

SHORT SUMMARY OF H.R. 6800 THE HEALTH AND ECONOMIC RECOVERY OMNIBUS EMERGENCY SOLUTIONS (HEROES) ACT

May 18, 2020

Note: This document was prepared by the Division of Government Relations of the American Council on Education (ACE) and is subject to revision.

SUPPORT TO INSTITUTIONS

State Fiscal Stabilization Fund (p.88):

- Provides a total of \$90 billion to support education.
- Reserves 1% (or \$900 million) for Bureau of Indian Affairs and outlying areas.
- Reserves \$30 million for administrative expenditures.
- Allocates remaining funds (\$89.070 billion) to states by calculating:
 - › 61% for the relative population of people ages 5-24 in the state; and
 - › 39% based on the relative population of children counted under ESEA.
- Of the state funds, 65% of funds (\$57,985,500,000) given to states are reserved for K-12.
- 30% of state funds (\$26.721 billion) are reserved for public higher education institutions.
- 5% (\$4,453,500,000) appears to be discretionary to the states, although still reserved for educational purposes.
- Within the state, funds for public institutions are formula allocated among institutions with:
 - › 75% based on the relative share of the total enrollment of Pell students at an institution to other public institutions within the same state; and 25% based on the relative share of the total enrollment to other public institutions within the same state.
 - › The allocation excludes students who were exclusively enrolled online at the time of the coronavirus emergency.
 - › The allocation appears to use headcount, rather than full-time equivalent enrollment as in CARES.
- Governors are required to reserve any funds beyond those necessary to make the allocations for making later adjustments to allocations to meet the \$1 million dollar floor provision. It is not clear, and the bill does not specify, what percentage of funds are required to be reserved from the overall state amount before the initial allocation to cover the subsequent adjustments.
- Institutions may use these funds for “education and general expenditures (including defraying expenses due to lost revenue, reimbursement for expenses already incurred, and payroll) and grants to students for expenses directly related to coronavirus and the disruption of campus operations

(which may include emergency financial aid to students for food, housing, technology, health care, and child care costs that shall not be required to be repaid by such students) or for the acquisition of technology and services directly related to the need for distance education and the training of faculty and staff to use such technology and services.”

- Establishes a floor for each institution with at least 500 students that is equal to the lesser of either \$1 million or the combined loss of revenue and new expenses associated with the coronavirus at the institution.
- An institution may not use funds to “increase its endowment or provide funding for capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.”
- Includes a Maintenance of Effort (MOE) provision that requires an assurance that state support for higher education (including any form of state financial aid) shall be equal to at least the average of the three preceding years; and that state funding on a per-FTE basis shall be equal in FYs 20-22 to at least what it was in FY19.
- Unlike in the CARES Act, HEROES does not provide the Secretary the authority to waive the MOE provision.
- Requires institutions “to the greatest extent practicable” to “continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.”

Higher Education (p. 96):

- Provides \$10.15 billion for higher education institutions.
- Reserves \$11 million for the National Technical Institute for the Deaf; \$20 million for Howard University; and \$11 million to Gallaudet University.
- \$1.708 billion reserved for MSIs
 - › Funding allocated to HBCUs (under part B of Title III) and masters programs at HBCUs and PBIs (under subpart 4 of part A of title VII) using three factors:
 - 70% on the basis of number of Pell Grant recipients relative to all Pell Grant recipients at such institutions;
 - 20% on the basis of total number of students enrolled relative to all enrolled students at such institutions; and
 - 10% “according to a ratio equivalent to the total endowment size at all eligible institutions at the end of the school year preceding the beginning of that fiscal year and the total endowment size at such institution.”
 - › For HBCU professional or graduate institutions (under section 326 of HEA), the Secretary shall allot to each eligible institution an amount in proportion to the award received in FY20 appropriations.
 - › For American Indian tribally-controlled colleges and universities (under section 316 of HEA), the Secretary shall allot funding according to the formula in section 316(d)(3) of the Higher Education Act.
 - › For PBIs (under section 318 of HEA), the Secretary shall allot funding according to the formula in section 318(e) of HEA.
 - › For institutions eligible under the Strengthening Institutions program (under part A of Title III of HEA) and HSIs (under parts A and B of Title V of HEA), the Secretary “shall issue an application for eligible institutions to demonstrate unmet need, and the Secretary shall allow eligible institutions to apply for funds under one of the programs for which they are eligible.”

- \$7 billion reserved for private nonprofits
 - › Allocated on a formula basis:
 - 75% on the basis of relative share of headcount enrollment of Pell recipients; and
 - 25% on the basis of relative share of headcount enrollment of non-Pell recipients.
 - Excludes students who were exclusively enrolled online at the time of the coronavirus emergency from the calculation.
 - › Establishes a floor that is equal to the lesser of either \$1 million or the combined loss of revenue and new expenses associated with the coronavirus at the institution, only for institutions with a headcount of at least 500 students.
 - › Requires the Secretary to reserve any funds beyond those necessary to make the allocations for making later adjustments to allocations to meet the \$1 million dollar floor provision. It is not clear, and the bill does not specify, what percentage of funds are required to be reserved from the overall pool of funding prior to the initial allocations to cover the subsequent adjustments.
 - › Allowable uses of these funds include: “to provide emergency grants to students who attended such institutions at any point during the coronavirus emergency and for any component of the student’s cost of attendance (as defined under section 472 of the HEA), including tuition food, housing, course materials, technology, health care, and child care): Provided further, That institutions of higher education may use such funds to defray expenses (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll) incurred by institutions of higher education.”
- \$1.4 billion reserved for grant funding to be disbursed through FIPSE to sec. 101 and 102(c) institutions with “unmet needs related to the coronavirus,” including exclusively online institutions.
 - › Requires the Secretary to design an application for institutions to use to demonstrate unmet “which shall include for this purpose a dramatic decline in revenue as a result of campus closure, exceptional costs or challenges implementing distance education platforms due to lack of a technological infrastructure, serving a large percentage of students who lack access to adequate technology to move to distance education, serving a region or community that has been especially impacted by increased unemployment and displaced workers, serving communities or regions where the number of coronavirus cases has imposed exceptional costs on the institution, and other criteria that the Secretary shall identify after consultation with institutions of higher education or their representatives.”
 - › Institutions are not eligible to receive a grant without filing an application.

Sec. 110501 – Forgiving Private Student Loan Debt (p. 1145):

Directs the Secretary to make private student loan payments on behalf of “economically distressed” borrowers through the end of September 2021; or until such time as \$10,000 in loan payments have been made. Defines “economically distressed” as being (for private loan borrowers also holding a federal student loan) an individual who:

- Has a zero-dollar payment due on an Income-contingent or Income based student loan;
- Is in default;
- Is 90 days past due and:
 - › Is in deferment due to economic hardship, unemployment or cancer treatment; or
 - › Is In forbearance.

Requires the Secretary to promulgate rules for determining whether a private student loan borrower who does not have federal student loans is economically distressed.

Sec. 150101 – Higher Education Provisions (p. 1344)

Sec. 150102 – Application of Waiver to Participating Nonprofit Employers (p. 1345):

Waives nonprofit share of Federal Work Study (FWS).

Sec. 150103 – Extension of Federal Work-Study During a Qualifying Emergency (p. 1346):

Extends section 3505 of CARES as it applies to FWS.

Sec. 150104 – Continuing Education at Affected Foreign Institutions (p. 1346):

Modifies the qualifying emergencies for foreign institutions enrolling students through distance education in cooperation with an American institution.

Sec. 150105 – Funding for HBCU Capital Financing (p. 1348):

Removes the \$62 million cap in the HBCU Capital Financing Loan Program.

Sec. 150106 – Waiver Authority for Institutional Aid (p. 1349):

Strikes the waiver of the allotment requirements in sec. 324 of HEA for certain District of Columbia eligible institutions that was provided in CARES.

Sec. 150107 – Scope of Modifications to Required and Allowable Uses (p. 1349):

Waives the allowable uses requirements in the Minority Science Engineering and Improvement Program. Clarifies that the Secretary may not approve CARES Act waivers that would modify the required or allowable uses of TRIO or other program funds in a manner that deviates from the overall purpose of the grant programs.

Sec. 150108 – Emergency Financial Aid Grants Excluded from Need Analysis (p. 1350):

Excludes any forms of emergency financial aid from counting as income for purposes of federal student aid eligibility, or as counting as financial assistance for aid packaging purposes.

Sec. 150109 – Facilitating Access to Financial Aid for Recently Unemployed Students (p. 1351):

Allows for any student who is receiving, or has applied for, unemployment benefits to be treated at the time of their application for the FAFSA, to be treated as a dislocated worker. Requires ED to work with institutions to ensure students are aware of their eligibility for, and the benefits allowed to them. Allows institutions, with explicit permission of the individual, to disclose information collected as part of the FAFSA to relevant federal agencies to verify eligibility for federal programs.

Sec. 150110 – Student Eligibility (p. 1357):

Restricts the Secretary from imposing any restrictions on or defining a student for the purposes of HEROES and CARES on anything other than their enrollment status at an institution.

Exempts institutions that disbursed funds under CARES from penalties “if such provision is consistent with such subsection and section 18004 of the CARES Act (Public Law 116–136).”

Sec. 150111 – Definitions of Distance Education (p. 1358):

Provides definitions of the terms “Distance Education,” “Technology,” “Instructor,” “Substantive Interaction,” and “Regular Interactions” which are drawn from the consensus language on distance education in the finalized, but not yet effective regulations.

Sec. 150112 – Institutional Stabilization Program (p. 1360):

Establishes a program for private nonprofit institutions to voluntarily enter into if they would fall below a 1.0 on their financial responsibility score and are concerned with their financial stability. Institutions that

participate are evaluated as to their liquidity, and if they fall at or below 90 days of liquidity, are required to sign a COVID-19 Provisional Participation Agreement, which mandates the institution implement a teach-out plan and a records retention policy on an expedited basis. Institutions can participate in the program for two years beyond the current year (so a maximum total of three years) and during this period, they are eligible for grant funding from a \$300 million fund (that is authorized, but not appropriated in the bill) and are not required to file a letter of credit.

Sec. 150113 – Expanding Loan Relief to All Federal Student Loan Borrowers (p. 1399):

Extends the suspension of payments and interest on some federal loans under CARES to all federal loans (including certain FFEL loans, Perkins Loans, and Public Health Service loans).

Sec. 150114 – Extending the Length of Borrower Relief Due to the Coronavirus Emergency (p. 1385):

Extends the suspension of payments, interest, and collections activity under CARES and HEROES to September 30, 2021. Refunds to borrowers the payment on principal made on eligible loans since the passage of CARES (as a means of making the payment by the Secretary retroactive). Suspends the requirement for borrowers in income-based repayment plans to recertify their income or family size for the next year.

Sec. 150115 – No Interest Accrual (p. 1388):

Suspends calculation and capitalization of interest on all federally-held covered loans, and pays interest on behalf of the borrower for all non-federally held loans for the length of the suspension period. The suspension period is either September 30, 2021, or a period in which the national U-5 measure of labor underutilization as calculated by BLS is lower on average over a three-month period than it was on average for the three-month period preceding Feb. 2020 and/or the rate has dropped for each of previous two consecutive months.

Sec. 150116 – Notice to Borrowers (p. 1397):

Requires the Secretary to provide notice to borrowers of their eligibility to consolidate, move to IBR loans, and the changes in the terms of their loans resulting from CARES and HEROES. Also requires the Secretary to provide not less than six notices to borrowers of their restored obligations when the period of suspension is due to expire.

Sec. 150117 – Writing Down Balances for Federal Student Loan Borrowers (p. 1399):

Requires the Secretary to make payments on behalf of “economically distressed borrowers” for all covered federal loans up to \$10,000. Exempts these payments from taxability as income.

Defines an “economically distressed borrower” as an individual who:

- Has a zero-dollar payment due on an Income-contingent or Income based student loan;
- Is in default;
- Is 90 days past due and:
 - › Is in deferment due to economic hardship, unemployment or cancer treatment; or
 - › Is In forbearance.

Sec. 150118 – Implementation (p. 1401):

Requires the holders of loans to report to the relevant Secretary on the payment of covered loans and the calculation of any interest due.

Sec. 150120 – Special Rules Relating to Federal Direct Consolidation Loans and PSLF (p. 1403):

Establishes new terms relating to borrowers consolidating their loans regarding the option to participate in PSLF and have their status within PSLF calculated by the Department. Requires the Secretary to notify borrowers of their eligibility, as well as notice when the period is expiring.

Sec. 150121 – Treatment of PSLF (p. 1417):

Provides eligibility for PSLF for health care workers in certain states that do not allow healthcare workers to be directly employed by hospitals, making them ineligible for PSLF as a result.

Sec. 150122 – Emergency Relief for Defrauded Borrowers (p. 1419):

Incorporates the text of a bill offered by Sen. Durbin that would offer loan relief to borrowers who have received a determination of a valid claim to borrower defense against repayment.

Sec. 150123 – Notification of Non-CARES Act Flexibilities (p. 1427):

Requires the Secretary to report to Congress on any waivers granted that were not specifically authorized under CARES.

RESEARCH FUNDING

The legislation includes \$4.745 billion for the National Institutes of Health for COVID-19-related research as well as to address issues related to supporting the shutdown and start-up costs of biomedical research, which may have stopped due to the COVID-19 crisis across the nation. The bill also includes \$125 million for the National Science Foundation to prevent, prepare for, and respond to the COVID-19 crisis and includes \$10 million for both the National Endowment for the Arts and the National Endowment for the Humanities.

INSTITUTIONAL ACCESS TO LOANS

Sec. 110604 – Main Street Lending Requirements (p. 1063):

The HEROES Act also expands the Main Street Lending program, which was established at the Federal Reserve following the passage of the CARES Act. The Federal Reserve is still finalizing the guidance on this program, but has said non-profits are currently ineligible. The HEROES Act would expand eligibility to non-profits, specifically including institutions of higher education as defined by Section 101 (a) of the Higher Education Act, and requires that the Fed offer a low-cost loan option to non-profits shortly after passage of the legislation. In addition, the loans could be forgiven for non-profits predominately serving low income communities that are ineligible for a PPP loan.

Sec. 90001 – Amendments to the Paycheck Protection Program (p. 821):

The bill would expand the SBA Paycheck Protection Program (PPP) and extend the covered period from June 30 until December 31. It would also expand eligibility to all nonprofits of all sizes (not just those with under 500 employees). It also provides a set-aside specifically for non-profits of 25 percent, with 12.5 percent for non-profits with under 500 employees. It does not include any additional funding for the program, which has already run out of funding since it was included in the original CARES Act.

DACA AND DREAMERS

Sec. 191201 – Extension of Filing and Other Deadlines (p. 1729):

Allows certain aliens who were lawfully present in the United States when HHS declared a public health emergency to be protected from negative immigration consequences due to the inability to meet filing deadlines or leave the country. Also allows for automatic extensions of temporary immigration status or work authorization if it is set to expire during the emergency, including those under Deferred Action for Childhood Arrivals (DACA).

TAX PROVISIONS

Sec 20211 – Improvements to Employee Retention Credit (p. 236):

Makes public institutions eligible for an expanded employee refundable payroll tax credit of up to 80% of \$15,000 in the wages paid to each employee by employers each quarter (and \$45,000 in the aggregate) during the COVID-19 crisis. Employers whose operations were “fully or partially” suspended due to government orders related to COVID-19 are eligible for the credit.

Sec. 120117 – Amendments to Emergency Paid Sick Leave Act (p. 1143)

Amended the emergency paid sick leave mandates enacted in the Families First Coronavirus Response Act to apply to all employers, removing the limit to employers with fewer than 500 employees. This means the paid sick leave mandate will apply to all public and private non-profit institutions. Based on the draft of the bill, it is still uncertain whether the FLMA paid leave mandate was also expanded to employers with 500 or more employees.

Sec. 20225 – Federal, State, and Local Governments Allowed Tax Credits for Paid Sick and Paid Family and Medical Leave (p. 270):

Makes public institutions eligible for the refundable tax credit that helps employers pay for the two forms of mandated paid sick and Family and Medical Leave Act (FMLA) leave enacted in the “Families First Coronavirus Response Act.” In addition, large private employers, including private non-profit institutions would be newly eligible for the refundable tax credit.

Sec. 20232 – Emergency Financial Aid Grants – Exempt from Taxation (p. 276):

Exempts all CARES Act emergency student financial aid grants and any institutional provided emergency student financial aid grants from taxation, and holds students who receive any such emergency financial aid grants harmless for eligibility under various higher ed tax credits.

CENSUS REPORTING

Sec. 70203 – Providing Bureau of the Census Access to Information from Institutions of Higher Education (p. 755):

Provides a targeted and limited waiver under FERPA for institutions of higher education to submit additional information beyond directory information to the Census Bureau in order to support a full and accurate decennial census. Before the information is submitted to the Census, institutions would be required to provide notice to all students and allow for individuals to opt out. Institutions may use this, but are not required to submit information beyond the existing Census requirements. It also prohibits institutions from sharing immigration or citizenship status of students.

TITLE XVI: SCIENTIFIC INTEGRITY ACT

Includes a sense of Congress that science should be free from politics, ideology, and financial conflicts of interest. Would amend the “America Competes Act” to require federal science agencies to create scientific integrity policies which would prohibit federal employees or contractors from engaging in scientific or research misconduct, suppressing scientific findings, and outlining procedures for applicable whistleblower protections to ensure scientific integrity. Agencies would also be required to appoint a Scientific Integrity Officer, post an annual report on reports of misconduct around scientific integrity, and coordinate with the White House Office of Science and Technology Policy (OSTP).