

Delivering Immediate Relief to America’s Families, Schools and Small Businesses Act Summary

On August 18, 2020, Senate Republicans circulated a copy of a bill entitled the “Delivering Immediate Relief to America’s Families, Schools and Small Businesses Act.” This act does not provide individual relief payments nor address the Coronavirus Relief Fund and is a slim version of the Senate Republicans “Health, Economic Assistance, Liability Protection and Schools” (HEALS) Act. These Senate Republican packages are in response to the House Democrat’s Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) which passed the House of Representatives on May 15, 2020.¹

Liability Protection

- Creates a federal cause of action for “coronavirus exposure claims” and “coronavirus medical liability claims” against entities including governments and health care providers. This cause of action is the exclusive remedy for all claims for personal injury caused by exposure to coronavirus.
- The definition of governments and “individual or entity” includes tribal governments which are defined as:
 - (A) IN GENERAL.—The term “Tribal government” means the recognized governing body of any Indian tribe included on the list published by the Secretary of the Interior pursuant to section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131(a)).
 - B) INCLUSION.—The term “Tribal government” includes any subdivision (regardless of the laws and regulations of the jurisdiction in which the subdivision is organized or incorporated) of a governing body described in subparagraph (A) that— (i) is wholly owned by that governing body; and (ii) has been delegated the right to exercise 1 or more substantial governmental functions of the governing body.
- The immunity of any state and tribal government is not abrogated by the Act. In the event of a duly executed sovereign immunity waiver, the limitations on liability in the Act would control.
- Preempts federal, state, and tribal law that provides for recovery for COVID-19 actions except for laws that impose *stricter* liability limitations.
 - Liability limitations do not apply to enforcement actions by governments, discrimination lawsuits, and workers compensation actions.
- Provides liability for intentional misconduct or gross negligence that is defined as reckless disregard of: a (1) legal duty, (2) the consequences to another party, and (3) applicable government standards and guidance.
 - “Applicable government standard” only includes standards by federal, state, and local jurisdictions.

¹ A NCAI summary of the HEROES Act is available here: <http://www.ncai.org/Covid-19/indian-country-priorities-for-covid19-stimulus/hr-6800>



- Provides employers with protection from liability under federal labor and employment laws if acting in compliance with “applicable government standards.”
- Provides for concurrent original jurisdiction in district court and removal from tribal court to federal court.

PPP Updates

- Paycheck Protection Program Improvements
 - Expands the types of expenses for which loan funds may be used: operations, property damage, supplier costs, worker protection expenditures.
 - Lender safe harbor: no enforcement action will be taken against a lender who, in good faith, relies on certification or documentation provided by a borrower.
 - Allows the borrower to select the covered period for loan forgiveness ending no later than December 31, 2020.
 - Provides a simplified application processes for loan forgiveness for loans less than \$150,000 and for loans between \$150,000 and \$2 million.
 - Extends PPP eligibility to 501(c)(6) organizations.
- PPP Second Draw
 - Provides for a second loan from the PPP for eligible businesses, including Tribal Business Concerns that are under 300 employees and had gross receipts during the first and second quarter of 2020 that are not less than 35% of gross receipts from the same quarter of 2019.
 - Limits loans to businesses not in existence during the year prior to February 15, 2020, to \$2 million.
 - Sets aside \$25 billion for eligible entities with not more than 10 employees as of February 15, 2020.
 - Creates a \$10 billion set aside for community lenders and directs the SBA Administrator to issue guidance addressing barriers for access to capital for underserved communities.
 - Prohibits the use of funds for lobbying activities.
 - Permits PPP borrowers to request an increase in loan amount due to updated regulations.
 - Rescinds \$100 billion of unobligated balances in the “Small Business Administration—Business Loans Program Account, CARES Act” and appropriates \$257.69 billion to that same account for PPP loans which includes PPP Second Draw Loans. This action would add \$157.69 billion in new funding to the program.
 - Provides \$10 million for technical assistance to minority small business concerns.

Unemployment Insurance

- Extends the Federal Pandemic Unemployment Compensation Program from the CARES Act through December 27, 2020.
- Changes the payment amounts from \$600 to \$300 for weeks of unemployment after July 31, 2020 or beginning the week after an agreement is entered into.

Education

- Education Stabilization Fund to prevent, prepare for, and respond to COVID-19:



- \$227.6 million set aside for Tribal Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Native American Serving Non-tribal Institutions.
- \$525 million for the Bureau of Indian Education under the terms and conditions established for funding provided under this heading in the CARES Act.

Health:

- Not less than \$500 million for necessary expenses for testing, contact tracing, surveillance, containment, and mitigation including support for workforce, epidemiology, use by employers, elementary and secondary schools, child care facilities, institutions of higher education, long-term care facilities, or in other settings, scale-up of testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, health care facilities, and other entities engaged in COVID-19 testing, and other related activities related to COVID-19 testing, contact tracing, surveillance, containment, and mitigation.

Postal Service:

- Amends section 6001 of the CARES Act to convert a \$10 billion treasury loan available to the USPS into direct funding that will not require repayment.