

U.S. TRAVEL

ASSOCIATION®

Health, Economic Assistance, Liability Protection and Schools (HEALS Act)

The HEALS Act represents the initial offer of coronavirus relief legislation by Senate Republicans in response to the HEROES Act, which was previously passed by House Democrats. Key elements of the Republican proposal include the following:

Liability Protections

- **Guards against a patchwork of state coronavirus exposure liability laws and provides certainty for businesses seeking to rehire and reopen by:**
 - Establishing an exclusive federal cause of action for all personal injury claims related to coronavirus exposure at schools, colleges, nonprofits, government agencies, or businesses;
 - Establishing a federal floor for liability by preempting all state coronavirus exposure liability laws that impose broader grounds, but permitting states to enact more limited liability laws; and
 - Allowing any one defendant in a state court to remove a case to federal court.
- **Provides limited safe harbors for entities that make reasonable efforts to follow applicable government coronavirus standards and guidelines, including:**
 - Safe harbor from coronavirus exposure liability for entities that make a good faith effort to comply with at least one set of applicable government coronavirus standards and guidelines; or maintain a written or published policy on mitigation of coronavirus transmission that meets or exceeds applicable standards and guidance.
 - Protection from liability under certain federal labor and employment laws¹ if a business makes reasonable attempts to satisfy such laws, such as exploring virtual training or remote communications.
 - Safe harbor from being liable under, or found in violation of, certain public accommodation laws² if lodgings, entertainment venues, restaurants, or other places of public accommodation³ offer the requested accommodations because doing so would pose a serious public health risk.
 - Protection from lawsuits for injuries caused by workplace coronavirus testing unless the injuries were caused by gross negligence or intentional misconduct.
- **Provides immediate, but temporary, safe harbor by:**
 - Applying the federal cause of action and liability relief to coronavirus exposure actions that were filed before the date of enactment and are still pending, or to cases that are filed on or after the date of enactment; and
 - Sunsetting the federal cause of action and liability protections on October 1, 2024, unless the coronavirus public health emergency continues after that date.

¹ Including the Occupational Safety and Health Act (OSHA), the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), the Worker Adjustment and Retraining Notification (WARN) Act, Title VII of the Civil Rights Act of 1964, Title II of the Genetic Information Nondiscrimination Act (GINA), and Title I of the Americans with Disabilities Act (ADA)

² Title II of the Americans with Disabilities Act (42 U.S.C. 12181 et seq.); or the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.)

³ As defined in section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a); or as defined in section 301 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181)

- **Protects struggling businesses against frivolous lawsuits and abusive litigation by:**
 - Requiring plaintiffs to prove by clear and convincing evidence that a defendant was not making reasonable efforts to comply with applicable government standards and guidance and that the defendant's gross negligence or willful misconduct caused the plaintiff's injuries; and
 - Limiting compensatory damages to economic losses, requiring defendants to pay only their proportionate share of damages owed to a plaintiff; and prohibiting punitive damages.
- **Encourages businesses to provide coronavirus assistance to contract workers:** Clarifies that providing coronavirus-related assistance to an independent contractor or to the employee of another employer does not create an employment relationship between the person who provided the assistance and the person who received it.
- **Provides flexibility during COVID-19 under the WARN Act:** Exempts employers during the coronavirus emergency from certain notification requirements under the Worker Adjustment and Retraining Notification (WARN) Act that normally require a notice period for employment decisions.

PPP

- The loan application deadline is extended to December 31, 2020.
- The maximum loan size is reduced from \$10 million to \$2 million.
- Eligibility is extended to any destination marketing organization that has 300 employees or less and is tax exempt under section 501(c) of the tax code, is a quasi-governmental entity, or is a political subdivision of a State or local government, including any instrumentality of a State or local government.
- Expands the type of expenses eligible for loan forgiveness to include expenses related to business software or cloud computing services, property damage costs related to any public disturbance occurring in 2020, supplier costs associated with a contract in effect before February 15, 2020, and expenses required to meet federal COVID-19 health and safety guidelines.
- Allows borrowers to decide how long they want their covered period for loan forgiveness to last by choosing any date between 8 weeks after loan origination and December 31, 2020.
- Maintains limits on PPP loan forgiveness to 40% of the forgivable amount for non-payroll costs and 60% of the forgivable amount for payroll costs.
- Allows small farmers (including vineyards) and ranchers to base their loan amount on 2.5 times their average monthly gross income, up to \$2 million.

PPP 2nd Draw (PPP2D) Loans

- Allows any business, 501(c)(3) organization, veterans organization, tribal business, self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative to receive a second PPP loan if—
 - They meet SBA size standards for revenue or have 300 employees or less; and
 - Experienced at least a 50 percent decline in revenue in the first or second quarter this year compared to the same quarter last year (with allowances for those that didn't exist in the first or second quarter last year);

- Eligibility is not extended to any entity that is government owned, is an organization primarily engaged in lobbying, or is at least 20 percent owned by any entity that has significant operations in China or Hong Kong.
- For most employers, the loan amount is based on 2.5 times the average monthly payroll costs of the borrower during the 1-year period before the date on which the loan is made, up to \$2 million.
- For seasonal employers, the loan amount is based on 2.5 times the average monthly payroll costs over a 12-week period last year, up to \$1 million.
- Loan forgiveness is provided for the following eligible expenses made during the covered period:
 - payroll costs,
 - interest payments on mortgage debt (not including prepayments),
 - expenses for business software or cloud computing services,
 - property damage costs related to any public disturbance occurring in 2020,
 - rent
 - utilities
 - supplier costs associated with a contract in effect before February 15, 2020, and
 - expenses required to meet federal COVID-19 health and safety guidelines.
- The maximum amount of loan forgiveness is based on eligible payroll costs divided by 0.6.

Recovery Sector Loans

- Provides 20-year loans to small businesses based on 200 percent of their average annual receipts, up to \$10 million.
- Eligible borrowers include businesses with 500 employees or less and seasonal businesses with 250 employees or less, but only if they—
 - Had at least a 50 percent decline in gross receipts in a quarter this year compared to a comparable quarter in 2019 (or any 2-month period in 2020 for new businesses); and are either--
 - a seasonal employer seeking a loan of not more than \$1 million; or
 - located in a low-income census tract (or a census tract in a county with a poverty rate above 20 percent).
- Entities that receive a PPP 2D loan are not eligible for Recovery Sector loans. Additionally, eligible entities can only receive one Recovery Sector loan, with a loan application deadline of December 31, 2020.
- The interest rate is set at 1%, with borrowers able to defer payment on principal and interest for the first 2 years. SBA can grant an additional 2-year deferral if the borrower is deemed “economically distressed.”
- All loan fees are waived, and the borrower doesn’t have to prove an inability to obtain affordable credit elsewhere. However, collateral and personal guarantee requirements still apply.
- Eligible uses include any expense needed to meet working capital needs, acquire fixed assets, or refinance existing debt (not including SBA EIDLs).

Resources for PPP, PPP2D, and the Recovery Sector Loan program

- Appropriates an additional \$90 billion for PPP and PPP2D, providing a total of \$190 billion for the programs.
- Appropriates \$57.7 billion for the Recovery Sector Loan program, with a max obligation limit of \$100 billion.

ERTC

- Includes enhancements to the Employee Retention Tax Credit, but less generous than some of the enhancements made in the HEROES Act:

	HEALS Act	HEROES Act
Tax Credit Formula	65% of compensation, up to \$10,000 in compensation each quarter (limited to \$30,000 for the calendar year)	80% of compensation, up to \$15,000 in compensation each quarter (limited to \$45,000 for the calendar year)
Revenue Decline Requirement	25% decline in revenue in a quarter this year compared to the same quarter last year	50% decline in quarterly revenue required to get the full credit, but provides a partial credit for those experiencing a decline in quarterly revenue between 10% and 49%
Allowance for “Small Employers” Open for Business	Employers with 500 employees or less can claim the credit for employees that are working.	Employers with 1,500 employees or less can claim the credit for employees that are working.
Expanded Eligibility	Employers receiving PPP loans, if the PPP loan is not forgiven.	State and local government employers if their operations are fully or partially shut down

WOTC

- Provides a temporary expansion of the Work Opportunity Tax Credit (WOTC) to include unemployed individuals hired before January 1, 2021.
- Employers can claim the credit to cover 50 percent of the first \$10,000 of qualified first-year wages for eligible workers.

Safe and Healthy Workplace Tax Credit

- Creates a refundable payroll tax credit worth 50 percent of expenses needed to prevent the spread of COVID-19, including expenses related to COVID-19 testing, protective personal equipment, cleaning supplies, workplace reconfiguration, and contactless technology solutions.
- For each quarter, the credit is capped based on the sum of (1) \$1,000 for each of the first 500 employees, (2) \$750 for each employee between 500 and 1,000, and (3) \$500 for each employee that exceeds 1,000.
- The credit is retroactive, covering any eligible expense incurred between March 12, 2020 and January 1, 2021.
- For self-employed individuals, including sole proprietors and independent contractors, the credit can be claimed against income taxes.

Food & Beverage Expense Deduction

- Provides full deductibility of business expenses for food and beverages, if provided by a restaurant and incurred between the date of enactment and January 1, 2021.

CRF

- Allows states and local governments to use their Coronavirus Relief Fund (CRF) allocations to cover revenue shortfalls if they—
 - distribute at least 25% of their total allocation to downstream governments, and
 - use no more than 25% of their total allocation to cover revenue shortfalls compared to 2019, including lodging tax shortfalls.
- Extends the deadline to use CRF funds to December 2021.

UI Relief

- Increases the amount by which nonprofit organizations and governmental entities (including tribes) can reduce their reimbursements to States for unemployment insurance benefits paid to their workers, by 75 percent. Previously, the CARES Act allowed them to reduce their reimbursements by 50 percent.

Remote Work Tax Flexibility

- Pre-empts states and local governments from assessing income taxes on workers residing out of state because of pandemic-related shutdown orders, allowing income taxes to only be assessed if the worker earned income in the state for more than 90 days (or more than 30 days for non-pandemic related remote work going forward).
- Gives employers the discretion to treat employees' wages as earned at either their normal work location or at the location in which such duties were remotely performed, until the earlier of when the employees return to their normal work location or the end of the calendar year.
- Employers are exempt from any registration or tax requirement that comes with establishing physical nexus while their employees are working remotely.

Pandemic Unemployment Compensation

- Reduces the \$600 per week bonus to individuals receiving unemployment insurance (UI) benefits, to \$200 per week for those receiving unemployment benefits through the end of September.
- Starting in October, bonus payments would be replaced with a payment (up to \$500) that, when combined with the state UI payment, would replace up to 70 percent of lost wages.

Rebate Check

- Provides a \$1,200 (\$2,400 for married couples) tax rebate, plus \$500 per dependent (regardless of age).
- The rebate begins to phase out for individuals making \$75,000 per year (\$150,000 for married couples filing jointly), with a complete phaseout for those making more than \$99,000 per year (or \$198,000 for married couples).

Additional Emergency Appropriations (Liability Protections)

What U.S. Travel called for:

- Provide \$10 billion in Economic Development Administration (EDA) grants for promoting safe and healthy travel practices.
- Provide \$13 billion in additional relief for U.S. airports.
- Provide robust federal funding for research and development of new, rapid and accurate COVID-19 tests; to expand laboratory capacity; expand data collection and contact tracing; and to develop a national testing strategy.

SUMMARY: The HEALS Act provides an additional \$306 billion in discretionary supplemental appropriations to respond to the health and economic impacts of the coronavirus, and to support federal agency operations. The HEALS Act:

- Does not provide additional funding for EDA grants for travel promotion.
- Provides \$10 billion in additional relief for U.S. airports.
- Provides more than \$26 billion to fund research and development of new, rapid and accurate COVID-19 tests; to expand laboratory capacity; expand data collection and contact tracing; and provide grants for testing and contact tracing to states.

FUNDING FOR TRAVEL-RELATED PROGRAMS and PRIORITIES

Homeland Security

- **Transportation Security Administration – \$208 million.** The proposal provides \$208 million for enhanced cleaning and investments in technology necessary to reduce physical contact with travelers.
- **Customs and Border Protection -- \$1.6 billion:** Provides \$1.6 billion Customs and Border Protection (CBP) to account for fee shortfalls to continue immigration processing and customs-related activities normally funded by fees.

Labor, Health and Human Services, Education, and Related Agencies

- **State Unemployment Insurance and Employment Service Operations – \$1.15 billion.** The proposal provides \$1.15 billion for states to process unemployment claims and make needed IT upgrades to their unemployment systems.

Department of Health and Human Services

- **Centers for Disease Control and Prevention -- \$1.7 billion for testing and contact tracing.** The proposal includes \$1.5 billion to continue supporting state, local, and territorial efforts for contact tracing, COVID-19 testing, enhance laboratory capacity, infection control, and other preparedness efforts; and \$200 million to modernize public health data reporting.
- **Public Health and Social Services Emergency Fund -- \$25 billion for testing, contact tracing and surveillance in States.** The proposal provides \$16 billion for testing, contact tracing, and surveillance in states. This new funding, when combined with approximately \$9 billion that remains unallocated from the Paycheck Protection Program and Health Care Enhancement Act, would make \$25 billion available for these purposes.

State, Foreign Operations, and Related Programs

- **Department of State – \$425 million.** The proposal provides \$425 million for Consular and Border Security Programs to mitigate the impact of declining visa and passport revenue.
- **Extends the use of visa and passport fees to fund consular affairs:** addresses the loss of Department of State visa and passport fees by extending the use of visa and passport security fees already collected to fund consular affairs through FY 2021.

Transportation, Housing and Urban Development, and Related Agencies

- **Airport Improvement Program (AIP) – \$10 billion.** The proposal provides \$10 billion to FAA's AIP to maintain operations at our nation's airports that are facing a record drop in passengers. Funding will be distributed by statutory entitlement and enplanements formulas and may be used for operating expenses and debt service. Funding is also set aside to maintain Contract Tower operations.
- **Essential Air Service (EAS) – \$75 million.** The proposal provides \$75 million to maintain existing EAS service to rural communities, which is necessary to offset the reduction in overflight fees that help pay for the EAS program.
- **Federal Aviation Administration (FAA) Operations – \$50 million.** The proposal provides \$50 million for the FAA's administrative costs related to air traffic control tower cleanings, janitorial services and supplies, and IT costs resulting from employees working from home.