

HEALS Act Summary

On July 27, 2020, Senate Majority Leader Mitch McConnell (R-KY) announced the Health, Economic Assistance, Liability Protection and Schools (HEALS) Act which is a \$1 trillion dollar coronavirus-19 response package by the Senate Republicans. The HEALS Act is a response to the House Democrat's Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) which passed the House of Representatives on May 15, 2020.¹

The HEALS Act was released in seven separate bills (six substantive, and one appropriations bill) and contains provisions of significance for tribal economic recovery, health, and welfare. The following is a summary of tribal related provisions in the seven bills.

American Workers, Families, and Employers Assistance Act

Coronavirus Relief Fund

- Extends the end date for Coronavirus Relief Fund (CRF) use of funds to September 30, 2021. The revenue shortfall period extends from March 1, 2020 to 90 days after the last day of a governments' 2021 fiscal year.
- Expands allowable uses of CRF funds to include coverage of revenue shortfalls.
 - Revenue shortfalls can only account for 25% of CRF funds.
 - “[R]evenue shortfalls,” means shortfalls of revenue from taxes, fees, or other sources of funds for a government relative to fiscal year 2019 levels.
- Prohibits certain uses of CRF funds (ex: cannot replenish rainy day funds, influence legislation, etc).
- Requires CRF recipients to supplement, but not supplant, any non-federal funds that the recipient would otherwise provide, distribute, or use for assistance to other units of government.
- Requires the Treasury's Inspector General to prioritize audits based on distribution of funds by states to localities.
- Codifies the requirements promulgated by Treasury's Inspector General, [here](#), for recipients of CRF funds and expands on them to include reporting and recordkeeping requirements.
- Requires that Treasury's IG provide quarterly reports to Congress on state, local, and other government uses of relief funds provided to them under Title V of the CARES Act.

Unemployment

- The CARES Act provides payment to states to compensate reimbursed-employers, including Indian tribes, for half of the costs they incur through December 31, 2020 to pay unemployment benefits. This provision increases the percentage from 50 to 75 percent.

¹ A NCAI summary of the HEROES Act is available here: <http://www.ncai.org/Covid-19/indian-country-priorities-for-covid19-stimulus/hr-6800>



Payroll Tax Credits

- Increases the Employee Retention Tax Credit (ERTC) from 50% to 65% of qualified wages; increases the total allowable employee wages from \$10,000 for the year to \$30,000; allows employers to receive the ERTC and a PPP loan; and increases employee thresholds from 100 to 500.
- Expands the Work Opportunity Tax Credit (WOTC), which provides a payroll tax credit to employers for hiring individuals who are in certain groups, including COVID-19 unemployment recipients.
- Provides a refundable payroll tax credit to reimburse employers 50% of qualified expenses, including for, PPE, cleaning supplies, testing, costs related to reconfiguring workspaces to protect employees and customers, and qualified technology expenses including software needs.
 - In each calendar quarter, qualified expenses cannot exceed a cap based on the average number of employees.

Medicare

- Extends waivers under Medicare for the use of telehealth to December 31, 2021.

TANF

- Provides reimbursement to states and Indian tribes for increased costs of providing cash assistance and other short-term help through the Temporary Assistance to Needy Families program, up to a total cap of \$2 billion.

Safeguarding America’s Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy

Liability Protection

- Creates a federal cause of action for “coronavirus exposure claims” and “coronavirus medical liability claims” against entities including governments and health care providers. This cause of action is the exclusive remedy for all claims for personal injury caused by exposure to coronavirus.
 - Health care provider is defined as an individual licensed under federal or state law.
- The definition of governments and “individual or entity” includes tribal governments which are defined as:
 - (A) IN GENERAL.—The term “Tribal government” means the recognized governing body of any Indian tribe included on the list published by the Secretary of the Interior pursuant to section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131(a)).
 - B) INCLUSION.—The term “Tribal government” includes any subdivision (regardless of the laws and regulations of the jurisdiction in which the subdivision is organized or incorporated) of a governing body described in subparagraph (A) that— (i) is wholly owned by that governing body; and (ii) has been delegated the right to exercise 1 or more substantial governmental functions of the governing body.



- The immunity of any state and tribal government is not abrogated by the Act. In the event of a duly executed sovereign immunity waiver, the limitations on liability in the Act would control.
- Preempts federal, state, and tribal law that provides for recovery for COVID-19 actions except for laws that impose *stricter* liability limitations.
 - Liability limitations do not apply to enforcement actions by governments, discrimination lawsuits, and workers compensation actions.
- Provides liability for intentional misconduct or gross negligence that is defined as reckless disregard of: a (1) legal duty, (2) the consequences to another party, and (3) applicable government standards and guidance.
 - “Applicable government standard” only includes standards by federal, state, and local jurisdictions.
- Provides employers with protection from liability under federal labor and employment laws if acting in compliance with “applicable government standards.”
- Provides for concurrent original jurisdiction in district court and removal from tribal court to federal court.

Continuing Small Business Recovery and Paycheck Protection Program Act

PPP Updates

- Paycheck Protection Program Improvements (PPP)
 - Eligible PPP Expenses: Expands to include the following expenses: operations; property damage; supplier costs; and worker protection. Confirms that employer group insurance is a payroll cost.
 - Lender Safe Harbor: No enforcement action could be taken against a lender who in good faith relied on a certification/documentation submitted by a borrower.
 - Allows a borrower to elect their covered period for loan forgiveness.
 - Provides a simplified application based on whether a loan exceeds \$150,000.
 - Reduces eligible loan amount under the first round from \$10 million to \$2 million.
- PPP Second Loan
 - Provides for a second loan from the PPP for eligible businesses, including Tribal Business Concerns, that are under 300 employees.
 - Creates a \$10 billion set aside for community lenders and directs the SBA Administrator to issue guidance addressing barriers for access to capital for underserved communities.
- Provides \$190 billion of committed and appropriated funds to support PPP and PPP Second Draw Loans.

Non PPP Programs

- 7(a) Loans to Recovery Sector Businesses:
 - Authorizes \$100 billion in long-term, low-cost loans to recovery sector businesses, which include seasonal businesses and businesses located in low-income census tracts that meet the applicable SBA revenue size standard, have no more than 500 employees, and demonstrate at least a 50 percent reduction in gross revenues.
 - Loan amount is up to \$10 million.



- Loans terms include a 100% SBA guarantee and maturity of up to 20 years with a one percent fixed interest rate to the borrower. Allowable loan uses include working capital, acquisition of fixed assets, and refinancing existing indebtedness.
- Small Business Investment Company Program
 - Creates a Small Business Growth and Domestic Production Investment Facility that provides for \$10 billion in long-term debt with equity features to registered SBA Small Business Investment Companies (SBICs) that invest in small businesses with significant revenue losses from COVID-19, manufacturing startups in the domestic supply chain, and low income communities.

Safely Back to School and Back to Work Act

Strategic National Stockpile

- Requires the Secretary of HHS to establish clear guidance for Indian Tribes on accessing the Strategic National Stockpile.

Education & Child Care

- One half of 1 percent of the Department of Education’s Emergency Education Freedom Grant fund for eligible organizations that serve students attending elementary schools or secondary schools operated or funded by the Bureau of Indian Education.
- Authorizes the Secretary of Education to waive certain requirements under the Every Student Succeeds Act for BIE funded schools for current student support and academic enrichment grants.
- Authorizes short-term assistance through FY 2021 for Indian Tribes or tribal organizations, through the Administration of Children and Families, to help child care providers reopen and stay open.

Restoring Critical Supply Chains and Intellectual Property Act

- Prevents the Secretary of the Department of Health and Human Services from purchasing foreign manufactured personal protective equipment (PPE) and additional medical items.
- Eligible U.S. manufacturers can receive a 30% credit against cost associated with PPE manufacturing. There is a \$7.5 billion limit to the total tax credit.
- Creates the Federal Research Security Council in the Office of Management and Budget to standardize federal research and development grants. The Council must engage with the United States Research Community.
 - The United States Research Community includes “research and development centers of States, United States Territories, Indian tribes, and municipalities.”
- Criminalizes federal grant application fraud.
 - Exceptions include statements involving any activity “carried out in connection with a lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency. . .”
 - Tribal law enforcement is included in the definition of law enforcement agency.
- Updates the Congressional policy on mineral security and requires the executive branch to create and periodically update a list of critical minerals.



- Directs the United States Geological Survey to conduct a resource assessment of critical minerals and make the information public.
- The Secretary of the Interior may provide technical assistance to Indian Tribes conducting critical mineral resource assessments on non-Federal lands.
 - Indian Tribe is given the same definition as under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).
- Directs the Secretary of the Interior and Secretary of Agriculture to complete the federal permitting review process efficiently as it pertains to critical mineral production.
 - The Secretaries are encouraged to engage “in early and active consultation with State, local, and Indian tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent, rather than sequential, reviews. . .”

Time to Rescue United States’ Trusts Act

- Provides for the identification of “critical social contract programs” which are any federal trust fund program which has spent more than \$20 billion in the prior fiscal year and has already or is projected to be inadequately funded by FY 2035.
 - Includes programs under the Social Security Act, Medicare Part A, and the Highway Trust Fund as well as others identified by the Treasury Secretary which may include programs providing Indian Country funding.
- Establishes a “Rescue Committee” for each fund to improve the solvency of the program and recommend legislative technical amendments.
- Rescue Committees are to be composed of 12 bipartisan members of the House and Senate.
- Rescue Committee Bills are not eligible for amendment and will receive expedited consideration in both chambers.

Coronavirus Response Additional Supplemental Appropriations Act, 2020

Health, Education, Nutrition and Human Services

Health

- \$1.605 billion for Indian Health Services:
 - \$605 million for Indian Health Services until September 30, 2021.
 - \$1 billion for Indian Health Facilities to remain available until September 30, 2021, to prevent prepare for, and respond to coronavirus including for the acquisition of sites, purchase and reaction of modular buildings, and purchases of trailers, for provision of domestic and community sanitation facilities for Indians, and for necessary equipment to support the activities of the Indian Health Service.
- Not less than \$125 million set aside from the Centers for Disease Control and Prevention – CDC Wide Activities and Program Support account.
- Not less than \$15 million for the Substance Abuse and Mental Health Services Administration Health Surveillance Program.
- Not less than \$500 million for necessary expenses for testing, contact tracing, surveillance, containment, and mitigation including support for workforce, epidemiology, use by employers, elementary and secondary schools, child care facilities, institutions of



higher education, long-term care facilities, or in other settings, scale-up of testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, health care facilities, and other entities engaged in COVID-19 testing, and other related activities related to COVID-19 testing, contact tracing, surveillance, containment, and mitigation.

- \$1.5 billion for the Low-Income Home Energy Assistance Program (LIHEAP), which includes tribal and non-tribal recipients.

Education

- Education Stabilization Fund:
 - \$525 million set aside for the Bureau of Indian Education.
 - \$227.6 million set aside for Tribal Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Native American Serving Non-tribal Institutions.

Violence Against Women

- \$6.5 million (ten percent tribal set-aside of \$65 million) for the Family Violence Prevention and Services Act.

Child Welfare

- \$5 billion for the Child Care Development Block Grant.
 - Funds shall be used to supplement, not supplant state, territory and tribal general revenue funds for child care assistance for low income families within the United States.
- \$75 million for child welfare services under title IV-B subpart 1 of the Social Security Act.

Homeland Security and Emergency Services

- \$930 million for Federal Assistance under the Federal Emergency Management Agency.
 - \$365 million for assistance to firefighter grants.
 - \$365 million for staffing for adequate fire and emergency response grants.
 - \$200 million for the emergency food and shelter program.

Environment & Natural Resources

- \$500 million for Fisheries Disaster Assistance.
 - The Secretary of Commerce shall prescribe a formula to proportionally divide the funds between states, tribes, and territories. The formula shall be the same as the formula under section 12005 of Public Law 116-136 with adjustments.