

July 28, 2020

Overview of the Senate HEALS Act

The Health, Economic Assistance, Liability Protection and Schools (HEALS) Act was unveiled on July 27 in the form of eight separate bills written by several Republican senators. Altogether, it is expected these bills will cost more than \$1 trillion (by comparison, competing legislation approved by the House in May, the HEROES Act, cost approximately \$3 trillion). With the introduction of these legislative proposals, negotiations with Democrats in Congress are expected to begin immediately and are expected to last days, if not weeks.

Many of the provisions in the HEALS Act are manufacturing priorities that had been included in the NAM's "[American Renewal Action Plan](#)." Highlights of those provisions and others that will impact the manufacturing community include the following:

Liability Protections for Businesses

Liability Limitations Framework: Creates an exclusive cause of action for coronavirus exposure lawsuits and establishes a framework for how and under what conditions plaintiffs may pursue a claim. The legislation would apply in cases involving workers, customers, visitors and others who might claim to have been exposed at a place of business or public accommodation. Businesses must earn the bill's protections by obeying all applicable federal, state and local rules and implementing any relevant guidance that applies to their circumstances. Key elements include the following:

- Plaintiffs may only bring suits based on personal injury if a defendant acted recklessly or in willful disregard of a legal duty, the consequences to the defendant and any applicable government standards and guidance.
- The bill defines "reasonable efforts to comply" with government standards and guidance, including how to handle conflicts between standards and guidance issued by different levels of government.
- Businesses of all sizes are protected, and those located in states with stronger liability protections will retain those protections in addition to these new federal protections.

Procedural Guard Rails: Puts in place basic procedural elements for any case that will enable the parties to very quickly resolve disputes before the case becomes costly for everyone involved.

Certainty in Application of Existing Federal Employment Laws: Addresses known conflicts with existing federal employment laws that have created new legal risks for employers who take important preventative steps to safeguard their workforce, such as taking temperatures or sharing information about potential exposure from a coworker.

Product Liability Relief: Expands the PREP Act to cover a far greater range of important countermeasures, including masks, face shields and hand sanitizer (among others). It also enables companies to far more easily achieve potent liability protections for selling these public health products by simplifying the steps necessary to qualify for PREP Act coverage.

Paycheck Protection Program and Other Liquidity Provisions

PPP Enhancements: Makes targeted changes to the PPP to grant more flexibility to loan recipients. It also extends PPP eligibility to certain 501(c)(6) organizations. PPP modifications in the proposal include the following:

- New categories of expenses are added as allowable and forgivable expenses for PPP borrowers, including worker protection costs (PPE and facility updates to protect workers from COVID-19); operations expenditures (software, cloud computing, HR and accounting costs); and supplier costs (payments for goods essential to the business under a contract existing prior to Feb. 15, 2020).
- PPP loans applied for after the date of enactment of the HEALS Act are capped at \$2 million. Loans applied for prior to the HEALS Act still have a maximum loan amount of \$10 million.
- Trade associations organized under Section 501(c)(6) will be eligible for PPP loans if they have 300 or fewer employees, do not receive more than 10% of their total receipts from lobbying activities and do not spend more than 10% of their time lobbying.

PPP Second Draw Loans: Creates a \$190 billion PPP Second Draw loan program to allow certain PPP borrowers to receive a second loan under the program. PPP borrowers will be eligible for a PPP Second Draw loan if they meet certain requirements, including having fewer than 300 employees and being able to show a 50% revenue decline. PPP Second Draw loan amounts are equal to two and a half times a business's average monthly payroll costs, capped at \$2 million. Like the PPP, the loans are fully guaranteed by the SBA and at least 60% of loan proceeds must be spent on payroll costs. \$25 billion in PPP Second Draw funds will be set aside for entities with 10 or fewer employees. In addition, \$10 billion will be set aside for loans made by community lenders.

Small Business Growth and Domestic Production Investment Facility: The HEALS Act creates a facility for the SBA to match up to \$10 billion in SBIC investments in small manufacturers, small businesses impacted by COVID-19 and small businesses located in low-income census tracts.

Business Tax Provisions

Enhanced Employee Retention Tax Credit: The CARES Act created a new, temporary refundable payroll tax credit equal to 50% of certain wages paid by eligible employers affected by COVID-19. Enhancements made by the HEALS Act to the ERTC include the following:

- Increasing the credit percentage from 50% to 65%
- Increasing the amount of qualifying wages per employee from \$10,000 for the year to \$10,000 per quarter with a maximum of \$30,000 for the year
- Increasing the full-time employee threshold from 100 to 500
- Employers can claim the credit and participate in the PPP but with restrictions to prevent double-dipping

Modification of the Work Opportunity Tax Credit: Adds a new group of individuals for whom an employer may claim the WOTC—"2020 qualified COVID-19 unemployment recipients." These are individuals hired before Jan. 1, 2021, who are certified by a designated local agency as having received UI benefits for the week immediately preceding their hire. The bill also

increases the maximum WOTC amount for this group to \$5,000 per employee (up from \$2,400, generally).

Safe and Healthy Workplace Tax Credit: Temporarily creates a refundable payroll tax credit in the amount of 50% of the sum of qualified expenses paid or incurred by the employer for employee protection expenses (e.g., COVID-19 testing, PPE, cleaning supplies), workplace safety reconfiguration expenses and qualified workplace technology expenses.

Tax Certainty for Stranded Workers: Employers are allowed to treat the wages of employees working remotely due to COVID-19 as if earned at the work location until employees return to that work location or by the end of the calendar year, whichever comes earlier.

Pension Clarifications: Clarifies that businesses' 2020 pension plan contributions delayed by the CARES Act are due on Jan. 4, 2021.

Health Care Provisions

Telehealth: Expands employee access for telehealth services as an excepted benefit for those who are not full time or do not qualify for employer coverage. Also, maintains access for Medicare beneficiaries to telehealth services through 2021. Requires Health and Human Services to study telehealth in Medicare and report on utilization before authorities expire.

FSAs: Allows Flexible Spending Account /Dependent Care Flexible Spending Account unused 2020 contribution amounts to be rolled over into the 2021 plan year, recognizing care forgone in 2020 and promoting wellness in 2021.

On-Site Health Care: Considers visits to employer-sponsored on-site clinic to be a Health Savings Account eligible expense through Dec. 31, 2021, providing a cost and convenience benefit to employees.

Public Health Emergencies: Includes provisions to better run the HHS-managed Strategic National Stockpile and ensure needed medical countermeasures are available to respond to current and future health threats through partnerships and other capability-building opportunities. Brings state stockpiles into the federal fold by providing HHS a technical assistance and coordination role.

Supply Chain and Intellectual Property

U.S. Made Act: Requires American-made PPE acquisitions for the HHS-managed Strategic National Stockpile and provides a five-year ramp-up period to achieve 100% U.S.-made supplies in the stockpile. Covered items include PPE equipment and clothing, sanitizing supplies and ancillary medical supplies, overall items made with traditional textiles and other nonwovens from mills and manufacturers in the U.S. The legislation is modeled after the Berry Amendment, which governs Defense Department acquisitions and requires the purchase of certain U.S.-made goods, with a strong focus on textiles.

Critical Minerals and Mineral Security: Promotes the development of robust domestic supply chains essential to U.S. manufacturing and competitiveness and reduces our current dependence on China for critical minerals. It funds robust research; encourages domestic

production and permitting accountability; and establishes programs for recycling and alternatives R&D, analytical market evaluation tools and workforce development.

Rare Earth Element Advanced Coal Technologies: Requires the Department of Energy to carry out a program to develop advanced separation technologies for the extraction and recovery of rare earth elements and other minerals from coal and coal byproducts.

CHIPS for America: Creates incentives to increase the domestic production of semiconductors and establishes a grant program to support advanced chip manufacturing in the U.S. It provides funding for semiconductor R&D, including the establishment of a semiconductor technology center and requires the development of a strategy on domestic semiconductor manufacturing.

Funding for Coronavirus Defense Production Act Purchases: Supports Defense Industrial Base capacity and initiatives that support critical partners and fragile small business providers that are at risk due to COVID-19 impacts. \$5.3 billion is provided for DPA Title III tailored economic incentives and gives preference to small businesses where possible.

Workforce and Training Provisions

Workforce Recovery and Training Services: Authorizes funding to states to support training through the Workforce Innovation and Opportunity Act through activities such as customized training, on-the-job training or Individual Training Accounts. Allows local boards to use more of their existing funds on incumbent worker training and authorizes additional funding to support apprenticeship.

- Authorizes \$500 million for Dislocated Worker Grants for employment and training activities.
- Authorizes \$450 million for WIOA state grants for adult, youth and dislocated workers.
- Authorizes \$350 million for re-employment services, job search assistance and placement assistance for job seekers.

Assistance for Individuals

Unemployment Insurance: Continues to provide workers with additional federal unemployment assistance on top of their traditional state unemployment benefits but decreases the additional federal amount to \$200 per week from the current \$600. Additional background:

- In October, workers will receive 70% of lost wages, which will be determined by adding federal dollars on top of traditional state benefits.
- If a state is unable to determine 70% of lost wages, it can receive a two-month waiver to continue paying state benefits plus the additional \$200 in federal assistance per week.
- States are required to notify individuals of the state's return to work requirements, the individual's rights to refuse to return to work or to refuse suitable work and how an individual can contest the denial of a claim.

Stimulus Checks: Authorizes a second round of income tax rebate checks. Certain provisions remain the same as the CARES Act payments, such as amount (\$1,200 for individuals/\$2,400 for married couples) and phase-out level (amounts begin to reduce as income exceeds \$75,000 for individuals/\$150,000 for married filers and are completely eliminated once income reaches \$99,000 individuals/\$198,000 for joint filers with no children). However, the second round of

payments will employ a more generous definition of “dependent,” for which an additional \$500 is paid.

Investments in Schools and Child Care Centers

Education: Provides \$105 billion to the Education Stabilization Fund so that grants to states, using existing formulas, can be distributed for the purpose of getting students back to school, with the largest share—\$70 billion—going to the Elementary and Secondary School Emergency Relief Fund. Private schools are also eligible for some level of funding based on the enrollment of children in private schools per state. A \$29 billion portion will go to Higher Education. Remainder amounts will be distributed to the Governors Emergency Education Relief Fund and the Bureau of Indian Education.

Of the funding allocated directly to school districts and private schools, one-third would be available to all school districts and private schools immediately. The remaining two-thirds would be available specifically to help schools with the additional costs to reopen for in-person instruction, with funding awarded based on certain minimum opening requirements and other criteria established by the state.

Back to Work Child Care Grants: Authorizes short-term assistance to help child care providers reopen and stay open so that parents have a safe place to send their children when they return to work. Allows states to build out programs to help child care providers reopen and maintain operations for nine months. The proposal also includes \$10 billion in funding for this program and an additional \$5 billion for child care direct support via block grants.