

HEROES Act Detailed Analysis

The House of Representatives is expected to pass H.R. 6800, the “[Health and Economic Recovery Omnibus Emergency Solutions \(HEROES\) Act](#)” on May 15. The \$3 trillion 1,815-page package is largely viewed as the Democrats’ opening offer for future COVID-19 relief legislation. The White House threatened to veto the measure and Senate Republicans have indicated they would like to evaluate the impact of the CARES Act before proceeding with new legislation. It is unlikely that serious negotiations toward the next round of COVID-19 relief will begin until after Memorial Day.

Read on or click through the below glossary for a detailed analysis of provisions included relevant to the multifamily industry.

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Direct Financial Assistance for Americans

Unemployment Expansion

Pandemic Unemployment assistance under the CARES Act provides for a major expansion of unemployment benefits for those affected by COVID-19, allowing eligible unemployed Americans an extra \$600 per week benefit for up to four months, on top of state unemployment benefits to make up for 100 percent of lost wages.

The HEROES Act would extend the \$600 per week benefit through January 31, 2021, and extend eligibility to those who traditionally are not able receive unemployment compensation, for example those Americans who leave the workforce to care for sick family members or school age children whose schools are closed as a result of the pandemic.

Recovery Rebates

The CARES Act provides checks of \$1,200 to qualifying individuals and \$2,400 to qualifying married taxpayers with an additional \$500 for each child under 17 years of age. The checks are fully available to individuals earning up to \$75,000 and married couples earning up to \$150,000 and begin to phase down once those thresholds are reached.

The HEROES Act would provide a \$1,200 refundable tax credit for each family member paid out in advance payments, similar to the Economic Impact Payments in the CARES Act. The credit is \$1,200 for a single taxpayer (\$2,400 for joint filers), in addition to \$1,200 per dependent up to a maximum of 3 dependents. The credit phases out starting at \$75,000 of modified adjusted gross income (\$112,500 for head of household filers and \$150,000 for joint filers) at a rate of \$5 per \$100 of income.

Direct Financial Assistance for Americans

Rental Assistance

The measure would authorize \$100 billion for an Emergency Rental Assistance program to help families and individuals pay their rent and utility bills and remain stably housed during, and after, the COVID-19 crisis. The legislation utilizes the framework of the U.S. Department of Housing and Urban Development's (HUD) Emergency Solutions Grant (ESG) program, which currently administers homelessness assistance.

Assistance would be obtained via the renter, through an agency that the state selects to administer the program. The administering agency would send the payment directly to the landlord, for both past-due and future rent. The maximum amount of rental assistance provided to a household per month is 120 percent of the fair market rent or the small area fair market rent for their area, whichever is greater, or a higher amount that HUD determines is needed to cover market rents in the area.

This provision mirrors legislation introduced by Congresswoman Maxine Waters (D-CA), Chairwoman of the House Committee on Financial Services, Congressman Denny Heck (D-WA) and Senator Sherrod Brown (D-OH), Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs, called the "[Emergency Rental Assistance and Rental Market Stabilization Act of 2020](#)."

NMHC and NAA, along with a coalition of real estate industry organizations, support the goals of the proposal. We are appreciative of efforts to ensure the financial viability and stability of the rental housing industry and its residents, as millions of people shelter in place. We appreciate the work done to develop this critical economic lifeline to struggling renters. We have raised concerns relating to the capacity of the ESG program to effectively and efficiently provide relief to the myriad renters and rental housing providers who are struggling to survive in the current environment. We want to work with members of Congress to ensure any emergency rental assistance program can be administered in an efficient and timely manner to renters of all income levels who are in need as a result of COVID-19.

Forbearance Protections

The CARES Act provides up to 90 days of forbearance for multifamily borrowers with a federally backed multifamily mortgage loan who have experienced a financial hardship as a result of COVID-19. The CARES Act also stipulated that borrowers receiving forbearance may not evict

or charge late fees to tenants for the duration of the forbearance period. The bill also prevents the owner from sending a notice of eviction until after the forbearance ends and then prevents the eviction from happening for 30 days more. The bill does allow for necessary evictions for criminal activity/activity endangering other residents, etc. to move forward although legal interpretation has varied, which essentially prevents any eviction from moving forward under this provision.

The HEROES Act would extend forbearance protection to all multifamily mortgages and is aligned on the same timeline as the proposed eviction moratorium of 12 months. Borrowers would have 12 months after forbearance ends to bring the loan current. The provision also clarifies that borrowers receiving forbearance may not evict residents solely for non-payment of rent or charge late fees or penalties.

Eviction Expansion

The CARES Act imposed a 120-day eviction moratorium at any property that has a mortgage backed by the federal government (HUD, GSE, USDA loan products). The bill also prevents the owner from sending a notice of eviction until after the moratorium ends and then prevents the eviction from happening for 30 days more. The moratorium is applicable to evictions for nonpayment of rent or fees, but allows for other necessary evictions including criminal activity, endangering other residents, serious lease violations, etc. to move forward.

The HEROES Act expands eviction restrictions to all residential properties, not just those with federally backed mortgages. The bill also significantly extends the moratorium period and prohibits evictions for nonpayment of rent and fees for a year. The provision does allow for other evictions to move forward. It further prevents the owner from sending a notice to vacate until 30 days after the passage of the 12 months for non-payment of rent. Additionally, it requires federal agencies to provide resident notification material to property owners and Housing Authorities, which must be posted and disseminated on resident rights and responsibilities, including that the moratorium does not terminate the tenant's obligation to pay rent, that tenants will owe any rental arrearages that accrue during the moratorium and that tenants are encouraged to contact their landlord if they are having trouble paying their rent.

Critical Tax Provisions

Individual Provisions

Recovery Rebates Round 1: While the CARES Act allowed only dependents under 17 to qualify for \$500 rebates, the proposal would enable all dependents to qualify. Accordingly, households with full-time students who are under 17 and adult dependents would be able to receive \$500 per dependent.

Recovery Rebates Round 2: The proposal would authorize a second round of Recovery Rebates totaling \$1,200 per person (\$2,400 for joint filers). In addition, up to three dependents could be claimed. The rebates would phase out for single filers earning over \$75,000 and married couples earning over \$150,000.

Child Tax Credit: The Child Tax Credit is increased to \$3,000 (\$3,600 for a child under six) for 2020 and made fully refundable. Seventeen-year-old children are also made eligible. The proposal directs the Treasury Secretary to make advanced payments.

Business Provisions

Restoration of Limitation on Excess Business Losses: The proposal repeals changes made by the CARES Act to suspend the denial of deductibility of excess business losses of a taxpayer other than a corporation for 2018-2020. Excess business losses are treated as net operating losses in the next succeeding taxable year. An excess business loss exists if taxpayer's total deductions from all trades or businesses exceed all income from such trades or businesses, plus \$250,000 (\$500,000 for joint filers). While this provision is in law only through 2025, the proposal would also make it permanent.

Net Operating Loss Carryback Limitation: The CARES Act enables taxpayers to carryback net operating losses incurred in 2018, 2019, or 2020 for five years. The provision would enable losses to be carried back only to taxable years beginning after January 1, 2018. In addition, taxpayers who are limited by executive compensation tax rules or engage in stock buybacks or dividend distributions over certain limits are deemed ineligible to carryback losses.

Employee Retention Tax Credit: The CARES Act provides a refundable payroll tax credit for 50 percent of wages (up to \$10,000) paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19 related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

The proposal would increase the credit percentage to 80 percent while increasing the per-employee wage limit to \$15,000. Partial tax credits would be available to employers experiencing gross receipts declining between 10 percent and 50 percent in comparison to the same quarter in the prior year. Finally, a large employer would be redefined to one with more than 1,500 employees and gross receipts of over \$41.5 million in 2019.

Tax Credit for Employer Expenses: The proposal establishes a 50 percent refundable payroll tax credit for qualified fixed costs, including rent obligations, covered mortgage obligations, and covered utility payments, for employers subject to a full or partial suspension due to a COVID-19 government order or those who experience a decline in gross receipts of at least 20 percent compared to the same calendar quarter of the preceding year. For each quarter, qualified expenses eligible for this credit are limited to 25 percent of qualified wages or 6.25 percent of 2019 gross receipts, with an absolute maximum of \$50,000. This credit is limited to employers with no more than 1,500 full-time equivalent employees or no more than \$41,500,000 in gross receipts in 2019.

Additionally, the credit is phased in for employers with a decline in gross receipts between 10 percent and 50 percent.

Paid Sick and Family Leave Credits: The refundable tax credits available to employers to offset the cost of mandatory paid sick and family leave enacted as part of the Families First Coronavirus Response Act are extended through 2021. Individuals taking leave to care for a child may claim up to \$511 per day as opposed to \$200 per day for the first two weeks of leave. Employers may also claim up to 60 days of credit (instead of 50 days) for paid family leave.

Payroll Tax Deferral: The CARES Act enables taxpayers to defer the employer portion of Social Security tax paid after the date of enactment through 2020. Half is repaid at the end of 2021, and the remainder is repaid at the end of 2022. The proposal would enable taxpayers with forgiven loans as part of the Paycheck Protection Program to defer payroll taxes.

Deductibility of Business Expenses for Taxpayers Receiving Paycheck Protection Program Loans: The provision clarifies that taxpayers receiving Paycheck Protection Program loans do not result in the denial of any deduction or basis of any asset for tax purposes.

Credit Facility

CARES Act compliance and the COVID-19 crisis have placed financial stains on all aspects of the multifamily housing system including mortgage servicers. The HEROES Act establishes a Federal Reserve credit facility using authority under the CARES Act for mortgage servicers to ensure liquidity, and a Federal Reserve credit facility/low-interest loan program for rental property owners to temporarily compensate owners for documented financial losses caused by reductions in rent payments. The provision imposes eviction restrictions and renter protections, including Source of Income.

Consumer/Credit Protection Reporting

The CARES Act required that furnishers to credit reporting agencies (like apartment firms, credit card companies, etc.) who agree to modified (rental) payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, must report such obligation or account as “current” or as the status reported prior to the accommodation during the period of accommodation unless the consumer becomes current. Such credit protection ends at the later of 120 days after enactment of the legislation or 120 days after the date the national emergency declaration related to the coronavirus is terminated.

The HEROES Act suspends negative consumer credit reporting during the COVID-19 pandemic and other declared major disasters. Credit score furnishers would be prohibited from implementing new credit scoring models that would lower existing consumer credit scores during the COVID-19 pandemic or during other major disaster periods. Also, provides a temporary moratorium on consumer debt collection during this COVID-19 crisis, and for 120 days thereafter.

Additional Housing Program Support

In addition, to the funds already included as part of the CARES Act, the HEROES Act includes additional funding for TBRA, PBRA, Emergency Rental Assistance, Rural Rental Assistance, Homeownership Assistance, CDBG, the Public Housing Operating Fund, Homeless Assistance Grants/ESG, HOPWA, Housing for the Elderly, Housing for Persons with Disabilities, and Victims of Domestic Violence.

Program Funding Levels Included in the HEROES Act

Tenant-Based Rental Assistance – \$4 billion to allow public housing agencies (PHAs) to respond to coronavirus and the ability to keep over 2.2 million families stably housed even when facing a loss of income, including \$1 billion for new, temporary, vouchers for individuals and families who are homeless or at risk of becoming homeless or fleeing domestic violence.

Project-Based Rental Assistance – \$750 million to ensure the continuation of housing assistance for low income individuals and families living in project based rental assistance properties, and to ensure housing providers can take the necessary actions to prevent, prepare for, and respond to the pandemic.

Emergency Rental Assistance – \$100 billion to provide emergency assistance to help low-income renters at risk of homelessness avoid eviction due to the economic impact of the coronavirus pandemic.

Rural Rental Assistance -- Authorizes \$700 million in supplemental funding for USDA's rental assistance programs, including \$25 million for rural vouchers, to absorb reductions in tenant rent contributions and to provide rental assistance to unassisted households living in USDA subsidized properties who are struggling to pay rent during the COVID19 pandemic.

Homeowner Assistance Fund -- Provides \$75 billion to states, territories, and tribes to address the ongoing needs of homeowners (including those who own 2-4 unit rental homes) struggling to afford their housing due directly or indirectly to the impacts of the COVID19 pandemic by providing direct assistance with mortgage payments, property taxes, property insurance, utilities, and other housing related costs.

Community Development Block Grant – \$5 billion for coronavirus response and to mitigate the impacts in our communities to be distributed by formula to current grantees.

Public Housing Operating Fund – \$2 billion for PHAs to carry out coronavirus response for the operation and management of almost 1 million public housing units.

Homeless Assistance Grants/Emergency Solutions Grants – \$11.5 billion for Emergency Solutions Grants to address the impact of coronavirus among individuals and families who are homeless or at risk of homelessness and to support additional homeless assistance, prevention, and diversion activities to mitigate the impacts of the pandemic.

Housing for Persons with AIDS – \$15 million to maintain operations, rental assistance, supportive services, and other necessary actions to mitigate the impact of coronavirus on low-income persons with HIV/AIDS.

Housing for the Elderly – \$500 million to maintain operations at properties providing affordable housing for low-income seniors and to ensure housing providers can take the necessary actions to prevent, prepare for, and respond to the coronavirus pandemic.

Housing for Persons with Disabilities – \$200 million to maintain operations at properties providing affordable housing for low-income persons with disabilities, and to ensure housing providers can take the necessary actions to prevent, prepare for, and respond to the coronavirus pandemic.

Violence Against Women Act (VAWA) programs – \$100 million, with a waiver of the local match requirement, including \$30 million for grants to combat violence against women, \$15 million for transitional housing assistance grants, \$15 million for sexual assault victims assistance, \$10 million for rural domestic violence and child abuse enforcement assistance, \$10 million for legal assistance for victims, \$4 million for assistance to tribal governments, and \$16 million to support families in the justice system.