

House passes ‘Phase Four’ economic disruption relief bill

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In brief

The House late on May 15 voted 208 to 199 to pass a \$3 trillion ‘Phase Four’ COVID-19 relief bill that would provide additional economic assistance to individuals and businesses. While the Congressional Budget Office has not yet released an estimate of the budgetary cost of the entire legislation, the House Democratic bill includes nearly \$1 trillion for state and local governments that have been impacted by the economic effects of the pandemic and over \$1 trillion in tax reductions, partly offset by tax increases.

H.R. 6800, the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, includes numerous tax provisions that generally extend or expand ‘Phase Three’ tax provisions enacted in late March as part of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). However, the House-passed bill would narrow the scope of CARES Act net operating loss (NOL) relief provisions for corporations and pass-through businesses.

The HEROES Act also includes proposed changes to the refundable payroll tax credits for paid sick and family leave enacted as part of ‘Phase Two’ relief legislation, the Families First Coronavirus Relief Act (FFCRA).

While generally building off recent COVID-19 relief legislation, the HEROES Act includes provisions from bills previously considered by the Democratic-controlled House in 2019 before the declaration of the COVID-19 public health emergency. These include a temporary repeal of the 2017 tax reform act’s cap on individual deductions for state and local taxes and temporary expansions of certain refundable tax credits.

Administration officials and Congressional Republican leaders have expressed opposition to the House-passed bill, but have indicated a willingness to consider additional economic relief measures. A May 14 White House statement indicates that President Trump would veto the House bill as currently drafted and states that any additional legislation should include “a payroll tax holiday, safe-harbor provisions to protect businesses from frivolous lawsuits, permitting reform to facilitate infrastructure projects, and other policies to spur our economic comeback.”

In detail

The HEROES Act includes significant tax provisions and other measures to assist individuals and businesses impacted by the economic effects of the COVID-19 pandemic. The Joint Committee on Taxation staff have estimated that revenue provisions in the HEROES Act would reduce federal revenues by a net \$883 billion over 10 years, excluding the revenue impact for retirement provisions and certain other provisions in the legislation that JCT staff have not yet estimated.

The HEROES Act as introduced was modified by a House manager's amendment. The summary below reflects the amended legislation as passed by the House.

Individual tax relief

The CARES Act provided refundable 'recovery rebate' payments of up to \$1,200 for individuals, \$2,400 for married couples, and \$500 per child. The rebate begins to phase out after \$75,000 for a single filer and \$150,000 for a joint filer, and completely phases out after \$99,000 for a single filer (\$198,000 for a joint filer).

The HEROES Act would provide a second round of refundable tax credit payments for 2020 in a manner similar to the CARES Act recovery rebate payments. Under the House bill, the additional rebate would be \$1,200 for a single taxpayer (\$2,400 for joint filers), in addition to \$1,200 per dependent up to a maximum of three dependents. The HEROES Act would phase out the credit payments in the same manner as the CARES Act.

In addition, the HEROES Act would modify the earlier CARES Act recovery rebate provision to make all dependents eligible for the \$500 qualifying child payments that previously were only applicable to children below the age of 17. This allows households with dependents who are full-time students below age 24 and adult dependents to also receive the \$500 amount. The HEROES Act also would allow recovery rebate payments to be made to eligible individuals who provide a Taxpayer Identification Number (TIN), rather than a Social Security Number (SSN). The Treasury Department would be directed to issue a rebate equal to a taxpayers' redetermined rebate less the previously issued rebate. These modifications would be made effective retroactive to the date of enactment of the CARES Act.

Among other provisions, the HEROES Act includes the following individual tax relief:

- An expanded earned income tax credit (EITC) for individuals with no qualifying children for 2020, in addition to other modifications to the EITC.
- An expanded refundable child tax credit for 2020.
- An expanded refundable child and dependent care tax credit for 2020.
- An increase in the exclusion for employer-provided dependent care assistance for 2020.
- Increased flexibility for certain employee benefits for 2020, including health and child care flexible spending arrangements.
- An increase from \$250 to \$500 in above-the-line deductions for certain expenses of elementary and secondary school teachers.
- A \$500 above-the-line deduction for unreimbursed expenses of professional first responders related to the cost of uniforms or tuition and fees related to training.
- A temporary \$500 above-the-line deduction for uniforms, supplies, and equipment of first responders and COVID-19 'front-line' employees.
- Non-taxable student loan forgiveness of up to \$10,000 for certain low-income students.

The HEROES Act would eliminate for 2020 and 2021 the \$10,000 cap on the individual itemized deduction for state and local taxes that was enacted as part of the 2017 tax reform act. Under the proposal, the cap would remain in effect for tax years 2022 through 2025.

Business tax relief

Enhanced employee retention credit

The CARES Act provides a new temporary refundable 50% employee retention credit for employers subject to full or partial business suspension due to the COVID-19 emergency, or for employers whose gross receipts have significantly declined due to COVID-19 (defined as a reduction in gross receipts of more than 50% when compared to the same quarter in the prior year).

The HEROES Act would expand the employee retention credit by increasing the applicable percentage of qualified wages reimbursed by the credit against the employer's share of payroll taxes from 50% to 80%. The bill also would modify the gross receipts requirement to allow a partial credit, phased in for a decline in gross receipts between 10% and 50% compared to the same calendar quarter of the previous year.

Additional changes to the employee retention credit include increasing the limit on wages taken into account per employee from \$10,000 for the year to \$15,000 per quarter (limited to \$45,000 for the calendar year). All of the proposed changes to the employee retention credit would apply retroactively to the effective date of the credit in the CARES Act.

Other business tax relief provisions

Among other provisions, the HEROES Act also includes the following business tax relief for 2020:

- A 50% refundable payroll tax credit for certain qualified fixed costs, including covered rent obligations, covered mortgage obligations, and covered utility payments.
- A 90% business interruption credit for certain self-employed individuals who have experienced a significant loss of income.
- A 30% refundable payroll tax credit for expenses reimbursed or paid by employers for the benefit of an employee for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a presidentially declared disaster related to COVID-19.

Limits on CARES Act net operating loss relief

The CARES Act allows an NOL from tax years beginning in 2018, 2019, or 2020 to be carried back for five years. Additionally, it temporarily removes the current-law taxable income limitation to allow an NOL to fully offset income. Further, the CARES Act makes a retroactive technical correction to the 2017 tax reform act to allow NOLs arising in a tax year beginning in 2017 and ending in 2018 to be carried back two years.

The CARES Act also modifies an NOL limitation applicable to pass-through businesses and sole proprietors to permit utilization of excess business losses for tax years beginning before January 1, 2021.

The HEROES Act would amend the CARES Act NOL provision by limiting carrybacks to tax years beginning on or after January 1, 2018 (i.e., after the reduction of corporate income tax rates from 35% to 21% following the enactment of the 2017 tax reform act). In addition, taxpayers with 'excessive executive compensation or excessive stock buybacks and dividends' would be prohibited from carrying back losses. This provision would be effective retroactive to the date of enactment of the CARES Act.

JCT staff has estimated that limiting CARES Act NOL carryback relief to tax years beginning on or after January 1, 2018 would increase revenue by \$7.9 billion over 10 years.

The HEROES Act also would restore the active loss limitation of \$250,000 for single taxpayers and \$500,000 for married filing jointly taxpayers. This proposal would limit NOLs applicable to pass-through businesses and sole proprietors and make the limitation permanent, effective retroactively to the date of enactment of the CARES Act.

JCT staff has estimated that restoring and making permanent the limitation on excess business losses for non-corporate taxpayers would increase revenue by \$246.2 billion over 10 years.

Observation: The CARES Act provided NOL tax relief as part of a general effort to provide increased liquidity to businesses impacted by economic losses associated with the coronavirus pandemic. Administration officials and Congressional Republicans leaders have expressed opposition to increasing business tax burdens during a time of

economic disruption and have indicated that they oppose efforts to repeal the CARES Act NOL relief as part of any final 'Phase Four' agreement. In its veto statement, the White House specifically objected to the NOL changes for non-corporate taxpayers, describing that provision as "rais[ing] taxes on struggling small businesses by limiting deductibility of losses."

Paycheck Protection Program modifications

The CARES Act provided \$349 billion for a Small Business Administration 'Paycheck Protection Program' (PPP) to provide loans up to a maximum of \$10 million to eligible businesses, nonprofits, or veterans organizations. Loan forgiveness is provided for loan amounts spent during an initial eight-week period for certain expenses including payroll costs, with the amount of loan forgiveness dependent on employee retention. Congress subsequently approved legislation providing an additional \$310 billion for the SBA loan program.

The HEROES Act would modify the PPP by allowing a business receiving loan forgiveness also to defer payment of payroll taxes under the CARES Act. The House bill also would provide that expenses that are paid or incurred with the proceeds from a PPP loan that is forgiven do not result in a denial of any deduction or basis of any asset for federal tax purposes.

In addition, the HEROES Act would expand the PPP loan forgiveness safe harbor and the allowable use of expenditures eligible for loan forgiveness. The definition of eligible nonprofit entities would be expanded to include Section 501(c)(6) trade associations; however, PPP assistance to lobbyists would be prohibited, and covered loans would be prohibited to nonprofits engaged in election and campaign activities.

Credits for paid sick and family leave

The HEROES Act would extend and expand through the end of 2021 the refundable payroll tax credits for paid sick and family leave enacted as part of 'Phase Two' FFCRA relief legislation. The House bill also would repeal a reduced rate of credit for certain leave and increase the limitations on credits for paid family leave, among other changes.

Retirement provisions

Among other provisions, the HEROES Act includes the following retirement plan relief proposals:

- Relief for multiemployer plans, including repeal of benefit suspensions for multiemployer plans in critical and declining status.
- Extended amortization rules for single-employer plans affected by interest rate and market volatility due to the COVID-19 public health crisis.
- Extension of pension funding stabilization percentages for single-employer plans.
- Waiver of required minimum distributions for 2019.
- A statutory clarification permitting employee certification as to eligibility for increased CARES Act loan limits from an employer plan.
- Special rules for 'composite plans' composed of features of a traditional defined benefit plan and of a 401(k)-style defined contribution plan.

Other HEROES Act provisions

In addition to providing nearly \$1 trillion for state and local governments, the HEROES Act includes provisions that would extend increased unemployment benefits, create a \$175 billion housing assistance fund, and increase food assistance funding. The legislation also would provide new subsidies for laid-off workers to pay health insurance premiums under COBRA and a special sign-up period to join federally subsidized Affordable Care Act health exchanges, among other measures intended to assist individuals affected by the pandemic and its economic fallout.

The legislation would establish a COVID-19 'Heroes Fund' for certain state, local, tribal, and private-sector workers performing 'essential work' in any of 33 enumerated areas of work (e.g., health care, first responders, grocery stores, and transportation) that is not performed while teleworking and involves regular interaction with others or items handled by others. Employers that apply for and receive Heroes Fund grants will pay essential workers \$13 per hour premium pay on

top of regular wages. Essential workers are eligible for up to \$10,000 (up to \$5,000 for essential workers earning above \$200,000) for work performed from January 27, 2020 until 60 days after the last day of the COVID-19 public health emergency.

The HEROES Act includes additional funding for federal agencies and would provide \$25 billion for the US Postal Service. The legislation also proposes changes to federal election laws in cases of natural disasters and emergencies, including provisions for increased early voting and voting by mail.

Initial responses to House Democratic ‘Phase Four’ bill

Administration officials and Congressional Republican leaders have expressed opposition to the House-passed bill, but have indicated a willingness to consider additional economic relief measures.

A May 14 White House statement indicates that President Trump would veto the House bill as currently drafted and states that any additional legislation should include “a payroll tax holiday, safe-harbor provisions to protect businesses from frivolous lawsuits, permitting reform to facilitate infrastructure projects, and other policies to spur our economic comeback.” The White House statement specifically cites as “misguided” provisions in the House bill that would suspend the cap on individual itemized deductions for state and local taxes and, as noted above, also objected to the provision repealing the CARES Act loss limitation relief for pass-through entities.

“We’re going to insist on doing narrowly targeted legislation,” said Senate Majority Leader Mitch McConnell (R-KY). “Our legislation is going to create a legal safe harbor for businesses, nonprofits, governments, workers, and schools who are following public health guidelines to the best of their ability.”

Some Senate Republicans have expressed support for providing additional assistance to state and local governments. Senator John Kennedy (R-LA) and a group of Senate Republicans met recently with President Trump and senior administration officials to discuss proposals to give state and local governments more flexibility to use the \$150 billion already approved by Congress. Senator Bill Cassidy (R-LA) has joined with Senator Bob Menendez (D-NJ) in proposing to provide an additional \$500 billion in assistance to state and local governments.

House Ways and Means Ranking Member Kevin Brady (R-TX) has expressed support for President Trump’s efforts to provide additional payroll tax relief. In addition, Rep. Brady has proposed a credit to help companies with expenses associated with reconfiguring workplaces and incorporating testing and protective equipment into their facilities. Rep. Brady also has expressed support for consideration of tax incentives to improve domestic supply chains for certain vital medical supplies.

Rising concerns over the economic effects of COVID-19

Consideration of ‘Phase Four’ relief legislation comes at a time of increased economic disruption associated with efforts to limit the spread of the coronavirus and avoid higher numbers of deaths. More than 36 million applications for unemployment assistance have been filed in the last two months. A recent Federal Reserve survey found that “among people who were working in February, almost 40% of those in households making less than \$40,000 a year had lost a job in March.”

The most recent unemployment report for the month of April showed an increase in the jobless rate to 14.7%. Administration officials have cautioned that the unemployment rate could exceed 20% when the May report is issued on June 5.

Some Administration officials and Republican members of Congress have expressed concern about rising federal budget deficits resulting from reduced economic growth and the enactment of more than \$2.4 trillion in relief legislation. At the same time, Treasury Secretary Steven Mnuchin has noted that low interest rates are helping the government to manage the cost of recent relief legislation.

The Congressional Budget Office (CBO) on April 24 projected that the federal budget deficit for Fiscal Year 2020 would be \$3.7 trillion and that federal debt held by the public would equal 101% of GDP by the end of the current fiscal year. CBO projected that interest rates on three-month Treasury bills and 10-year Treasury notes are expected to average 0.1% and 0.6-0.7%, respectively, through 2021.

In a May 13 public address, Federal Reserve Chairman Jerome Powell noted the “devastating human and economic toll” being left in the wake of the coronavirus. “Additional fiscal support could be costly, but worth it if it helps avoid long-term economic damage and leaves us with a stronger recovery,” Chairman Powell remarked.

The takeaway

Passage of the House Democrats ‘HEROES Act’ marks the beginning of increased focus on Phase Four legislation to provide relief for individuals and businesses from COVID-19 economic disruption. While the Senate is not expected to immediately respond to the House bill, bipartisan concerns over the economic effects of COVID-19 make it likely that the Trump Administration and Congress will take action on a significant ‘Phase Four’ relief package in coming weeks.

Additional information

For a staff summary of the HEROES Act as introduced, click [here](#).

For bill text of the HEROES Act as introduced, click [here](#).

For bill text of the House manager's amendment, as reported, click [here](#).

For JCT staff revenue estimates, click [here](#).

For PwC’s March 25 Insight on the “Phase Three” CARES Act, click [here](#).

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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