



Analysis of HEROES Act Provisions Key to Community Colleges

On May 15, on a largely party-line vote, the U.S. House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions Act or the HEROES Act, H.R. 6800. This emergency supplemental appropriations bill would provide more than \$3 trillion to address the coronavirus crisis, including significant additional resources for higher education. The legislation now moves to the U.S. Senate, where action is not expected until June at the earliest.

This AACC analysis focuses on the bill's higher education provisions. Other bill sections include funding to assist state, local territorial and tribal governments, essential workers, direct payments to individuals, coronavirus testing and tracing, payroll protections, worker protections, unemployment benefits, health insurance subsidies, housing and food assistance, small business loans, and other provisions.

State Fiscal Stabilization Fund

- \$90 billion is provided for grants to states to support statewide and local funding for elementary and secondary schools and public postsecondary institutions. After some small set-asides, 30% (\$26.72 billion) of state funds are reserved for public higher education institutions.
- 5% (\$4.45 billion) is provided for discretionary education funding for states.
- Within states, funds for public institutions are allocated by formula as follows:
 - 75% is based on the relative share of the total enrollment of Pell students at an institution, and 25% is based on the relative share of the total non-Pell enrollment. (The use of headcount, rather than the full-time equivalent (FTE) enrollment calculations used in the CARES Act, benefits community colleges.)
 - The allocation excludes students who were exclusively enrolled online at the time of the coronavirus emergency, as in the CARES Act.
- Institutions may use funds for “education and general expenditures (including defraying expenses due to lost revenue, reimbursement for expenses already incurred, and payroll) and grants to students for expenses directly related to coronavirus and the disruption of campus operations (which may include emergency financial aid to students for food, housing, technology, health care, and child care costs that shall not be required to be repaid by such students) or for 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.”

This generally expansive definition should allow institutions to deploy funds much more easily and effectively than under the CARES Act. There is no requirement that funds be devoted to any specific purpose, including emergency grants to students, as with CARES.

- Critically and of great benefit to community colleges, the language broadening eligible institutional expenses extends to the CARES Act as well.
- AACC analysis indicates that approximately 48% of the formula grants would be made to community colleges, the rest going to universities, baccalaureate-granting institutions, and those offering certificates.
- Institutions who enroll 500 or more students are guaranteed to receive funding equal to the lesser of either \$1 million or the combined loss of revenue and new expenses associated with the coronavirus at the institution. States must reserve funds for this purpose.
- ED is explicitly prohibited from establishing a priority or preference not specified in the law, or from imposing any limitations not specified.
- “Maintenance of effort” language requires an assurance that state support for higher education, including need-based financial aid, shall be equal to at least the average of the three preceding years; and that state funding on a per-FTE basis shall be equal in fiscal years (FYs) 2020-22 to what it was in FY19. Unlike the CARES Act, no waiver is permitted. This is an extremely stringent “maintenance of effort” requirement.
- Institutions are required “to the greatest extent practicable” to continue to pay their employees and contractors during the period of any disruptions or closures related to coronavirus.
- Governors have two years to award or commit funds.

Higher Education Programs

- Provides \$10.15 billion overall for colleges and students.
- \$1.708 billion is reserved for Titles III and V of the Higher Education Act (HEA)
 - For institutions eligible for the Strengthening Institutions Program (under part A of Title III of HEA), Hispanic Serving Institutions (under parts A and B of Title V of HEA), and other MSI programs, the secretary “shall issue an application for eligible institutions to demonstrate unmet need,” and the secretary “shall allow eligible institutions to apply for funds under one of the programs for which they are eligible.” AACC believes that this approach will generally serve community colleges well, although the application process will require administrative resources, in contrast to the formula allocations made under the CARES Act. Colleges could apply for only one of these programs. The bill outlines six conditions that should be considered as aspects of “unmet need.”
 - Predominantly Black Institutions funds shall be allocated according to the formula in HEA section 318(e).
 - American Indian Tribally Controlled colleges and universities shall be allotted funding according to the formula in HEA section 316(d)(3).
- Private non-profit institutions receive \$7 billion, allocated on a formula basis.
 - \$1.4 billion is reserved for disbursement through the Fund for the Improvement of Postsecondary Institutions (FIPSE) for non-profit HEA Sec. 101 institutions with “unmet needs related to the coronavirus,” including exclusively online institutions. It is intended to be grant funding available to institutions particularly impacted by the pandemic.

Application of Waiver to Participating Nonprofit Employers

Under the Federal Work-Study (FWS) program, the match required of non-profit employers is waived (retroactive to CARES Act).

Extension of Federal Work-Study During a Qualifying Emergency

Extends section 3505 of CARES as it applies to FWS, which allows students to receive funds even if they are not able to fulfill their job obligations due to the coronavirus.

Emergency Financial Aid Grants Excluded from Need Analysis

Excludes any forms of emergency financial aid from counting as income or assets for purposes of federal student aid eligibility, or as counting as financial assistance for aid packaging purposes.

Facilitating Access to Financial Aid for Recently Unemployed Students

Allows for any student who is receiving, or has applied for, unemployment benefits to be treated as a dislocated worker at the time they file a FAFSA. This expands their eligibility to receive Title IV aid.

Student Awareness of Federal Benefits and Application Facilitation

The U.S. Department of Education (ED) is required to work with institutions of higher education to ensure students are aware of their potential eligibility for means-tested federal benefits. The ED secretary shall consult with the secretary of labor to ensure that applicants for, and recipients of, unemployment benefits are made aware of the availability of Title IV aid.

Allows institutions, with the individual's explicit permission, to disclose information collected as part of the FAFSA to enable qualifications for Federal, State, or local benefits.

Student Eligibility

Restricts the education secretary from imposing any restrictions on or defining a student for the purposes of the HEROES Act and CARES Act on anything other than their enrollment status at an institution. This would nullify the guidance provided by ED on April 21, restricting eligibility to students eligible under Section 484 of the Higher Education Act. The bill explicitly makes undocumented and international students eligible for funds, overriding language in the welfare reform law of 1996 that prohibits these students from receiving federal benefits. These provisions cover the CARES Act as well as any funds spent under HEROES.

Exempts institutions that disbursed funds under the CARES Act from penalties "if such provision is consistent with such subsection and section 18004 of the CARES Act." This makes retroactive to the CARES Act the broadened student eligibility provided under the HEROES Act.

Definitions of Distance Education

Provides definitions of the terms "Distance Education," "Technology," "Instructor," "Substantive Interaction" and "Regular Interactions" which are drawn from negotiated rulemaking sessions included in finalized, but not yet effective regulations.

Extending the Length of Borrower Relief Due to the Coronavirus Emergency

Extends the suspension of payments, interest, and collections activity under the CARES and HEROES Acts to September 30, 2021. Refunds to borrowers the payment on principal made on eligible loans since the passage of CARES (as a means of making the payment by the secretary retroactive). Suspends the requirement for borrowers in income-based repayment plans to recertify their income or family size for the next year. Extends the suspension of payments and interest on some federal loans under the CARES Act to all federal loans (including certain Federal Family Education Loans, Perkins Loans and Public Health Service loans).

No Interest Accrual

Suspends calculation and capitalization of interest on all federally held covered loans and pays interest on behalf of the borrower for all non-federally held loans for the length of the suspension period. The suspension period is either until September 30, 2021 or until such time that the national measure of labor underutilization as calculated by Bureau of Labor Statistics is lower on average over a three-month period than it was on average for the three-month period preceding Feb. 2020 and/or the rate has dropped for each of the previous two consecutive months.

Notice to Borrowers

Requires the secretary to provide notice to borrowers of their eligibility to consolidate loans, option to move to Income Based Repayment loans, and of the changes in loan terms resulting from the CARES and HEROES Acts. Also requires the secretary to provide not less than six notices to borrowers of their restored obligations when the period of suspension is due to expire.

Student Loan Forgiveness

Student loans of up to \$10,000 would be forgiven if the borrower was “economically distressed” as of March 12, 2020, the day before the declaration of the national emergency. Economically distressed borrowers are those who were not required to make any payments under an income-based repayment plan, or were in delinquency, default, forbearance, or deferment due to financial hardship.

These provisions were scaled back from those included in the bill as introduced, for reasons of cost. However, with their focus on low-income borrowers and those having difficulty repaying, the changes are better targeted on the community college population. The loan forgiveness provisions are also targeted on private loans.

Public Service Loan Forgiveness (PSLF)

Establishes new terms relating to borrowers consolidating their loans regarding the option to participate in PSLF and have their status within PSLF calculated by ED. Requires the secretary to notify borrowers of their eligibility, as well as notice when the period is expiring. Provides PSLF eligibility for health care workers in certain states that do not allow healthcare workers to be directly employed by hospitals, making them ineligible for PSLF as a result.

Emergency Relief for Defrauded Borrowers

Incorporates legislation introduced by Senator Richard Durbin (D-IL) that would offer loan relief to borrowers who have received a determination of a valid claim to borrower defense against repayment. Such claims would be made on the basis of “false and misleading” representations by an institution.

Notification of Non-CARES Act Flexibilities

Requires the secretary to report to Congress on any waivers granted that are not specifically authorized under the CARES Act.

Institutional Access to Loans

Main Street Lending Requirements

The HEROES Act expands the Main Street Lending program, established by the Federal Reserve Bank following the passage of the CARES Act. The Federal Reserve is still finalizing the guidance on this program but has said that nonprofits are currently ineligible. The HEROES Act would expand eligibility to nonprofits and public and non-profit private institutions of higher education and requires the Fed to offer a low-cost loan option to non-profits shortly after passage of the legislation. In addition, loans could be forgiven for nonprofits predominately serving low-income communities that are ineligible for a PPP loan. The specific inclusion of institutions of higher education is positive for community colleges that may wish to take advantage of this program.

Amendments to the Paycheck Protection Program

The bill would expand the SBA Paycheck Protection Program (PPP) and extend the covered period from June 30 until December 31, 2020. It also would expand eligibility to all nonprofits of all sizes (not just those with under 500 employees). It would provide a 25% set aside in the program for nonprofits, with 17.5% for nonprofits with under 500 employees. It does not include any additional funding for the program, which has already run out of funding since it was included in the original CARES Act.

DACA

Extension of Filing and Other Deadlines

Protects certain aliens who were lawfully present in the United States when Health and Human Services declared a public health emergency protection from negative immigration consequences due to the inability to meet filing deadlines or to leave the country. It also would allow for automatic extensions of temporary immigration status or work authorization if it is set to expire during the emergency, including those under Deferred Action for Childhood Arrivals (DACA).

Tax Provisions

Improvements to Employee Retention Credit

Makes public institutions eligible for an expanded employee refundable payroll tax credit of up to 80% of \$15,000 in the wages paid to each employee by employers each quarter (and \$45,000 in the aggregate) during the COVID-19 crisis. Employers whose operations were “fully or partially” suspended due to government orders related to COVID-19 are eligible for the credit.

Federal, State, and Local Governments Allowed Tax Credits for Paid Sick and Paid Family and Medical Leave

Makes public institutions eligible for the refundable tax credit that helps employers pay for the mandated paid sick and Family and Medical Leave Act (FMLA) leave enacted in the "Families First Coronavirus Response Act."

Emergency Financial Aid Grants Taxation Exemption

Exempts all CARES Act emergency student financial aid grants and any institutionally provided emergency student financial aid grants from taxation. Holds harmless students who receive any such emergency financial aid grants for eligibility for higher education tax credits.

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For more information, contact David Baime, senior VP for government relations and policy analysis, dbaime@aacc.nche.edu, or Jim Hermes, associate vice president for government relations, jhermes@aacc.nche.edu.