



The Jewish Federations[®]
OF NORTH AMERICA

COVID RELIEF WEBINAR

Questions & Answers

July 28, 2020

- 1. Will you be lobbying for liability protection for nonprofits as they reopen? Rep. Vicky Hartzler of Missouri has a bill that would extend liability protections to nonprofits.**

JFNA does not anticipate taking an active advocacy position on liability protection for nonprofits.

- 2. Are they considering automatically forgiving loans under \$150,000?**

The HEALS proposal (the Senate Republican Leadership proposal) would automatically forgive loans under \$150,000,

- 3. Would the HEALS act unemployment program put more pressure on states?**

There are several components to the HEALS Act unemployment program. We spoke about its increased support for nonprofits that self insure from the 50% federal backstop included in the CARES Act to 75% in the HEALS Act. That would not put pressure on the states. The extra funding for individuals for pandemic relief that would provide \$200/week for August and September (down from \$600 in CARES) also would not directly put pressure on the states, but the funding that would begin in October through December that would provide the federal unemployment and state unemployment resources up to 70% of an unemployed individual's previous wages, would require significant reconfiguration of state unemployment practices and offices and presumes a continuation of existing state unemployment payments as part of the unemployment compensation. This would put additional pressure on states.

- 4. Our employees are not covered by state unemployment benefits. How will this legislation affect them?**

The CARES Act provided a 50% federal backstop for nonprofits and other entities that self insure. The Senate HEALS proposal would provide a federal subsidy for unemployment expenses for these entities equal to 75% of the costs.

5. Is it known what components of the House or Senate legislation is supported by the White House and what components they want added that either the House or Senate does not support?

This is a moving target but it has been reported in the last few days that the White House supports the HEALS Act as introduced, although the President has also sent out tweets suggesting he is lukewarm about it. Presumably where there is commonality with House provisions, the White House supports those. The White House really wanted to include a reduction in employee-paid payroll taxes, which is not supported by Republicans or Democrats on the Hill, and the Republican leadership did not include it in the HEALS Act. At the request of the White House, the Senate leadership included more than \$1 billion in funding for a new FBI building on the site of the existing facility. This surprised many members of the Republican caucus, who do not favor it (including the Senate Majority Leader), but it was added anyway.

6. Will there be a follow-up webinar on PPP loan forgiveness now that some have gone through the process?

When we have sufficient info on organizations that have gone through the loan forgiveness process, we will convene a webinar to discuss.

7. According to Lindsay Graham, 50% of Republican Senators will vote against the HEALS Act. If this is true, how does an extension of unemployment benefits get put in place before they adjourn on August 8th for a month?

On July 26 on Fox, Senator Graham said: “We said last week the leverage here isn’t clear to us. But it’s becoming clearer that half of the GOP will vote against whatever the leadership comes up with. If that’s true, Democrats hold the keys.” On July 27, Senator Ted Cruz said, “there is significant resistance to yet another trillion dollars. And as it stands now, I think it’s likely that you’ll see a number of Republicans in opposition to this bill and expressing serious concerns.”

If it seems like a bill is achievable the Senate will stay in town until they complete action on the legislation, even passage slips beyond August 8. These comments from the two Senators suggest that there are major fissures in the Senate Republican caucus and the Senate will not be able to pass a final bill with just Republican votes and because of the filibuster, they need 60 votes to push something through the Senate and theoretically this will be achieved by appealing to a significant majority of both Republicans and Democrats. That said, at this point, it seems likely that there will be a gap between the time that the unemployment provisions expire on July 31 and the date that Congress passes a new bill.

8. ERTC and payroll tax deferment are not the same is that correct?

That is correct. ERTC is a refundable tax credit that relates to payroll taxes either paid or not paid (the credit can be earned even if the employer has no additional payroll taxes to pay). Under the CARES Act, as another form of stimulus, payroll taxes paid by the employer could also be deferred through 2020 and repaid in 2021 and 2022.

9. Could decline in gross receipts be classified as decrease in tuition revenue?

Yes.

10. Which quarter do you have to show a decrease?

The revenue decrease is a comparison to the same quarter in 2019.

11. ERTC - explain how a school that moves to distance learning may be eligible.

Potentially, a school would be eligible for the program either because 1) its operations were fully or partially suspended due to a COVID-19 related shutdown order, or 2) gross receipts declined by more than 50% (in the CARES Act, which is the current law), 25% in the HEALS Act, or 10% in the HEROES Act (Democratic proposal that passed the House in May), when compared to the same quarter in the prior year. If it is eligible because of these standards, then the school would be able to apply for up to 65% of the first \$10,000 in wages and benefits per employee per quarter through the HEALS legislation or up to 80% of the first \$12,000 in wages and benefits per employee per quarter through the HEROES provision.

12. Will the ERTC be retroactive and if yes from when?

It is already part of current law under the CARES Act and available for reductions of revenues or suspension of operations in the first quarter of 2020, but under the CARES Act, an employer could not accept both ERTC and a Paycheck Protection loan. If either the HEROES or HEALS Act provision were adopted, the provision would still be retroactive to the first quarter of 2020, but an employer could accept relief from both ERTC and PPP, assuming that it was not for the same specific expense.

13. Which quarter do you have to show a decrease?

Any relevant quarter of 2020 in comparison to the same quarter in 2019.

14. A) I'm concerned that so much of the money that was supposed to go to small businesses and individuals the last time around ended up going to large chain businesses and airlines, not all of whom passed down the money they received to employees, or at least not substantially. What oversight will there be on anything that passes. This was a problem with money given to banks etc. in 2008 as well. Can you talk about this?

B) It's important that we do what we can to make sure that none of these badly needed funds are not diverted. I realize we are limited in what we can do but it seems to be in our interest to also be asking for who is doing the oversight and to keep our eyes on this.

C) I realize that you may not be able to raise this here, but I would like you to see my question. I was attempting to help hospitals, including a historically Jewish hospital obtain PPE's through contacts. They were ordered, the order was received and in flight. The PPE's were intercepted by FEMA or other agency of the Federal Government. So, this isn't just a money issue, again this is an oversight and boundary issue.

There is a House Coronavirus Oversight Committee which has held some initial hearings, but has not reported yet or made findings. There was also supposed to be a bicameral oversight committee with appointments from the White House and both Houses of Congress, but it has not gotten off the ground. Recognize that there were many different stimulus programs in the CARES Act including the Paycheck Protection Program which applied to businesses and nonprofits of up to 500 employees. Airlines did not get funding from this program. Some large chains did receive funding but there were certain exceptions in the legislation like carve outs for restaurants and hospitality businesses that were franchises but could still legally receive a PPP loan for each site. There were some entities which should have not gotten funding and a number ultimately returned their loans. Congress is aware of these problems (and the publicity associated with them) and, for instance, the new HEALS provision explicitly excludes publicly held companies (like Shake Shack) which were eligible under the CARES Act. More broadly, concerns with oversight have been raised in many quarters and we suspect that this Congress or a future one will spend more time performing oversight on them.

15. Can we apply for PPP loans if already applied for and received 2.5x payroll?

Under the HEALS Act, you could apply for a second round loan even if you had already received a PPP loan. You would have to have fewer than 300 employees and have experienced at least a 50% reduction in revenue.

16. Does operations fully or partially suspended mean--the organization lost revenue?

No, there are two separate categories – suspension of operations or reduction in revenue. The organization has to meet one of the categories.

17. I believe that the proposed Senate bill there is a provision for resumption of the Business Meal & Entertainment Credit.

The HEALS bill is large and has many provisions. It does include the tax credit that you referenced. We only discussed provisions that we think would be particularly beneficial to our stakeholders.

18. Do the credits happen automatically or we will need to apply? Who is dispensing the applications.

They do not happen automatically and an organization would have to apply for them. The Internal Revenue Service is the entity that oversees the ERTC program.

19. A) What if you don't file a 990? Synagogues don't in some states?

B) As auxiliary of a church on tax status exempt status I do not file a 990.

This will not be a problem for the ERTC program.

20. Will PPP proceeds when determined to be forgiven count as "proceeds" for measuring gross proceeds?

Assuming you mean gross receipts under the ERTC program, probably that would be counted if they arose in the same quarter that you would be applying for the ERTC. This issue is not explicitly detailed in either the HEALS Act or the HEROES Act in the provision where the legislation would affirmatively allow a business to apply for both the PPP and ERTC.

21. A) Would the PPE Tax Credit include additional janitorial cleaning for sanitizing?

B) Does PPE Tax credit apply to modifications to HVAC systems (i.e. bipolar ionization)?

C) Do you think that modifications to air-conditioning systems to include UV Light treatment in the air path to destroy the virus might be something that the school reopening support would include?

Probably. It would definitely include the supplies needed for the janitorial cleaning and it applies to qualified workplace reconfiguration expenses. Here is analysis released by the Senate Finance Committee that describes the provision: "This section establishes a refundable payroll tax credit equal to 50 percent of an employer's "qualified employee protection expenses," such as testing for COVID-19, protective personal equipment, cleaning supplies, "qualified workplace reconfiguration expenses," including modifications to workspaces for the purpose of protecting employees and customers from the spread of COVID-19, and "qualified workplace technology expenses," including contactless point-of-sale systems and other technology to track employee interactions with customers. Qualified workplace reconfiguration expenses and qualified workplace technology expenses must have a primary purpose of preventing the spread of COVID-19 among other requirements."

22. If you already got a PPP loan, can you go for the 2nd draw.

Under the HEALS Act, if you received a PPP loan you would now be eligible for a second loan if you had fewer than 300 employees and you suffered a 50% loss of revenue in comparison to the same time period in the prior year.

23. Can you get the PPE Tax Credit for PPE that were billed to State and City contracts?

Probably not.

24. On the PPP second draw, is it both 300 employees and 50% reduction in revenue?

If the HEALS Act passes, both requirements would need to be met.

25. Would the same forgiveness approach apply to the 2nd tranche of PPP loans?

Yes.

26. Most of nonprofit revenue comes at the end of the year so how do we know if our revenue is down until December 31?

It doesn't matter. You are examining quarterly revenue compared to the prior year, and under either HEROES or HEALS provisions you would basically be able to apply for tax credits for up to three quarters, if your revenue was reduced for each quarter in comparison to the prior year.

27. Does schools include Sunday school/Hebrew school?

Under the school provisions of the HEROES and HEALS Act, these schools would not apply.

28. Does support for schools include Higher Ed?

Yes. Under the HEROES provision, \$10 billion (of \$100 billion in school funds) would apply to Higher Ed. Under HEALS, \$29 billion (of \$105 billion) would apply to Higher Ed.

29. A) Does support for schools include preschools?

B) Is any of the school reopening support earmarked for early childhood or does it start with elementary grades?

C) What about support for infant toddler and preschool programs? d) Are JCC Early Childhood a part of the "private schools?"

D) We aren't a private school. We are after school/child care. Is there any way we might qualify for this support for schools?

E) Would the private school eligibility include early childhood schools?

F) Are preschools and daycares eligible for any of these benefits?

G) We talked about education - where do nursery schools fit into this? It seems there's an early childhood crisis at the moment given smaller class sizes eliminating already slim margins?

H) Is there any chance that the school-related funding could be used by providers of emergency child care. With many schools offering "on-line school" many families will need additional child care in order to be able to work from home and keep their jobs and income?

We think that the school provisions of both the HEALS and the HEROES would generally not apply to early childhood centers and preschools. The main basket of funds is for elementary and secondary education, which would include kindergarten and in some cases, possibly pre-k, if it is actually part of the same school system. This would be a rare occurrence and these school funds would generally not apply to preschools. Where private school funding is available in the HEALS Act, it would have to be an elementary or secondary school, not an early childhood

center. There is child care block grant funding in both bills that could apply to preschools, but that block grant income dependent. A new provision in the HEALS Act that is called Back to Work Child Care Grants may apply, but there is little available detail on it. The description says that it “authorizes short-term assistance to help child care providers reopen and stay open so that parents have a safe place to send their children when they return to work. Allows states to build out programs to help child care providers reopen and maintain operations for 9 months.” The safe and healthy workplace tax credit would also apply to preschools.

30. A) Will cleaning/sanitization equipment, materials, product currently being purchased be covered or only those incurred once bill is passed and a start date is declared?

B) should schools move forward with retrofitting a/c systems to deal with covid even before the bill is passed as school is soon opening in the south?

C) Will the funds be reimbursable?

If the HEALS Act Safe and Healthy Workplace Tax Credit were to be enacted, the credit would apply “to amounts paid or incurred for qualified employee protection expenses after March 12, 2020 and before January 1, 2021.” You can take the chance and incur expenses now, but it would only be reimbursable if the provision passes and the operative terms as introduced haven’t changed. Similarly, under the safe school reopening provisions, assuming you are talking about a private school, if the HEROES provision passes it would apply to private schools and would include retrofitting expenses, but because of the way money would be allocated within a particular state, not every school would necessarily benefit from the provision.

31. Can you claim the ERTC in multiple quarters?

Yes, basically you can claim ERTC up to three quarters in a calendar year.

32. There's a lot of pushback on the "private school" issue, worrying about separation between church and state. Is there a risk for Jewish Day Schools in taking advantage of tax dollars?

There is unlikely to be a legal risk and the relevant school provision, if it were to pass, merely references private schools, not sectarian schools, but it would be clear that day schools could apply for these funds or other provisions like the safe and healthy workplace tax credit, ERTC or PPP. While there certainly could be a political risk pushed by those who are focused on the separation of church and state, is a separate issue and many, many day schools already applied and received PPP loans, making this a somewhat moot point.

33. I understand the private schools will be eligible for PPE Tax Credits. How does that work if they are Jewish Schools that are non-profits?

Nonprofit day schools would be eligible for the safe and healthy workplace tax credit under the HEALS Act. Day schools would pay payroll taxes and this would be a refundable payroll tax credit.

34. I would appreciate better understanding the PPE tax credit. If a school has 140 employees, would that school get \$140K? What would it need to do to access those funds?

The relevant issue is a tax credit equal to 50% of an employer's qualified employee protection expenses, so it depends how much the school spends on these purposes between March 12, 2020 and the end of 2020. The cap is equal to \$1,000 for each of the first 500 employees, plus \$750 for the next 500 employees plus \$500 for each additional employee over 1000. The application process would be handled by the Internal Revenue Service.

35. Does PPE eligible for tax credit include items such as tents for outdoor services?

Eligible qualified employee protection expenses include COVID-19 testing, protective personal equipment, cleaning supplies, and qualified workplace reconfiguration expenses including modifications to workplaces for the purpose of protecting employees and customers from the spread of COVID-19. If this provision were enacted, possibly using tents for services could be included as a qualified workplace reconfiguration expense.

36. As a chaplain, I am concerned about my colleagues and all who work in various institutions to get the PPE's that they need. This isn't only about money, it's about shortages, which may occur again and making sure PPE's are not diverted from hospitals, nursing homes, etc.

Unfortunately, neither the HEALS Act nor the HEROES Act do much to produce PPE and ensure that it gets to where it needs to. There are many provisions that relate to paying for PPE.

37. Will the second round of PPP be administered through the banks again?

If the HEALS Act were to pass in its current form and included the second round of PPP funding, the provision does not change how these loans would be handed out, so presumably they would continue to be administered through banks.

38. Our JCC is launching "All Day at the J" -- School Age Care for primary and middle school children. What provisions might help with this expensive cost?

If the HEALS Act were to pass, it includes support for private schools for elementary and secondary education. It sounds like you are setting up a private school and it could thus be eligible for private school funding. The provisions like the ERTC and safe and healthy workplace tax credits would also apply.

39. Could you discuss more on liability protection?

If enacted, the HEALS Act would provide enhanced liability protection for any business, nonprofit, school, medical provider or medical profession arising from COVID-19. This would establish a new federal cause of action for coronavirus exposure as the exclusive remedy for all claims for personal injury with a cap on damage awards and plaintiffs needing to demonstrate

that a defendant was grossly negligent or engaged in willful misconduct and violated state or local public health guidelines in place at the time the incident occurred.

40. Does the school funding bill only go to the schools or is there a portion that helps the parents who would have to pay out of pocket for education, say for a younger 1st grader?

The school funds contained in the HEROES Act and the HEALS Act would all go to the schools, none to parents.

41. Where is this money going to come from? What programs will be cut?

In the short-term, the money will be added to the U.S. debt and programs will not be cut. Future Congress' may certainly cut programs to pay for the trillions of dollars of outlays attributable to COVID-19.

42. Is the \$200/month and then 70% of pre-unemployment earnings level extend to gig workers, etc. that are on the PUA?

It appears that the HEALS Act would extend current Pandemic Unemployment program until October 5, 2020 at the reduced rate \$200 per week and then the state payments would be revised to reflect 70 percent of prior wages. Those previously covered, including gig workers, would continue to receive the reduced coverage amount.

43. A) What if we are already signed up for Payroll tax deferral?

B) How does ERTC interface with the deferral of payroll tax which has been used to push 2020 payroll tax into 2021 (50%) and 2022 (50%)?

The ERTC would be an addition to the employer payroll tax deferral and would result in those taxes being credited to the employer.

44. Are there any updates about including expenses on 1099's?

We have no new updates if this is in reference to Payroll Protection Program loans.

45. As a synagogue I do not need to file a Form 990. How do we prove the decline in gross revenue for ERTC?

There is no need to file Form 990 in order to claim the ERTC. The Form 990 is cited to provide the definition of how any nonprofit including a synagogue would calculate gross receipts as there are specific definitions in the IRS instructions to the form. See page 78 of this document: <https://www.irs.gov/pub/irs-pdf/i990.pdf> .

46. Recognizing that I am still eligible for the ERTC program, how do I demonstrate the decline in gross receipts?

Both the HEROES Act and the HEALS Act would require a nonprofit to compare gross receipts (defined by the IRS in Form 990 instructions) to the same quarter in the prior calendar year (i.e. compare second quarter 2020 with second quarter 2019).

47. What is my gross income per quarter?

See above. Gross income is based on definition in IRS Form 990 instructions.

48. For schools that get some relief for PPE from the original CARES act, will the new funding be lessened?

We assume that this question refers to PPP or the Paycheck Protection Program. If the HEROES provision passes with the PPP provision, a second loan, if the school qualified, would be calculated the same as for the PPP in the CARES Act but the maximum loan would be limited to \$2 million.

49. A) PPP forgiveness- do you still have to get back to your pre-covid headcount?

B) Do we know until when do we need to show that we have not furloughed or let go of staff to be eligible for loan forgiveness?

C) Is there clarification regarding forgiveness for PPP - with respect to any changes in personnel. Can a change be made (e.g. reduced hours) after the period of the loan, but before the forgiveness application is filed? Or do we need to wait until everything has been approved?

D) If the reduction in hours or personnel, is not related to COVID, but instead performance, does that compromise forgiveness?

Answers will depend on the size of the loan as there could be blanket forgiveness for loans under \$150,000 and reduced criteria applied to loans up to \$2 million. It would be better to wait on filing any forgiveness application until this legislation is finalized.

50. What time period would the 300 employee head count for PPP second round be based on?

Under the HEALS Act, it appears that the PPP second round loan would be a new SBA 7a loan program and that it defines "covered period" for such loans as the date of loan origination and ending December 31, 2020. As such, it would appear that the 300 employee requirement is based on the loan origination date. Note that the organization would also have to meet the 50

percent gross receipts reduction in either the first or second quarter of 2020 as compared to 2019.

51. What unemployment insurance will employees of synagogues not paying unemployment taxes be eligible to receive?

The House HEROES proposal extends the current Pandemic Unemployment insurance program through the end of January, 2021. The Senate Republican HEALS Act would extend the program with reduced benefits through September at which time the revised state UI formula (70 percent of prior wages) would apply.