socioeconomic, sex, gender, and disability disparities.

Tribal Funding to Research Health Inequities Including COVID-19: The bill requires the Director of Indian Health Service, in coordination with Tribal Epidemiology Centers, to conduct and support research and field studies to improve understanding of Tribal health inequities among American Indians and Alaskan Natives with respect to COVID-19, public health surveillance and infrastructure, population-based health disparities, barriers to health care services, the impact of socioeconomic status, and factors contributing to Tribal health inequities.

CDC Field Studies Pertaining to Specific Health Inequities: The bill requires the Secretary of HHS, through the CDC, to collaborate with State, local, and territorial health departments to complete field studies to better understand health inequities currently not tracked by the Secretary. The focus of these field studies should be the impact of socioeconomic status, disability status, and language preference on health care access and disease outcomes, including COVID-19.

Additional Reporting to Congress on the Race and Ethnicity Rate of COVID-19 Testing, Hospitalizations, and Mortalities: The bill requires the Secretary of HHS to submit to Congress an initial report on testing, positive diagnoses, hospitalizations, intensive care admissions, and mortality rates associated with COVID-19 disaggregated by race, ethnicity, age, sex, gender, and geographic region no later than August 1, 2020.

CARES Technical Corrections - Assistance to Providers and Health Systems

Health Care Provider Relief Fund: The bill requires the Secretary of HHS to establish a program through the Health Resources and Services Administration to reimburse eligible health care providers on a quarterly basis for eligible expenses or lost revenues retroactive to January 1, 2020, resulting from preventing, preparing for, and responding to COVID-19. Eligible providers, meaning providers that provide diagnostic, testing, or treatment services to individuals with a confirmed or presumptive diagnosis of COVID-19, will apply for grants, and would be eligible to receive 100 percent of eligible expenses and 60 percent of lost revenues, in addition to supplemental funds provided by prior COVID-19 relief legislation. Eligible expenses include: (1) funds for building temporary structures, (2) leasing properties, (3) procuring supplies and equipment, (4) testing, (5) workforce and trainings, (6) surge capacity, and (7) other items determined to be appropriate by the Secretary of HHS. Overpayments in earlier quarters would be offset over subsequent calendar quarters for which the eligible health care provider seeks reimbursement.

The bill defines net patient revenues for purposes of the calculation, and specifies that if a provider's lost revenue for a calendar quarter does not exceed 10 percent of net patient revenue received in the corresponding quarter in 2019, the calculation is deemed to be zero for that quarter. The bill also prevents (1) providers from receiving duplicative reimbursement for expenses or losses, (2) using funds received to for excessive compensation of executives, and (3) balance billing patients. The bill further requires, as a condition of receiving reimbursement, that providers provide uncompensated care for uninsured presumed COVID-19 patients. If providers fail to meet these requirements, the bill authorizes the Secretary of HHS to recoup funds reimbursed to the provider. The bill requires the Secretary of HHS to publicly report a list of recipients of grants. The bill also authorizes \$100 billion in funding to remain available until expended to make such grants to providers, with at most \$10 billion designated to reimburse providers for providing uncompensated care.

Public Health Workforce Loan Repayment Program: The bill directs the Secretary of HHS to establish a Public Health Workforce Loan Repayment Program to reimburse individuals enrolled in or having graduated in the past ten years from an eligible academic entity (i.e. medical school) of their student loans. In exchange for repayment of such student loans, the bill requires students to serve for at least two years in a local, State, or Tribal public health agency or related fellowship program. Reimbursement payments will be capped at \$35,000 per student. The bill appropriates \$100 million for FY 2020 and \$75 million for FY 2021 for such payments.

Expanding Capacity for Health Outcomes: The bill directs the Secretary of HHS to award grants to eligible entities to support use and expansion of Technology-enabled collaborative learning and capacity building models. The bill appropriates \$20 million for grants for equipment to remain available until expended for such grants.

Additional Funding for Medical Reserve Corps: The bill appropriates an additional \$20 million for each of FY 2019 through FY 2023 and an additional \$11.2 million for each of FY 2022 and FY 2023 for the Medical Reserve Corps.

Grants for Schools of Medicine in Diverse and Underserved Areas: The bill permits the Secretary of HHS to award grants to eligible institutions of higher learning for development of allopathic or osteopathic school of medicine. The bill directs that such grants be prioritized to underserved areas. The bill appropriates \$1 billion for such grants.

GAO Study on Public Health Workforce: The bill requires the Comptroller General to issue a report on existing gaps, challenges, and recommended improvements regarding the public health workforce.

Longitudinal Study on the Impact of COVID-19 on Recovered Patients: The bill requires the Director of NIH to conduct a study over 10 years on the impact of COVID-19 on infected individuals. The bill appropriates \$200 million for conducting the study.

Research on the Mental Health Impact of COVID-19: The bill directs the Secretary of HHS to conduct a study on the mental health impacts of COVID-19. The bill appropriates \$200 million for conducting the study.

Emergency Mental Health and Substance Use Training and Technical Assistance Center: The bill directs the Secretary of HHS to establish an Emergency Mental Health and Substance Abuse Training and Technical Assistance Center to support entities seeking to expand access to mental health and substance abuse prevention services. The bill appropriates \$20 million for each of FY 2020 and FY for the establishment of the center.

Importance of the Blood and Plasma Supply: The bill makes a technical correction to the blood donation public awareness program established in the CARES Act to include blood plasma.

CARES Technical Corrections - Assistance for Individuals and Families

Reimbursement for Additional Health Services Relating to Coronavirus: The bill expands the services funded by the Families First Coronavirus Response Act for the uninsured to include treatment for COVID-19.

Centers for Disease Control and Prevention COVID-19 Response Line: The bill directs the Secretary of HHS, for the duration of the public health emergency, to maintain a toll-free telephone number to address public health queries, including questions concerning COVID-19. The bill appropriates \$10 million for establishment of the line.

Grants to Address Substance Use During COVID-19: The bill directs the Assistant Secretary for Mental Health and Substance Use to award grants to States, Tribes, and community-based entities to address the harms of drug misuse, including in preventing and controlling the spread of disease and connecting individuals to overdose education and counseling. The bill directs the Assistant Secretary to prioritize grants in areas with high overdose death rates, high telemedicine infrastructure needs, and high behavioral health workforce needs. The bill appropriates \$10 million for such grants.

Sec. 30634. Grants to Support Increased Behavioral Health Needs Due to COVID-19: The bill directs the Secretary of HHS to award grants to States, localities, Tribes, community-based entities, and primary care and behavioral health organizations to address behavioral health needs caused by the COVID-19 public health emergency through increasing behavioral health treatment and prevention capacity and services. The bill appropriates \$50 million for each of FY 2020 and FY 2021 for such grants.

CARES Technical Corrections - Public Health Assistance to Tribes

Improving State, Local, and Tribal Public Health Security: The bill extends eligibility for the CDC's Public Health Emergency Preparedness (PHEP) program beyond local public health departments to Tribes. The bill appropriates an additional \$30 million for such of FY 2021 through 2023 for the program's grants.

Provision of Items to Indian Programs and Facilities: The bill requires the Secretary of HHS, in addition to disbursing qualified pandemic or epidemic products from the Strategic National Stockpile to States, to also distribute such products to facilities operated by the Indian Health Service and Tribes.

Health Care Access for Urban Native Veterans: The bill includes the Urban Indian Health Organizations (UIHO) among the federal agencies permitted to share facilities and services.

Proper and Reimbursed Care for Native Veterans: The bill permits reimbursement for the Indian Health Service or Tribes by the Department of Veterans Affairs or the Department of Defense including for services for which the Indian Health Service contracts with another entity to provide such services.

Amendment to The Indian Health Care Improvement Act: The bill makes a technical amendment to the Indian Health Care Improvement Act.

Providing Medical Equipment for First Responders and Essential Workers

COVID-19 Emergency Medical Supplies Enhancement: The bill would expand the materials considered "scarce and critical materials essential to the national defense" under section 101 of the Defense Production Act (DPA) authorities to include diagnostic tests, personal protective equipment, medical ventilators, pharmaceutical and medicines determined to be effective in treating COVID-19, and any other medical equipment or supplies determined by the Secretary of HHS or the Secretary of the Department of Homeland Security to be scarce and critical to the national defense. The bill additionally authorizes the President to prioritize and allocate the aforementioned materials ordered by State and local governments, and requires the Federal Emergency Management Agency (FEMA) Administrator to designate an individual to be known as the "Outreach Representative" to act as the government-wide single point of contact during the COVID-19 public health emergency for outreach to manufacturing companies and their suppliers who may be interested in producing medical supplies.

The bill would require the President to provide support to companies that comprise the supply chains for reagents, components, raw materials, and other materials and items necessary to produce or use the materials deemed scarce and critical materials essential to national defense under section 101 of the DPA. The bill would require the President, in coordination with FEMA's National Response Coordination Center, the Defense

Logistics Agency Administrator, the Secretary of HHS, and Secretary of Veterans' Affairs (VA), to submit a report to the appropriate congressional committees assessing the immediate needs to combat the COVID-19 public health emergency and a plan for meeting those immediate needs, which would be updated every 14 days and made publicly available. Additional reports would be required to assess longer-term needs and the exercise of authorities of the DPA. This bill would allow the FEMA Administrator and Secretary of HHS the same authority as the President, with respect to the authorities given within this bill and only during or in preparation for a public health emergency.

Other Provisions

Prevention of Price Gouging: During the Public Health Crisis, the bill bans selling or offering for sale a good or service at a price that: (1) is unconscionably excessive; and (2) indicates the seller is using the circumstances related to such public health emergency to increase prices unreasonably. Factors for consideration of a violation include whether a price "grossly exceeds" the average sales price for the good/service from the same seller during (1) the 90-day period preceding January 31, 2020; or (2) 45 days before or after the current or renewed PHE. Other factors include whether the price exceeds the average sales price for the same good/service from other sellers before the PHE, and other potential unforeseen costs. Goods/services are defined as such items offered in commerce, including personal protective equipment, a drug as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, any health care service, and others. A violation of this prohibition would constitute a violation of the federal unfair or deceptive acts or practices act. In addition to federal enforcement, a state attorney general would be permitted to bring a claim in federal court under the Act, and the Federal Trade Commission would have the authority to intervene in any action brought by an attorney general.

Modification to Maintenance of Effort Requirement for Temporary Increase in Medicaid FMAP. The bill amends a provision of Families First Coronavirus Act to require that, in order to receive increased FMAP and as compared to State law in effect on January 1, 2020, or as signed into law on April 15, 2020, and taking effect on April 3, 2020. States may not: (1) reduce eligibility standards, (2) increase premiums, (3) terminate enrollment, (4) conduct more frequent income checks, or (5) fail to cover coronavirus tests, treatments, vaccines, and therapies without beneficiary cost sharing.

Future Actions - Health Care

The HEROES Act represents the House Democrats' opening bid for negotiations, and while dead on arrival in the Senate, it includes some provisions that could garner bipartisan support in upcoming negotiations. Improvements to the supply chain and the Strategic National Stockpile (Stockpile) are bipartisan concerns. Hospitals and healthcare providers across the nation have been affected by critical shortages during the public health emergency, and there is broad recognition that our current supply chain system warrants review and improvement.

Many provisions included in the HEROES Act came from bipartisan standalone bills, including the authority granted to the Secretary to destroy certain counterfeit devices, and the creation of the National Centers of Excellence in Continuous Manufacturing. The bill also includes simple solutions to improve the Stockpile, such as requiring certain equipment maintenance at the Stockpile and granting the Secretary the authority to transfer drugs, vaccines, medical devices, and supplies to other federal agencies or departments, which potentially frees up certain resources while benefitting other agencies or departments in need. Testing remains a priority for Republicans and Democrats alike, and support has grown for contact tracing as a key tool to help the country recover. Private industry partnerships have formed, and legislators have been discussing ways to balance privacy interests while preventing disease spread.

One additional area of bipartisan agreement could be the provision of additional funds to support hospitals and healthcare providers, though there remains great interest on the part of Republicans to first exhaust previously approved funds and determine whether the loosening of restrictions on elective procedures provides adequate relief.

TAX AND REVENUE

Appropriations

The legislation would fund the Treasury Department Inspector General to provide supervision of Treasury grants to state and local governments and expanded IRS payment programs; the legislation would also provide the IRS with additional funding to implement the expanded payments to individuals called for under the bill.

Revenue Provisions

2020 Recovery Rebate Improvements: The legislation would, among other things, expand the application of the CARES Act rebate of \$500, that previously only was for certain qualifying dependents, to all dependents, including adult dependents and full-time students under the age of 24. The CARES Act limited it to children under the age of 17. The improvements would also allow for individuals to provide a Taxpayer Identification Number, rather than a Social Security Number in order to claim the full \$1,200 rebate. These provisions are retroactive as if they were passed as part of the initial CARES Act.

Additional Recovery Rebates: The legislation provides for an additional round of rebates of \$1,200. This rebate will be \$1,200 to a single taxpayer (\$2,400 for married taxpayers filing jointly) and \$1,200 per dependent of the taxpayer (up to three dependents), for a total potential rebate of \$6,000, subject to eligibility and phase out provisions. The rebate begins to phase out at \$75,000 of modified adjusted gross income (\$112,500 for head of household filers and \$150,000 for joint filers).

Eligibility is determined based on 2018 or 2019 tax information, and any payment exceeding eligibility based on 2020 income will not need to be repaid. The legislation requires a “robust and comprehensive outreach program” to make taxpayers aware of the availability of the credit. Payments under this program may not bear the name, likeness, or signature of the President, Vice-President, cabinet level official, or family member to these senior officials. This benefit would apply to Puerto Rico and other U.S. possessions.

Earned Income Tax Credit (EITC): The legislation would expand the EITC for 2020 for workers without qualifying children by, among other things, reducing the minimum age threshold from 25 to 19 (other than for full-time students, or a minimum age of 18 in the case of a foster or homeless youth) and increasing the maximum age threshold from 65 to 66. The bill proposes a number of other changes to the EITC with the goal of expanding eligibility for, and the amount of, the credit. This benefit would apply to Puerto Rico and other U.S. possessions.

Child Tax Credit: The legislation would make fully refundable the Child Tax Credit for 2020, increases the amount to \$3,000 per child (\$3,600 per child under age 6), and expands qualifying children to include 17-year-olds. Under the bill, the Treasury Secretary is to provide the additional amount as an advance payment “as soon as practicable after the date of the enactment.” This benefit would apply to Puerto Rico and other U.S. possessions.

Dependent Care Assistance: The proposal would make the child and dependent care tax credit fully refundable for 2020, increase the maximum credit rate to 50 percent of applicable expenses and makes other changes to increase the amount and availability of the credit.

Employee Benefit Flexibility: The proposed legislation would allow: (1) cafeteria plans and health flexible spending arrangements to carry over \$2,750 in unused benefits or contributions to 2021; (2) cafeteria plans and dependent care flexible spending plans to carry over dependent care assistance benefits to 2021; and (3) cafeteria plans to allow participants to carry over paid time off to 2021. The legislation would also allow cafeteria plan and health flexible spending plan participants to make one-time elections to change health FSAs

or to paid time off arrangements. The bill would also extend plan grace periods to twelve months following the 2020 plan year, allow for participants who cease plan participation to receive reimbursements for the remainder of the year, and would permit for retroactive amendments to cafeteria and other benefit plans in line with these changes.

State and Local Tax Deduction: The legislation would eliminate the dollar limitation for individuals to deduct state and local taxes for 2020 and 2021.

Expand “Above-the-Line” Deductions for Teachers, First Responders, and Front Line Workers: The legislation would allow above-the-line deductions for out of pocket costs for teachers of \$500, a deduction of \$500 for certain unreimbursed expenses for first responders, and a deduction of \$500 for front line workers for the cost of uniforms, supplies, and equipment.

Payroll Tax Credit for Employee Benefits: The legislation would allow employers to claim a refundable 30% credit for the reimbursement of employee costs for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of the presidentially declared disaster related to COVID-19. This credit is capped at \$5,000 per employee, per quarter, and rises to 50% when used for frontline workers.

Expanding the Employee Retention Credit: The legislation would retroactively increase the credit from 50% to 80% of an employee’s qualifying wages, while simultaneously increasing the limit of qualifying wages considered from \$10,000 to \$15,000 per quarter (with a \$45,000 annual cap). The legislation would also expand the ability of businesses to qualify by phasing the credit in based on the business’s decline in gross receipts from 10% to 50%. The legislation would redefine a large employer as one with greater than 1,500 full time employees and gross receipts of greater than \$41,500,000 in 2019.

The proposal would also allow state and local governments to claim the credit on wages paid for those operations that are fully or partially shut down as a result of the pandemic. The bill clarifies that the credit is available based on health plan expenses even when cash wages are not paid. Under the legislation, these changes would be retroactive to enactment of the CARES Act.

Payroll Credit for Certain Fixed Costs: For smaller employers (those with fewer than 1,500 employees or \$41.5 million in gross receipts) facing a COVID-19 related suspension or a decline of gross receipts of 10% year over year (measured on a quarterly basis), including tax-exempt organizations, the legislation would allow a refundable payroll tax credit of up to \$50,000, for those rent, mortgage, and covered utility costs (as defined under the Paycheck Protection Program) accrued after March 12, 2020 and before January 1, 2021. Eligibility for this credit is phased in for those employers not suspended by a pandemic health order and which business has suffered a decline of less than 50%. The legislation includes aggregation rules, provisions designed to deny any double benefit, and directions to Treasury for the issuance of relevant guidance.

Business Interruption Credit for the Self-Employed: The legislation would provide a refundable income tax credit of 90% of qualified self-employment income, which is calculated as a ratio of self-employment income from 2019 to 2020. This credit is capped at \$45,000 and reduced by 50% of any income in excess of \$60,000. This benefit would apply to Puerto Rico and other US possessions.

Extension of Refundable Credits for Sick and Family Leave: The legislation would extend the credits created under the Families First Coronavirus Response Act for paid sick and family leave through December 31, 2021 and clarifies that employers may claim up to \$511 per day. The legislation also increases the ceiling from \$10,000 to \$12,000 and allows individuals to claim 60 days of leave, rather than 50. Self-employed persons may use 2019 income calculations rather than 2020 calculations. It would expand the credits to state and local governments as well but bar them for large employers with more than 500 employees.

Coordination with Payroll Protection Program and Deferral Of Payroll Taxes: Under the legislation, those businesses receiving loan forgiveness under the Payroll Protection Program may defer payment of payroll taxes as allowed under the CARES Act.

Clarification of Deductibility of Expenses: The legislation would also clarify that expenses paid with forgiven Payroll Protection Program loan proceeds or EIDL grants do not result in the denial of any deduction or reduction in basis of any asset for federal tax purposes.

Excludes emergency financial aid grants to students from gross income: The bill would allow students to exclude emergency financial aid grants authorized under the CARES Act from gross income and exclude such grants from calculations determining eligibility for higher education tax incentives.

Restores the limitation on excess loss provisions for non-corporate taxpayers: Reversing the CARES Act, the legislation would restore the limit to claiming excess business losses imposed under the Tax Cuts and Jobs Act effective for taxable years beginning after 2017 and make this limitation permanent.

Limitation to Net Operating Loss Carrybacks: The CARES Act allowed businesses to carryback net operating losses generated in 2018, 2019, and 2020 to the preceding five years. This legislation would significantly modify the carryback provisions of the CARES Act by only allowing carrybacks for net operating losses generated in 2019 and 2020 and not allowing such losses to be carried back prior to 2018. The legislation also would disallow carrybacks entirely for certain businesses with excessive executive compensation or excessive stock buy-backs and dividends.

Giving Retirement Options to Workers Act

Authorization for Composite Plans: The legislation would authorize so-called “composite plans” or plans that share features of both traditional defined benefit plans and defined contribution plans. Under the proposed bill, a “composite plan” may be a stand-alone plan or a part of an existing multiemployer plan, as long as such plan is not anticipated to be in critical status in the next five years. Such plans must meet and maintain certain standards, such as maintaining funding ratios. Should such plans fail to adequately maintain those requirements, they would face remedial steps. Composite plans are not covered by the Pension Benefit Guarantee Corporation and do not pay PBGC premiums. Legacy multiemployer plans that create composite plans, however, would still be covered by PBGC and would have to pay PBG.

SMALL BUSINESS

Paycheck Protection Program Amendments

Amended Loan Terms: The bill would adjust the Paycheck Protection Program (PPP) to fix problems House Democrats observed in its implementation. Most notably, Democrats believe businesses will feel the impact of COVID-19 for months to come and that many cannot reopen in the 8-week period covered by the CARES Act and subsequent Small Business Administration (SBA) regulations. This led House Democrats to include bill language to extend the PPP's covered period from June 30 to December 31, 2020 and provide businesses with up to 24 weeks to spend the loan proceeds. The bill also removes the requirement that 75% of loan proceeds be used for payroll, recognizing that many small businesses will be unable to return to pre-COVID-19 operational levels. In addition, the bill would establish a minimum maturity on PPP loans of five years instead of the two-year maturity set by the SBA (notwithstanding that the CARES Act allows a maximum maturity of ten years). The bill would prohibit interest on PPP loans from being calculated on a compounding basis.

Nonprofits: The bill would greatly expand PPP eligibility for nonprofits. First, it would eliminate the 500-employee cap for nonprofits. Second, the bill would allow all 501(c) organizations to access the PPP, rather than just 501(c)(3) organizations as was the case under the CARES Act. Lastly, the bill waives all affiliation rules for nonprofit organizations.

Expanded Eligibility: The bill would expand PPP eligibility to include previously excluded entities. For example, currently, entities undergoing bankruptcy proceedings are prohibited from receiving a PPP loan. The bill would create a narrow exception to that prohibition for critical access hospitals that are on the frontlines of battling the pandemic. In addition, the bill would relax requirements to make it easier for borrowers with low-risk, non-financial fraud or deception criminal histories to obtain PPP loans. Lastly, as touted by Senate Minority Leader Chuck Schumer (D-NY) in a recent press release, the bill would extend PPP eligibility to small, local news broadcast entities with NAICS codes beginning with 511110, 515112, and 515120.

Loan Forgiveness: The bill would limit the SBA's authority to limit the non-payroll portion of a forgivable PPP loan amount, thus effectively reversing the SBA's decision to require that at least 75% of a PPP loan be used on payroll costs in order to be forgiven. The bill would also give borrowers until December 31, 2020, to rehire employees to be eligible for full loan forgiveness. For those borrowers who are unable to rehire employees or find similarly qualified employees prior to December 31, their loan forgiveness would be determined without regard to a reduction in full-time equivalent employees. Lastly, the bill would harmonize the use of PPP loan proceeds with the terms of forgiveness, thus allowing a borrower to include in its forgiven amount all payments permitted under the PPP, including payment of interest on debt obligations and amounts of an EIDL refinanced as a PPP loan.

Payroll Tax Deferral and Loan Forgiveness: The bill would allow businesses that receive PPP loan forgiveness to defer payment of payroll taxes, thus eliminating the provision in the CARES Act that does not allow a borrower of a PPP loan to both receive loan forgiveness and defer payment of employer payroll taxes.

Targeted Funding for Community Banks and the Smallest Businesses: The bill would aid smaller businesses that had trouble accessing PPP loans following implementation of the CARES Act. These targeted measures include establishing an additional set-aside of funds for small Community Development Financial Institutions (CDFIs), Minority Development Institutions (MDIs), SBA microlenders, and SBA Certified Development Companies (CDCs). The bill would also create carve-outs for small businesses with 10 or fewer employees and nonprofits, and require any returned amounts due to cancellation of a PPP loan be redistributed to small businesses with 10 or fewer employees. As a note, Congress created a \$60 billion set-aside for small, midsize, and community lenders in the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139), which became law in late April.

Traditional 7(a) vs. PPP: Following concerns that the PPP would wipe out funding for the SBA's traditional 7(a) program over the long-term, the bill would bifurcate the SBA's traditional 7(a) lending authority from that of the PPP authority to ensure the 7(a) lending program continues.

Employee Retention Tax Credit and PPP: The bill would clarify that borrowers who get their PPP loans forgiven are not eligible for the Employee Retention Tax Credit. If a borrower receives a PPP loan but does not have it forgiven, they may take advantage of the tax credit for wages paid to employees.

Other SBA Programs

Economic Injury Disaster Loan (EIDL): The bill would appropriate an additional \$10 billion for emergency EIDL grants established under the CARES Act. In addition, the bill would clarify that an applicant is not ineligible for an EIDL solely because of their involvement in the criminal justice system.

Boost for SBA's 7(a) and 504 Programs: To prepare for the longer-term recovery of small businesses, the bill turns its attention to SBA's core programs, including the 7(a) and 504 loan programs. First, the bill would waive borrowers' and lenders' fees associated with the 7(a) and 504 loan programs, including the Community Advantage and Export loan programs, through September 30, 2021. Second, the bill would increase the SBA's guarantee of 7(a) loans to 90% until September 30, 2021. For 504 loans, SBA would increase its guarantee to 90% on loans up to \$350,000 and 75% on loans greater than \$350,000 through January 1, 2021. The bill would appropriate \$500 million for the fee waivers and guarantee increases. Third, the bill would increase the maximum 7(a) and 504 loan amounts to \$10 million until September 30, 2021. This increase would be permanent for small manufacturers. Lastly, the bill would increase the SBA's lending limit for the 7(a) program from \$30 billion to \$75 billion.

Boost for SBA's Microloan Program: Similar to the temporary changes to the 7(a) and 504 loan programs, the bill would provide the SBA's microloan program with an additional \$72 million in loans and increase the total amount each lender can loan from \$6 million to \$10 million. In addition, borrowers would have an extra 2 years to repay their microloan. The bill would appropriate \$57 million for the microloan program and technical assistance grants to microloan lenders.

Nontaxable Subsidies for Certain Loan Payments: The CARES Act provided borrowers of existing SBA loans with six months of payment relief. The bill would clarify that such payment relief would not be considered taxable income.

SBA Administrative Changes

Not Taxable Income: The bill clarifies that forgiven amounts of PPP loans, emergency EIDL grants, and payment relief for other SBA loan products provided by the CARES Act would not be included in the gross income of the ultimate recipient.

Deductibility of Expenses Maintained: The IRS recently issued a notice that any deduction otherwise allowable as business or interest expense will not be allowed if such expense was funded with forgiven amounts of a PPP loan. The bill would reverse this decision by clarifying that PPP loan forgiveness, emergency EIDL grants, and payment relief for other SBA loan products would not result in denial of any deduction for federal tax purposes.

SBA Transparency: To increase transparency in an agency that has been fraught with criticism over its implementation of the pandemic loan programs, the bill would mandate the SBA issue several reports. For example, the SBA would be required to regularly report on specific demographic, industry, size, and geographic data points for PPP loans, EIDLs, and emergency EIDL grants. The bill would also mandate data collection and

reporting on PPP loan forgiveness. In addition, in response to media coverage that the SBA suffered a data breach of its EIDL program, the SBA would be required to issue cybersecurity infrastructure reports.

Multiple Languages Assistance: The bill would obligate \$25 million of previously appropriated amounts to ensure that the SBA provides translation services for all materials, applications, and websites related to COVID-19.

Technical Assistance to Community Financial Institutions: The bill would establish technical assistance grants for small community financial institutions and small depository institutions and credits with assets of less than \$10 billion.

Entrepreneurial Development Resource Partners: The bill would include SCORE and Veteran Business Outreach Centers (VBOCs) as eligible SBA entrepreneurial development resource partners so they can access \$10 million each in previously appropriated sums to assist businesses during the pandemic.

Future Action

The HEROES Act includes several fixes to the PPP in response to criticism of the program's parameters, such as the eight-week covered period, and implementation. The SBA has been particularly hit with criticism for crafting policies seen as more restrictive than Congress's intent, including limiting the use of loan proceeds if businesses want to take advantage of loan forgiveness. In addition, there has been scrutiny over who received the funds in the first place, and several high-profile, larger businesses returned their PPP loans due to mounting Congressional and public concern.

While certainly much of the HEROES Act may not make it into the final bill after negotiations, several of the small business provisions are likely to have bipartisan support because of the criticisms described above, especially those that are program "fixes" and do not involve additional spending. For example, while the PPP's covered period may not be extended all the way to December 31, 2020, the period may be lengthened beyond June 30, 2020. In addition, Members are beginning to look for ways to help small businesses recover long-term from the effects of the pandemic. It is still unclear whether there is agreement on how to approach the long-term recovery. The small business relief provided in the CARES Act via the PPP and other SBA loan products, such as the EIDL and emergency EIDL grants, have been exceedingly popular as small businesses continue to suffer the impact of the COVID-19 pandemic. Small businesses must now prepare for the possibility that the pandemic's impact will extend beyond what was originally considered, thus they will likely need continued, longer-term assistance. The provisions in the bill demonstrate how House Democrats plan to help these small businesses get the assistance they need to weather the pandemic's effects.

APPROPRIATIONS

The bill provides nearly \$3 trillion in funding to address the ongoing COVID-19 pandemic. Funding provisions of relevance not covered under other policy sections of this analysis are summarized below.

Budgetary Provisions: The bill would designate the spending in the Act as an emergency requirement under the Pay-As-You-Go (PAYGO) Act of 2010. This designation allows the spending and revenue effects to not be counted for the purposes of projecting the budgetary effects of the legislation or enforcement of Congressional budget procedures. The bill further specifies that funds made available are in addition to the amounts otherwise appropriated for the fiscal year. Additionally, the funds provided in the bill will remain available for obligation for the current fiscal year, unless otherwise noted.

National Foundation on the Arts and Humanities: The bill would provide \$10 million, to remain until September 30, 2021, to the National Endowment for the Arts for grants in response to COVID-19 impacts. The bill requires 40 percent of the funds to be distributed to state and regional arts agencies and organizations, while 60 percent is reserved for direct grants, upon which the matching requirements may be waived. Additionally, the bill would provide \$10 million, to remain until September 30, 2021, to the National Endowment for the Humanities for grants in response to COVID-19 impacts. The bill requires 40 percent of the funds to be distributed to state humanities councils, while 60 percent is reserved for direct grants, and the matching requirements may be waived.

U.S. Postal Service: The bill would provide \$25 billion for the Postal Service Fund to help address revenue loss during the pandemic. The bill directs the Postal Service to prioritize the purchase of personal protective equipment for employees and to conduct additional cleaning and sanitizing of Postal Service facilities and delivery vehicles. The funds will remain available until September 30, 2022. Additionally, the bill allocates \$15 million for the Postal Service Inspector General to conduct oversight activities relating to this funding.

Wage Rate Requirements: The bill would require contractors and subcontractors who employ laborers and mechanics on any projects funded directly or in part by the federal government under the Act to pay wages that are not less than wages of other prevailing projects of a similar manner in their locality, in accordance with wage rate requirements.

Coronavirus Fiscal Relief Fund: \$915 billion

The bill would provide nearly \$1 trillion in funding for state, local, tribal, and territory government relief.

Coronavirus State Fiscal Relief Fund: The bill would provide \$540 billion to state, territory, and tribal governments to mitigate effects stemming from COVID-19, to remain available until expended. The bill provides \$20 billion for the territories, including Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. Half of the funds shall be allocated equally to each territory, while the other half shall bear the same proportion to relative population of each. Additionally, it provides \$20 billion for Tribal governments, in amounts determined by the Secretaries of the Treasury and Interior and Indian Tribes.

The \$500 billion for states and the District of Columbia would be divided into two payments. First, is \$250 billion for initial payments to all 50 states and the District of Columbia, with: (1) \$51 billion allocated equally between each state and DC (\$1 billion each); (2) \$150 billion allocated as an additional amount based on population; and (3) \$49 billion allocated based on COVID-10 cases. Next, \$250 billion will be an additional payment to all 50 states and DC, with (1) \$51 billion allocated equally between the states; and (2) \$199 billion allocated based on unemployment in the first three months of 2021.

Coronavirus Local Fiscal Relief Fund: The bill would provide \$375 billion for payments to cities, counties, and other units of local government to mitigate the effects stemming from COVID-19, with half for metropolitan cities and states (70 percent of which is reserved for cities and 30 percent for states) and the other half for counties, DC, Puerto Rico, U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa (in relative proportion to population).

The bill provides an additional amount (\$1.3 billion less its Social Security allocation) for the District of Columbia to be available within five days of enactment to cover costs or lost revenue related to the COVID-19 public health emergency.

Department of Commerce: \$511 million

Bureau of the Census: The bill would appropriate \$10 million for current surveys and programs to address necessary expenses incurred as a result of the coronavirus, including paying salaries and leave to staff due to the suspension of data collection for reimbursable surveys conducted for other federal agencies. In addition, the bill would provide \$400 million, available until September 30, 2022, for expenses due to delays in the 2020 Decennial Census in response to the coronavirus.

National Oceanic and Atmospheric Administration (NOAA): The bill would appropriate \$100 million for Fishery Disaster Assistance for tribal, subsistence, commercial, and charter fishery participants affected by COVID-19. The Fishery Disaster Assistance may include direct relief payments to participants.

DOC Office of the Inspector General (IG): The bill would provide \$1 million to help the Commerce Department IG prevent, prepare for, and respond to COVID-19, including auditing and providing oversight of funds provided to the Department in the CARES Act and in the HEROES Act.

Economic Development Administration (EDA): The bill clarifies that the federal share of grants provided by the EDA under the HEROES Act, the CARES Act (Pub. L. 116-136), the Consolidated Appropriations Act of 2020 (Pub. L. 116-93), and the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (Pub. L. 116-20) is 100 percent.

Department of Justice: \$1.8 billion

Bureau of Prisons: The bill would appropriate \$200 million to prevent, prepare for, and respond to COVID-19 in federal prisons, including funding for medical testing and services, personal protective equipment (PPE), hygiene supplies and services, and sanitation services.

DOJ Office of the Inspector General: The bill would provide \$3 million to prevent, prepare for, and respond to COVID-19, including auditing and providing oversight of funds provided to the Justice Department.

Office of Violence Against Women: The bill would appropriate a total of \$100 million to the Violence Against Women Act (VAWA) programs and provide a waiver of the local matching funds requirement. Within these funds, the bill would provide: (1) \$30 million for grants to combat violence against women; (2) \$15 million for transitional housing assistance grants for victims; (3) \$15 million for sexual assault victims assistance; (4) \$10 million for grants for rural domestic violence and child abuse enforcement assistance; (5) \$10 million for legal assistance for victims; (6) \$4 million for grants to assist tribal governments in exercising special domestic violence criminal jurisdiction; and (7) \$16 million for grants to support families in the justice system.

Office of Justice Programs: The bill provides \$1.3 billion for the Office of Justice Programs, which includes funding for the Edward Byrne Memorial Justice Assistance Grant program, the Second Chance Act grants, and the Pandemic Justice Response Act Grants. The bill also would waive local matching funds and non-

supplanting requirements under these grant programs. Within these funds, the bill provides \$300 million for the Edward Byrne Memorial Justice Assistance Grant program to help prevent, prepare for, and respond to COVID-19, including for purchasing PPE and controlling outbreaks at prisons. The Byrne Justice Assistance Grants can also be used for public defender funding. The bill would prevent the Justice Department from preventing these funds from going to sanctuary jurisdictions. The bill appropriates \$250 million for Second Chance Act grants to help facilitate the reintegration of formerly incarcerated people back into society and to prevent recidivism.

Finally, the bill appropriates \$600 million for the Pandemic Justice Response Act Grants, including: (1) \$500 million to prevent, detect, and stop the spread of COVID-19 among arrestees, detainees, inmates, correctional facility staff, and visitors; and for pre-trial citation and release grants; (2) \$25 million for Rapid COVID-19 Testing at correctional institutions; and (3) \$75 million for Juvenile Specific Services.

Community Oriented Policing Services (COPS): The bill would provide \$300 million for grants to hire and rehire additional career law enforcement officers and to purchase PPE. The bill would waive local matching funds and non-supplanting requirements.

Department of Labor: The bill would appropriate \$3.1 billion to the Department of Labor to support the workforce training and worker protection activities related to COVID-19, which includes: (1) \$485 million for grants to States for adult employment and training; (2) \$518 million for grants to States for youth activities; (3) \$597 million for grants to States for dislocated worker employment and training activities; (4) \$400 million for dislocated workers assistance; (5) \$25 million for migrant and seasonal farmworker programs, including emergency support services; (6) \$6.5 million for the Wage and Hour Division to support enforcement and outreach efforts to make individuals, particularly low-wage workers, aware of their rights during the pandemic; (7) \$100 million for the Occupational Safety and Health Administration; and (8) \$5 million for the Office of Inspector General.

The bill also would appropriate \$28.6 million to the Employment Training and Administration for State Unemployment Insurance and Employment Services Operation for Fiscal Year 2021. Additional funds would be made available if the average weekly insured unemployment rate continues to increase.

Department of Transportation: \$30.8 billion

Federal Aviation Administration (FAA): The bill would appropriate \$75 million in operational funds for the FAA until September 30, 2022 to prevent, prepare for, and respond to COVID-19. The bill includes \$1 million for the FAA Administrator to conduct a study to determine whether environmental controls systems in commercial airliners recirculate pathogens in the cabin air and to assess existing and potential solutions to reduce circulation.

Airport and Airway Trust Fund Relief (AATF): The bill would allow for the AATF to utilize funds from the General Fund of the Treasury to ensure it can meet its obligations during the pandemic.

Federal Highway Administration: The bill would appropriate \$15 billion for Highway Infrastructure programs to support the ongoing efforts of State, Tribal, and Territorial Departments of Transportation to alleviate the effects of COVID-19, including administrative and salary expenses. Of the \$15 billion, \$14.7 billion will go to States; \$150 million to Tribal Transportation programs; \$60 million to the Puerto Rico Highway Program, and \$15 million to the Territorial Highway program. The Administrator also may retain up to one half of one percent of the funds for oversight purposes of these activities.

Transit Emergency Relief: The bill would appropriate \$15.8 billion, available until expended, to support transit agencies to prevent, prepare for, and respond to COVID-19, with \$11.8 billion reserved for urbanized areas

with populations of over 3 million citizens and \$4 billion reserved for grants to transit agencies that require significant assistance to maintain basic transit services. The bill requires the Secretary to notice funding opportunities for the grants within 30 days of enactment. The Administrator may retain up to one half of one percent of the funds for administrative and oversight purposes of these activities.

HEROES ACT

Heroes Fund: The bill would authorize \$180 billion to establish a COVID-19 Heroes Fund within the Department of the Treasury. This fund would provide grants to employers to be used for pandemic premium pay to essential workers who are serving during the COVID-19 public health emergency. The fund would provide an additional \$13 per hour for each hour of work an essential worker performed starting on January 27, 2020, through 60 days after the COVID-19 public health emergency ends. Workers making less than \$200,000 could receive up to \$10,000 in pandemic premium pay, while any workers making over \$200,000 would receive up to \$5,000. The bill specifies that independent contractors would be eligible for the premium pay, and immigration status would not be considered for essential workers.

The bill includes an expansive list of categories of essential work that would be covered by the fund, some of which include: (1) first responder work, including police, fire, emergency medical, protective, child maltreatment, domestic violence, and correctional services; (2) healthcare work physically provided in inpatient and outpatient settings; (3) pharmacy work; (4) work performed in a facility that performs medical testing and diagnostic services, as well as biomedical research regarding SARS-CoV-2 and COVID-19; (5) home and community-based work, including home health care, residential care, assistance with activities of daily living, etc.; (6) behavioral health work requiring physical interaction with individuals; (7) nursing care and residential care work; (8) family care, including child care services and nanny services; (9) social services and public health work; (10) grocery, restaurant (including delivery, carryout, and drive-thru), and food production work; (11) transportation work, including public transportation and private transportation of people and goods; and (12) work performed in a warehouse and cleaning/building maintenance work.

The bill would require employers of essential workers to apply to the Secretary of the Treasury to receive pandemic premium pay for its workers. Employers are eligible to apply for grants equaling the total cost of the pandemic premium pay for all its essential workers, including the employer payroll taxes for the premium pay. After Treasury receives an application, it would have 15 days to let the employer know whether it meets the requirements for the program, and then an additional seven days after this certification to transfer the funds to the employer.

The bill would require employers to provide any retroactive pay to the essential worker as a lump sum in the next paycheck that immediately follows the employer's receipt of funding from the federal government. If an essential worker exhibits COVID-19 symptoms and dies, the payment of pandemic premium pay would be paid in a lump sum to the next of kin. Any grant that an essential worker receives through this fund would not be considered as income for the purposes of determining eligibility for federal, state, or local benefits or assistance.

The Secretary of Labor will enforce the payment requirement provisions within this section, including a requirement that these funds should be in addition to all other compensation and employers cannot reduce pay or benefits for employees if they receive pandemic premium pay. The Department of Labor would be in charge of conducting outreach to employers to encourage them to apply for the program. Employers must keep records of how it uses the funds and provide these records to the Secretary of Treasury and Secretary of Labor. Any grant that an employer receives would not be considered as part of the gross income of the employer for tax purposes.

The bill also includes an additional \$10 billion to provide pandemic premium pay to federal employees who are deemed essential workers. The Office of Personnel Management would develop criteria for determining eligibility for premium pay and implementing regulations.

LABOR AND EMPLOYMENT

Unemployment Benefits: The bill would extend through January 31, 2021, the \$600 per week Federal Pandemic Unemployment Compensation (FPUC) benefit, the Pandemic Unemployment Assistance provision (which extended unemployment benefits to workers who do not qualify for regular unemployment benefits) and the Pandemic Extended Unemployment benefit (which provides an additional 13 weeks of benefits for recipients who have otherwise exhausted their unemployment benefits). For all three provisions, recipients who have not exhausted their benefits on January 31, 2021 would continue collecting benefits for their remaining period of eligibility through March 31, 2021. In addition, the bill would disregard FPUC benefits for purposes of determining eligibility for any federal or federally assisted programs for nine months following receipt. Finally, the bill extends related federal funding provisions through January 31, 2021 and includes a technical correction to allow government entities and nonprofit organizations to receive the financial relief provided by the CARES Act.

Family and Medical Leave Act (FMLA) Eligibility: The bill would temporarily reduce the eligibility requirements for FMLA from 1,250 hours or twelve months employment to 90 days through December 31, 2022. The bill would also clarify that public agencies, regardless of size, are covered under the FMLA.

Emergency Family and Medical Leave (E-FMLA): The bill would extend E-FMLA benefits from December 31, 2020, to December 31, 2021. In addition, the bill would expand eligibility and reinstate the E-FMLA benefits from the Families First Coronavirus Response Act (FFCRA). Specifically, the bill would rescind the Labor Department's authority to exempt small businesses with fewer than 50 employees, health care providers and emergency responders from E-FMLA benefits. It also rescinds the Director of the Office of Management and Budget's authority to exclude certain federal employees from paid leave.

In addition, the bill would also clarify that E-FMLA benefits do not count toward an employee's ordinary twelve weeks of unpaid FMLA leave, that only the employee can decide to take E-FMLA leave concurrently with other available paid leave, and that leave can be taken intermittently or on a reduced work schedule. It would also ensure benefits received under the family leave provisions at two-thirds the employee's usual pay would not be less than the applicable minimum wage. The bill would also raise the cap on paid family leave from \$10,000 to \$12,000.

Employees who have been employed for at least 30 calendar days would be entitled to twelve weeks of job-protected paid leave to: (1) self-isolate based on a COVID-19 diagnosis; (2) obtain a diagnosis or to care for symptoms of COVID-19; (3) comply with a recommendation or order to self-isolate because the employee's presence on the job would jeopardize the health of the employee, other employees, or an individual in the employee's household due to the employee's possible exposure to COVID-19 or exhibition of COVID-19 symptoms; (4) care for a family member of the employee who is self-isolating due to symptoms or a diagnosis of COVID-19 or a recommendation or order that the family member would jeopardize the health of the employee, other employees, or an individual in the employee's household due to the employee's possible exposure to COVID-19 or exhibition of COVID-19 symptoms; (5) provide care for a child of the employee if the school or place of care is closed or unavailable due to the COVID-19 pandemic; or (6) care for a family member who has a disability or is a senior citizen if the place of care is closed or unavailable due to the COVID-19 pandemic.

The bill would allow employers to require that employees provide documentation of their need to take family leave, but would prevent employers from requiring documentation earlier than five weeks after the date on

which the employee takes leave. It also outlines the types of documentation that will be sufficient for certification.

Emergency Paid Sick Leave: The bill would expand the emergency paid sick and family leave provisions to apply to employers with one or more employees and extend the benefits from December 31, 2020 to December 31, 2021. In addition, the benefit would be expanded to be available during any twelve-month period. Currently, these provisions only apply to employers with fewer than 500 employees and covered employers must provide these benefits once to each employee. Combined with the extension, employees would have access to up to 80 hours of leave in 2020 and in 2021.

In addition, the paid leave benefit would be expanded to apply to a qualifying need related to a public health emergency, as outlined above for E-FMLA benefits. The bill would also increase the benefit to full wage replacement (up to \$511 per day and \$5,100 total) for all emergency paid sick leave uses and clarify that emergency paid sick leave is available in addition to any employer's existing paid leave benefits. The bill further clarifies that nonprofit organizations, the Department of Veterans Affairs and the Transportation Security Administration are covered employers. Finally, the bill would treat a failure to pay emergency sick leave as unpaid overtime.

Workforce Development Response Activities: The bill would create flexibility for workforce development in several areas. Specifically, the bill would redirect funding provided to states under the Workforce Innovation and Opportunity Act (WIOA) in fiscal years 2020 and 2021 to support apprenticeship programs registered under the National Apprenticeship Act. The bill would also direct the Labor Secretary to identify and develop a strategy to support virtual and online learning and training for apprenticeship programs.

In addition, the bill would provide flexibility for Job Corps Centers and participants during the COVID-19 national health emergency, including programmatic flexibilities related to eligibility, enrollment length, advanced career training programs, counseling, job placement and assessments, and transition support. The bill would also authorize a one-year extension on the four-year grant cycle for WIOA programs for Native American and migrant and seasonal farmworkers. For the Youthbuild program, the bill would also expand eligibility to individuals who turned 25 during the COVID-19 national emergency and extend the possible enrollment length beyond two years for current program participants.

COVID-19 Every Worker Protection Act of 2020: The bill would require OSHA to issue an Emergency Temporary Standard (ETS), based on CDC guidance, to protect workers from exposure to COVID-19 in the workplace within seven days of enactment of the bill. OSHA would also be required to issue a permanent infectious disease standard within two years of implementation of the bill. The bill would also require the 24 states with OSHA State plans to adopt the ETS within 14 days of enactment. In addition, the bill would prohibit employers from retaliating against employees who report or publicize health and safety hazards or for using their own more protective personal protective equipment if not provided by the employer. The bill would also require the CDC and the National Institute for Occupational Safety and Health to track and investigate work-related COVID-19 infections and make recommendations on needed actions or guidance based on those reports and investigations.

Family Violence Prevention and Service Act: The bill would waive matching requirements for grantees and subgrantees during the COVID-19 pandemic.

Community Services Block Grants: The bill would ensure states receive their appropriate share of Community Services Block Grant funds under the CARES Act, raises eligibility to 200 percent of the poverty

line for fiscal years 2020 through 2022, and ensures funds are distributed to local community action agencies in a timely manner.

Low-Income Home Energy Assistance (LIHEAP): The bill would temporarily increase LIHEAP agencies' administrative resources to help process higher volumes of applications remotely. The bill would also ease proof of eligibility requirements for applicants due a COVID-19-related job loss or severe income loss.

COVID-19 Protections under the Longshore and Harbor Workers' Compensation Act: The bill creates a presumption that a COVID-19 infection is work-related and authorizes eligibility for benefits under the Longshore and Harbor Workers' Compensation Act for maritime employees who were (1) employed between January 27, 2020, and January 27, 2022, (2) diagnosed with COVID-19, and (3) ordered not to return to work by the employer or a public health agency because of exposure or risk of exposure. Employers would be entitled to reimbursement for compensation paid for COVID-19 claims, provided the employer follows COVID-19-related requirements and guidance issued by the CDC, OSHA, U.S. Coast Guard, or state or local health authorities.

FINANCIAL SERVICES

The HEROES Act includes a number of provisions prepared by the House Financial Services Committee intending to provide and/or expand assistance to homeowners and renters, financial consumers, and small businesses.

Housing Provisions

Rental Assistance Program: The bill provides \$100 billion for an Emergency Rental Assistance program to be administered by HUD, which would allocate funds to states and local governments to aid with rent and utilities for individuals and families at risk of homelessness.

Homeowner Assistance Fund: The bill creates a \$75 billion fund administered by the Treasury Department to allocate to state housing finance authorities to provide direct assistance with mortgage payments, insurance, property taxes, utilities, and other housing costs. Allocation of funds among states/DC/territories will be set by the Treasury Secretary, but each state, territory, and the District of Columbia will receive at least \$250 million under the program.

Eviction/Foreclosure: The bill would expand the eviction moratorium included under the CARES Act to a 12-month eviction moratorium, and it would apply to virtually all tenants (whereas the CARES Act only applied to those in housing with federally-backed mortgages). The bill would also expand the foreclosure moratorium under the CARES Act to include most residential mortgage loans, and requires automatic forbearance for certain delinquent borrowers. Other borrowers experiencing hardship would be eligible for loan forbearance of up to 12 months.

Federal Reserve Liquidity Facility: The bill would provide mortgage servicers and residential rental property owners with access to Federal Reserve liquidity facilities established with Treasury funding from section 4003 of the CARES Act, but such access would be contingent upon meeting certain requirements and conditions. The extent to which the various CARES Act conditions could apply is not entirely clear under the current text of the HEROES Act.

Homelessness Assistance: The bill would authorize \$11.5 billion in Emergency Solutions Grants administered by HUD to assist the homeless in response to the COVID-19 public health emergency, and would provide \$1 billion in emergency rental assistance vouchers for families that are homeless or at risk of homelessness.

Other Housing Assistance: The bill also authorizes substantial funding for a variety of targeted housing assistance programs, including: (1) \$309 million for the USDA's rural rental assistance program; (2) \$100 million for housing counselling services; (3) \$14 million for protection against housing-related hate crimes; (4) \$5 billion for programs to assist public housing authorities, and (5) nearly \$1.5 billion in programs for the elderly, disabled, and Section 8 rental assistance.

Credit Reporting and Consumer Protections

Debt Collection and Negative Reporting: The bill amends the CARES Act to provide a moratorium on any negative consumer credit reporting until 120 days after the termination of the COVID-19 national emergency. The bill also provides a moratorium on consumer debt collection for the same period, and requires debt collectors to provide reasonable repayment and forbearance options following such period. The bill would create a Federal Reserve facility, funded under the CARES Act, to provide temporary compensation to debt collectors with losses associated with these forbearance requirements.

Targeted Business Assistance

Debt Collection Moratorium: The bill would provide a temporary moratorium on small business and nonprofit debt collection during the COVID-19 crisis and for an additional 120 days. When payments resume, the Act would ensure reasonable forbearance and repayment options for small businesses and nonprofit organizations.

Nonprofits Eligible for the Main Street Lending Program: Currently, the Federal Reserve has not opened the Main Street Lending Program to nonprofit organizations. The bill would require the Federal Reserve to open the Program to nonprofit organizations and provide a low-cost loan option tailored to nonprofit organizations' unique needs. For nonprofits ineligible for PPP loans that predominantly serve low-income communities, they would be able to receive loan forgiveness.

Other Changes to the Main Street Lending Program: The bill would mandate the Federal Reserve provide at least one low-cost loan option of which small businesses and small nonprofits can take advantage. The low-cost option must have no minimum loan size, in contrast to the current \$500,000 minimum loan size for the Main Street Lending Program.

Community Development Financial Institutions: The bill provides \$2 billion in funding to the Community Development Financial Institutions Fund, intended to support minority-owned lenders and depository institutions, to in turn support small businesses, minority-owned businesses, and underserved communities.

State/Local Assistance: The bill expands the Federal Reserve's Municipal Liquidity Facility (MLF) to include cities and counties of more than 50,000 residents, and clarifies eligibility of US territories/possessions, and combinations of states/DC/territories, as eligible issuers. Additionally, the bill provides clarifying authority for the District of Columbia to participate in the MLF. The bill also provides \$5 billion in CDBG funding to for state and local governments.

Cannabis Businesses: The bill includes legislation that passed the House in 2019 aimed providing legitimate cannabis businesses with greater access to financial services. For further information on these provisions, please see our previous [Advisory](#) on the stand-alone bill.

Oversight

The bill includes expanded reporting requirements for the Treasury Department relating to pandemic-related transactions under its purview and requires monthly reports from Treasury to Congress and the Special Inspector General for Pandemic Recovery on CARES Act financing.

PENSION SUPPORT

Many multiemployer pension plans were already on the brink of collapse before the market downturn caused by COVID-19. The bill aims to help stabilize pension plans for the 1.3 million Americans who participate in plans that are threatened, as well as single employer pension plans that have experienced interest rate and market volatility caused by the COVID-19 pandemic. Many benefits and human resources consulting firms lobbied for the inclusion of these provisions, which were left out of the previous-passed CARES Act.

Relief for Multiemployer Pension Plans: The bill creates “special partition relief” for struggling multiemployer union pensions. Under current law, the Pension Benefit Guaranty Corporation (PBGC) has limited authority to partition certain troubled multiemployer pension plans. In a partition, the PBGC takes on the financial responsibility of some of the benefits of an eligible plan so the plan as a whole can stay solvent. This special partition program would expand the PBGC’s existing authority, increase the number of eligible plans, and simplify the application process—thus allowing more troubled plans to obtain relief.

Eligible plans would include: (1) plans in critical and declining status, (2) plans with significant underfunding with more retirees than active workers, (3) plans that have suspended benefits, and (4) certain plans that have already become insolvent. The legislation allows plans to become eligible for the special partition program through 2024. The PBGC is required to issue regulations within 120 days of enactment of this bill and may prioritize the processing of applications of plans most in need. In exchange for this financial assistance, plans would be required to restore previously cut benefits to retirees and would not be allowed to suspend earned benefits as allowed under the Multiemployer Pension Reform Act.

The bill also eases certain administrative burdens for multiemployer plans in “endangered” or “critical status.” A plan in endangered or critical status would not have to update its plan or schedules until the plan year beginning March 1, 2021 and could retain its funding zone status as of 2019 for plan years that begin in 2020 or 2021. Additionally, a plan in endangered or critical status could extend its rehabilitation period for five years, giving a plan additional time to improve contribution rates, limit benefit accruals, and maintain plan funding.

To address funding shortfalls as a result of investment losses due to the COVID-19 pandemic, the bill allows multiemployer plans to use a 30-year amortization base to spread out losses over time, instead of the generally required 15-year base. This provision is effective for each of the two plan years ending on or after February 29, 2020.

Notably, the bill would increase the PBGC maximum guaranteed benefit to 100 percent of the first \$15 in monthly benefits per year of service and 75% of the next \$70 in monthly benefits per year of service. The standard PBGC guarantee under current law is 100 percent of the first \$11 of the monthly benefit rate, plus 75 percent of the next \$33 of the monthly benefit rate. All plans receiving financial assistance beginning December 16, 2014 would see this improved guarantee. This increased guarantee benefit would also apply to any plans that become insolvent in the future.

Though this legislative vehicle is proposed by House Democrats, these provisions have some bipartisan support. Recent Republican-sponsored [proposals](#) floated in the Senate have included these strategies for supporting struggling union pensions.

Also bipartisan are several accountability and transparency provisions included in the bill. Among them, the PBGC would be required to annually report to Congress. The Government Accountability Office (GAO) would be required to regularly evaluate the PBGC’s implementation and administration of the special partition relief program, and the PBGC’s inspector general would receive funding to audit the special partition relief program to prevent waste, fraud and abuse.

Relief for Single Employer Pension Plans: To address interest rate and market volatility caused by the COVID-19 pandemic, the legislation would provide single employer plans with pension funding relief by extending amortization of required annual funding amounts. All shortfall amortization bases for all plan years beginning before January 1, 2020 - and all shortfall amortization installments determined with respect to such bases - would be reduced to zero. Further, all shortfalls would be amortized over 15 years, rather than the seven years prescribed under current law. The bill would also preserve the stabilizing effects of interest rate smoothing for single employer plans, which Congress enacted in 2012, 2014, and 2015 in order to address concerns that historically low interest rates were creating inflated pension funding obligations.

Waiver of Required Minimum Distributions for 2019 and 2020: The CARES Act waived Required Minimum Distributions (“RMDs”) for IRAs and eligible defined contribution plans for 2020, allowing individuals to keep funds in their retirement plans. The bill expands upon this relief by waiving these distributions for defined contribution plans and for IRAs in 2019 as well. The bill provides that RMDs made for 2019 to be rolled back to a plan or IRA without regard to the 60-day requirement if the rollover is made by November 30, 2020; and that RMDs made for 2020 would be permitted to be rolled back to a plan or IRA without regard to the 60-day requirement if the rollover is made by November 30, 2020.

Other Retirement Related Provisions: The bill expands upon several retirement relief provisions enacted in the CARES Act. The bill would make permanent a provision that excludes from income certain benefits provided to volunteer firefighters and emergency medical responders; extends the community newspapers pension funding relief provision from the SECURE Act to a number of other community newspapers; and provides for grants that can be made to assist low-income women and survivors of domestic violence in obtaining qualified domestic relations orders.

COMMUNICATIONS AND TECHNOLOGY POLICY

Prevention of Price Gouging: The bill prohibits individuals from selling or offering for sale a good or service at a price that is “unconscionably excessive,” and indicates the seller is taking advantage of the circumstances related to the pandemic to unreasonable increase prices. Violations of the provision will be considered an unfair trade practice under section 18(a)(1)(B) of the Federal Trade Commission Act (FTC).

Factors used to determine whether a price is unconscionable include: (1) whether the price grossly exceeds the average prices at which the same or a similar good or service was sold or offered prior to January 31, 2020 (based either during the 90-day period immediately preceding January 31, 2020, or during the period 45 days before or after the year before the good or service was sold); (2) whether the price grossly exceeds the average prices of a similar good available from other similarly situated competing sellers before January 31, 2020; and (3) whether the set price understandably reflects the unavoidable additional costs of COVID-19.

The bill authorizes the Federal Trade Commission (“FTC”) to enforce this section, in addition to states attorney generals or other equivalent state law enforcement officials upon suspicion that an individual has engaged in price gouging. State law enforcement agencies may bring a civil action against that individual in any appropriate United States district court or in any other court of competent jurisdiction in order to (1) enjoin further such violation by such person; (2) enforce compliance; (3) obtain civil penalties; and (4) obtain damages, restitution, or other compensation on behalf of state residents. The attorney general of a state must provide prior written notice to the FTC and upon receipt, the Commission will retain the right to intervene. In the event the Commission has instituted a civil action against an individual for price gouging, no state may put forth its own action for the same act against the individual.

None of these provisions shall preempt or otherwise affect any state or local law.

The Bill defines “good or service” as (1) food, beverages, water, ice, a chemical or a personal hygiene product; (2) any personal protective equipment, filtering facepiece respirators, or medical equipment and supplies (including medical testing supplies), drugs, cleaning supplies, disinfectants, sanitizers; or (3) any health care service, cleaning service, or delivery service.

E-Rate Support for Wi-Fi Hotspots, Other Equipment, and Connected Devices During Emergency Periods Relating to COVID-19: The bill authorizes and appropriates \$5 billion for the creation of an Emergency Connectivity Fund to support school and library acquisition of advanced telecommunications and information services and equipment for use during the pandemic. The FCC would administer the program, using \$1.5 billion in appropriated funds. Eligible equipment would include: (1) Wi-Fi hotspots; (2) modems; (3) routers; and (4) devices that combine a modem and router; and connected devices (defined as a laptop computer, tablet computer or similar device capable of connecting to advanced telecommunications and information services). Amounts in the Emergency Connectivity Fund shall be available to the FCC to provide support to schools and libraries without from contributions under section 254(d) of the Communications Act of 1934.

The FCC would be required to promulgate regulations to administer the Emergency Connectivity Fund no later than seven days after enactment of the bill, and such regulations would apply to support provided before enactment of the bill. In promulgating regulations, the FCC must provide for a mechanism to require schools or libraries to prioritize access to eligible technology and services for students, staff or patrons that do not access to such equipment or services in their residences. Additionally, the regulations must allow for a school or library continue using such equipment, subject to appropriate restrictions, after the public health emergency is over. Finally, the bill calls on the Commission to prohibit these schools or libraries from selling or otherwise transferring purchased equipment in exchange for anything of value, except in the event that the exchange is for upgraded equipment of the same type.

Benefit for Broadband Service During Emergency Periods Relating to COVID-19: This provision authorizes appropriations of \$8.8 billion for the creation of an Emergency Broadband Connectivity Fund to facilitate discounted broadband internet services during the public health emergency for households in need. The FCC would administer the program, using \$4 billion appropriated in the bill, and must promulgate regulations within seven days following enactment of the bill requiring communications providers to provide eligible households with discounted internet connectivity during the public health emergency.

Eligible households for the emergency broadband benefit include those where at least one household member: (1) qualifies for Lifeline subsidies; (2) receives benefits under the Richard B. Russell National School Lunch Act; or (3) experienced a substantial loss of income since February 29, 2020 and can provide proper documentation. Those households would be eligible for discounted internet services of up to \$50 per month, or in the case of service on a tribal land, \$75.

Reimbursement. The Emergency Broadband Connectivity Fund would be available to reimburse providers for making services available to eligible households, so long as the provider verifies whether a household is eligible for emergency broadband using either the National Lifeline Eligibility Verifier or an alternative verification process approved by the Commission. Connectivity Funds will also be made available to reimburse entities that provide eligible households with a connected device (defined as a laptop or desktop computer or tablet costing more than \$10 but less than \$50) for a reimbursement of up to \$100 - with a limit of no more than one connected device per eligible household.

No Retroactive Reimbursement. A provider may not receive a reimbursement from the Fund for providing an internet service offering discounted by the emergency broadband benefit, or for supplying a connected device, that was provided or supplied *before* the bill's enactment. In other words, providers that provided internet connectivity benefits to Americans pursuant to commitments made in coordination with the FCC's "Keep Americans Connected Pledge," or related public commitments.

Enforcement. Violations of these provisions or related promulgated regulations, including the knowing or reckless denial of internet service offering discounted by the emergency broadband benefit to an eligible household that request such an offering, shall be treated as a violation of the Communications Act of 1934 (47 U.S.C 151 et seq.) or a regulation promulgated under the Act.

Enhanced Lifeline Benefits During Emergency Periods: The bill would also create certain service standards for the Lifeline program during the public health emergency. Those standards require, that during the emergency, Lifeline supported mobile service must provide: (1) an unlimited number of minutes per month; (2) an unlimited data allowance each month and 4G speeds, where available and; (3) the basic support amount and tribal lands support amount shall be increased by an amount the Commission deems necessary to offset any incremental increase in costs.

This provision allows for an emergency period to be extended within a state or any portion thereof for a maximum of six months if the state or local entity provides the Commission with a written, public notice declaring the extension necessary to recover from COVID-19. The FCC shall adopt, on an expedited basis, any regulations necessary to carry out this provision.

Continued Connectivity During Emergency Periods Relating to COVID-19: The bill amends Title VII of the Communications Act to make it unlawful for communications providers to terminate services or impose fees during the pandemic. Specifically, providers of advanced telecommunications service or voice service may not terminate services, reduce services, change services, or impose late fees on a customer or small business because the customer or small business cannot pay due to disruptions certifiably caused by the public health emergency. Additionally, such providers may not limit the amount of data allotted to an individual customer or small business during an emergency period, except that such provider may engage in reasonable network

management, or charge an individual customer or small business an additional fee for exceeding such a limit. Finally, such providers make Wi-Fi hotspot service available to the public at no cost during the pandemic - so long as Wi-Fi hotspots are available to subscribers in public places on the day before the start of the emergency period.

These provisions may be suspended or waived by the Federal Communications Commission at any time, in whole or in part.

Repeal of Requirement to Reallocate and Auction T-Band Spectrum: The bill calls for the repeal of Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012, which requires the FCC to reallocate spectrum in the 470-512 MHz spectrum band currently used by certain public safety entities before February 22, 2021, and begin a process for competitive bidding to grant new initial licenses for use of that spectrum.

Universal Telephone Number for National Suicide Prevention and Mental Health Crisis Hotline System: The bill amends Section 251(e) of the Communications Act of 1934 to add a universal telephone number (9-8-8) and hotline system for national suicide prevention and mental health crisis. This amendment shall take effect one year after enactment of the bill, and within 180 days after the bill's enactment, the Department of Health and Human Service and the Department of Veterans Affairs shall jointly submit a report to the relevant congressional committees regarding the resources necessary to carry out this provision.

Requirements for Confinement Facility Communications Services: The bill amends Section 276 of the Communications Act to include additional requirements for confinement facility communications services. All charges, practices, classifications, and regulations for and in connection with confinement facility communications services must be just and reasonable. The FCC must issue regulations within 18 months following enactment of the bill must declares instances in which this is not the case unlawful.

The FCC would be tasked with issuing rules to determine maximum rates for confinement facility communications services using average industry costs of providing such services.

Expansion of FCC Rural Health Care Program: This section of the bill directs the FCC to promulgate regulations no later than seven days after enactment of the act modifying and expanding the Commission's existing Rural Healthcare Program. It also authorizes appropriations of \$2 billion to be made available for fiscal years 2020 through 2021 to establish the Emergency Rural Health Care Connectivity Fund, which would help the FCC facilitate expanded rural healthcare services under the Rural Healthcare Program.

The FCC must promulgate regulations to modify the existing program, and those regulations shall go into effect immediately upon being promulgated. The regulations must: (1) allow for a health care provider located outside a rural area to be treated as a rural health care provider for the purposes of the Healthcare Connect Fund Program; (2) increase the discount rate for an eligible expense through the Healthcare Connect Fund Program to 85 percent in funding years 2019, 2020, and 2021 for eligible equipment purchased or eligible services rendered; (3) provide for a temporary, mobile, or satellite health care delivery site to be treated as a health care provider for purposes of determining eligibility for the Healthcare Connect Fund Program or the Telecommunications Program; (4) provide for the waiver of the application window for funding year 2019; (5) institute the adoption and implementation of a rolling application process to allow a health care provider to apply for funding; and (6) institute changes to specific bidding requirements.

Changes to bidding requirements shall include: (1) a waiver of any requirement for a health care provider upgrading an existing supported service at a particular location, effective as of the date of the declaration of the public health emergency; (2) reduction of the 28-day waiting period to a 14-day waiting period; and (3) modification of bid criteria, so additional consideration can be provided for the speed with which an eligible

service provider can initiate service, while encouraging applicants to consider bids from different providers in order to expedite the overall timeline for initiating or expanding service to individual locations.

As amended, application decisions must be released no later than sixty days after the date the application is filed and funding must be released no later than thirty days after the date on which an invoice is submitted with respect to an approved application with its required invoices submitted and applicable services provided.

Rural Health Care Program Additional Changes. The bill calls on the Federal Communications Commission to ensure the release of funding for all requests under the Rural Health Care Program no later than sixty days after the bill enactment. This shall apply to all requests outstanding as of the bill's enactment. Except for those outstanding funding requests subject to a review of the applicable urban and rural rates, the bill charges the Commission with ensuring interim funding is released no later than sixty days after the bill's enactment, disbursed at 65 percent of the funding request, subject to a true-up following the completion of such review.

Limitation. This shall not apply to any party or successor-in-interest to any party to which the Commission, during the period beginning on the date 1 year before the date of the bill's enactment and ending on January 31, 2020, has issued a Letter of Inquiry, Notice of Apparent Liability, or Forfeiture Order relating to the party's participation in the Rural Health Care Program.

If an eligible service provider receives funding through the program to which that provider is not entitled, the FCC shall require the provider to repay such funds.

Termination of Regulations. The bill creates a default termination mechanism for the Commission's Rural Health Care Program regulations, except if the Commission determines that some or all of the regulations should remain in effect. If the FCC does not make that determination, the regulations would expire either nine months after enactment of the bill, or 60 days after the termination of the public health emergency declaration (and expiration of the appropriations made as part of the Emergency Rural Health Care Connectivity Fund) - whichever comes earlier.

Delay of Implementation Schedule. The FCC would be required to delay, by one year, implementation of sections 54.604 and 54.605 of title 47, Code of Federal Regulations, as adopted in the Report and Order in the matter of Promoting Telehealth in Rural America that was adopted by the Commission on August 1, 2019. The bill also calls on the Commission to delay the application of the new definition of "similar services" as described in the aforementioned Report and Order until the implementation of such sections.

Broadband Mapping: The bill extends the authorization of appropriations for the FCC to create a Broadband Map - as required under the Broadband DATA Act - depicting the availability of broadband internet access service in the U.S. Specifically, it would authorize appropriations of \$25 million for the FCC to carry out the mapping activities in FY 2020, and \$9 million for fiscal years FY2021 through 2027. The bill also establishes a deadline of October 1, 2020 for the FCC to create the Broadband Map. Finally, the bill appropriates \$24 million in salaries and expenses for the FCC to carry out these activities, which would remain available until September 30, 2021.

Rural Digital Opportunity Fund Auction: The bill accelerates several deadlines included in the Phase I auction date provided for in the FCC's Rural Digital Opportunity Fund report and order, adopted on January 30, 2020. This provision would require the FCC to be accepting long-form auction applications from applicants willing to commit to deploy Gigabit performance service either on July 31, 2020 or 30 days after the FCC begins accepting short-form applications - whichever comes earlier. Further, if only one qualified applicant is willing to commit to provide Gigabit performance service for a census block or census block group, the provision would require the FCC to award support to such applicants no later than 30 days before the start of the auction or September 30, 2020 - whichever comes earlier. Long-form applicants must: provide a letter of

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commitment from a bank that meets the FCC's eligibility criteria; commit to begin construction no later than 6 months and make service available within 1 year after following funding authorization.

VETERANS

Increases for Certain Department of Veterans Affairs Payments: The bill authorizes the Department of Veterans Affairs to make an increase payment equal to 125 percent of the dollar amount found within the following provisions under Title 38 of U.S.C. during the duration of the emergency period: (1) additional compensation for dependents (section 1115); (2) dependency and indemnity compensation to a surviving spouse (section 1311); (3) dependency and indemnity compensation to parents (section 1315); and (4) non-service connected disability pension for veterans of a period of war (section 1521).

Preventative Services Related to COVID-19 for Veterans: The bill prohibits the VA Secretary from requiring any copayment or other cost sharing for qualifying coronavirus preventive services.

Emergency Treatment for Veterans During the Pandemic: The bill permits eligible veterans to receive emergency treatment at non-VA facilities during the period of the public health emergency. Additionally, the bill grants prior authorization for emergency treatment sought by a veteran at a non-VA facility, including treatment relating to COVID-19 diagnosis and ambulance transportation. The bill also outlines that the payment rates for such emergency treatment will be equal to the rate paid to a provider of services or a supplier under the Medicare program for the same treatment. The bill directs the VA Secretary to award a contract to one or more entities to process claims for payment for such emergency treatment.

Flexibility for the VA to Care for Homeless Veterans: The bill provides the VA with flexibilities during the duration of the public health emergency to help provide homeless veterans with basic supplies and assistance including, clothing, toiletries, shelter, food, transportation and communications equipment and required capabilities such as smartphones, phone service plans and disposable phones.

The bill authorizes the VA Secretary to use revolving funds for the use of providing temporary shelter locations for homeless veterans and to partner with organizations to help manage VA property used by homeless veterans for sleeping. Furthermore, the VA is authorized to make available telehealth capabilities for homeless veterans receiving services under Title 38 during the duration of the public health emergency.

Additionally, the bill would expedite additional funding for Grant Per Diem (GPD) providers and award additional grants to providers, which may be used for housing, food and other supplies to help homeless and formerly homeless veterans with self-isolation during the pandemic. The bill also directs the VA Secretary to provide monthly reports to Congress if the VA reduces care, treatment and rehabilitation services for homeless veterans during the public health emergency.

HUD-VASH Program: The bill would extend certain flexibilities for public housing agencies that administer the HUD-VASH rental assistance vouchers to homeless veterans during the pandemic. Specifically, it would allow public housing agencies under the program to process applications electronically and waive specific requirements relating to in-person inspections to expedite housing for veterans during the pandemic.

Consumer Protections for Military Servicemembers: The bill would amend the Servicemembers Civil Relief Act to allow servicemembers that are under a stop-movement order for a period of not less than 30 days due to the pandemic to terminate without penalty specific covered leases, including housing and vehicle leases, as well as cable, internet and phone contracts. The bill specifies that the application of these provisions will apply to stop movement orders issued on or after March 1, 2020.

Consumer Protections for Military Servicemembers and Their Families Due to Death or Catastrophic Disability: The bill would amend the Servicemembers Civil Relief Act to authorize a spouse or dependent of a deceased or catastrophically disabled servicemembers to terminate without penalty specific contracts and leases pertaining to their housing, vehicle, phone, television, and internet.

Debt Deferral on Certain Veterans Benefits: The bill prohibits the VA Secretary from taking action to: (1) collect on any covered debt; (2) record a covered debt; (3) issue notice of a covered debt to a consumer reporting agency; (4) allow any interest to accrue on a covered debt; or (5) apply any administrative fee to covered debt (with an exception for individuals who elect to make a payment). This suspension on collection activities would extend until 60 days past the end of the public health emergency.

Deadlines for Filing Claims and Appeals for VA Benefits: The bill would extend the deadline for veterans to submit claims and appeals for VA benefits for a covered period beginning on the date of the public health emergency until 90 days past the end of the public health emergency.

VA Health Care for Veterans without Health Insurance: The bill authorizes certain veterans who are unemployed, lost employer-sponsored health coverage or suffered a financial hardship to qualify to enroll in the VA's healthcare system to receive necessary veteran hospital care and medical services during a 12-month period, starting on the date of enactment of the Act.

Prohibition on Copayments and Cost Sharing for Veterans Receiving COVID Treatment Furnished by the VA: The bill amends the Families First Coronavirus Response Act (Public Law 116-127) to establish zero cost sharing for hospital care and medical services to treat COVID-19 under VA health plans.

Expansion of Vet Center Services to National Guard & Reserve Members: The bill would expand eligibility for a member of the National Guard or Reserve who has been serving more than 14 days in support of the pandemic to be eligible to receive mental health care through VA's Vet Centers.

GOVERNMENT OPERATIONS

Accountability

Pandemic Response Accountability Committee: The bill amends the membership eligibility for the Pandemic Response Accountability Committee to allow Inspectors General to serve as Chair of the Committee.

Inspector General Notifications: The bill would amend current law to require congressional notification by the President 30 days prior to an Inspector General being placed on paid or unpaid administrative leave.

Inspector General Nominations: The bill would require the President to submit in writing to Congress an explanation regarding a rationale if the President has not made a formal nomination for an Inspector General position if a vacancy persists beyond 210 days.

Inspector General Independence: The bill outlines specific conditions under which the President may remove an Inspector General. The list includes, permanent incapacity, inefficiency, neglect of duty, malfeasance, conviction of a felony, knowingly violating a rule or law, gross mismanagement or waste of funds, and abuse of authority.

U.S. Postal Service Inspector General Oversight: The bill would require the U.S. Postal Service Inspector General to conduct oversight and audits of the use of funds provided under the HEROES Act and submit the findings to the relevant congressional authorizing committees.

2020 Census

Postponement of the 2020 Census Deadlines: The bill would authorize a 120-day delay in the publication of apportionment and state redistricting data due to the impact of the pandemic that delayed census operations. Additionally, this section directs the Census Bureau to produce data products and tabulations that meet or exceed the same data quality standards as produced under the 2010 Census.

Congressional Reporting Requirements for the 2020 Census: This section would require the Census Bureau to provide monthly reports on operational information (including metrics on field staffing, non-response and completion rates, spending on media and advertising, etc.) to the relevant congressional authorizing committees.

Census Access to Information from Institutions of Higher Education: This section clarifies that institutions of higher education may provide information about students living on campus to respond to the 2020 Census. Additionally, the section outlines a public notice process in which students would have the ability to opt-out before the institution provides this information to the Census.

Postal Service

U.S. Postal Service Borrowing Authority: The bill would repeal certain restrictions put in place under the CARES Act regarding the U.S. Postal Service's borrowing authority of \$10 billion. Specifically, the Treasury Secretary would be directed to lend up to \$10 million subject to the terms and conditions of the note purchase agreement between the USPS and Federal Financing Bank in effect of September 2018.

GOVERNMENT CONTRACTING

Telework for Federal Contractors: The bill would direct federal agencies to allow all contractor personnel to telework to the maximum extent practicable throughout the period of the public health emergency. Additionally, the Director of the Office of Management and Budget (OMB) would direct contracting officers to document any decisions to not allow telework during this period and maintain that documentation within the contract file.

CARES Act Guidance on Federal Contracting: This section requires OMB to issue governmentwide guidance on the implementation of CARES Act Section 3610 - Federal Contractor Authority, which permits federal agencies to modify contracts, without consideration, to reimburse contractors for paid leave provided to keep employees and subcontractors in a ready state. The bill dictates that OMB's guidance must limit the "basic requirements" for reimbursement to those included in the CARES Act, allow an effective date for relief dating back to January 31, 2020, and clarify that reimbursement for the "minimum applicable contract billing rate," a concept the CARES Act introduced, covers the financial impact of retaining employees and subcontractors in a ready state, including not only the base wage, but also indirect costs and general-and-administrative expenses. The bill also states that reimbursement can include "fees," which seems to indicate that the rates can include profit or fee.

Past Performance Ratings: The bill permits a federal agency to exclude from a contractor's past performance record any incidents in which the contractor is unable to timely deliver goods or complete work due to measures resulting from the pandemic. Specifically, this section intends to ensure that contractors are not adversely penalized or unfavorably evaluated due to contracting disruptions caused by the pandemic.

Accelerated Payments: The bill would require the Director of OMB to direct contracting officers to establish accelerated payment dates for any prime contract and require that payments be made within 15 days after the receipt of the invoice. This section would take effect within 10 days after the enactment of the Act and extend until the expiration of the public health emergency.

VOTING RIGHTS

The bill incorporates the ACCESS Act (the “American Coronavirus/COVID-19 Election Safety and Security Act”), which is designed to expand opportunities for lawful voters to exercise their right to vote with minimal hindrances and across mediums. This provision directs state and local jurisdictions responsible for administering federal elections to establish and make publicly available, within thirty days of the bill’s enactment, a contingency plan to enable individuals to vote in elections for federal office during a state of emergency, public health emergency, or national emergency which has been declared for reasons including either a natural disaster or infectious disease. These plans must include initiatives to provide equipment and resources needed to protect the health and safety of poll workers and voters when voting in person. These contingency plans must be updated at least every five years.

Early Voting Requirements: The bill directs states to allow individuals to vote in an election for federal office during an early voting period prior to the election in the same manner as voting is allowed on the actual election date. The early voting period must be a period of 15 consecutive days, including weekends, ending on the date of the election.

States must provide polling places for early voting in rural areas and in communities with the greatest opportunity for rural residents of rural areas to vote. Additionally, the bill calls for states to ensure to the greatest extent possible that each polling place which allows early voting is located within walking distance of a stop on a public transportation route. The FCC shall issue standards for the administration of voting prior to a scheduled federal election. These standards shall include the nondiscriminatory geographic placement of polling places at which voting occurs.

These provisions shall apply with respect to the regularly scheduled general election for federal office in November 2020 and each succeeding election for federal office.

Promoting Ability of Voters to Vote By Mail: The bill prohibits states from imposing any additional conditions or requirements on the eligibility of an individual to cast a vote in an election by absentee ballot by mail if the individual is eligible to cast a vote in person. The Act also prohibits states from requiring an individual to provide any form of identification as a condition of obtaining an absentee ballot, except in the case of requiring a signature or similar affirmation as a condition of obtaining an absentee ballot. A state may not require notarization or witness signature or other formal authentication, other than voter attestation, as a condition of obtaining or casting an absentee ballot.

The bill prohibits states from imposing a signature verification requirement as a condition of accepting and counting an absentee ballot submitted by an individual with respect to an election for federal office. There is an exception if the appropriate state or local election official determines a discrepancy exists between the ballot signature and the official record signature. To find a discrepancy, there must be agreement by at least two election officials who both received training in signature verification procedures.

In the event of an emergency or disaster, no later than two weeks before the date of the election, the appropriate state or local election official is charged with transmitting by mail absentee ballots and balloting materials to all individuals who are registered to vote in such election, in the state’s central voter file, or are eligible to vote in such election, depending on the individual state’s record-keeping protocol.

Absentee Ballot Tracking Program: The bill mandates states implement a program to track and confirm the receipt of absentee ballots in a federal election for which the state is responsible for receipt of voted absentee ballots.

Internet Registration: The bill requires each state to ensure residents of their state have access to online applications for voter registration, online assistance to applicants, and online completion and submission of the mail voter registration application form prescribed the Election Assistance Commission, including assistance with providing a signature.

EDUCATION

Appropriations

The bill would appropriate \$100.2 billion to the Department of Education to address the educational needs of states, school districts, and institutions of higher education during the COVID-19 pandemic, as discussed further below.

State Fiscal Stabilization Fund: The bill would appropriate \$90 billion for the State Fiscal Stabilization Fund. This fund would be available through September 30, 2022, to support states, school districts, and institutions of higher education to prevent, prepare for, and respond to COVID-19, domestically or internationally. While up to \$30 million may be reserved by the Secretary of Education for oversight and administration activities, the Secretary must allocate the following funds to governors to support elementary, secondary, postsecondary, and early childhood education programs and services (as applicable): (1) One-half of one percent made available to outlying areas; (2) One-half of one percent made available to the Bureau of Indian Education; (3) 61 percent of the remaining funds made available to states on the basis of their relative population of individuals ages 5 through 24; and (4) 39 percent of the remaining funds made available to states on the basis of their relative number of children counted under the Elementary and Secondary Education Act (ESEA).

Of the state subgrants, 65 percent of funds shall be allocated to local educational agencies (LEAs) in proportion to their funds received under Title I of ESEA, and 30 percent of funds shall be allocated to public institutions of higher education. Of these higher education funds, 75 percent shall be on the basis of relative share of enrollment of Pell Grant recipients who were not exclusively enrolled in distance education courses prior to the emergency, and 25 percent shall be apportioned according to total student enrollment for those not exclusively in distance education courses prior to the emergency.

The bill would require Governors to return the funds if they cannot commit them to LEAs or public institutions of higher education within two years. LEAs may use funding for any activity authorized under ESEA, Individuals with Disabilities Education Act, the Adult Education and Family Literacy Act, or the Carl D. Perkins Career and Technical Education Act, in addition to limited other uses. Additional uses include: (1) costs associated with making up instructional time; (2) providing school-based supports for impacted students, families, and staff, including counseling, mental health services, family engagement efforts, and the coordination of physical health services; (3) costs associated with sanitation and cleaning for schools and school transportation; (4) professional development for school-based staff on trauma-informed care; (5) purchasing educational technology, including assistive technology, that aids in regular and substantive interactions between students and their classroom instructor; (6) coordination efforts between state educational agencies and public health departments; (7) training and professional development for college and university faculty and staff to use technology and services related to distance education; (8) general expenditures for institutions of higher education for expenses associated with a disruption in services or operations related to coronavirus, including: (a) defraying expenses due to lost revenue, (b) reimbursement for expenses already incurred, and payroll; and (c) emergency financial aid to postsecondary students for housing, food, technology, health care, and child care.

The bill would prioritize higher education funds to under-resourced institutions, those with high coronavirus burden, and those without distance education capabilities before the emergency. Institutions that receive less than \$1 million through the formula are eligible to receive a minimum of their total loss of revenue and increased costs due to the virus, up to \$1 million. Funding may not be used to support institutional endowments or capital expenditures related to athletics or religious worship, but may be used to support hourly workers and adjunct faculty.

The bill would require the Secretary of Education to issue a notice inviting applications within 15 days of enactment, and states must include assurances that they will maintain elementary, secondary, and higher education funding at levels equal to the average over the preceding three years. The bill would require grant recipients to continue to pay employees and contractors to the greatest extent practicable during the disruption period.

Higher Education Funding: The bill would appropriate an additional \$10.2 billion for higher education institutions and students to prevent, prepare for, and respond to COVID-19, as follows: (1) \$11 million for the National Technical Institute for the Deaf; (2) \$20 million to Howard University; (3) \$11 million to Gallaudet University; (4) \$1.7 billion for Historically Black Colleges and Universities and Minority Serving Institutions; and (5) \$8.4 billion to other institutions. Of that funding for other institutions, \$7 billion is reserved for private nonprofits, based on relative share of Pell Grant recipients not exclusively online prior to the pandemic (75 percent), and \$1.4 billion for other institutions with unmet need, including those who offer exclusively online education.

The bill would require these funds to be used for emergency grants to students to help defray cost of attendance (i.e., food, housing, course materials, technology, health care, and child care) and to institutions to defray expenses and lost revenue related to COVID-19. Similar restrictions would be placed on spending for endowments or capital expenditures. Institutions that receive less than \$1 million through the formula and have more than 500 students are eligible to receive a minimum of their total loss of revenue and increased costs due to the virus, up to \$1 million.

Student Loan Provisions

Extension of CARES Act Provisions for Other Federal Loan Borrowers: The bill would extend the CARES Act provisions related to student loans to include borrowers of commercially-held Federal Family Education Loans (FFEL), Perkins loans held by institutions, and Department of Health and Human Services (HHS) student loans under the Public Health Service Act. The bill also would require the federal government to provide retroactive refunds to these borrowers to make the loan whole as if the payment and interest suspension provisions had applied to these borrowers since the enactment of the CARES Act.

Extension of CARES Act Student Loan Payment Suspension: The bill would extend the CARES Act's suspension of federal student loan payments for an additional year through September 30, 2021. It also includes a 30-day transition period following the suspension period where the Department of Education must ensure that any missed payments do not result in collection fees or penalties and are not reported to consumer reporting agencies. Any borrowers who are in income-based repayment plans would not be required to recertify their income or family size until December 31, 2021.

Extension of CARES Act Interest Accrual Suspension: The bill would update the CARES Act provisions related to interest accrual suspension for federal student loans. It states the federal government would have to ensure interest does not accrue or is paid by the Secretaries of Education or HHS until September 30, 2021, or until two months after the economy shows initial signs of recovery, whichever is later. The formula in the bill to determine economic recovery utilizes the Bureau of Labor Statistics' (BLS) national U-5 measure of labor underutilization, which BLS defines as "total unemployed, plus discouraged workers, plus all other marginally attached workers, as a percent of the civilian labor force plus all marginally attached workers."

The bill would prohibit interest capitalization on federal student loans for any interest that had not been paid prior to March 13, 2020. If any interest had been capitalized since that time on any federal loans (including FFEL, Perkins, and HHS loans), the Secretaries of Education and HHS must correct and adjust the principal balance and interest due on those loans accordingly.

Federal Student Loan Forgiveness: Within 30 days of the enactment of the bill, the Secretary of Education would be required to cancel or repay \$10,000 of the total outstanding balance of the borrower's loans (whichever is less) for all federal student loan borrowers. Unless the borrower requests otherwise, the Department would apply the forgiveness first to the loan with the highest interest rate and then towards loans with the highest principal balance if the rates are equal. Any cancelled or forgiven loans would not count as part of a borrower's gross income for tax purposes.

A manager's amendment released May 14 changed the loan forgiveness provisions so that they apply only to economically distressed borrowers, which is defined slightly differently for federal student loan borrowers vs. private student loan borrowers. For federal student loan borrowers, the bill defines an economically distressed borrower as someone, as of March 12, 2020, who:

1. Had a monthly payment of \$0 in an income-contingent or income-based repayment plan;
2. Was in default on their federal student loan;
3. Had a payment on their federal student loan that was at least 90 days past due;
4. Was in deferment due to an economic hardship, unemployment, or cancer treatment;
5. Has a FFEL loan that is in forbearance because the borrower has a debt burden that equals or exceeds 20 percent of their income or has been agreed upon by the parties to an insured loan and approved by the insurer; or
6. Has a Perkins loan that is in forbearance because the borrower has a debt burden that equals or exceeds 20 percent of their income, the institution determines the borrower should qualify for forbearance for other reasons, or the borrower is eligible for interest payments made on the loan for service in the Armed Forces.

Private Education Loan Forgiveness: The bill would create a repayment assistance program under the Truth in Lending Act to allow the Department of the Treasury to pay monthly loan amounts due for private education borrowers through September 30, 2021. Payments would be based on the payment plan selected by the borrower or the borrower's loan status, with a maximum payment amount of \$10,000 for each borrower over the period. During the covered period, the bill would prohibit: (1) capitalization of interest on such loans; and (2) adverse credit information from being reported to consumer reporting agencies. It would require payments made by the Secretary during the covered period to be treated as regularly scheduled payments by the borrower.

The Secretary would be required to provide notice about the repayment program to private education borrowers within 15 days of enactment and monthly until October 2021. The notice shall provide an easy opt-out method and make clear that the program is temporary. All involuntary collection will stop through September 2021.

During the period in which the Secretary of the Treasury makes payments on individual private student loans, servicers of these loans will grant a mandatory forbearance of all other payments. For borrowers who are delinquent but not yet defaulted, forbearance will be retroactive to address delinquency. Also, private student loan holders and servicers must provide the Secretary the necessary information to calculate the monthly payment to be paid. The bill provides \$45 billion to carry out this assistance.

Again, the manager's amendment would limit the private loan assistance program to economically distressed borrowers only, defined by the bill as a private loan borrower who, as of March 12, 2020, meets one of the following criteria: (1) based on financial state or other conditions, the borrower would be eligible for a \$0 monthly payment in an income-contingent repayment plan or income-driven repayment plan if the borrower instead had a federal student loan; (2) the borrower is in default on their private student loan; (3) the borrower has a payment due on their private loan that is at least 90 days past due; or (4) the borrower is in forbearance or deferment based on financial state or other conditions.

The CFPB and Department of Education must issue rules within 7 days after the bill's enactment of how to implement the definition of "economically distressed borrower," including how a borrower of a private education loan will be considered "economically distressed."

Additional protections for private student loan borrowers during a qualifying emergency also include the following: (1) private student loan holders must modify all private student loan contracts to provide for the same repayment plan and forgiveness terms as the federal government's Revised Pay As You Earn repayment (or REPAYE) plan; (2) for defaulted borrowers, no payment or forbearance under this section will be considered an event that impacts the calculation of the applicable state statutes of limitation; and (3) private student loan debt collectors may not pressure borrowers to elect to apply an amount to any of their private student loans during this time.

The bill ensures that every affected private student loan borrower receives up to \$10,000 in repayment during the qualifying emergency. By the end of 2021, the Secretary shall reduce each borrower's outstanding balances by an amount that is equal to the lesser of the total amount of each private loan or \$10,000 (reduced by the aggregate amount of assistance payments made prior to September 2021).

Also, by the end of 2021, the Secretary would be required to notify qualified private student loan borrowers of the mandatory loan relief and the opportunity for these borrowers to elect how the relief will be distributed. The Secretary also must notify borrowers how to elect to apply the determined relief amount to their private student loans. If a private student loan borrower does not make an election, the Secretary will automatically apply the loan payments to the private student loan with the highest interest rate or to the loan with the highest principal if rates are equal.

Consolidation of Loans: The bill would create special rules for borrowers who consolidate federal loans between the bill's enactment date and September 30, 2021 or until there are signs of economic recovery, whichever is longer. Borrowers could consolidate federal loans and not lose prior payments for purposes for the Public Service Loan Forgiveness (PSLF) program and income-driven repayment (IDR) plans. To consolidate federal loans for the purpose of participation in income-contingent or IDR plans, a borrower would apply to the Department of Education that includes a certification of employment. In its review of the borrower's application, the Department would look at the borrower's payment history and identify each component loan of a borrower's federal consolidated loan. The bill includes a formula using the weighted factor of each component loan that the Department must follow when calculating the total number of qualifying monthly payments. The Department would inform the borrower of the number of qualifying monthly payments made prior to consolidation and the remaining number of qualifying monthly payments required. The Department would not be able to change or rescind the calculation after informing the borrower. Additionally, when determining the new interest rate, the standard consolidation rules apply except that the Secretary must not round up to the weighted average of the interest rate.

The bill would direct the Secretaries of Education and HHS to alert borrowers on the benefits of consolidating loans under the newly created special rules and would work with servicers and holders of federal student loans to convey this information to borrowers. The Government Accountability Office also would submit a report on the implementation of this section within six months after the bill's enactment date, which would include: (1) information on borrowers who apply or receive loan consolidation, (2) established procedures by the Secretaries of Education and HHS on how to notify borrowers of these new benefits, and (3) recommendations on improving implementation to ensure increased participation.

Public Service Loan Forgiveness: The bill would eliminate the requirement that borrowers must be employed in a public service job at the time of PSLF forgiveness. It also would extend PSLF eligibility to borrowers who

are full-time healthcare practitioners at public or nonprofit hospitals or healthcare facilities but have been prohibited by state law from being employed directly by the hospital or facility.

Other Financial Aid Provisions

Taxability of Emergency Financial Aid Grants: The bill would ensure that no emergency financial aid grants awarded under the CARES Act by institutions of higher education to students would be considered taxable income. It includes other emergency financial aid to students made by the federal government, states, Indian tribes, institutions, or other scholarship-granting organizations in response to a qualifying emergency, as defined under the CARES Act, as a “qualified emergency financial aid grant.” The bill would prohibit payments for teaching, research, and services from qualifying as emergency financial aid. Only payments made after March 26, 2020 qualify. The bill also ensures such grants do not affect a student’s American Opportunity Tax Credit or Lifetime Learning Credit.

The bill would therefore codify Internal Revenue Service (IRS) guidance released in early May, which stated that CARES Act Higher Education Emergency Relief (HEER) funds to students “are qualified disaster relief payments under section 139 of the Internal Revenue Code” and are not included in a student’s taxable income. The bill also clarifies that emergency financial aid grants do not count as income or assets in the Expected Family Contribution (EFC) calculation for financial aid purposes.

Financial Aid for Recently Unemployed Students: Individuals who have applied for or are receiving unemployment benefits when they fill out a FAFSA would be treated as a “dislocated worker” for the needs analysis, which means they may qualify for a simplified needs test or an automatic zero EFC. The bill would direct the Secretary of Education to work with institutions to inform FAFSA applicants about this provision, as well as the availability of means-tested benefits for which they could be eligible. The Secretary also would work with the Secretary of Labor to inform applicants and recipients of unemployment benefits of the availability of federal financial aid if they are interested in attending higher education.

The bill also specifies that the May 2009 guidance, [Update on the use of “Professional Judgment” by Financial Aid Administrators](#), is effective for the duration of the emergency. This guidance allows financial aid administrators to conduct professional judgement for recently unemployed students and adjustments to the Department’s risk-based model for selecting institutions for program reviews.

Student Eligibility for Higher Education Emergency Relief Fund: In response to criticism of the Department of Education’s guidance stating universities cannot provide HEER funding to undocumented students, the bill would prohibit the Secretary of Education from restricting the populations of students who may receive HEER funding. The bill also clarifies the requirement in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that prohibits non-citizens from receiving public benefits would not apply to students seeking funds under the CARES Act or HEROES Act.

Distance Education: The bill would update the definition of “distance education” as education that uses technology: (1) to deliver instruction to students enrolled at an institution of higher education who are separated from the instructor(s); and (2) to support regular and substantive interaction between students and instructors, either synchronously or asynchronously. This definition aligns with the updated definition in the final distance education rule, which the Department issued on April 2, 2020, and will go into effect in November 2020. The bill states the definition would go into effect for any distance education programs that begin after August 15, 2020 and would be effective for the 2020-21 award year.

Emergency Relief for Defrauded Borrowers: The bill would provide full student loan relief to borrowers that attended institutions the Department of Education found to have made a false or misleading job placement representation, guarantee of employment, or credit transferability representation. For eligible borrowers who

have already received partial relief from the Department, the bill would provide relief for the remaining portion of their loans and require the Secretary to do the following: (1) within 30 days of the bill's enactment, notify each borrower of their entitled relief, when they might receive it, and their eligibility to receive future federal financial aid; (2) within 45 days of enactment, cancel or repay the full balance of interest and principal (including fees and charges) due on the loan and return to the borrower the total amount of payments (voluntary and involuntary) they have made on the loan; and (3) within 60 days of enactment, report the cancellation or repayment of the loans to each consumer reporting agency to delete all adverse credit history related to the loan and reverse any default status on borrowers.

The bill also would require the Secretary of Education to adjudicate claims submitted by state Attorneys General (AG) within 180 days of enactment and provide full relief for each claim where the State AG has proven misrepresentation and the borrower has not yet received full relief. The Secretary must suspend payments, collections, and interest during adjudication, and inform borrowers within ten days of the adjudication about the relief the borrower is entitled to. The Secretary also would initiate proceedings to require institutions involved in the claims to repay the amount of repaid or cancelled loans to the Department. Finally, the bill would clarify the loan relief to borrowers as separate from gross income and therefore not required to be reported to the IRS.

Higher Education Flexibility

Institutional Stabilization Program: The bill would authorize \$300 million for a new program that permits institutions to enter into a COVID-19 provisional program participation agreement (CVPPPA) with the Department of Education. This process would allow institutions to be deemed financially responsible to participate in Title IV of the Higher Education Act in lieu of submitting a letter of credit. An eligible institution under this section includes private non-profit institutions of higher education that have either: (1) a composite score (a calculation of the institution's equity, primary reserve, and net income ratios) of less than 1.0 for the institution's fiscal year 2019; or (2) on the date of application, a composite score of less than 1.0 for fiscal year 2020. The eligible institution also must have offered on-campus classes and qualified for Title IV funds during award year 2018-19, as well as have a liquidity level of less than or equal to 180 days.

The application for eligible institutions to enter into a CVPPPA with the Department would include: (1) the institution's estimated liquidity level on the date of application and that such level will be attested by an auditor within 60 days of the application; and (2) an assurance that the eligible institution will submit record-management and teach-out plans to the Department within 60 days, which must be approved by the institution's accrediting agency. During the application process, the Secretary would not be able to use the composite score of the institution to require the institution submit a new letter of credit or increase an existing letter of credit. The Secretary would have no later than 10 days after the date of submission to approve or deny an eligible institution's application.

Once the Secretary receives an auditor attestation, a record-management plan, and teach-out plan from the institution, the Secretary could enter into a CVPPPA with the institution. If an institution has a liquidity level of 90 days or less, it would be required to submit an interim teach-out agreement that provides for the equitable treatment of at least 75 percent of enrolled students and a reasonable opportunity for students to complete their program of study. All other teach-out agreements must cover all enrolled students.

An eligible institution may renew its agreement with the Department through June 30, 2022, and the Department has the ability to extend such participation through June 30, 2024. If an institution closes while participating in a CVPPPA, enrolled students would be entitled to an automatic closed school discharge if they have not yet enrolled in another institution within three years of school closure.

Campus-Based Aid Waivers: The bill would direct the Secretary to waive the non-federal share matching requirements for nonprofit employers participating in the Federal Work Study (FWS) program. The waiver would be retroactive to the date of enactment of the CARES Act and would apply to the 2019-20 and 2020-21 award years.

Federal Work Study Payments: In the event of a qualifying emergency, the CARES Act allowed schools to pay eligible students under the FWS program for the period of time they were unable to fulfill their work-study obligation. The bill would remove the CARES Act language that had restricted these flexibilities to one academic year, which will allow universities to continue to provide students with FWS payments as long as the emergency continues.

Continuing Education at Affected Foreign Institutions: The bill clarifies provisions in the CARES Act that allow foreign institutions to offer distance learning to U.S. students for the duration of an emergency, disaster, and the following payment period. The bill clarifies this provision is based on the declaration of an emergency in the applicable foreign country, as opposed to the qualifying emergency in the U.S. It also would clarify that a foreign institution may enter into a written arrangement with an institution of higher education located in the U.S. for the duration of the emergency in the foreign country or for the duration of the declared emergency in the United States.

Reporting on Higher Education Flexibilities: The bill would require the Secretary of Education to notify congressional authorizing committees and publish a notice online whenever the Department plans to modify or waive a provision of the Higher Education Act (including regulatory and sub-regulatory guidance) due to COVID-19. The Secretary also would submit a quarterly report on the flexibilities granted to educational entities through the end of the first fiscal year after the COVID-19 emergency, as well as a report within 30 days of enactment on flexibilities granted since March 13, 2020. Within 30 days of enactment, the bill would require each institution that utilized the campus-based aid waivers included in the CARES Act to submit a report to the Secretary describing the nature and extent of the waiver, including the number of students affected and the amount of aid provided.

The bill also would require the Department to issue several reports to Congress on the implementation of regulatory flexibilities for institutions of higher education in light of COVID-19, including: (1) a quarterly report with a summary of all modifications to student loan servicer contracts and any modifications to program participation agreements with higher education institutions; (2) a report on the how the Secretary used the CARES Act authority to adjust subsidized loan usage limits and exclude certain periods from the federal Pell Grant duration limit; and (3) aggregate data related to the temporary student loan relief for federal loan borrowers under the CARES Act.

Career and Technical Education/Adult Education Flexibility: The bill would provide flexibility for recipients under the Carl D. Perkins Career and Technical Education (CTE) Act of 2006 to retain unused funds from the 2019-20 academic year for activities in the 2020-21 academic year. Recipients would be able to pool a portion of the funds to support the transition from secondary to postsecondary education or employment for CTE participants whose academic year was interrupted by the COVID-19 emergency, as well as use the funds for professional development uses.

The bill would provide flexibility under the Workforce Innovation and Opportunity Act for a variety of uses, including using available funding for administrative expenses related to transitioning to online education. The Secretary of Education must provide guidance on virtual proctoring tools for assessing adult education programs and could waive requirements related to restrictions on carrying over unused funds under the Perkins CTE Act and Adult Education and Family Literacy Act into the next fiscal year.

Future Action

While some additional relief is expected for institutions, students, and student loan borrowers, we believe a negotiated bill may reduce such amounts, lengths, or terms. Congressional Republican leadership has stated they are still very far apart from Democrats on their student loan priorities, in particular, and argue for more targeted relief to borrowers in need, which was included in the House Manager's Amendment to an extent. We are likely to see extensions and expansions of emergency support for institutions and students in the next negotiated relief bill, while loan forgiveness measures are considered during congressional negotiations on a recovery package later.

CHILDCARE

Child Care and Development Block Grant (CCDBG): The HEROES Act provides \$7 billion for CCDBG until September 30, 2021, doubling the amount included in the CARES Act. The funding is intended to cover the copayments and tuition costs for low-income families, in addition to the amount of the childcare provider's cost typically paid through a family's copayments. The aim is to ensure providers affected by COVID-19 remain open or can reopen. States also are authorized to use CCDBG emergency funding to cover the tuition costs of essential workers, even if their income exceeds CCDBG's eligibility threshold. States must implement enrollment and eligibility policies supporting the fixed costs of providing childcare services by delinking provider reimbursement rates from a child's absence and a provider's closure due to the pandemic. As states distribute funding, the bill gives them the authority to require a portion of the funding to go to maintaining teachers and childcare staff on payroll. Further, providers typically not eligible for CCDBG may receive funding to support cleaning and sanitation activities. The provided CCDBG funds may be obligated for FY 2020, FY 2021, and FY 2022, and states do not need to change their state plans to receive funding.

Family Care for Essential Workers: The bill appropriates \$850 million to states under the Social Services Block Grant to cover dependent care costs for essential workers during the coronavirus national emergency. The funds cover the costs of care for both children and adults who cannot provide self-care. The definition of essential worker is fairly broad, including health care workers, emergency response workers, workers at businesses deemed essential by states, sanitation workers, and other workers who cannot telework for businesses designated as essential. The bill also grants states flexibility on how funding is given to child or adult care providers, including providing a childcare provider such funds or reimbursing essential workers for their use of childcare services.

Future Action

In the Senate, there has been bipartisan support to address the childcare sector. However, we expect there will be considerable debate and negotiations on the appropriations level for CCDBG and the inclusion of a separate childcare stabilization fund.

FOOD AND NUTRITION

Child Nutrition Programs: The HEROES Act appropriates \$3 billion for Child Nutrition Programs under the Food and Nutrition Service until September 30, 2021, to address the COVID-19 national emergency. The bill outlines reimbursement requirements for emergency funding for the School Meal Programs and the Child and Adult Care Food Program. The intention is to hold harmless the commodity allocations and other calculations for these programs during the national emergency. For example, for the National School Lunch Program, the number of lunches served by a school during the 2020 period will be equal to or greater than the number of lunches served by that school in 2019 or 2020. The same goes for commodity assistance. Further, as part of the reimbursement calculation, childcare operational costs during the pandemic is included. In addition, the bill provides flexibility for the Fresh Fruit and Vegetable Program to help children in low-income communities have access to fresh fruit and vegetables during the pandemic. The bill also gives the Secretary waiver authority for Child Nutrition Programs. Applications and the determinations must be posted on the Department's website.

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): The bill provides \$1.1 billion until September 30, 2021, for WIC. The Secretary has the authority to increase the amount of a cash-value voucher by \$35.

Pandemic-Electronic Benefit Transfer (P-EBT): The Act authorizes the program to continue through the summer and until schools reopen. States are permitted to have children, who otherwise would receive meals at childcare, to participate in the program. The P-EBT program allows states to provide emergency food assistance to low-income families with children who would otherwise receive free or reduced-priced school meals, but for the closing of their schools.

Supplemental Nutrition Assistance Program (SNAP): The bill provides an additional amount of \$10 billion until September 30, 2021, for SNAP. It also makes a number of changes to SNAP, including to benefits and eligibility, the food eligibility list, and SNAP-Ed. The bill increases administrative funding by \$150 million for FY 2020 and 2021 to states due to increased demand for SNAP because of COVID-19. Further, the bill anticipates the need for education of the program and provides flexibility for SNAP Nutrition Education as a means to support the distribution of non-congregate school meals.

The bill increases the SNAP benefit level by 15 percent and the minimum amount to \$30 a month. In calculating benefits, income from the Pandemic Unemployment Compensation is excluded. Currently, the purchase of hot foods is not allowed under SNAP, but the bill makes an exception during the COVID-19 health emergency. The bill also waives all SNAP work requirements for two years and prohibits funding for the Department to implement or finalize rules related to Able-Bodied Adults Without Dependents, Broad Based Categorical Eligibility, and Standard Utility Allowance. Curtailing funding to support the Department's actions on these rules is controversial as some of the rules are involved in legal battles.

The Emergency Food Assistance Program (TEFAP): Under the bill, the House appropriates \$150 million for TEFAP until September 30, 2021. The legislation requires the Agriculture Secretary to publish guidance to waive the non-federal matching requirements for administrative funds under TEFAP. Under the current matching requirements, states must distribute a minimum of 40 percent of administrative funds to emergency feeding organizations. For the funds states do not distribute, they are required to match them. The guidance must be posted to the Department's website no later than 10 days after the bill's enactment.

Farm to Food Bank Program: The bill provides \$25 million until September 30, 2021, to account for up to 100 percent of harvesting, processing, packaging, and transportation costs for commodities donated to food banks. As part of the program, dairy, meat, poultry, and specialty crops are prioritized.

Senior Farmers Market Nutrition Program (SFMNP): In implementing SFMNP, the Secretary is required to change or waive rules that states cannot comply with because of COVID-19 or it is necessary to support low-income seniors. No later than 10 days of states submitting their waiver applications, the Secretary must post each application and determination on the Department's website. This flexibility continues until 30 days after the COVID-19 national emergency ends.

Food Distribution Program on Indian Reservations (FDPIR): The Act waives the non-federal share requirement for FDPIR funds provided under the CARES Act, in addition to other flexibilities. For households on Indian reservations who receive SNAP benefits but cannot access SNAP retailers due to COVID-19, they can receive FDPIR support.

OTHER PROVISIONS

Pandemic Relief for Aviation Workers and Passengers: The bill extends the prohibition of involuntary furloughs of airline employees, or employees of contractors, that receive financial assistance through the CARES Act (i.e. Payroll Support Program grants) until funds are exhausted rather than ending September 30, 2020. The bill also clarifies that the CARES Act prohibits the Treasury Department from conditioning airline and contractor payroll grants on changes to current collective bargaining agreements. The bill seeks greater transparency on financial assistance to airlines by requiring the Treasury Department to publish descriptions of each issued payroll grant to airlines and contractors on the Department's website within 72 hours of issuance and submit the information to Congress.

The bill prohibits Airlines that receive a loan or loan guarantee under the CARES Act from increasing their share of heavy maintenance work done outside of the United States. The Department of Transportation would be required to develop a national aviation preparedness plan for communicable disease outbreaks.

The bill would also mandate that airlines, during the COVID-19 pandemic: (1) require flight attendants and passengers wear masks or face coverings; (2) require pilots wear a mask while outside of the flight deck; (3) provide pilots, flight attendants and customer-facing employees with masks or protective face coverings, gloves, hand sanitizer, and alcohol wipes; (4) ensure aircraft are cleaned and disinfected in accordance with CDC guidance; (5) ensure cleaning workers are provided masks or protective face coverings and gloves; and (6) establish guidelines for notifying employees of confirmed COVID-19 diagnoses. Further, the Federal Aviation Administration would be required to provide protective equipment and sanitized environments to certain employees.

Amtrak and Rail Workers: The bill provides that, for the duration of the COVID-19 pandemic, Amtrak must require passengers and employees to wear masks or face coverings while onboard an Amtrak train.

Transit COVID-19 Requirements: The bill would require the employees and passengers of large transit systems to wear masks or face coverings.

Immigration Matters: The bill allows for the extension of certain filing and other deadlines related to lawful immigration, including the automatic extension of temporary immigration status, temporary work authorization and immigration visas set to expire during the COVID-19 emergency. The bill also provides temporary protections to undocumented workers engaged in essential critical infrastructure work and temporarily eases certain immigration-related restrictions to allow immigrant physicians and other critical healthcare workers to assist in the fight against COVID-19, this includes expediting visas, providing flexibility for the transfer employees to work in COVID-19 hotspots, engaging in the development of COVID-19 vaccines and cures, and more.

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