

TO: Ann Gergen
FROM: David Farber and Scott Dziengelski
DATE: May 22, 2020
RE: Heroes Act

This memorandum provides a brief summary of the Health and Economic Recovery Omnibus Emergency Solutions Act (HR 6800). Commonly referred to as the “HEROES Act,” it was developed by House Democrats and recently passed by the House of Representatives. The legislation *will not* be taken up by the Senate, as both the Senate Republicans, and the White House have stated that: (1) another pandemic response package shouldn't be enacted until there has been more time to gauge the effectiveness of the earlier-enacted packages; and (2) the legislation's new level of spending will inappropriately add to federal deficits and the debt.

Senate Minority Leader Mitch McConnell (R-KY) has stated that there is little urgency among Republicans to develop another response package. Democrats have responded saying that there is an urgency, both because state and local governments are facing severe revenue shortfalls from the virus' negative impact on the economy and because many low-income households and small businesses have yet to receive aid. They note that those state and local revenue shortfalls may result in deep cuts to state and local budgets, including to first responders, and many individuals who have lost their jobs have also lost their health coverage and lack funds to purchase groceries and pay their rent or mortgage.

The HEROES Act, which is an estimated \$3 trillion bill, does include a number of provisions that would have impacted AGRiP members. Therefore, despite the legislation not coming up for a vote in the Senate, this memorandum highlights the relevant provisions for AGRiP. Specifically, the nearly \$1 trillion in direct aid to state and local governments, including to help cover revenue shortfalls caused by the coronavirus pandemic's impact on the economy, as well as additional aid to impacted workers. The legislation would provide hazard pay to frontline workers, additional funds for national testing and aid to hospitals, aid to schools, and funds to prepare for the November elections.

Virus-Related Sick & Family Leave

The recently passed Families First Coronavirus Response Act, enacted March 28, generally required businesses with fewer than 500 employees to provide two weeks (80 hours) of paid sick leave to employees affected by the new coronavirus, and to provide two weeks of sick leave and an additional 10 weeks of paid family and medical leave for employees who must care for a child who no longer has childcare or whose school is closed because of the coronavirus pandemic. Under that law, the Labor Department was allowed to exclude health care providers

and emergency responders from eligibility for such leave, and could also exempt small businesses with fewer than 50 employees if imposing the leave requirements would jeopardize the business.

The HEROES Act proposes to extend those sick and family leave requirements through Dec. 31, 2021, while also immediately applying the requirements to all businesses (not just those with less than 500 employees). The legislation would also end the Labor Department's authority to exempt health care providers and emergency responders as well as small businesses with fewer than 50 employees — so that the requirements would apply to all workers. The measure also clarifies that: (1) virus-related sick and family leave is in addition to any sick leave provided by an employer and the regular unpaid family leave an individual is eligible for under the Family and Medical Leave Act; and employees taking sick leave to care for a family member who is quarantined or a child who no longer has childcare or whose school is closed because of the coronavirus are eligible for two weeks of sick leave at their full pay, up to \$511 per day, equal to the level for those taking sick leave to self-isolate or receive treatment (under the Families First law, those taking care of others may receive only two-thirds of their regular pay, capped at \$200 per day). When taking family leave to care for a family member or child, an employee must receive at least the minimum wage for their area (rather than being limited to two-thirds their regular pay, capped at \$200 per day). The legislation also provides that full emergency paid sick leave is available to employees when they begin employment. Finally, it provides that employees taking the paid family leave may take that leave intermittently or work a reduced schedule.

Aid to Individuals (Benefit Carryovers, FSAs)

The bill allows for carryovers of certain employee benefits from calendar year 2020 to 2021, including up to \$2,750 in unused benefits or contributions for health FSAs, up to the annual maximum amount of unused dependent care assistance benefits or contributions for dependent care FSA, and unused paid time off. It also allows participants to make a one-time change to contributions to an FSA or to amounts of paid time off, and it allows FSA grace periods to be extended for up to 12 months after the end of the 2020 plan year (thereby allowing for 2020 contributions to be used for expenses incurred up to 12 months after the end of the plan year; normally, contributions expire and cannot be used beyond the plan year in which they were made).

Public Service Loan Forgiveness

The Public Service Loan Forgiveness program forgives the remaining balance on direct student loans after an individual makes 120 monthly payments under a repayment plan while working full-time for any governmental organization (federal, state, or local) or a tax-exempt non-profit organization. The measure also proposes to remove the requirement that a borrower must be employed by a public service employer at the time of forgiveness under the program. It also allows a borrower with a full-time job as a health care practitioner working at a public or non-profit hospital or health care facility — but who is prohibited by state law from being employed directly by the hospital or health care facility — to be eligible.

Frontline Workers, Testing & Health Provisions

The bill includes provisions to support frontline workers, including by establishing a \$180 billion Heroes fund to finance an additional \$13 an hour hazard pay for essential workers during the pandemic and requiring the Occupational Safety and Health Administration (OSHA) to issue an emergency temporary workplace standard to protect workers from the coronavirus. Under the measure, employers of essential workers could apply for and receive grants from the Heroes Fund to pay essential workers \$13 per hour over their regular wages for work performed from Jan. 27, 2020, until 60 days after the last day of the COVID-19 public health emergency. In addition to covering all of the premium pay to essential workers, the grants would cover employer payroll taxes for the premium pay.

For state, local, tribal and private sectors, the bill defines "essential work" as fulfilling four criteria: it is performed during the COVID-19 public health emergency; it is not performed while teleworking; it involves regular interaction with others or items handled by others; and it is work in any of 33 enumerated areas of work. The 33 enumerated areas of work include health care, first responders, and public transportation. Workers performing essential work would be eligible for a maximum of \$10,000 in such pay, although "highly compensated" essential workers (those earning above \$200,000) would only be eligible for a maximum of \$5,000. If an essential worker develops symptoms of COVID-19 and dies, the worker's next of kin would receive the remainder of the premium pay as a lump sum.

The bill also establishes a presumption that public safety officers who die or are disabled because of COVID-19 infection are eligible to receive disability and death benefits. Officers who were injured or disabled during or because of the Sept. 11, 2001 attacks, and whose injuries in combination with a COVID-19 illness result in disability or death, may apply for disability or death benefits. It provides a temporary above-the-line tax deduction for supplies and equipment for first responders and COVID-19 frontline workers. For tax year 2020, first responders and COVID-19 frontline employees could deduct \$500 for uniforms, supplies and equipment.

The bill further provides \$1 billion for HHS to make grants to state and local governments to support the improvement, renovation or modernization of infrastructure at clinical laboratories. The grants must improve diagnostic and serological testing and response activities, including the expansion and enhancement of testing capacity. It also provides \$450 million for HHS to expand, enhance and improve the public health data systems used by the CDC by making grants to state, local, tribal or territorial public health departments for the modernization of public health data systems. Grants could be used to assess current data infrastructure capabilities and gaps; improve secure data collection, transmission, exchange, maintenance and analysis; and enhance the interoperability of public health data systems. Grants could also be used to support and train personnel, support earlier disease and health condition detection, and develop and disseminate related information and electronic case reporting.

The bill subsidizes the full cost of health insurance premiums through Jan. 31, 2021, to allow workers to retain their employer-sponsored coverage through COBRA. Under the measure, the federal government would cover the premiums for COBRA due to a layoff or reduction in

hours, as well as for workers furloughed but still participating in their employer-sponsored health insurance plan.

Aid to State & Local Governments

The CARES Act created a State and Local Coronavirus Relief Fund in the Treasury with funds to be allocated on a per capita basis, with a minimum of \$1.25 billion for states that have relatively small populations. Those CARES funds are going directly to state and territorial governments to reimburse them for increases in spending this year associated with their response to the pandemic — but they cannot be used for other purposes.

The HEROES Act would add to the CARES funding and provide nearly \$1 trillion to states, U.S. territories, local governments, municipalities and tribal governments to help them cover revenue shortfalls caused by the coronavirus pandemic, as well as to pay for expenses incurred due to the COVID-19 public health emergency. The total includes \$500 billion in direct federal appropriations for states, \$375 billion for local governments, cities and other municipalities, \$20 billion for U.S. territories, \$20 billion for tribal governments and \$755 million in retroactive payments to the District of Columbia.

Because of the major impact of the pandemic on the economy, state and local governments are experiencing severe budget shortfalls with revenues falling far below projections, forcing those governments to consider cutting health, education and other programs as well as government services, including fire and police. This bill provides a new and larger tranche of funds that can be used to help fill in the revenue gap, as well as to continue supporting first responders, frontline health workers, transit employees, teachers, and other workers providing vital services. The measure also eliminates the restrictions on the state and local aid provided by the CARES Act, so it can be used for purposes other than pandemic response.

The bill provides \$375 billion for local governments, cities and other municipalities — including \$250 billion to be disbursed within 30 days of enactment and the remaining \$125 billion to be provided one year after enactment. The initial \$250 billion for municipalities and counties would be disbursed \$125 billion to counties based on population, and \$125 billion to municipalities using a modified Community Development Block Grant (CDBG) formula, with \$87.5 billion to entitlement municipalities (generally defined as those with populations of 50,000 or more) and \$37.5 billion to non-entitlement municipalities (generally defined as those with populations under 50,000). The funds for non-entitlement municipalities would be awarded to states, which would then make awards to those non-entitlement cities based solely on population within 30 days of receipt.

The remaining \$125 billion for municipalities and counties would be awarded one year after the date of enactment \$62.5 billion to counties based on population, and \$62.5 billion for municipalities again using a modified CDBG formula, with \$43.75 billion going to entitlement municipalities (populations over 50,000) and \$18.75 billion to non-entitlement municipalities (populations under 50,000).

The bill defines "essential worker" to include: health care sector workers, emergency response workers, sanitation workers, workers at businesses which state or local officials have determined must stay open to serve the public during the COVID-19 emergency, and any other worker who cannot telework and who the state or local government deems to be essential during the pandemic.

The bill also directly appropriates \$9.6 billion to the Social Services Block Grant to provide emergency aid and services to disadvantaged children, families, and households. It requires the Health and Human Services Department to distribute the funds to all 50 states, the District of Columbia, and all U.S. Territories within 45 days, and requires states and territories to obligate the funds by Dec. 31, 2020.

Under this section, states would be required to pass through at least 50% of the funds to county governments, local governments working in partnership with community-based organizations, or directly to community-based organizations with experience serving disadvantaged individuals or families. States must report to HHS on their plan for distribution within 90 days.

Funds could be used to provide basic economic and well-being necessities, provide necessary supplies to protect against infection, help connect individuals and families to payments and services for which they are eligible, provide short-term cash, non-cash, or in-kind disaster relief, and pay operational costs directly related to providing the services and maintaining local social service operations to assist needy families.

Community Development Block Grants

The bill provides \$5 billion for the Community Development Block Grant (CDBG) program to enable nearly 1,240 states, counties, and cities to rapidly respond to COVID-19 and the economic and housing impacts caused by it, including the expansion of community health facilities, child care centers, food banks, and senior services.

The bill eliminates the cap on the amount of funds a grantee can spend on public services, removes the requirement to hold in-person public hearings in order to comply with national and local social distancing requirements, and allows grantees to be reimbursed for COVID-19 response activities regardless of the date the costs were incurred.

Volunteer Firefighters and Emergency Medical Responders

At the end of 2019, Congress passed the Setting Every Community Up for Retirement Enhancement (SECURE) Act which reinstated for one year certain exclusions that allow volunteer fire and EMS personnel for 2020 to receive nominal recruitment and retention incentives — without those incentives being considered as taxable income. The bill makes the exemption permanent.