HEROES Act
Provisions Impacting YMCAs

The U.S. House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) on Friday. While the HEROES Act is just the first step in Congress passing another COVID-19 relief package, the nonprofit community can celebrate some clear advocacy wins and some partial successes – though there is still more work to be done.

Below is a summary of provisions that impact YMCAs and other nonprofits.

Paycheck Protection Program Provisions

House Summary: Supports small businesses and nonprofits, by strengthening the Payroll Protection Program to ensure that it reaches underserved communities, nonprofits of all sizes and types and responds flexibly to small businesses by providing $10 billion for Covid-19 emergency grants through the Economic Injury Disaster Loan program.

Highlights

- Extends the covered period from June 30 to December 31, 2020.
- Expands PPP to nonprofits of all sizes and types
    - Removes the 500-employee cap
    - Includes all 501(c) employers as eligible, e.g., social welfare, unions, chambers
    - Removes nonprofits from the affiliation rule that was intended to block Planned Parenthood from access to PPP loans.
        - Makes ineligible 501(c)(4) social welfare organizations that have made election-related expenditures at the federal, state, or local levels and prohibits 501(c)(4) organizations that receive PPP loans from making such election-related expenditures through the calendar year. (Manager's Amendment pp 46-47)
- Corrects Treasury/SBA Interim Final Rule by:
    - Setting minimum maturity at 5 years (up from 2 years in Rule)
    - Banning forgiveness limits on non-payroll expenses – the 75%/25% rule (Sec. 90004)
    - Mandating deferment of principal and interest for 1 year (up from 6 months) (Sec. 90008)

- Creates 25 percent set-aside for PPP funding for nonprofits
    - Half for nonprofits with 500 or fewer employees
    - Half for nonprofits with more than 500 employees
- Makes payments for personal protective equipment allowable uses of PPP loan money and treats expenses as forgivable. (Manager's Amendment pp 50, 51)
- Sets aside 25 percent of PPP funding for eligible employers with 10 or fewer employees, and for community financial institutions the bill would set aside the lesser of 25 percent or $10 billion from remaining funds under the interim funding bill passed in April.
- Loan Forgiveness Changes (Sec. 90004)
    - Expands covered period from 8 weeks to the earlier of 24 weeks or December 31, 2020. It also extends the rehire exemption from June 30 to December 31, 2020.
    - Makes technical corrections to expressly allow forgiveness of payments on interest on pre-existing debt.
    - Alters application forms to require demographic information and reporting of full-time equivalents on Feb. 15, 2020, at date of application, and upon application for loan forgiveness.
- Mandates that SBA provide reports on loan approval and disbursement to nonprofits, provided on a state, congressional district, industry, and loan size. (Sec. 90016)

Loan Program for Mid-Sized Nonprofits

House Summary: Main Street Lending Program requirements. This section mandates that the Federal Reserve's Main Street Lending Program, which was established utilizing CARES Act funds and is backstopped by the Treasury Department, include non-profit organizations as eligible borrowers, and stipulates that the Fed immediately offer a low-cost loan option tailored to the unique needs of nonprofit organizations with deferred payments, and the loan may be forgiven solely for non- profits predominantly serving low-income communities that are ineligible for a PPP loan.

Highlights

- Mandates creation of a low-cost loan program for nonprofits, one that includes the ability to defer payments. (Sec. 110604)
- Makes institutions of higher education eligible. (Manager's Amendment p 57)
- Loans to nonprofits serving low-income communities are eligible for loan forgiveness along the lines of CARES Act Sec. 1106 shall be granted. (Sec. 110604) (Manager's Amendment p 57 corrects a drafting error)
- Makes ineligible 501(c)(4) social welfare organizations that have made election-related expenditures at the federal, state, or local levels and prohibits 501(c)(4)

organizations that receive PPP loans from making such election-related expenditures through the calendar year. (Manager's Amendment p 58)

- Only gives the Federal Reserve five days from date of enactment to implement the nonprofit lending program. (Sec. 110604)
- Also mandates that the Federal Reserve ensure that at least one loan option for which small nonprofits and small businesses are eligible has no minimum loan size. (Sec. 110605)

Employee Retention Credit

- Increases the value of the employee retention credit from the current 50 percent of $10,000 to a maximum of 80 percent of $15,000 for up to three quarters, i.e. from a maximum of $5,000 to a maximum credit of $36,000. It would make it clear that the cost of health care is covered even if wages are not paid during the period. (Sec. 20211)
- Modifies the existing gross receipts requirement (triggered by a decline of 50 percent) to allow a partial credit, phased in for a decline in gross receipts (calculated by nonprofits using Form 990, Line G) between 10 percent and 50 percent compared to the same calendar quarter of the previous year. (Sec. 20211)
- Changes retroactive to the effective date of the CARES Act. (Sec. 20211)
- Also would provide a 50 percent refundable payroll tax credit for qualified fixed costs, including rent, mortgage, and utility payments, which are defined the same as under Sec. 1106 of the CARES Act, relating to forgiveness of Paycheck Protection Program loans. This provision is limited to employers with 1,500 or fewer employees or gross receipts (calculated using Form 990, Line G) of no more than $41,500,000 in 2019. (Sec. 20212)
- With these changes, the Employee Retention refundable credit may be a better deal for some nonprofits than the Paycheck Protection Program.

Delayed Payment of Payroll Taxes

- Removes prohibition to allow nonprofits and businesses receiving Paycheck Protection Program loan forgiveness to delay payment of the employer portion payroll taxes in 2020; payable in equal halves at the end of 2021 and 2022. (Sec. 20231)

Unemployment Insurance (Sec. 50005)

House Summary: Extension of emergency relief and technical corrections for governmental entities and nonprofit organizations. This section would extend the financial relief provided to reimbursable employers in the CARES Act through January 31, 2021, and make technical corrections to ensure that states can simply waive 50 percent of the amount owed by such employers.

<u>Highlights</u>

- This fixes the issue of nonprofits having to reimburse and then waiting to get reimbursed for their reimbursement, effectively overriding the bad guidance issued by US DOL on April 27.

- The provision does not raise the reimbursement rate to 100 percent, meaning that nonprofits will still be charged for half the costs of basic unemployment benefits received by their former employees.

Emergency Paid Leave

- Extends the paid leave provisions under the Families First Coronavirus Response Act to nonprofits and other employers with more than 500 employees. Applying the paid leave provision only to smaller employers was a last-minute change to the Families First Act back in March. (Secs. 120104 and 120117)

(Updated with Manager's Amendment Revisions, May 14, 2020)