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The Heroes Act: Education-Related Provisions

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The Heroes Act: Education-Related Provisions

In response to the rapidly evolving Coronavirus Disease 2019 (COVID-19) pandemic, Congress and the Administration have taken several actions to support the continued education of elementary, secondary, and higher education students and to protect student loan borrowers and educational institutions from related economic hardship. The Secretary of Education has issued several informational and guidance documents to help education providers respond to COVID-19-related disruptions to services and administration. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136, as amended), enacted on March 27, 2020, supported efforts to address the COVID-19 emergency across the federal government. The CARES Act education provisions authorized the Secretary of Education to grant flexibilities and waivers of various statutory and regulatory provisions; provide relief to postsecondary education students and student loan borrowers; and provide financial support to states, local educational agencies (LEAs), and institutions of higher education (IHEs).

On May 15, 2020, the House passed the Heroes Act (H.R. 6800) to further the federal response to the COVID-19 emergency through provisions to support the economy, public health, state and local governments, individuals, and businesses.

The Heroes Act would appropriate \$146.7 billion for several education-related initiatives. The Secretary of Education would distribute \$90.0 billion through the State Fiscal Stabilization Fund (SFSF) to states for distribution to LEAs and public IHEs. LEAs and public IHEs could use the SFSF funds for several purposes not necessarily related to the COVID-19 emergency. An additional \$10.2 billion would be available for allocation to public and private nonprofit IHEs, minority-serving IHEs (MSIs), and other specified IHEs to provide grants to students for eligible expenses and to defray select IHE expenses incurred as a result of the COVID-19 emergency. An appropriation of \$45.0 billion would be available to the Secretary of the Treasury to make private student loan payments on behalf of economically distressed borrowers and to forgive up to \$10,000 of their private student loan debt. In addition, the Federal Communications Commission (FCC) would receive \$1.5 billion for the Emergency Connectivity Fund to support elementary schools, secondary schools, and libraries in purchasing equipment and services, including wi-fi hotspots, modems, routers, connected devices, and advanced telecommunications and information.

Since enactment of the CARES Act, some Members of Congress and other stakeholders have raised concerns over its implementation and identified limitations that may be inhibiting assistance. The Heroes Act would address certain of these issues, including those regarding limitations on eligibility for postsecondary student grants and the provision of equitable services for non-public school students and teachers. The act would, for example, specify that postsecondary student grants funded under the CARES Act Higher Education Emergency Relief Fund (HEERF) would be available to undocumented students and to other students that are ineligible for the federal student aid programs authorized by Title IV of the Higher Education Act (HEA). The act would establish a new formula for LEAs subject to equitable services requirements under the CARES Act Governor's Emergency Education Relief (GEER) Fund or the Elementary and Secondary School Emergency Relief (ESSER) Fund for determining the share of funds that must be reserved by LEAs to serve non-public, elementary and secondary school students and teachers.

Other key provisions of The Heroes Act would expand on the temporary federal student loan benefits made available under the CARES Act. It would extend authorization of CARES Act student loan payment suspension through September 2021 and interest accrual suspension through the later of September 2021 or after specified labor metrics show initial signs of recovery. The Heroes Act would also authorize new loan benefits to borrowers. Specifically, it would permit the Secretary of Education and, as applicable, the Secretary of Health and Human Services, to suspend loan payments, interest accrual, and collections for federal student loan types not covered under the CARES Act; and to cancel or repay up to \$10,000 of loans for economically distressed borrowers. The act would also allow more loan payments to count toward the required payments for loan forgiveness under income-driven repayment (IDR) plans and Public Service Loan Forgiveness (PSLF), and provide borrower defense to repayment relief to specified cohorts of borrowers.

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Contents

Introduction	1
Supplemental Appropriations	2
State Fiscal Stabilization Fund.....	3
The Emergency Connectivity Fund.....	4
Higher Education Funding	5
Fund for the Improvement of Postsecondary Education.....	6
Minority Serving Institutions Programs	6
Direct Appropriations to Select Universities	8
Department of Education Office of the Inspector General	8
CARES Act Amendments and Related Provisions	8
Education Stabilization Fund.....	8
Competitive Grants.....	9
Assistance to Non-public Schools	9
Higher Education Emergency Relief Fund.....	11
Campus-Based Financial Aid Programs.....	12
Waivers of Campus-Based Aid Matching Requirements	12
FWS During a Qualifying Emergency	12
Tax Treatment of Student Grants.....	13
Funding for the Historically Black Colleges and Universities Capital Financing Program.....	13
Strengthening HBCU Program	13
Minority Science and Engineering Improvement Program (MSEIP)	14
Student Loan Provisions.....	14
Private Student Loan Relief.....	14
Payments on Behalf of Borrowers.....	15
Paying Down Private Student Loan Debt	16
Federal Student Loan Relief	16
Suspension of Payments and Interest Accrual, and Other Relief.....	16
Paying Down Federal Student Loan Debt.....	18
Consolidating Federal Student Loans and Loan Forgiveness	18
Addressing Borrower Defense to Repayment.....	19
Automatic Closed School Loan Discharge.....	20
HEA Title IV Administrative Provisions	21
Modifications to FAFSA and Need Analysis Procedures	21
Emergency Financial Aid Grants Excluded From Need Analysis	21
Facilitating Access to Financial Aid for Recently Unemployed Students	21
Definition of Distance Education	22
COVID-19 Provisional Program Participation Agreements and Funding	23
Carl D. Perkins Career and Technical Education Act of 2006 and Adult Education and Family Literacy Act: Additional Flexibilities	24

Tables

Table 1. The Heroes Act Supplemental Appropriations for Education-Related Provisions.....	2
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Table 2. MSI Program Allocations Under the CARES Act and Estimated Allocations Under the Heroes Act..... 7

Table A-1. Estimated State Grants and the Allocation of Funds Within Each State for the State Fiscal Stabilization Fund Program at an Appropriations Level of \$90 Billion 27

Appendixes

Appendix. Estimated State Fiscal Stabilization Fund Grant Allocations 26

Contacts

Author Information 29

Introduction

In response to the rapidly evolving COVID-19 pandemic, Congress and the Administration have taken several actions to support the continued education of elementary, secondary, and higher education students and to protect student loan borrowers and educational institutions from related economic hardship. On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under Section 319 of the Public Health Service Act (42 U.S.C. §247d).¹ On March 13, the President declared the COVID-19 outbreak a national emergency, beginning March 1.²

Since early March 2020, the Secretary of Education (hereinafter referred to as the Secretary) has issued several informational and guidance documents to help education providers respond to COVID-19-related disruptions to services and administration.³ For example, on March 4, the Department of Education (ED) Office of Civil Rights reminded schools and educators to take special care to ensure that all students are able to study and learn free from bias or discrimination related to racial or ethnic stereotypes associated with COVID-19 infection.⁴ ED's guidance has included information on various existing legislative and regulatory flexibilities and waivers available to state educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), higher education accrediting agencies, and student loan borrowers to facilitate their response to the emergency and to ameliorate impacts.⁵ For example, on March 5, ED's Office of Postsecondary Education provided guidance on flexibilities available to IHEs to help students complete the term in which they were enrolled.⁶

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136, as amended) was enacted on March 27, 2020, to authorize the Secretary to grant flexibilities and waivers of various statutory and regulatory provisions due to the COVID-19 emergency; to provide relief to postsecondary education students and student loan borrowers; to provide financial support to states, LEAs, and IHEs to maintain operations and continue supporting students; and to assist other purposes not directly related to education.⁷

¹ U.S. Department of Health and Human Services (HHS), "Secretary Azar Declares Public Health Emergency for United States for Coronavirus Disease 2019," press release, January 31, 2020, <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

² The White House, "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," March 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>, also at U.S. President (Trump), "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," 85 *Federal Register* 53, March 18, 2020.

³ See U.S. Department of Education, COVID-19 ("Coronavirus") Information and Resources for Schools and School Personnel, available at <https://www.ed.gov/coronavirus?src=feature>.

⁴ Letter from Kenneth L. Marcus, Assistant Secretary for Civil Rights, Department of Education, to Education Leaders, March 4, 2020, <https://content.govdelivery.com/accounts/USED/bulletins/27f5130>.

⁵ See U.S. Department of Education, COVID-19 ("Coronavirus") Information and Resources for Schools and School Personnel, available at <https://www.ed.gov/coronavirus?src=feature>.

⁶ U.S. Department of Education, Office of Postsecondary Education, *Guidance for interruptions of study related to Coronavirus (COVID-19) (Updated March 20, 2020)*, March 5, 2020, <https://ifap.ed.gov/electronic-announcements/030520Guidance4interruptionsrelated2CoronavirusCOVID19>.

⁷ For more information, see CRS In Focus IF11509, *CARES Act Elementary and Secondary Education Provisions*; and CRS In Focus IF11497, *CARES Act Higher Education Provisions*.

The House passed the Heroes Act (H.R. 6800) on May 15, 2020. The act is intended to continue supporting the nation’s response to the COVID-19 pandemic throughout the federal government, including its response via several education-related programs.

This report provides brief summaries of key provisions in the Heroes Act that would affect elementary, secondary, and higher education students and student loan borrowers. The report begins by describing supplemental funding the act would make available to educational providers and in support of broadband educational infrastructure. This is followed by sections describing amendments that would be made to CARES Act education-related provisions, and sections describing Heroes Act provisions that would provide relief to private and federal student loan borrowers. The report concludes with descriptions of bill provisions that would authorize new waivers and flexibilities pertaining to existing legislative requirements in the Higher Education Act of 1965 (HEA), as amended; the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins), as amended; and the Adult Education and Family Literacy Act (AEFLA), as amended.

Several of the Heroes Act provisions would appropriate funds. As shown in **Table 1**, the supplemental appropriations for education-related provisions would sum to approximately \$146.7 billion. A portion of the Emergency Connectivity Funds would support libraries.

Table 1. The Heroes Act Supplemental Appropriations for Education-Related Provisions
(Dollars in thousands)

Program/Activity	Heroes Act Section	Appropriation
State Fiscal Stabilization Fund	Division A, Title VI	\$90,000,000
Forgiving Private Student Loan Debt and Protecting Student Borrowers	Division K, Title V	\$45,000,000
Higher Education	Division A, Title VI	\$10,150,000
Emergency Connectivity Fund ^a	Division M, Title III	\$1,500,000
Department of Education Office of the Inspector General	Division A, Title VI, Section 10602	\$7,000 ^b
Total		\$146,657,000

Source: CRS analysis of The Heroes Act (H.R. 6800), as passed by the House on May 15, 2020.

- a. The Emergency Connectivity Fund would provide funds to schools and libraries.
- b. H.R. 6800 would rescind the \$7 million appropriation provided by the CARES Act for the Office of the Inspector General and then would appropriate the same amount.

Supplemental Appropriations

The Heroes Act (H.R. 6800) would provide appropriations for new and existing education programs and other programs that would affect elementary, secondary, and postsecondary schools. The appropriations would supplement state and local funding for LEAs and public IHEs, support broadband infrastructure for schools and other facilities, assist private nonprofit IHEs, fund grants for students enrolled in public and private nonprofit IHEs, and supplement the ED Office of the Inspector General.

The Heroes Act would establish additional requirements of the Secretary on the use of funding. The Secretary would be prohibited from establishing priorities or preferences or imposing limits on the use of funds unless specified in the act when allocating and awarding the supplemental

appropriations.⁸ ED and other federal agencies would be required to report to Congress on the use of all COVID-19-related funding in the Heroes Act and other acts.⁹

State Fiscal Stabilization Fund

The Heroes Act would provide \$90.0 billion for a new State Fiscal Stabilization Fund (SFSF) to prevent, prepare for, and respond to COVID-19 by supplementing state and local funding for elementary, secondary, and postsecondary education.¹⁰ The program would be administered by ED. The funds would remain available through September 30, 2022. The Secretary would be required to issue a notice inviting applications for the program within 15 days of enactment of the act.

After reserving up to 0.5% of the total appropriation for the outlying areas,¹¹ 0.5% for the Bureau of Indian Education (BIE), and \$30.0 million for administration and oversight activities conducted by ED, the remainder of the funds would be awarded by formula to governors of the 50 states, the mayor of the District of Columbia, and the governor of Puerto Rico (hereinafter referred to as governors) for elementary, secondary, and postsecondary education and, as applicable, for early childhood education and services.¹² The funds would be awarded to governors based on two formula factors: (1) 61% would be awarded based on each state's share of individuals ages 5 through 24 relative to the total number of individuals ages 5 through 24 in all states; and (2) 39% would be awarded based on each state's share of children counted under Section 1124(c) of the Elementary and Secondary Education Act (ESEA) relative to the total number of children counted in Section 1124(c) for all states.¹³ Each state would then be required to allocate 65% of the funds it received to LEAs and 30% to public IHEs. The remaining 5% could be used by the governor for statewide elementary, secondary, and postsecondary education activities. The governor would be required to return to the Secretary any funds that the governor does not award to LEAs or public IHEs or otherwise commit within two years. The Secretary would be required to redistribute the funds among the states using the aforementioned formula.

Governors would be required to use state grants and subgrants to “maintain or restore State and local fiscal support for elementary, secondary, and postsecondary education.”¹⁴ Funds provided to LEAs could be used for a multitude of purposes. LEAs could use them for any activity authorized by the ESEA, the Individuals with Disabilities Education Act (IDEA),¹⁵ the Adult Education and Family Literacy Act (AEFLA),¹⁶ the Carl D. Perkins Career and Technical Education Act (Perkins

⁸ H.R. 6800, §10606

⁹ H.R. 6800, §11001.

¹⁰ H.R. 6800, Division A.

¹¹ The term *outlying areas* is not defined in the act.

¹² Although this would be a formula grant program, each state or entity would be required to apply in accordance with the notice inviting applications.

¹³ Section 1124(c) references the count of formula children used to determine grants under Title I-A. For information about the ESEA and Title I-A, see CRS Report R45977, *The Elementary and Secondary Education Act (ESEA), as Amended by the Every Student Succeeds Act (ESSA): A Primer*.

¹⁴ H.R. 6800, Division A.

¹⁵ For information about IDEA, see CRS Report R44624, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer*.

¹⁶ For information about AEFLA, see CRS Report R43789, *Adult Education and Family Literacy Act: Major Statutory Provisions*.

Act),¹⁷ and the McKinney-Vento Homeless Education program.¹⁸ A state or LEA also could use funds for an array of other authorized purposes, such as supporting online learning, planning and implementing activities related to supplemental afterschool programs and summer learning, addressing learning gaps that were created or exacerbated by long-term closures, and supporting the operation and continuity of services in LEAs, including maintaining employment of existing personnel and receiving reimbursement for eligible costs incurred during the national emergency.

Public IHEs would be required to use funds for the following:

- education and general expenditures, including defraying expenses due to lost revenue, reimbursement for expenses already incurred, and payroll;
- grants to students for expenses directly related to COVID-19 and the disruption of campus operations, which could include emergency financial aid to students for purposes such as tuition, food, housing, and technology;¹⁹ or
- the acquisition of technology and services directly related to the need for distance education and the training of faculty and staff to use such technology and services.

Public IHEs also could use funds to support hourly workers. They would be prohibited from using funds to increase their endowments or for capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.

Any state receiving funds under the SFSF would be required to meet several maintenance of effort requirements related to its percentage of total spending and state support for elementary, secondary, and higher education relative to prior fiscal years, and would also be required to meet a maintenance of effort requirement related to spending for public higher education per full-time equivalent student. The Secretary would not have the authority to waive any of these provisions.

The SFSF also includes several other requirements that would apply to grant recipients. These requirements would limit the use of funds to assist students to attend private elementary or secondary schools, require that a recipient of funds “to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus,” and require collective bargaining agreements to be maintained.²⁰ Also, any state receiving a grant would be required to submit a report to the Secretary that provides information on the uses of funds made available under the SFSF.

The Emergency Connectivity Fund

The Emergency Connectivity Fund²¹ would be one of two emergency connectivity funds that would be established by the Heroes Act. The fund would be administered by the Federal

¹⁷ For information about Perkins, see CRS Report R45446, *Reauthorization of the Perkins Act in the 115th Congress: The Strengthening Career and Technical Education for the 21st Century Act*.

¹⁸ For information about the McKinney-Vento Homeless Education program, see CRS Report RL30442, *Homelessness: Targeted Federal Programs*.

¹⁹ Students would not be required to repay this aid. Section 150110 of The Heroes Act would prohibit the Secretary from establishing student eligibility criteria on any financial aid grants provided by IHEs from the appropriation and would establish eligibility for students who are unauthorized immigrants.

²⁰ This would apply to collective-bargaining agreements as defined by Section 2(5) of the National Labor Relations Act or any analogous state law. States also would be required to maintain the terms and conditions of employment set forth in such agreements.

²¹ H.R. 6800, §130201.

Communications Commission (FCC) and would be designed to prevent, prepare for, and respond to the COVID-19 pandemic.²² It would provide elementary schools, secondary schools, and libraries²³ with funds for the purchase of equipment and services, including wi-fi hotspots, modems, routers, connected devices, and advanced telecommunications and information services, for FY2020 through FY2021.

The Emergency Connectivity Fund would be administered through FCC's Universal Service Fund (USF) schools and libraries (E-Rate) program.²⁴ Unlike the current USF E-Rate program,²⁵ the provisions of the Heroes Act related to the Emergency Connectivity Fund would allow funds to be used to support remote learning by allowing for the purchase of equipment and services for students and school personnel at locations other than schools, and for library patrons at locations other than libraries.

A school or library that purchases equipment with money from the Emergency Connectivity Fund²⁶ may continue to use that equipment after the emergency period for which the support is received. However, the school or library may not sell or otherwise transfer the equipment purchased with Emergency Connectivity Fund dollars in exchange for anything (including a service) of value.²⁷

The Heroes Act would provide an immediate \$1.5 billion for the Emergency Connectivity Fund, to be administered through FCC's USF E-Rate program, and it would authorize an appropriation of \$5.0 billion for the Emergency Connectivity Fund for FY2020, to remain available through FY2021.²⁸

Higher Education Funding

The CARES Act provided approximately \$14.0 billion for a Higher Education Emergency Relief Fund (HEERF), of which the Secretary was required to allocate funds to IHEs through three programs: Direct Grants to IHEs; Programs for Minority Serving Institutions²⁹ (MSI programs); and the Fund for the Improvement of Postsecondary Education (FIPSE) program. The Higher

²² The Emergency Broadband Connectivity Fund (H.R. 6800, §130301), the second fund that would be created by the Heroes Act, would provide reimbursements to internet service providers that provide eligible households with discounted internet service offerings. An "eligible household," must meet at least one of several criteria. One qualifying criterion, relevant to education and public school students, is having at least one member of the household who has applied for and been approved to receive benefits through the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. §1751 et seq.) or the school breakfast program under Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. §1773).

²³ The act requires 5% of these funds to be set aside for tribal elementary schools, tribal secondary schools, or tribal libraries.

²⁴ The FCC oversees a number of programs through its Universal Service Fund (USF) aimed at promoting access to high-speed internet, including the E-Rate program. For more information on USF programs, including the E-rate Program, see CRS Report RL30719, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*.

²⁵ The USF E-rate program provides subsidies for eligible elementary and secondary schools and libraries for internet access, internal network connections, and telecommunications services. E-rate only supports projects within school or library buildings or that connect schools and libraries to broadband.

²⁶ Equipment purchased by a school or library may include devices intended to be loaned to students and their families.

²⁷ The exception to this prohibition is that a school or library may exchange equipment purchased through the Emergency Connectivity Fund for upgraded equipment of the same type.

²⁸ Division A, Title III of the Heroes Act would provide the immediate appropriation. Division M, Title II of the act would authorize an appropriation.

²⁹ For more information on Minority Serving Institutions, see CRS Report R43237, *Programs for Minority-Serving Institutions Under the Higher Education Act*.

Education Act (HEA), as amended³⁰ (the primary legislative vehicle for federal higher education support and oversight), authorizes the MSI programs (HEA, Title III-A, Title III-B, Title V, and Title VII-A-4) and FIPSE (HEA, Title VII-B). Additional appropriations were also provided for select IHEs—the Institute of American Indian and Alaska Native Culture and Arts Development, Gallaudet University, and Howard University—under the CARES Act.³¹

The Heroes Act would provide approximately \$10.2 billion for supplemental appropriations for IHEs through FIPSE and the MSI programs, and for select IHEs.³² The higher education funds could be used to provide grants to students for eligible expenses and to defray select IHE expenses incurred as a result of the COVID-19 emergency. The act would prohibit the Secretary from establishing student eligibility criteria for the grants and would establish eligibility for students who are unauthorized immigrants.³³

Fund for the Improvement of Postsecondary Education

The CARES Act directed the Secretary to allocate approximately \$348.8 million for FIPSE for public and private nonprofit IHEs that the Secretary determined to have the greatest unmet needs related to the COVID-19 emergency. Funds disbursed under FIPSE may be used to provide grants to students for eligible expenses and to defray select IHE expenses.

The Heroes Act would provide \$8.4 billion for FIPSE, \$7.0 billion of which would be allocated to private nonprofit IHEs through a formula based on each IHE's enrollment of students who were not exclusively enrolled in distance education courses prior to the COVID-19 emergency. From that \$7.0 billion, the Secretary would be required to reserve an amount for each private nonprofit IHE that has a total enrollment of at least 500 students but that would not otherwise receive a grant of at least \$1.0 million according to the formula, for a minimum grant that is the lesser of either \$1.0 million or the total loss of revenue and increased costs associated with the pandemic.³⁴ The remaining \$1.4 billion of appropriated funds for FIPSE would be awarded competitively to public and private nonprofit IHEs with unmet need related to the pandemic.

Minority Serving Institutions Programs

The CARES Act directed the Secretary to allocate approximately \$1.0 billion among the MSI programs according to each program's proportional share of funds allocated under the Further Consolidated Appropriations Act, 2020 (P.L. 116-94). The CARES Act did not specify how program funds should be distributed to each eligible MSI.

The Heroes Act would provide over \$1.7 billion for the MSI programs according to each program's proportional share of funds allocated under P.L. 116-94. The process for distributing funds among IHEs would vary by program in accordance with HEA provisions. For example, funds for IHEs eligible to participate in the Strengthening Historically Black Colleges and University (HBCU) program would be allocated by a formula based on each IHE's enrollment of students and endowment size. Funds for IHEs eligible to participate in the Strengthening

³⁰ For a description of the HEA, see CRS Report R43351, *The Higher Education Act (HEA): A Primer*.

³¹ For more information on the CARES Act HEERF, see CRS Report R46378, *CARES Act Education Stabilization Fund: Background and Analysis*.

³² H.R. 6800, Division A.

³³ H.R. 6800, §150110.

³⁴ There appears to be a drafting error in H.R. 6800 in which the provisions regarding the reserve makes reference to the second to last provision, when it appears it should reference the fifth to last provision.

American Indian Tribally Controlled Colleges and Universities (TCCU) program would be allocated according to the HEA formula used to allocate funds for the TCCU program.³⁵ Funds for the Strengthening Institutions Program would be allocated to eligible IHEs that apply for funds and demonstrate unmet need. **Table 2** provides the amount provided for MSI programs under the CARES Act and estimates of the amount that would be provided under the Heroes Act.

Table 2. MSI Program Allocations Under the CARES Act and Estimated Allocations Under the Heroes Act
(Dollars in thousands)

Program	Allocation Under the CARES Act	Estimated Allocation Under the Heroes Act
Strengthening Institutions Program (HEA, Title III-A)	\$148,619	\$248,494
Strengthening American Indian Tribally Controlled Colleges and Universities (HEA, Title III-A)	\$50,469	\$84,402
Strengthening Alaska Native and Native Hawaiian-Serving Institutions (HEA, Title III-A)	\$24,735	\$42,209
Strengthening Predominantly Black Institutions (HEA, Title III-A)	\$17,818	\$30,406
Strengthening Native American-Serving, Nontribal Institutions (HEA, Title III-A)	\$6,000	\$10,239
Strengthening Asian American and Native American Pacific Islander-Serving Institutions (HEA, Title III-A)	\$6,123	\$10,239
Strengthening Historically Black Colleges and Universities (HBCUs) (HEA, Title III-B)	\$447,466	\$748,315
Strengthening Historically Black Graduate Institutions (HEA, Title III-B)	\$115,720	\$193,523
Developing Hispanic-Serving Institutions (HEA, Title V-A)	\$193,180	\$329,656
Promoting Postbaccalaureate Opportunities for Hispanic Americans (HEA, Title V-B)	\$17,333	\$29,579
Masters Degrees at HBCUs (HEA, Title VII-A-4)	\$13,716	\$22,938
<i>Subtotal</i>	<i>\$1,038,057</i>	<i>\$1,708,000</i>
Reserve for subsequent awards	\$8,381	—
Total	\$1,046,438	\$1,708,000

Source: Allocations published by the U.S. Department of Education (ED), Formula Allocations for Section 18004(a)(2) of CARES Act, at <https://www2.ed.gov/about/offices/list/ope/allocationshbcutccumsisip.xlsx>; and CRS analysis of the ED supplemental appropriations for the Higher Education account in Division A of the Heroes Act (H.R. 6800).

Notes: In FY2020, the Minority Science and Engineering Program (MSEIP) authorized under HEA Title III-E received \$12.8 million in discretionary appropriations. The Heroes Act would not authorize the Secretary to allocate funds to the MSEIP; thus, the program was excluded when determining the estimated share of funding that would be allocated to each program.

³⁵ The formula is provided in Section 316(d)(3) of the HEA.

Direct Appropriations to Select Universities

Under annual appropriations acts, four IHEs regularly receive a direct appropriation for ongoing support: Gallaudet University, Howard University, the Institute of American Indian and Alaska Native Culture and Arts Development (IAIA), and the National Technical Institute for the Deaf (NTID).³⁶ The CARES Act provided \$7.0 million to Gallaudet University, \$13.0 million to Howard University, and \$78,000 to IAIA to prevent, prepare for, and respond to COVID-19, and, as specified, to enable grants to students for expenses directly related to the pandemic and the disruption of university operations.

The Heroes Act would appropriate \$11.0 million to Gallaudet University, \$20.0 million to Howard University, and \$11.0 million to NTID for grants to students for expenses, and to help defray IHE expenses, related to the pandemic.³⁷

Department of Education Office of the Inspector General

Under the CARES Act, \$7.0 million was appropriated for the Office of the Inspector General (OIG) “to prevent, prepare for, and respond to coronavirus, domestically or internationally.” Among other purposes, funds could be used for “salaries and expenses necessary for oversight and audit of programs, grants, and projects” funded under the CARES Act in response to the pandemic. The funds are to remain available until September 30, 2022.

The Heroes Act would rescind the appropriations made available under the CARES Act and make them available under the Heroes Act.³⁸ The funds would be available for the same purposes and authorities for which they were originally appropriated under the CARES Act and, as added by the Heroes Act, also would be available for investigations. The funds would remain available until expended and would be in addition to any other funds available for such purposes.

CARES Act Amendments and Related Provisions

The Heroes Act would amend several CARES Act education-related provisions. The Heroes Act would also require IHEs and ED to provide more frequent or extensive reporting to the congressional authorizing committees on

- the implementation of provisions under the CARES Act and the Heroes Act; and
- modifications and waivers of HEA legislative provisions, regulations, or guidance intended, granted, or denied that were not authorized by the CARES Act.³⁹

Education Stabilization Fund

The CARES Act authorized almost \$30.8 billion for the Education Stabilization Fund (ESF), which is administered by ED. The ESF is distributed through competitive grants; a Governor’s

³⁶ Rochester Institute of Technology is the sponsoring institution of the National Technical Institute for the Deaf.

³⁷ Section 150110 of the Heroes Act would prohibit the Secretary from establishing student eligibility criteria on any financial aid grants provided by IHEs from the appropriation and would establish eligibility for students who are unauthorized immigrants.

³⁸ H.R. 6800, §10602.

³⁹ H.R. 6800, Division O, Title I-D.

Emergency Education Relief (GEER) Fund; an Elementary and Secondary School Emergency Relief (ESSER) Fund; and a Higher Education Emergency Relief Fund (HEERF).⁴⁰

Competitive Grants

The CARES Act requires the Secretary to reserve 1% of the total appropriation for the ESF to provide competitive grants to the states with the “highest coronavirus burden” to support activities under the ESF. The statutory language does not define “highest coronavirus burden” or indicate how this should be determined. On April 27, 2020, ED announced two types of competitive grants: (1) \$180.0 million for Education Stabilization Fund—Rethink K12 Education Models Grants (ESF-REM Grants), and (2) \$127.5 million for Education Stabilization Fund—Reimagining Workforce Preparation Grants (ESF-RWP Grants).⁴¹ Some observers have expressed concerns about the inclusion of microgrants,⁴² viewed by some as private school vouchers, as one of three priorities under the ESF-REM grants.⁴³

The Heroes Act would strike the reservation of 1% of funds under the ESF for competitive grants.⁴⁴ In effect, this would increase the overall amount of funding available under the GEER Fund, ESSER Fund, and HEERF.

Assistance to Non-public Schools

Under the CARES Act, an LEA that receives funds under the GEER Fund or the ESSER Fund is subject to equitable services requirements. More specifically, LEAs receiving such funds must reserve the required amount of funding to provide equitable services in the same manner as under Section 1117 of the ESEA to students and teachers in non-public schools. The provision of services to such students and teachers must be determined in consultation with representatives of non-public schools.

⁴⁰ For more information on the CARES Act ESF, see CRS Report R46378, *CARES Act Education Stabilization Fund: Background and Analysis*.

⁴¹ U.S. Department of Education, “Secretary DeVos Launches New Grant Competition to Spark Student-Centered, Agile Learning Opportunities to Support Recovery from National Emergency,” press release, April 27, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-launches-new-grant-competition-spark-student-centered-agile-learning-opportunities-support-recovery-national-emergency>.

⁴² SEAs have the option to apply to use the funds to provide microgrants to parents to meet the educational needs of their school-age children, through increased access to high-quality remote learning to support their educational needs. A microgrant is defined as “an account established for a parent that provides funds directly to service providers to expand educational choice. The parent must have easy access to and visibility into the account and it must allow the parent to select particular education services, expenses, or materials, to expand the ability to choose high-quality educational opportunities to meet their needs.” U.S. Department of Education, *Notice Inviting Application (NIA) for the FY 2020 Education Stabilization Fund—Rethink K-12 Education Models (ESF-REM) Discretionary Grant Program*, Notice for posting in the *Federal Register*, April 27, 2020, p. 17, <https://oese.ed.gov/files/2020/04/ESF-REM-Notice-Inviting-Applications.pdf>.

⁴³ See, for example, Andrew Ujifusa, “Betsy DeVos Introduces Grants to ‘Rethink’ Learning During COVID-19,” April 27, 2020, https://blogs.edweek.org/edweek/campaign-k-12/2020/04/betsy_devos_coronavirus_grants_rethink_learning.html; and Letter from National Coalition for Public Education to The Honorable Mitch McConnell, Senate Majority Leader; The Honorable Charles Schumer, Senate Minority Leader; The Honorable Nancy Pelosi, Speaker of the House; and The Honorable Kevin McCarthy, House Minority Leader; June 2, 2020, <http://go.politicoemail.com/?qs=0d351c67e8c9f87c1c2bdc47f943dc845a8ec52208d43f1e312a86baaa9c37c900d7193f680cfc94ffc31099a9b5e9a4>. (Letter made available by Politico in Politico’s Pro Morning, June 3, 2020 edition.)

⁴⁴ H.R. 6800, §10603.

The calculation that LEAs should use to implement this provision has been a topic of disagreement.⁴⁵ ED initially released non-binding guidance⁴⁶ that would require LEAs to determine the amount of funds to be reserved based on the enrollment of all private school students in private schools located in the LEA.⁴⁷ This stood in contrast to the usual calculation used to determine the reservation of funds under the Section 1117 provision, which is based on the number of private school students from low-income families who reside in the school attendance area of a public Title I-A school. In response to a letter from the Council of Chief State School Officers⁴⁸ asking ED to clarify its guidance, ED indicated that it plans to issue a rule related to its guidance on equitable services under the ESF.⁴⁹

On July 1, 2020, ED published an interim final rule providing LEAs with three ways to implement the equitable services provision.⁵⁰ Under one option, an LEA can determine the proportional share based on enrollment in participating non-public elementary and secondary schools in the LEA compared to the total enrollment in public and participating non-public elementary and secondary schools in the LEA (total enrollment option).

The remaining options are available to LEAs only if they agree to use those funds available for public education to serve exclusively students and teachers in public Title I-A schools. If this condition is met, the LEA may determine the share of funds to be reserved to serve students and teachers in non-public schools by either (1) using the proportional share of Title I-A funds calculated by the LEA under Section 1117(a)(4)(A) of the ESEA for the 2019-2020 school year, or (2) determining the number of children ages 5-17 who are from low-income families and attend each non-public school in the LEA that will be participating in a CARES Act program compared to the total number of children ages 5-17 who are from low-income families in Title I-A schools and participating non-public elementary and secondary schools in the LEA. In addition, if an LEA chooses to implement one of the latter two options, it must comply with the supplement

⁴⁵ See, for example, Andrew Ujifusa, “Sen. Alexander Splits From Betsy DeVos on COVID-19 Aid to Help Private Schools,” *Education Week*, May 21, 2021, <http://blogs.edweek.org/edweek/campaign-k-12/2020/05/alexander-devos-covid-aid-private-schools-cdc-reopening.html>, and Letter from Robert C. “Bobby” Scott, Chair, Committee on Education and Labor, U.S. House of Representatives, Rosa L. DeLauro, Chair, Committee on Appropriations, Subcommittee on Health and Human Services, Labor, and Education and Other Related Services, U.S. House of Representatives, and Patty Murray, Ranking Member, Committee on Health, Education, Labor, and Pensions, U.S. Senate, to The Honorable Betsy DeVos, Secretary of Education, May 20, 2020, <https://edlabor.house.gov/imo/media/doc/2020-5-20%20Ltr%20to%20DeVos%20re%20Equitable%20Services.pdf>.

⁴⁶ ED has removed the guidance from its website as the guidance does not match the Interim Final Rule that ED published in July. The guidance is available from the authors of this report upon request.

⁴⁷ For a more detailed discussion of the calculation of the reservation of funds for equitable services under ESEA, Section 1117 and ED’s guidance, see CRS Report R46378, *CARES Act Education Stabilization Fund: Background and Analysis*.

⁴⁸ Letter from Carissa Moffat Miller, Executive Director, Council of Chief State School Officers, to Secretary Betsy DeVos, Secretary of Education, May 5, 2020, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj73ZLI1cfpAhWRgnIEHZugAZoQFjAAegQIBBAB&url=https%3A%2F%2Fccsso.org%2Fsites%2Fdefault%2Ffiles%2F2020-05%2FDeVosESLetter050520.pdf&usq=AOvVaw2GJDElYRfzHpWo8Udl7QSC>.

⁴⁹ Letter from Secretary Betsy DeVos, Secretary of Education, to Carissa Moffat Miller, Executive Director, Council of Chief State School Officers, May 22, 2020, <https://blogs.edweek.org/edweek/campaign-k-12/Secretary%20DeVos%20Response%20to%20Carissa%20Moffat%20Miller%205%2022%2020.pdf>. (Letter made available in the following article: Andrew Ujifusa, “DeVos to Release Rule Cementing COVID Aid Push for Private School Students,” *Education Week*, May 26, 2020, <https://blogs.edweek.org/edweek/campaign-k-12/2020/05/devos-covid-aid-private-school-students-rule.html>.)

⁵⁰ U.S. Department of Education, “CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools,” 85 *Federal Register* 39479-39488, July 1, 2020.

not supplant requirement included in Section 1118(b) of the ESEA.⁵¹ Among other things, this requirement prohibits the LEA from allocating CARES Act funds to Title I-A schools and then redirecting state or local funds to non-Title I-A schools.

The Heroes Act would amend the CARES Act to establish a formula for determining the share of funds that must be reserved by LEAs to serve non-public school students and teachers under the GEER Fund and ESSER Fund.⁵² The formula would require LEAs to reserve funds to serve non-public school students and teachers based on the number of low-income non-public school students counted under ESEA Section 1117 for Title I-A purposes for the 2019-2020 school year relative to the total number of low-income public school students included in the Section 1117 calculation for Title I-A purposes for the 2019-2020 school year. The Heroes Act amendment would result in LEAs having to reserve a larger share of funds to serve non-public school students and teachers than they would have to reserve based on the usual reservation of funds calculation made under Section 1117. However, the new formula could result in LEAs having to reserve a smaller share of funds than would have to be reserved under the total enrollment option included in ED's interim final rule. In addition, the Heroes Act would not limit the use of the GEER Fund and ESSER Fund grants for public education to students and teachers in Title I-A schools only. It also would not apply a supplement not supplant requirement to the use of GEER Fund and ESSER Fund grants in public schools if the LEA opted to calculate the share of funds to be reserved to provide services to students and teachers in non-public schools based on the 2019-2020 school year Title I-A equitable services calculation or on low-income student enrollment in public and participating non-public elementary and secondary schools.

Higher Education Emergency Relief Fund

Under the CARES Act, the HEERF is awarded as direct grants to IHEs. The majority (90%) of the HEERF is awarded as direct Institutional or Student Aid grants. The Student Aid grants must be used for emergency financial aid grants to students. The Institutional grants may be used for student grants or to cover any costs associated with significant changes to the delivery of instruction due to the COVID-19 emergency.⁵³ The remaining 10% of the HEERF, distributed under the MSI programs and FIPSE, may be used by IHEs to provide grants to students and to defray IHE expenses, including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff training, and payroll.

HEERF Institutional Grants to IHEs

The Heroes Act would amend the CARES Act to authorize IHEs to use institutional grants in the same manner as IHEs receiving HEERF MSI or FIPSE funds.⁵⁴

⁵¹ The CARES Act did not apply a supplement not supplant requirement to either the GEER Fund or the ESSER Fund. For more information about the Title I-A supplement not supplant requirement, see CRS In Focus IF10405, *Fiscal Accountability Requirements That Apply to Title I-A of the Elementary and Secondary Education Act (ESEA)*.

⁵² H.R. 6800, §10604.

⁵³ The CARES Act prohibits IHEs from using funds for paying contractors to provide pre-enrollment recruitment activities, for endowments, or for capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.

⁵⁴ H.R. 6800, §10605.

HEERF Student Aid Grants to IHEs

The CARES Act did not establish eligibility criteria for students to receive financial aid grants from their IHEs under the HEERF. The Secretary limited the financial aid grants to individuals eligible to receive HEA Title IV aid.⁵⁵ The Heroes Act would prohibit the Secretary from imposing student eligibility restrictions and would expand eligibility to students who are unauthorized immigrants, effective on the date of enactment of the CARES Act.⁵⁶

Campus-Based Financial Aid Programs

The Federal Supplemental Educational Opportunity Grant (FSEOG) program and the Federal Work-Study (FWS) program are two campus-based financial aid programs authorized under Title IV of the HEA.⁵⁷ Under the FSEOG program, federal funds are allocated to IHEs for the purpose of making grants to undergraduate students with financial need. The FWS program provides grants to IHEs to provide undergraduate, graduate, and professional students the opportunity for paid employment in a field related to their course of study or in community service.

Waivers of Campus-Based Aid Matching Requirements

Section 3503 of the CARES Act required the Secretary to waive the non-federal matching requirement⁵⁸ for IHEs participating in the FSEOG and the FWS programs for federal funds made available for award years 2019-2020 and 2020-2021, with one exception: private for-profit organizations that employ FWS students are still required to provide a match of federal funds received. The Heroes Act would amend Section 3503 of the CARES Act to require that the Secretary waive any requirement that a nonprofit employer provide a match of federal funds received under the FWS program.⁵⁹

FWS During a Qualifying Emergency

Section 3505 of the CARES Act permits an IHE participating in the FWS program to continue making payments to students who participated in the program but were unable to fulfill their work-study obligation due to a qualifying emergency. Under the CARES Act, IHEs are able to make payments for the period of time, not to exceed one academic year, that the students were

⁵⁵ For students who have not demonstrated eligibility by filing a Free Application for Federal Student Aid (FAFSA), the IHE would have to find a way for such students to demonstrate eligibility in order to receive emergency financial aid grants. U.S. Department of Education, “Frequently Asked Questions about the Emergency Financial Aid Grants to Students under Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act,” <https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf> (accessed April 22, 2020); and Letter from Betsy DeVos, Secretary of Education to College and University Presidents, April 30, 2020, <https://www2.ed.gov/about/offices/list/ope/coverletterhbcumsisiptccu.pdf> (accessed May 15, 2020).

⁵⁶ H.R. 6800, §150110. Nonimmigrant (international) students would also be eligible under the provision.

⁵⁷ For more information about the campus-based aid programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*.

⁵⁸ H.R. 6800, §150102. Typically, IHEs participating in the FSEOG and FWS programs are required to provide a non-federal match of the federal funds received.

⁵⁹ The HEA does not include provisions requiring that nonprofit employers provide a match under FWS. 34 C.F.R. §675.20 provides that if an IHE chooses to have its FWS students employed by a federal, state, or local agency, or nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must indicate whether the institution or the agency/organization will pay the employed students. Thus, it is possible that an agreement between an IHE and a nonprofit employer could specify that the nonprofit employer provide the match in funds.

unable to fulfill their work-study obligation. The Heroes Act would allow IHEs to pay students for the full amount of time they were unable to fulfill their work-study obligation, even if it exceeds one academic year.⁶⁰

Tax Treatment of Student Grants

The CARES Act established emergency financial aid grants for postsecondary students to cover unexpected expenses related to disruptions of campus operations due to the COVID-19 pandemic under the HEERF and the FSEOG program.⁶¹ The CARES Act did not include provisions regarding the tax treatment of these emergency grants.

The Heroes Act would exclude from gross income any qualified emergency financial aid grants; thus, the grants would not be subject to federal income tax.⁶² Additionally, under the Heroes Act the emergency grants would not be considered when calculating education tax benefits (i.e., American Opportunity Tax Credit, Lifetime Learning Credit) and the tuition and fees deduction.⁶³ The act defines qualified emergency financial aid grants as student grants made available under the FSEOG program and the HEERF as authorized by the CARES Act, as well as “any other emergency grant aid to a student from a federal agency, a state, an Indian tribe, an institution of higher education, or a scholarship-granting organization ... for the purpose of providing financial relief to students enrolled at institutions of higher education in response to a qualifying emergency.”⁶⁴

Funding for the Historically Black Colleges and Universities Capital Financing Program

The HBCU Capital Financing Program assists HBCUs in obtaining low-cost capital financing for campus maintenance and construction projects. Section 3512 of the CARES Act authorized the Secretary to grant loan deferments during a qualifying emergency to IHEs participating in the program. The CARES Act appropriated \$62.0 million for the Secretary to pay the required principal and interest due during the period of the deferment. At the end of the deferment, an IHE is required to repay the Secretary for payments made on its behalf. The Heroes Act would amend the amount of \$62.0 million provided under the CARES Act to be “such sums as may be necessary.”⁶⁵

Strengthening HBCU Program

The Strengthening HBCU program awards grants to eligible HBCUs to assist them in strengthening their academic, administrative, and fiscal capabilities. Howard University and the University of the District of Columbia (UDC) are HBCUs that receive permanent annual appropriations, which generally make them ineligible for the Strengthening HBCU program. The CARES Act provided the Secretary the authority to waive the ineligibility provision beginning on

⁶⁰ H.R. 6800, §150103.

⁶¹ P.L. 116-136, §3504.

⁶² H.R. 6800, §20232.

⁶³ Generally, education expenses used to calculate these tax benefits must be reduced by any tax-free (i.e., excluded from gross income) financial aid, which may reduce the value of the benefits.

⁶⁴ H.R. 6800, §20232(b).

⁶⁵ H.R. 6800, §150105.

the first day of the qualifying emergency through September 30 of the fiscal year following the end of the qualifying emergency. The Heroes Act would eliminate the authority granted to the Secretary under the CARES Act to waive the ineligibility provision.⁶⁶

Minority Science and Engineering Improvement Program (MSEIP)

The MSEIP provides grant-based assistance to predominantly minority institutions to foster long-term improvements in science and engineering education and to increase the number of underrepresented minorities in science and engineering careers.⁶⁷ Section 3518 of the CARES Act granted the Secretary the authority to waive the allowable use of funds under several HEA programs, including many of the HEA Title III programs. The Heroes Act would extend the waiver authority to include the MSEIP.⁶⁸

Student Loan Provisions

The Heroes Act would provide relief to federal and private student loan borrowers adversely affected by the COVID-19 emergency. It would provide temporary loan repayment on behalf of, and forgiveness to, eligible private student loan borrowers, expand temporary federal student loan benefits made available under the CARES Act, and authorize new federal student loan benefits to borrowers.

The Heroes Act would include special provisions for *economically distressed borrowers*. A borrower of a federal or private student loan would qualify as economically distressed if, as of March 12, 2020, (1) the borrower's loan was in default, (2) the borrower's loan payment was at least 90 days past due, (3) the borrower's loan was in forbearance or deferment under specified conditions, (4) the borrower had a \$0 monthly payment amount under a federal income-driven repayment (IDR) plan,⁶⁹ or (5) the borrower would qualify for a monthly payment of \$0 under an IDR plan if the borrower's loan was a federal student loan rather than a private loan.⁷⁰

Private Student Loan Relief

The Heroes Act would define private education loans as loans provided by a private educational lender⁷¹ to a borrower expressly for postsecondary educational expenses that are not made,

⁶⁶ H.R. 6800, §150106.

⁶⁷ For more information about MSEIP, see CRS Report R43237, *Programs for Minority-Serving Institutions Under the Higher Education Act*.

⁶⁸ H.R. 6800, §150107.

⁶⁹ In addition, Perkins Loan borrowers who are receiving benefits under the Armed Forces Student Loan Interest Payment Program for Members on Active Duty (10 U.S.C. §2174) would be considered economically distressed.

⁷⁰ A borrower may qualify for an economic hardship deferment if he or she is (1) receiving payments under a federal or state public assistance program (e.g., Temporary Assistance for Needy Families [TANF], Supplemental Security Income [SSI], Supplemental Nutrition Assistance Program [SNAP], state general public assistance, other means-tested benefits), or (2) working full-time and has a monthly income that does not exceed an amount equal to 150% of the poverty line applicable to the borrower's family size, as calculated on a monthly basis.

⁷¹ A private educational lender is “(A) a financial institution, as defined in section 1813 of title 12 that solicits, makes, or extends private education loans; (B) a Federal credit union, as defined in section 1752 of title 12 that solicits, makes, or extends private education loans; and (C) any other person engaged in the business of soliciting, making, or extending private education loans” (15 U.S.C. § 1650(a)(7)).

insured, or guaranteed under Title IV of the HEA.⁷² This definition would generally include loans authorized under the Public Health Service Act (PHSA). Additionally, however, the Heroes Act would amend the CARES Act to define *federal student loans* as inclusive of PHSA loans for the purposes of federal student loan relief. It is therefore unclear whether PHSA loans would also be eligible for the private student loan relief proposed in this bill. PHSA loans are further discussed in the “Federal Student Loan Relief” section below.

The Heroes Act would appropriate \$45.0 billion to provide private student loan payments and relief to eligible borrowers.⁷³

Payments on Behalf of Borrowers

The Truth in Lending Act of 1968 (TILA; P.L.90-301) applies to all forms of consumer credit, requiring covered lenders to disclose the total cost of credit. The Heroes Act would amend TILA to direct the Secretary of the Treasury to make monthly payments on private education loans on behalf of economically distressed borrowers from the date of enactment through September 30, 2021.⁷⁴ Aggregate payments would be capped at \$10,000 per borrower through September 30, 2021. A private education loan would be defined as a loan provided by a private lender for postsecondary education expenses that is not made, insured, or guaranteed under HEA Title IV.

The Secretary of the Treasury would be responsible for outreach and proper credit reporting. Within 15 days of enactment and monthly thereafter through September 30, 2021, the Secretary of the Treasury would be required to inform economically distressed borrowers of the temporary benefits provided and provide an easily accessible method for borrowers to opt out. Holders of loans would not be permitted to opt out. The Heroes Act would require the Secretary of the Treasury to ensure that any loan payments that the Secretary of the Treasury makes on behalf of borrowers would be reported to consumer credit reporting agencies as if the payments were made by the borrowers.

Holders of affected private student loans would have to meet several requirements. Loan servicers would be required to grant mandatory forbearance to borrowers of any loan for which the Secretary of the Treasury makes payments, and such forbearance would be made retroactive for loans that were in delinquent, but not in default, status prior to the commencement of the Treasury Secretary’s payments.⁷⁵ Such forbearance would formally relieve borrowers of their obligation to make payments during the period in which the Treasury Secretary makes payments on their behalf. The act would also prohibit any involuntary collections actions or adverse reporting to consumer credit reporting agencies concerning private education loans of economically distressed borrowers through September 30, 2021. Any holder of private education loans that receives such loan payments from the Secretary of the Treasury would be required to modify its private loan contracts in order to offer economically distressed borrowers of private education loans the same

⁷² 15 U.S.C. §1650(a)(8).

⁷³ H.R. 6800, §110501(b).

⁷⁴ H.R. 6800, §110501.

⁷⁵ Such payments made or forbearance granted would not affect state statutes of limitations (H.R. 6800, §110502(a)(2)).

repayment plan and loan forgiveness options available to borrowers of federal Direct Loans in the Revised Pay As You Earn (REPAYE) repayment plan⁷⁶ for the remaining life of the loans.⁷⁷

Paying Down Private Student Loan Debt

After September 30, 2021, economically distressed borrowers whose private education loan payments were made by the Secretary of the Treasury would receive loan relief equal to the lesser of the amount of their outstanding private education loan balance or \$10,000 minus the aggregate amount of payments made on their behalf by the Secretary of the Treasury.⁷⁸ The Heroes Act would allow borrowers to select the private education loan to which this amount of relief would be applied,⁷⁹ and it would prohibit creditors and debt collectors from pressuring borrowers regarding this selection.⁸⁰ If a borrower did not make a selection, the amount would be automatically applied to the borrower's private education loan with the highest interest rate.⁸¹

Federal Student Loan Relief

The HEA authorizes three federal student loan programs: the William D. Ford Federal Direct Loan (Direct Loan) program, the Federal Family Education Loan (FFEL) program, and the Federal Perkins Loan program. While new loans are authorized to be made only through the Direct Loan program, FFEL and Perkins Loan program loans remain outstanding and borrowers of such loans remain responsible for repaying them. In addition, over the years, the Public Health Service Act (PHSA) has authorized a variety of student loan programs (hereinafter referred to as *PHSA Loans*) to support specific health professions students.⁸²

The Heroes Act would expand on the temporary federal student loan benefits made available under the CARES Act and authorize new loan benefits to borrowers of federal student loans.

Suspension of Payments and Interest Accrual, and Other Relief

Section 3513 of the CARES Act provided several types of loan benefits to borrowers of Direct Loans and borrowers of ED-held FFEL program loans.⁸³ ED administratively extended these benefits to loans made under the Perkins Loan program that are held by ED.⁸⁴ Benefits provided

⁷⁶ REPAYE is an income-driven repayment plan in which monthly payments are generally 10% of discretionary income and any remaining loan balance is forgiven after 20 years for undergraduate loans or 25 years for graduate or professional school loans (34 C.F.R. §685.209(c)). Discretionary income is defined as the portion of a borrower's adjusted gross income that is in excess of a specified multiple of the federal poverty guidelines applicable to the borrower's family size.

⁷⁷ H.R. 6800, §110502(a)(1).

⁷⁸ H.R. 6800, §110502(b)(1).

⁷⁹ H.R. 6800, §110502(b)(3)(A).

⁸⁰ H.R. 6800, §110502(a)(3).

⁸¹ H.R. 6800, §110502(b)(3)(B).

⁸² PHSA Loans are administered by the Department of Health and Human Services. For additional information on PHSA Loans, see CRS Report R43571, *Federal Student Loan Forgiveness and Loan Repayment Programs*.

⁸³ For additional information on the federal student loan debt relief afforded to borrowers in response to COVID-19, see CRS Report R46314, *Federal Student Loan Debt Relief in the Context of COVID-19*.

⁸⁴ U.S. Department of Education, Office of Federal Student Aid, "Coronavirus and Forbearance Info for Students, Borrowers, and Parents," <https://studentaid.gov/announcements-events/coronavirus> (accessed June 22, 2020).

to borrowers of Direct Loans and ED-held FFEL and Perkins Loan program loans through September 30, 2020, include the following:

- Suspension of all payments due. Suspended payments are to count toward monthly payments required under any loan forgiveness program (e.g., Public Service Loan Forgiveness (PSLF)⁸⁵ and IDR plans⁸⁶) and loan rehabilitation,⁸⁷ and to be reported to consumer reporting agencies as if they were regularly scheduled payments made by the borrower.
- Suspension of interest accrual.
- Suspension of involuntary collection on defaulted loans (e.g., wage garnishment or offset of federal income tax refunds).

Federal student loans that are not eligible for these benefits include FFEL program loans held by commercial lenders and guaranty agencies (hereinafter, *commercially held FFEL program loans*), Perkins Loan program loans held by IHEs (hereinafter, *institutionally held Perkins Loans*), and most PHSA Loans.⁸⁸

The Heroes Act would effectively extend CARES Act student loan benefits to borrowers of commercially held FFEL programs loans, Perkins Loans (including institutionally held Perkins Loans), and all types of PHSA Loans.⁸⁹ Such benefits would be made available as of March 13, 2020 (the date of enactment of the CARES Act). The Heroes act would require ED (or the Secretary of Health and Human Services (HHS) in the case of PHSA Loans to refund to borrowers any interest that accrued and any payments made on such loans between March 13, 2020, and the date of enactment of the Heroes Act.

In addition, the Heroes Act would extend the time period during which the above-described benefits would be available for all types of federal student loans. Payments and involuntary collection would be suspended through September 30, 2021.⁹⁰ Interest accrual would be

⁸⁵ To qualify for PSLF, a borrower must make 120 qualifying monthly payments while employed in a public service job. Generally, periods of nonpayment do not count toward the 120 qualifying payments. For additional information on PSLF, see CRS Report R45389, *The Public Service Loan Forgiveness Program: Selected Issues*.

⁸⁶ To qualify for loan forgiveness under one of the IDR plans, an individual must make qualifying monthly payments for a period of 20 or 25 years, depending on the plan. In general, periods of nonpayment are not included in a borrower's repayment period. For additional information, see CRS Report R43571, *Federal Student Loan Forgiveness and Loan Repayment Programs*.

⁸⁷ Loan rehabilitation is the process by which a borrower may bring a loan out of default by making nine monthly payments on a defaulted loan within 20 days of the due date during a period of 10 consecutive months.

⁸⁸ ED also extended the suspension of interest and collections to defaulted Health Education Assistance Loan (HEAL) program loans. From 1978 to 1998, Title VII of PHSA authorized the insurance of HEAL program loans to eligible health professions graduate students. The authorization to make new HEAL program loans was terminated on September 30, 1998, but borrowers remain responsible for repaying them. Administration of the HEAL program was transferred to ED from HHS on July 1, 2014, pursuant to the Consolidated Appropriations Act, 2014 (P.L. 113-76). Defaulted HEAL program loans are held by ED. HEAL program loans that are not in default are held by commercial lenders. U.S. Department of Education, Office of Federal Student Aid, "Coronavirus and Forbearance Info for Students, Borrowers, and Parents," <https://studentaid.gov/announcements-events/coronavirus> (accessed May 27, 2020).

⁸⁹ H.R. 6800, §150113.

⁹⁰ H.R. 6800, §150114.

suspended through the later of September 30, 2021, or the date that is two months after the national U5 measure of labor underutilization⁹¹ shows initial signs of recovery.⁹²

Because some FFEL and Perkins Loan program loans and PHSA Loans are held by entities other than ED or HHS, the Heroes Act would require the Secretary of Education or the Secretary of HHS, as applicable, to compensate holders of such loans for any losses incurred due to required payment suspension. Losses would be determined by the relevant Secretary. The act would also require the secretaries to make interest payments on such loans on behalf of borrowers during periods of interest suspension.

Paying Down Federal Student Loan Debt

The Heroes Act would require the Secretary to cancel or repay (in the case of those loans not held by ED) up to \$10,000 in outstanding balance of Direct Loan, FFEL, and Perkins Loan program loans for borrowers who are *economically distressed*.⁹³

The Heroes Act would specify how the benefit would be applied to borrowers with multiple loans. For example, it would specify that in the case of a borrower whose loans had different interest rates, the benefit would first be applied toward the loan with the highest interest rate. The act would also specify that cancellation/repayment benefits would be excluded from federal income tax liability.⁹⁴

Consolidating Federal Student Loans and Loan Forgiveness

Direct Consolidation Loans allow borrowers with at least one loan borrowed through either the Direct Loan program or the FFEL program to refinance their eligible federal student loan debt (including Perkins Loans and PHSA Loans) by borrowing a new loan and using the proceeds to pay off their existing federal student loan obligations. Upon a borrower obtaining a Direct Consolidation Loan, a new repayment period begins, which may be for a longer term than applied to the original loans. Qualifying payments made on the component loans under an IDR plan or for purposes of PSLF are not considered qualifying payments on the new Direct Consolidation Loan for purposes of obtaining forgiveness benefits under an IDR plan or PSLF.⁹⁵

The Heroes Act would specify that for loans consolidated during the period for which the interest suspension benefit described above would be in effect, payments made on component loans prior

⁹¹ The U5 measure of labor underutilization is an alternative measure of unemployment calculated by the Bureau of Labor Statistics that measures “total unemployed, plus discouraged workers, plus all other marginally attached workers, as a percent of the civilian labor force plus all marginally attached workers.” U.S. Bureau of Labor Statistics, “Alternative Measures of Labor Underutilization for States, Second Quarter of 2019 through First Quarter of 2020 Averages,” <https://www.bls.gov/lau/stalt.htm> (accessed May 26, 2020).

⁹² H.R. 6800, §150115. The Heroes Act would establish that the national U5 measure is showing “initial signs of recovery” when the following conditions hold: (1) the U5 three-month average has been below its highest three-month average since March 2020 for three consecutive months (i.e., its peak value); (2) for each of those three consecutive months, the three-month average U5 measure is no greater than the three-month value for the period ending February 2020 (i.e., the starting value) plus two-thirds of the percentage point difference between the peak value and the starting value; and (3) the monthly U5 measure has decreased for each month during the two most recent consecutive months for which data from BLS are available.

⁹³ H.R. 6800, §150117.

⁹⁴ H.R. 6800, §150117.

⁹⁵ Effectively, any progress made toward IDR forgiveness or PSLF on the component loans paid off by the Consolidation Loan is eliminated. Upon consolidation, a borrower of a new Direct Consolidation Loan would be required to restart working toward PSLF and IDR forgiveness benefits.

to consolidation into a Direct Consolidation Loan would count toward the required number of payments under an IDR plan or PSLF for the new Direct Consolidation Loan.⁹⁶ Such payments would qualify irrespective of whether all of the component loans are eligible for an IDR plan or PSLF, or whether for purposes of PSLF, the payments on all component loans were made according to a PSLF qualifying repayment plan. The number of payments made on the component loans that would count toward IDR or PSLF forgiveness benefits would be determined by multiplying the weighted factor of each component loan by the number of payments made on such loan and applying the result to the new Direct Consolidation Loan.

The Heroes Act would also specify that health care practitioners who provide full-time medical services at nonprofit or public hospitals or other healthcare facilities but who are prohibited by state law from being directly employed by such entities may nonetheless qualify for PSLF, so long as they meet all other program criteria.⁹⁷ Unlike other Heroes Act student loan provisions, this provision appears to be a permanent change to the PSLF program.

Addressing Borrower Defense to Repayment

The HEA and accompanying regulations establish a route through which Direct Loan borrowers, and in more limited circumstances FFEL and Perkins Loan borrowers, may seek cancellation of their loans in instances where an IHE made misleading representations regarding the educational services it provided. This is known as borrower defense to repayment (BDR). In recent years, thousands of BDR applications have been filed by borrowers; however, many have not been processed by ED. In other instances, BDR applications have been processed but borrowers only had a portion of their student loan debt cancelled.⁹⁸

The Heroes Act would require ED to cancel the full balance of, and return payments previously made on, a borrower's qualifying outstanding loans within 45 days of the act's enactment for *eligible borrowers*.⁹⁹ Eligible borrowers would be defined as individuals who borrowed a Direct Loan or FFEL program loan to finance the cost of enrollment at an IHE that, according to ED findings made on or before the act's date of enactment, made a false or misleading representation of "job placements rates" of such IHE, with respect to "guaranteed employment," or of "transferability of credits" of such IHE.¹⁰⁰ Individuals who previously received partial BDR relief would be included as eligible borrowers.

The Heroes Act would also require ED to, not later than 180 days after the date of enactment, adjudicate BDR claims from state attorneys general who, on or before the date of enactment, submitted BDR claims on behalf of borrowers and such borrowers did not receive full BDR relief. ED would be required to, within 45 days of adjudication, cancel the full balance of and

⁹⁶ H.R. 6800, §150120.

⁹⁷ To qualify for PSLF, an individual must be directly hired and paid by a government or nonprofit organization. Some state laws prohibit physicians from being employed directly by nonprofit hospitals; although, physicians may still provide healthcare services at such hospitals. For additional information, see Physician News Network, "California Groups Urge Education Department to Fix Public Service Loan Forgiveness," June 6, 2016.

⁹⁸ For additional information, see Danielle Douglas-Gabriel, "DeVos reaches settlement over stalled student debt relief claims," *Washington Post*, April 10, 2020.

⁹⁹ H.R. 6800, §150122(b) and (c).

¹⁰⁰ Individuals who would qualify for debt relief pursuant to an IHE making a false or misleading representation with respect to guaranteed employment or transferability of credits must also have asserted such in a BDR application to ED.

return payments previously made on qualifying loans for borrowers whose BDR claims are successfully adjudicated.¹⁰¹

In addition, ED would be required to initiate proceedings to collect loan amounts cancelled from the relevant IHE.¹⁰² The act would also specify that amounts of BDR relief would be excluded from federal income tax liability.¹⁰³

Automatic Closed School Loan Discharge

In general, borrowers of HEA Title IV loans may be eligible to have the full balance of their outstanding Title IV loans discharged if they (or the student on whose behalf a parent borrowed in the case of Parent PLUS Loans) are unable to complete the program in which they enrolled due to the closure of the school.¹⁰⁴ Typically, to qualify for a closed school loan discharge a student must have been enrolled in an IHE when it closed or must have withdrawn from the IHE within 120 days prior to its closure. In addition, the student must have been unable to complete his or her program of study at the closed school or in a comparable program at another IHE.¹⁰⁵ Borrowers may have their loans discharged in one of two ways: (1) by applying for a closed school loan discharge or (2) by having their loans automatically discharged by the Secretary, if the Secretary determines that, with respect to an IHE that closed on or after November 1, 2013, the borrower did not subsequently reenroll in any Title IV eligible institution within three years after the school closed.¹⁰⁶

Effective July 1, 2020, regulations provide that a borrower may be eligible for a closed school loan discharge if he or she (or the student on whose behalf a parent borrowed in the case of Parent PLUS Loans) were enrolled in an IHE when it closed or withdrew from the IHE within 180 days prior to its closure.¹⁰⁷ The new regulations retain the eligibility requirement that a student must have been unable to complete his or her program of study at the closed school or in a comparable program at another IHE. The automatic closed school loan discharge procedures would only be available with respect to IHEs that closed on or after November 1, 2013, and before July 1, 2020.

The Heroes Act would require ED to automatically discharge a borrower's Title IV student loans if the borrower¹⁰⁸ (1) was enrolled at an IHE while such IHE was participating in a COVID-19 Provisional Program Participation Agreement (see the "COVID-19 Provisional Program Participation Agreements and Funding" section); (2) was unable to complete the period of enrollment due to the IHE's closure or withdrew from the IHE, in general, within 120 days prior to the IHE's closure; and (3) did not subsequently reenroll in any Title IV eligible institution within three years after the school closed.¹⁰⁹

¹⁰¹ H.R. 6800, §150122(e).

¹⁰² H.R. 6800, §150122(f).

¹⁰³ H.R. 6800, §150122(g).

¹⁰⁴ HEA, §§437(c)(1), 455(a)(1), and 464(g).

¹⁰⁵ 34 C.F.R. §§674.33(g)(4), 682.402(d)(3), and 685.214(c)(1).

¹⁰⁶ 34 C.F.R. §§674.33(g)(3)(A)(ii), 682.402(d)(8)(ii), and 685.214(c)(2)(ii).

¹⁰⁷ U.S. Department of Education, "Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program," 84 *Federal Register* 49788, September 23, 2019.

¹⁰⁸ The Heroes Act does not appear to address whether the borrower of a Parent PLUS Loan would be eligible for closed school discharged if the student on whose behalf the loan was borrowed is unable to complete his or her period of enrollment.

¹⁰⁹ H.R. 6800, §150112.

HEA Title IV Administrative Provisions

In addition to amending some of the CARES Act provisions and federal student loan relief provisions, the Heroes Act would make temporary and permanent modifications pertaining to the administration of HEA Title IV programs in response to the COVID-19 emergency. The provisions would modify HEA Title IV aid need analysis procedures, redefine distance education, respond to potential IHE fiscal instability, and require additional ED reporting of actions taken in response to the CARES Act and the Heroes Act.

Modifications to FAFSA and Need Analysis Procedures

Some HEA Title IV aid is based on student financial need. A key component of need is the ability of a student's family to pay for higher education. The HEA establishes a series of formulas that calculate a student's expected family contribution (EFC) on the basis of the financial and personal characteristics of the student and applicable family members (typically, parents or a spouse).¹¹⁰ Information necessary to calculate the EFC is collected through the Free Application for Federal Student Aid (FAFSA) and shared with applicable state agencies and IHEs.

Emergency Financial Aid Grants Excluded From Need Analysis

The CARES Act established emergency financial aid grants for postsecondary students to cover unexpected expenses related to disruptions of campus operations due to the COVID-19 pandemic under HEERF and FSEOG (see the "CARES Act Amendments and Related Provisions" section). The CARES Act did not explicitly address how these grants would be treated in calculating students' EFCs in subsequent award years.

The Heroes Act would explicitly exclude emergency financial aid grants from taxation and would also exclude the grants from being considered as untaxed income when calculating a student's EFC.¹¹¹ This provision would eliminate the possibility that a student's EFC could increase (and corresponding eligibility for need-based aid could decrease) on the basis of receiving an emergency grant. The act defines emergency financial aid grants as student grants made available under FSEOG and HEERF as authorized by the CARES Act, as well as "any other emergency grant aid to a student from a federal agency, a state, an Indian tribe, an institution of higher education, or a scholarship-granting organization ... for the purpose of providing financial relief to students enrolled at institutions of higher education in response to a qualifying emergency."

Facilitating Access to Financial Aid for Recently Unemployed Students¹¹²

A student's EFC typically considers income from the second preceding tax year (e.g., when completing the FAFSA for the 2020-2021 award year, applicants provided information from tax year 2018). The HEA allows a school's financial aid administrators (FAAs) to exercise *professional judgement* (PJ) on a case-by-case basis to adjust income and other EFC factors under

¹¹⁰ For a more detailed discussion of the EFC formula, see CRS Report R44503, *Federal Student Aid: Need Analysis Formulas and Expected Family Contribution*.

¹¹¹ H.R. 6800, §20232 (taxation) and §150108 (need analysis).

¹¹² H.R. 6800, §150109.

“special circumstances,” such as when the financial circumstances of a student’s family significantly change between the tax year reported on the FAFSA and enrollment.¹¹³

The Heroes Act would codify components of guidance that ED originally issued during the economic downturn in 2009 that encouraged schools to use PJ for students who were receiving unemployment benefits.¹¹⁴ The act would codify the component of the guidance that advised schools on how to reconsider the applications and potentially increase aid eligibility for students who documented receipt of unemployment benefits.¹¹⁵ The act would codify the portion of guidance that would further communicated an understanding that ED expected the usage of PJ to increase due to the current economic conditions; ED would make corresponding adjustments to its risk-based model for program reviews (i.e., schools that utilized PJ would not be more likely to be audited); and documentation of unemployment benefits would be considered adequate documentation of adjustments to the student-recipient’s income.¹¹⁶

The Heroes Act would direct ED, in consultation with the Secretary of Labor, to carry out activities to inform applicants for and recipients of unemployment benefits of the availability of federal student aid through the HEA. The act would further establish various avenues of outreach to FAFSA filers who may qualify for means-tested benefits beyond student aid.

Definition of Distance Education

To participate in the HEA Title IV federal student aid programs, educational programs offered via the internet and other specified technologies must meet the HEA-specified *distance education* requirements. In general, distance education must support “regular and substantive interaction between students and the instructor, synchronously or asynchronously.”¹¹⁷

In April 2020, in an effort to clarify the HEA distance education requirements and to address new adaptations of technology in higher education, ED published a Notice of Proposed Rulemaking (NPRM) that would add specificity to the meaning of distance education. Among other provisions, the NPRM would define *regular and substantive interaction*.¹¹⁸ If finalized,¹¹⁹ the proposed distance education regulations would likely not go into effect until at least July 1, 2021.

¹¹³ HEA, §479A.

¹¹⁴ The act specifically refers to GEN-09-05, which was issued in May 2009; see <https://ifap.ed.gov/dear-colleague-letters/05-08-2009-gen-09-05-subject-update-use-professional-judgment-financial-aid>. It is unclear when the guidance was withdrawn, though in June 2020 there were media reports that ED had communicated that it was no longer in effect. For example, see NPR, “Education Dept. Is Making It Harder For Colleges To Boost Student Aid During Crisis, June 19, 2020, <https://www.npr.org/2020/06/19/879633830/education-dept-is-making-it-harder-for-colleges-to-boost-student-aid-during-crisis>.

¹¹⁵ Specifically, GEN-09-05 advises FAAs that they may use evidence of unemployment benefits to establish that “income earned from work of that student is zero” and that “unemployment benefits can also be considered zero” when calculating the student’s total income.

¹¹⁶ In July 2020 (subsequent to the passage of the Heroes Act), ED issued guidance specifying “for the 2019-20 and 2020-21 award years, the Department will make appropriate adjustments to its risk-based model and will not negatively view increased use of professional judgment or use it as a selection criterion for a program compliance review.” See U.S. Department of Education, electronic announcements, July 9, 2020, <https://ifap.ed.gov/electronic-announcements/070920AltAcceptDocCompleteIRSVNFW2ProfJudgmentCOVID>. The announcement did not offer explicit guidance related to students receiving unemployment benefits.

¹¹⁷ HEA, §103(7)(a)(ii).

¹¹⁸ U.S. Department of Education, “Distance Education and Innovation,” 85 *Federal Register* 18638, April 2, 2020.

¹¹⁹ HEA, §482(c).

The Heroes Act would define distance education, for HEA Title IV purposes, in the same way as the NPRM would.¹²⁰ The definition would be effective for any semester (or equivalent) that begins on or after August 15, 2020, and would cease to be effective on June 30, 2021.

Incorporating the NPRM's definition of distance education may be particularly relevant during the COVID-19 pandemic, because many IHEs have, at least temporarily, transitioned to distance education in response to it.¹²¹

COVID-19 Provisional Program Participation Agreements and Funding

To participate in the HEA Title IV student aid programs, an IHE must demonstrate *financial responsibility*. To do so, private nonprofit and proprietary IHEs must, among other requirements, meet financial ratios (known as composite scores) established by ED.¹²² If an IHE does not meet composite score standards,¹²³ ED may still consider it financially responsible if it qualifies under an alternative standard.¹²⁴ These alternative standards include submitting an irrevocable letter of credit¹²⁵ to ED that is equal to a percentage of the Title IV funds that the IHE received during its most recently completed fiscal year. The alternative standards may also include meeting specific monitoring requirements and participating in the Title IV programs under a provisional program participation agreement (PPPA).¹²⁶

The Heroes Act would permit a subset of IHEs not meeting composite score standards to continue to participate in the Title IV student aid programs under a *COVID-19 PPPA* without being required to post a letter of credit.¹²⁷ Among other criteria,¹²⁸ an IHE would be eligible to participate under a COVID-19 PPPA if its liquidity level is less than or equal to 180 days on the date the IHE applies to participate under a COVID-19 PPPA. The liquidity level would be defined as the number of days an IHE can operate based on its available resources, as determined in accordance with specified standards.

IHEs would have to apply for a COVID-19 PPPA on or before December 31, 2020. The application would address, among other items, an IHE's submission of a record-management

¹²⁰ H.R. 6800, §150111.

¹²¹ Chronicle staff, "Here's a List of Colleges' Plans for Reopening in the Fall," *Chronicle of Higher Education*, April 23, 2020.

¹²² ED calculates an IHE's composite score based on its equity, primary, and net income ratios. 34 C.F.R. §668.172.

¹²³ Composite scores range from -1.0 to 3.0. IHEs with composite scores of 1.5 to 3.0 are considered financially responsible. IHEs with composite scores of 1.0 to 1.4 are considered in the "Zone" and are considered financially responsible, but additional oversight is required. IHEs with composite scores of -1.0 to 0.9 are not considered financially responsible.

¹²⁴ HEA, §498(c)(3).

¹²⁵ A letter of credit is a "document granted by banks stating that the bank will guarantee amounts that its customer incurred." U.S. Department of Education, *Federal Student Aid Handbook, 2019-2020*, Appendix A, p. 48.

¹²⁶ A program participation agreement is a document in which the IHE agrees to comply with the laws, regulations, and policies applicable to the Title IV programs. For additional information on provisional PPAs and alternative financial responsibility standards, see U.S. Department of Education, *Federal Student Aid Handbook, 2019-2020*, vol. 2, pp. 96-99.

¹²⁷ H.R. 6800, §150112.

¹²⁸ An IHE would need to meet the following criteria to participate in Title IV under a COVID-19 PPPA: (1) it either has a composite score of less than 1.0 for an institutional fiscal year ending in 2019 or it has or anticipates having a composite score of less than 1.0 for an institutional fiscal year ending in 2020, and (2) it must have offered on-campus classes during award year 2018-2019.

plan¹²⁹ and a teach-out plan¹³⁰ to ED. In addition, an IHE with a liquidity level of equal to or less than 90 days would be required to submit a teach-out agreement¹³¹ to ED, its accrediting agency, and its state authorization agency (if applicable). Upon approval to participate under a COVID-19 PPPA, an IHE would be required to continue to meet a variety of existing Title IV participation requirements and various reporting requirements.

In general, COVID-19 PPPAs would begin on the date on which the agreement was entered into and end on the last day of the first full award year following such date. A COVID-19 PPPA could be renewed or extended annually, but no COVID-19 PPPA could be in effect beyond June 30, 2024. ED would be required to terminate a COVID-19 PPPA if an IHE's composite score met specific benchmarks that indicate improved financial responsibility.¹³²

The Heroes Act would authorize discretionary appropriations of \$300 million for ED to award grants to IHEs that participate in the Title IV programs under a COVID-19 PPPA to carry out the requirements of the COVID-19 PPPA and provide for the increased economic stability of such IHEs.¹³³

Carl D. Perkins Career and Technical Education Act of 2006 and Adult Education and Family Literacy Act: Additional Flexibilities

The Carl D. Perkins Career and Technical Education Act of 2006 (Perkins; P.L. 109-270, as amended), is the primary federal law aimed at developing and supporting career and technical education (CTE) programs at the secondary and postsecondary educational levels.¹³⁴ Perkins requires local CTE providers to return unexpended grant funds at the end of the academic year (AY) to the state for redistribution.¹³⁵ Among many other uses of funds, Perkins allows local CTE providers to pool funds to provide professional development.¹³⁶ Professional development activities offered with pooled funds or an individual CTE provider's funds must meet several

¹²⁹ A record-management plan would include a plan for the custody and disposition of teach-out plan and teach-out agreement records; student records, including transcripts, billing, and financial aid records; an estimate of the costs necessary to carry out the record-management plan; and a financial plan to provide funding for such costs.

¹³⁰ A teach-out plan would be defined as a written plan developed by the IHE that “provides for the equitable treatment of students” if the IHE “ceases to operate or plans to cease operations before all enrolled students have completed their program of study.”

¹³¹ A teach-out agreement would be defined as a written agreement between an IHE and one or more other qualifying IHEs (i.e., *teach-out institutions*) that provides for the equitable treatment of students and “a reasonable opportunity for students to complete their program of study if such institution ... ceases to operate or plans to cease operations before all such enrolled students have completed their program of study.” The act would require teach-out agreements to include a variety of elements, such as a list of enrolled students; student financial information (e.g., amount of refunds due to each student); and in the case of an IHE's closure, a plan to notify students of, the process for obtaining a closed school loan discharge.

¹³² Specifically, ED would be required to terminate the COVID-19 PPPA if the IHE's composite score was equal to or greater than 1.0.

¹³³ H.R. 6800, §150112.

¹³⁴ For more information about Perkins, see CRS Report R45446, *Reauthorization of the Perkins Act in the 115th Congress: The Strengthening Career and Technical Education for the 21st Century Act*.

¹³⁵ Perkins, §133(b).

¹³⁶ Perkins, §135(c).

requirements, including being sustained (not stand-alone, one-day, or short-term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused.¹³⁷

With respect to Perkins, the Heroes Act would give local CTE providers greater flexibility in the use of funds.¹³⁸ States would be authorized to allow local CTE providers that were unable to expend AY2019-2020 grant funds in that year due to the COVID-19 emergency to retain such funds to carry out AY2019-2020 activities in AY2020-2021. Under the act, local CTE providers would be allowed to pool funds with each other to support transitions from secondary education to postsecondary education or employment for CTE participants whose academic year was interrupted by the COVID-19 emergency. In addition, local CTE providers could engage in professional development activities that are not sustained, intensive, collaborative, job-embedded, data-driven, and classroom-focused.

The Adult Education and Family Literacy Act (AEFLA) is the primary federal legislation that supports basic education (e.g., literacy, numeracy, and English language training) for out-of-school adults.¹³⁹ The legislation has a 2% reservation for National Leadership Activities, and the remainder of its funding is allotted to state grants that facilitate basic educational activities. State grants include discrete allocations for administrative expenses, state leadership activities, and subgrants to local providers.

With respect to AEFLA, the Heroes Act would allow state grantees to use funding made available for state leadership activities and administrative costs for expenses “related to transitions to online services delivery of adult education and literacy activities.”¹⁴⁰ The act would further direct the Secretary, as part of the National Leadership Activities, to identify and disseminate to state agencies strategies and virtual proctoring tools to assess adult education participants and measure their progress in compliance with the relevant performance standards.

Section 421(b) of the General Education Provisions Act (GEPA) allows funds appropriated for an applicable program (e.g., Perkins, AEFLA) that are not obligated and expended by the recipient before the end of the fiscal year to remain available for obligation and expenditure for one additional fiscal year. Section 3511 of the CARES Act authorized the Secretary to grant waivers of GEPA Section 421(b) if requested by state educational agencies (SEAs) to extend the period of availability of state formula grant funds authorized by Perkins and AEFLA. In response, ED extended the period of availability of FY2018 funds until September 30, 2021, for several Perkins and AEFLA grants for which the SEA is the eligible agency. ED noted, however, that the CARES Act did not give it authority to grant such Perkins and AEFLA waivers if the SEA were not the recipient of the funds.¹⁴¹ The Heroes Act would allow the Secretary, upon request of a state or Indian tribe, to waive GEPA Section 421(b) to extend the period of availability of formula grants under Perkins and AEFLA for periods before AY2020–2021.¹⁴²

¹³⁷ Perkins, §3(40).

¹³⁸ H.R. 6800, §150202.

¹³⁹ For more information about AEFLA, see CRS Report R43789, *Adult Education and Family Literacy Act: Major Statutory Provisions*.

¹⁴⁰ H.R. 6800, §150203.

¹⁴¹ U.S. Department of Education, Office of Career, Technical, and Adult Education, “Notice of Waivers Granted Under Section 3511 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act,” 85 *Federal Register* 29440-29441, May 15, 2020.

¹⁴² H.R. 6800, §150204.

Appendix. Estimated State Fiscal Stabilization Fund Grant Allocations¹⁴³

The Heroes Act would provide \$90.0 billion for the State Fiscal Stabilization Fund (SFSF). From the overall appropriation, the following reservations would be made:

- 0.5% for the outlying areas;¹⁴⁴
- 0.5% for the Bureau of Indian Education (BIE); and
- \$30,000,000 for administration and oversight by the U.S. Department of Education (ED).

The remaining funds would be awarded to states based on two formula factors: (1) 61% would be awarded based on each state's share of individuals ages 5 through 24 relative to the total number of individuals ages 5 through 24 in all states; and (2) 39% would be awarded based on each state's share of children counted under Section 1124(c) of the Elementary and Secondary Education Act (ESEA) relative to the total number of children counted under Section 1124(c) for all states. There would be no minimum state grant amount. Population estimates for the first factor were available from the U.S. Census Bureau for 2018.¹⁴⁵ Data for the second factor are based on formula child counts used to determine Title I-A grants under the ESEA. These counts for the 50 states, the District of Columbia, and Puerto Rico consist of children who are ages 5 through 17 (1) living in families in poverty, according to estimates from the U.S. Census Bureau's Small Area Income and Poverty Estimates (SAIPE) program; (2) in institutions for neglected or delinquent children or in foster homes; and (3) in families receiving Temporary Assistance for Needy Families (TANF) payments, but with incomes above the poverty income level for a family of four.¹⁴⁶

Each state would then be required to allocate 65% of the funds received to local educational agencies (LEAs) and 30% of the funds to public institutions of higher education (IHEs). The remaining 5% would be used for statewide elementary, secondary, and postsecondary activities.

Table A-1 presents estimated state grants for the SFSF program using 2018 Census Bureau population estimates, preliminary FY2020 ESEA Title I-A formula child counts, and an appropriation of \$90 billion. Based on these estimated grant amounts, the table also details the estimated amount of funding that would be provided to LEAs and public IHEs and would be available for statewide activities in each state.

¹⁴³ Emma Nyhof, CRS Research Assistant, contributed to this section of the report.

¹⁴⁴ The Secretary of Education would be required to allocate up to 0.5% of the total appropriation to the outlying areas. For the purposes of this memorandum, CRS assumed that the full 0.5% would be allocated to the outlying areas.

¹⁴⁵ Data for the 50 states and the District of Columbia were available from the U.S. Census Bureau, Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2018, <https://www.census.gov/data/tables/time-series/demo/ageandsex/2010s-state-detail.html>. These were the data that ED used to allocate grants under the Education Stabilization Fund authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). (Conversation between CRS and ED staff, April 1, 2020.)

¹⁴⁶ The analysis relies on unpublished preliminary FY2020 Title I-A data that were provided to CRS by ED on February 21, 2020.

Table A-1. Estimated State Grants and the Allocation of Funds Within Each State for the State Fiscal Stabilization Fund Program at an Appropriations Level of \$90 Billion
(Dollars in thousands)

State	Estimated Grants to States		Estimated Within-State Allocations of Funds		
	Estimated Grant Amount	Percentage Share of Total Funds Available for State Grants	Estimated Amount of Funding Provided to Local Educational Agencies	Estimated Amount of Funding Provided to Public Institutions of Higher Education	Estimated Amount of Funding Available for Statewide Activities
Alabama	\$1,469,335	1.65%	\$955,068	\$440,800	\$73,467
Alaska	\$196,523	0.22%	\$127,740	\$58,957	\$9,826
Arizona	\$2,084,527	2.34%	\$1,354,943	\$625,358	\$104,226
Arkansas	\$922,533	1.04%	\$599,647	\$276,760	\$46,127
California	\$10,716,134	12.03%	\$6,965,487	\$3,214,840	\$535,807
Colorado	\$1,332,224	1.50%	\$865,945	\$399,667	\$66,611
Connecticut	\$843,494	0.95%	\$548,271	\$253,048	\$42,175
Delaware	\$238,910	0.27%	\$155,292	\$71,673	\$11,946
District of Columbia	\$174,878	0.20%	\$113,671	\$52,463	\$8,744
Florida	\$5,231,568	5.87%	\$3,400,519	\$1,569,471	\$261,578
Georgia	\$3,183,894	3.57%	\$2,069,531	\$955,168	\$159,195
Hawaii	\$302,714	0.34%	\$196,764	\$90,814	\$15,136
Idaho	\$473,935	0.53%	\$308,058	\$142,180	\$23,697
Illinois	\$3,276,432	3.68%	\$2,129,681	\$982,930	\$163,822
Indiana	\$1,858,558	2.09%	\$1,208,062	\$557,567	\$92,928
Iowa	\$793,302	0.89%	\$515,646	\$237,991	\$39,665
Kansas	\$793,924	0.89%	\$516,051	\$238,177	\$39,696
Kentucky	\$1,318,189	1.48%	\$856,823	\$395,457	\$65,909
Louisiana	\$1,510,327	1.70%	\$981,713	\$453,098	\$75,516
Maine	\$280,399	0.31%	\$182,259	\$84,120	\$14,020
Maryland	\$1,382,192	1.55%	\$898,425	\$414,657	\$69,110
Massachusetts	\$1,539,977	1.73%	\$1,000,985	\$461,993	\$76,999
Michigan	\$2,696,937	3.03%	\$1,753,009	\$809,081	\$134,847
Minnesota	\$1,315,070	1.48%	\$854,796	\$394,521	\$65,754
Mississippi	\$1,040,636	1.17%	\$676,414	\$312,191	\$52,032
Missouri	\$1,648,077	1.85%	\$1,071,250	\$494,423	\$82,404
Montana	\$264,697	0.30%	\$172,053	\$79,409	\$13,235
Nebraska	\$495,052	0.56%	\$321,784	\$148,516	\$24,753

State	Estimated Grants to States		Estimated Within-State Allocations of Funds		
	Estimated Grant Amount	Percentage Share of Total Funds Available for State Grants	Estimated Amount of Funding Provided to Local Educational Agencies	Estimated Amount of Funding Provided to Public Institutions of Higher Education	Estimated Amount of Funding Available for Statewide Activities
Nevada	\$798,335	0.90%	\$518,918	\$239,501	\$39,917
New Hampshire	\$269,873	0.30%	\$175,417	\$80,962	\$13,494
New Jersey	\$2,082,842	2.34%	\$1,353,847	\$624,852	\$104,142
New Mexico	\$669,240	0.75%	\$435,006	\$200,772	\$33,462
New York	\$4,955,150	5.56%	\$3,220,847	\$1,486,545	\$247,757
North Carolina	\$2,882,586	3.24%	\$1,873,681	\$864,776	\$144,129
North Dakota	\$179,938	0.20%	\$116,960	\$53,981	\$8,997
Ohio	\$3,163,097	3.55%	\$2,056,013	\$948,929	\$158,155
Oklahoma	\$1,202,118	1.35%	\$781,377	\$360,635	\$60,106
Oregon	\$982,304	1.10%	\$638,498	\$294,691	\$49,115
Pennsylvania	\$3,152,091	3.54%	\$2,048,859	\$945,627	\$157,605
Puerto Rico	\$1,426,232	1.60%	\$927,051	\$427,870	\$71,312
Rhode Island	\$262,829	0.30%	\$170,839	\$78,849	\$13,141
South Carolina	\$1,458,908	1.64%	\$948,290	\$437,672	\$72,945
South Dakota	\$239,875	0.27%	\$155,919	\$71,963	\$11,994
Tennessee	\$1,914,689	2.15%	\$1,244,548	\$574,407	\$95,734
Texas	\$9,242,958	10.38%	\$6,007,922	\$2,772,887	\$462,148
Utah	\$885,549	0.99%	\$575,607	\$265,665	\$44,277
Vermont	\$136,029	0.15%	\$88,419	\$40,809	\$6,801
Virginia	\$2,020,418	2.27%	\$1,313,272	\$606,125	\$101,021
Washington	\$1,718,148	1.93%	\$1,116,796	\$515,444	\$85,907
West Virginia	\$492,066	0.55%	\$319,843	\$147,620	\$24,603
Wisconsin	\$1,408,079	1.58%	\$915,252	\$422,424	\$70,404
Wyoming	\$142,207	0.16%	\$92,435	\$42,662	\$7,110
Subtotal for 50 states, the District of Columbia, and Puerto Rico	\$89,070,000	100.00%	\$57,895,500	\$26,721,000	\$4,453,500
Outlying Areas	\$450,000	—	—	—	—
Bureau of Indian Education (BIE)	\$450,000	—	—	—	—

State	Estimated Grants to States		Estimated Within-State Allocations of Funds		
	Estimated Grant Amount	Percentage Share of Total Funds Available for State Grants	Estimated Amount of Funding Provided to Local Educational Agencies	Estimated Amount of Funding Provided to Public Institutions of Higher Education	Estimated Amount of Funding Available for Statewide Activities
Administration and oversight	\$30,000	–	–	–	–
Total appropriation	\$90,000,000	–	–	–	–

Source: Table prepared by CRS, based on analysis of the Heroes Act (H.R. 6800); unpublished preliminary FY2020 ESEA Title I-A formula child count data provided by the U.S. Department of Education, Budget Service; and 2018 population data from the U.S. Census Bureau, *Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2018*, <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-detail.html>.

Notes: Details may not add to totals due to rounding. Percentages were calculated based on unrounded numbers. CRS assumed that the Secretary of Education would allocate the full 0.5% to the outlying areas that would be permitted under the act. CRS also assumed that the Secretary would reserve the full \$30 million that would be available under the act for administration and oversight by ED.

Notice: These are estimated grants only. These estimates are provided solely to assist in comparisons of the relative impact of alternative formulas and funding levels in the legislative process. They are not intended to predict specific amounts states will receive. In addition to other limitations, data needed to calculate final grants may not yet be available.

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