



A SUMMARY OF THE EDUCATION PROVISIONS IN THE HEROES ACT 2.0

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September 30, 2020

Background

The latest supplemental relief proposal, a rehash of the [Health and Economic Recovery Omnibus Emergency Solutions Act](#) (the HEROES Act), is expected to be passed by the House of Representatives this week. Speaker Nancy Pelosi (D-CA) is meeting with Treasury Secretary Steve Mnuchin today to see if they might develop a compromise palatable to Democrats, Senate Republicans and the White House, but significant differences remain. The \$3 trillion Heroes Act passed by the House earlier this year was too large to win Senate passage or White House approval. The Senate-proposed HEALS Act didn't spend enough for Democrats, who argue the economic effects of the pandemic warrant significant investments in state and local budgets, education, unemployment benefits and other programs. Middle ground remains elusive.

The latest bill, unveiled on Monday, would spend \$208 billion on the Education Stabilization Fund, an amount much closer to the \$250 billion that education advocates [were initially requesting](#) to support states desperately trying to back fill funding. Similar to funds provided via the CARES Act, the bill would send governors and state education leaders funds to spend as they see fit to address local needs. It also would invest \$12 billion in addressing the "homework gap."

While negotiations on COVID relief continue, the regular FY 2021 appropriations process may finally have a temporary resolution as the Senate is prepared to pass a Continuing Resolution (CR) that will fund the government until December 11, fulfilling a prediction many made in May. That leaves final FY 2021 spending decisions to a lame duck Congress.

Education and Related Appropriations Provisions of the HEROES 2.0

The CARES Act, which was enacted in March of this year, provided \$30.75 billion for education. (A summary of the CARES Act's education provisions is [here](#).) The HEROES Act 1.0 tripled funding for education to reach the same level of education funding provided in the American Recovery and Reinvestment Act of 2009 (ARRA) signed during the Great Recession. (A summary of the education provisions of the HEROES Act is [here](#).) The HEROES Act 2.0 more than doubles the funding from the bill passed by the House in May for a total education investment of \$225 billion, with \$208 billion allocated to the Stabilization Fund. The education funding includes \$182 billion for K-12 schools and nearly \$39 billion for postsecondary education. The cost-savings that allow for this increase for education funding comes from cutting in half the funding for state and local fiscal relief (a large portion of state budgets support education), down from \$915 billion in the original bill to \$436 billion in this version.

Education Stabilization Fund: \$208 billion

Funding is allocated to the governor of each state, to outlying areas and BIE schools, and to LEAs via SEAs. Funding is not dependent upon schools reopening, and can be used for the types of services and supplies that were allowed under the CARES Act. Funding is divided as follows:

- \$175 billion for elementary and secondary education

- \$27 billion for postsecondary education

- \$4 billion for governors to use on education, including restoring state and local education support (pages 150-151)

\$2 billion for Bureau of Indian Education, tribal colleges and outlying areas
\$30 million for administration and oversight of the grants at the Department of Education

State Grant Allocation:

- **K12.** The allocation uses the same formula as HEROES 1.0 with 61 percent of the remaining total funding (after allocations to governors, BIE schools, outlying areas, and reservations for administering funds) or \$175 billion distributed based on the count of children aged 5-24 and then 39 percent based on the proportion of children in poverty under the Title I Basic Grants to Local Education Agencies (LEAs) formula. Similar to the CARES Act, one percent of total funding is reserved for both outlying areas and the Bureau of Indian Education (BIE) in consultation with the Department of Interior.
 - 85% of this funding shall be sub granted to local education agencies (LEAs) as administered by the state education agencies (SEAs).
- **Higher Education.** 13 percent, or \$27 billion, of the remaining funds are to be used for public postsecondary education, with 75 percent of funding granted out based on the number of Pell Grant-eligible students. Funds can be used for an institution's needs and for grants to students (there is a separate section described below for private institutions)

Application Notice. The Secretary shall issue a notice inviting applications not later than 15 days after enactment.

Prohibitions. The Secretary is prohibited from establishing any priority or preference not specified in this title or from imposing any limits on the use of funds not specified in this title. That means the Secretary would unlikely be able to use the set-aside funding to promote priorities such as vouchers or programs such as the Rethink K-12 Education Models Grant. States cannot use this agreement as a reason to displace or not fulfill any collective-bargaining agreements. LEAs may not use funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities whose IEPs require such placement. Colleges and universities may not use funds to increase their endowments or to fund capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.

Assurances and Maintenance of Effort. Any State receiving funding must maintain its percent of total spending on elementary, secondary, and postsecondary education in fiscal year 2019 for fiscal years 2020, 2021, and 2022. This Maintenance of Effort (MOE) provision also requires that each governor shall provide baseline data to demonstrate the State's current levels of funding to establish a benchmark.

- For K-12 funds, the State must also provide assurances that it shall maintain support that equals the average funding for elementary and secondary education in the three fiscal years preceding the date of enactment of this Act, which would be FY 2018 through FY 2020. Funds may not be used for students to attend private school unless subject to their IEP.
- For postsecondary education, the same requirement applies but the calculation must exhibit actual state support and may not include funding for capital projects, research and development revenues, or student tuition and fees. This provision is to keep States from further eroding direct funding for colleges and universities which causes institutions to pass on costs to students through higher tuition and fees. States must also sign assurances to provide students with disabilities their full rights to a Free and Appropriate Public Education (FAPE rights) under the Individuals with Disabilities Education Act (IDEA).

Uses of Funds for K-12. As under the CARES Act and HEROES 1.0, LEAs may use the funds for any activity authorized under ESSA. Additional uses of funds by for elementary and secondary schools include:

- Coordination of activities with State, local, tribal, and territorial public health departments to detect, prevent, or mitigate the spread of infectious disease or otherwise respond to coronavirus.
- Support for online learning through the purchase of educational technology and internet access for students that aids teacher student interaction and which may include assistive technology or adaptive equipment that aids in regular and substantive education interactions between students and their classroom instructor.
- Providing ongoing professional development to staff to effectively provide quality online academic instruction.
- Providing assistance, which is not clarified whether direct or indirect assistance, for children and families that promotes equitable participation in quality online learning. (Quality online learning is not defined but distance education is defined.)

- Planning and implementing activities related to supplemental afterschool programs and summer learning, including providing classroom instruction or quality online learning during the summer months.
- Planning and coordinating for long-term closures that includes:
 - providing technology for quality online learning to all students; and
 - how to specifically support the needs of low-income students, racial and ethnic minorities, students with disabilities, English learners, students experiencing homelessness, and children in foster care, including how to address learning gaps that are created or exacerbated due to long-term closures.
 - This includes activities authorized under Title III of the ESEA, such as ensuring the access of English learners to online learning, supporting professional development on digital instruction for English learners, engagement with the parents of English learners, expanded summer and after-school programs, and mental health supports
- Supporting the continuity of student engagement through social and emotional learning.
Other activities deemed necessary to maintain the operation of and continuity of services at the district level, including maintaining employment of existing personnel, and reimbursement for eligible costs.

Uses of Funds Higher Ed. The State Fiscal Stabilization Fund may be used to support public colleges and universities as well. Any public college or university must use the funds for the following:

- Expenditures for education and general costs such as defraying expenses due to lost revenue, reimbursement for expenses already incurred, and employee payroll.
- Providing 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. Similar to the Higher Education Emergency Relief Fund in the CARES Act, students would not have to repay any grants provided by the school.
- Support for the acquisition of technology and services directly related providing for distance education and the training of faculty and staff to use such technology and services.
 - Funds may NOT be used to pay contractors pre-enrollment activities.
 - Any college or university that is not otherwise eligible for a grant of at least \$1,000,000 under this section shall be eligible to receive funding up to \$1,000,000 or the total loss of revenue plus increased costs associated with the national emergency, whichever is lesser.
- Funds may also be used to support hourly workers, such as education support professionals, classified school employees, and adjunct and contingent faculty.
 - Funds may NOT be used for capital outlay projects or the support of athletics, sectarian instruction, or religious worship

Elementary and Secondary School Facilities Aid: \$5 billion

Notice. The Secretary shall provide notices inviting applications no later than 30 days after enactment. Applications for grants to the SEA must be approved or denied within 30 days of receipt. The governor of each state may designate a different agency other than the SEA for receipt of grant.

Allocation. Funding shall be allocated by the Secretary to each state in the same proportion as each state received under part A of title I of the ESEA in the most recent fiscal year. The state may reserve up to .5 percent for administrative costs.

- **Sub grants to LEAs.** Within 60 days of notice, each State shall allocate the remaining grant funds as sub grants to LEAs with the highest percentages of students eligible for free or reduced price lunch that also have public school facilities with the highest needs related to the coronavirus as determined by the state. LEA applications to the state shall include a description of coronavirus met needs and a cost estimate based on coronavirus impact. LEAs must provide a report on the use of funds 60 days after receiving such funds.

Uses of Funds. LEAs may use funds for the following-

- School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.
- Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.
- School facility repairs and improvements to support improved personal hygiene, such as repair, replacement, and installation of sinks for hand washing and touchless water dispensers for drinking, and health isolation areas.

- Inspection, testing, maintenance, repair, and replacement of school facility potable water systems to provide safe drinking water after prolonged shutoffs.
- Improvements to finishes, such as painting and other surface repair, needed to enable effective sanitizing.
- Improvements to school grounds needed to enable outdoor instruction and other physically distanced school activities.
- Training of school facility staff in association with the above uses of funds.
- Planning, assessment, management, design, renovation, repair and construction activities in association with the above uses of funds.
- Inspection, testing, maintenance, repair, replacement, and upgrade projects to electrical systems to allow or improve information technology to provide virtual education.

Higher Education Fund: \$11.95 billion

In addition to the Education Stabilization Fund, the HEROES Act 2.0 also provides \$11.942 billion in funding for colleges and universities that is available through FY 2022.

Allocations.

- \$3.5 billion shall be used for supplementing Strengthening Institutions and Strengthening HBCU programs (parts A and B of title III), supporting Hispanic-Serving Institutions (parts A and B of title V), and supporting graduate programs at HBCU's and Predominately Black Institutions (subpart 4 of part A of title VII) to address needs directly related to coronavirus. Funds will be further allocated by the Secretary based on the following formula.
 - 70 percent on the ratio of Pell recipients at the individual institution divided by the total number of Pell recipients at all eligible HBCUs.
 - 20 percent on the ratio of all students enrolled at the individual institution divided by the total number of all students enrolled at eligible HBCUs.
 - 10 percent based on endowment.
- \$8.4 billion will be distributed via the Fund for Improvement of Postsecondary Education (FIPSE).
 - Of that funding, \$7 billion is to be provided to private, not-for-profit institutions of higher education that would not necessarily receive funding under the State Fiscal Stabilization Fund which is reserved for public institutions of higher education. 75 percent of funding is based on Pell recipients and 25 percent based on total enrollment.
 - \$1.4 billion is reserved for institutions with unmet needs, which includes ability to provide distance education and remote learning.
 - Private, non-profit institutions with at least 500 students are eligible for grants of \$1,000,000.

Other Notable Education-related Funding:

- \$32 million for the **Institute of Education Sciences** to prevent, prepare for, and respond to coronavirus for carrying out the National Assessment of Educational Progress Authorization Act.
- \$336 million for the **Corporation of National and Community Service**, with \$228 million for new AmeriCorps awards/grants.
- \$135 million for the **Institute of Museum and Library Service**.
- \$300 million for education and human resources directorate at the **National Science Foundation**.
- \$12 billion for the **Emergency Connectivity Fund**. Provides for the funding for Wi-fi hotspots, modems, other equipment, connected devices, and advanced telecommunications and information services to schools and libraries.
- \$3 billion for **Emergency Broadband Connectivity Fund**.

Non-appropriations Initiatives:

Emergency Broadband Connectivity Fund. Requires the FCC to promulgate regulates for the emergency broadband benefit for households and expedite access to the verification tool for providers of broadband to determine household eligibility

FCC E-Rate Support. Requires the FCC, which administers the E-rate Program for schools and libraries, to promulgate regulations to provide funding for school and library students, teachers and other staff, and library patrons, to access equipment such as modems and hot spots, as well as advanced telecommunications and information services. Reimbursement for such

equipment and services is to equal 100 percent of the amount spent or as reasonable with respect to the school or library's request.

Federal Loan Payment Suspension. Maintains that students with federal education loans shall not be required to make payments until September 2021 and that any interest accrual will be paid by the Department of Education. For borrowers making application for loan consolidation, those borrowers will be permitted to apply for public service loan forgiveness. Also for applications for income based repayments and income contingent repayments, each month that a borrower has met the requirements for on-time payment while in an eligible profession as certified by ED, shall count as a qualifying monthly payment.

Cares Act Waiver Reporting to ED. Each institution of higher education that exercises an authority provided under sections 3503(b), 3504, 3505, 3508(d), 3509, or 3517(b) of the CARES Act, such as allowing for comingling of FSEOG and FWS funds, or reserving those funds for students unable to work due to the pandemic, shall submit to the Secretary a report that describing how the waiver and subsequent funding was used to benefit students.

Require the Secretary of Education to Conduct Audits of College/University Financial Security.

Require the Secretary of Education to Approve Colleges and Universities Offering Expanded Distance Education. Institutions of higher education that did not go through the standard approval process for distance education that was in effect prior to March 5, 2020, complete that evaluation and approval of all expanded programs to determine if the institution can and has effectively provided a distance education program.

Maintains Clarification on the Definition of Distance Education from HEROES 1.0. Programs starting in the next academic year (on or after August 15, 2020) are subject to the Department of Education's proposed rule on Distance Education and Innovation published on April 2, 2020. Here, distance education is defined as education that uses technology to deliver instruction to students who are separated from the instructor(s) and to support regular and substantive interaction between the students and the instructor(s), either synchronously or asynchronously.

Oversight of ED by Congress:

- **Oversight of Federal Student Loan Contractors.** Secretary shall submit quarterly reports to the authorizing committees includes, a summary of all modifications to any contracts with Department of Education contractors relating to Federal student loans; a summary of all amendments, addendums, or other modifications to program participation agreements with institutions of higher education and sample copies of such.
- **Report on Student Loan Payments and Federal Direct Student Loan Consolidations.**

Perkins Career and Technical Education (CTE) Act Flexibility. This section provides additional flexibility in the Perkins CTE program such as pooling funds among awardees and allowing Perkins CTE entities to retain funds at the local level instead of returning unspent academic year funds to the state.

Support for Virtual Apprenticeships. Not later than 30 days after the date of the enactment, the Secretary of Labor shall identify and disseminate strategies and tools to support virtual and online learning and training in apprenticeship programs.

Conclusion

The HEROES Act 2.0 is expected to pass the House this week with support from only Democrats, but there is still hope for a compromise on much-needed relief for the country that would include significant investments in education. The CR is poised to pass the Senate today and be sent to the President for signature before midnight. Although the CR will continue to fund programs upon which schools and states rely, unless Secretary Mnuchin and Speaker Pelosi reach a deal on this significantly scaled back version of the HEROES Act, it is unlikely that schools will see any supplemental funding before the election. *The text of revised version of The Heroes Act is [here](#). A one-pager on the legislation is [here](#). A section-by-section summary is [here](#). Additional information on the state and local relief provisions is [here](#).*