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Nonprofit New York Statement on HEROES Act Passage

An analysis of our Congressional recommendations

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Nonprofit New York is pleased the House of Representatives passed the [HEROES Act](#) last night, and particularly grateful to the New York Delegation for advocating for reforms to support all nonprofits. **However we must caution our constituents that this bill faces significant challenges from the Senate and the following provisions in the HEROES Act are not law.**

In early April, Nonprofit New York and hundreds of partner organizations sent a [letter to the New York Congressional Delegation](#) following the CARES Act with recommendations for the next phase of federal COVID-19 legislation. Below is how our recommendations fared in the HEROES Act. We thank our tireless national umbrella, the [National Council of Nonprofits](#), for their robust [analysis](#) of the HEROES Act and provisions impacting nonprofits that helped support this analysis.

Resources for all New Yorkers

Recent federal actions excluded undocumented immigrants from accessing relief and assistance, and Nonprofit New York recommended any further relief efforts protect all people, regardless of immigration status, including undocumented immigrants, DACA and TPS recipients, and mixed status families.¹ **The HEROES Act includes this recommendation; immigrants would receive Economic Impact Payments.** The HEROES Act includes language that would allow all taxpayers to receive this critical help using an Individual Taxpayer Identification Number. (pp 151 - 152, Section 20102).

Loan eligibility for all nonprofits

Nonprofit New York recommended nonprofits with more than 500 staff members be eligible for zero-interest and forgivable loan programs and adjust available resources proportionally.² **The HEROES Act includes this recommendation.**

The HEROES Act would make the following changes to CARES loan programs

Paycheck Protection Program (pp 821 - 878)

- Extends the covered period from June 30, 2020 through December 31, 2020 (Section 90001)

¹ New York State is home to 4.4 million immigrants, who are a vital part of our state's social fabric and economy. New York Immigration Coalition. (2019). [Blueprint for Immigrant New York](#).

² Due to years of chronic under-funding by local governments, many human service organizations have merged or consolidated into organizations with well over 500 staff members. These nonprofits operate with very thin margins, are shifting scopes of work as essential providers during the pandemic, and are in most need of zero-interest and forgivable emergency loans.

- Expands PPP to nonprofits of all sizes and types
 - **Removes the 500 employee cap**
 - Includes all 501(c) employers as eligible (including social welfare, unions, and chambers of commerce)
 - Removes nonprofits from the affiliation rule
 - Makes ineligible 501(c)(4) social welfare organizations that have made election-related expenditures at the federal, state, or local levels and prohibits 501(c)(4) organizations that receive PPP loans from making such election-related expenditures through the calendar year. ([Manager's Amendment](#), pp 46 - 47)
- **Creates 25% set aside funding for nonprofits**
 - Half for nonprofits with 500 or fewer employees
 - Half for nonprofits with 500 or more employees
- Makes payments for personal protective equipment allowable uses of PPP loan money and treats expenses as forgivable ([Manager's Amendment](#), pp 50, 51)
- Sets aside 25% of PPP funding for eligible employers with 10 or fewer employees, and for community financial institutions
- Loan forgiveness changes (Section 90004)
 - Expands coverage from 8 weeks to the earlier of 24 weeks or December 31, 2020. It also extends the rehire exemption from June 30 to December 31, 2020
- Mandates that SBA provide reports on loan approval and disbursement to nonprofits, provided on a state, congressional district, industry, and loan size (Section 90016)

Loan program for mid-size nonprofits (pp 1063 - 1065)

- Title IV, *Standing Up for Small Businesses, Minority Owned Businesses, and Nonprofits*, mandates the Federal Reserve's Main Street Lending Program include nonprofits as eligible borrowers, and stipulates the Federal Reserve immediately offer a low-cost loan option tailored to the unique needs of non-profit organizations with deferred payments, and that the loan may be forgiven solely for nonprofits predominantly serving low-income communities ineligible for a PPP loan (Section 110604)
- Mandates the Federal Reserve, through the Main Street Lending Program, provide at least one low-cost loan option that small nonprofits are eligible for that does not have a minimum loan size, overriding the current \$500,000 minimum loan size to participate in the program
- Makes higher education institutions eligible ([Manager's Amendment](#) p 57) (Section 110605)
- Makes ineligible 501(c)(4) social welfare organizations that have made election-related expenditures at the federal, state, or local levels and prohibits 501(c)(4) organizations that receive PPP loans from making such election-related expenditures through the calendar year ([Manager's Amendment](#) p 58)

Charitable giving deduction

Nonprofit New York recommended Congress expand "above the line" charitable deduction from \$300 to \$2,000 and allow all taxpayers to immediately claim the deduction on their 2019 taxes (due on July 15), and afterwards through 2021. **The HEROES Act does not include this recommendation**, but we are pleased the House of Representatives voted to **eliminate the limitation on the deduction for**

state and local taxes for taxable years beginning on or after January 1, 2020 and on or before December 31, 2021 which will provide tax relief to New Yorkers (p 224, Section 20161).

Funding for New York's budget deficit

Nonprofit New York recommended New York's Congressional Delegation work with our state, county, and city leaders to include federal relief for our significant budget deficits. **The HEROES Act includes this recommendation, by providing an estimated \$34.4 billion in relief funds for New York State and \$32.3 billion for municipalities and counties in New York, including \$17.1 billion for New York City** to replace lost revenue due to the pandemic (various sections).

Insurance

Unemployment

Under the CARES Act, employers who self-insure will only receive 50% reimbursement for their unemployment insurance claims. Before COVID-19, many nonprofits may have chosen to self-insure as the most prudent unemployment insurance option, however during this time of crisis we need to support our nonprofit workers. Nonprofit New York recommended Congress expand unemployment insurance reimbursement funding to 100% for organizations that self-insure. **The HEROES Act does not include this recommendation**, however technical changes in Section 50005 (p 687) would fix the issue of nonprofits having to reimburse and then waiting to get reimbursed for their reimbursement, effectively overriding the harmful guidance issued by the U.S. Department of Labor on April 27.

Business

Many nonprofits realized through COVID-19 that their insurance plans did not cover business losses related to pandemics and contagious diseases. Nonprofit New York recommended Congress expand insurance coverage for nonprofits that have experienced and will continue to experience losses related to COVID-19. **The HEROES Act does not include this recommendation**, however we support Congresswoman Maloney's Pandemic Risk Insurance Act and are advocating for a Congressional business interruption relief fund to be established.

Cost of living equity

The cost of living in the downstate New York area is significantly higher than other parts of the country.³ Nonprofit New York recommended cost of living equity for future Congressional action, that accounts for the higher or lower cost of living in different regions. **The HEROES Act does not include this recommendation** but additional recovery rebates will be sent as Economic Impact Payments (Section 20111).

Nonprofit 'revenue' and 'income' for loans and grants

Nonprofit New York recommended the definition of revenue or income for relief funding eligibility include donations, sponsorships, and grants. **The HEROES Act does not specifically address this**

³ Payments to individuals will have significantly more purchasing power in other parts of the country, the \$511/day and \$200/day quarterly reimbursement for paid sick and family leave will not cover as much of New Yorkers' wages as it will in other states, and the loan program thresholds also do not take cost of living into account, which will leave more New York employers without full loan forgiveness.

recommendation, however the expanded eligibility for PPP and Main Street loan programs offsets this recommendation.

Gaps in paid sick and family leave coverage

Nonprofit New York recommended Congress expand coverage for all employees, utilize an expansive definition of family, and expand the length of coverage for the full period of COVID-19 recovery which is at least around 20 days. **The HEROES ACT includes a version of this recommendation** by changing the requirement to provide emergency paid family and medical leave to allow employers to claim up to \$12,000 in refundable payroll tax credits, rather than \$10,000, and allows individuals to claim the credit for a maximum of 60 days (corresponding to the \$12,000 amount) rather than 50 days (Section 20223). **The HEROES ACT also increases paid leave for nonprofits with more than 500 staff** (Sections 120104 and 120117).

Other notable provisions for nonprofits in the HEROES Act⁴

Employee Retention Credit (pp 236 - 257)

- Increases the value of the employee retention credit from the current 50 percent of \$10,000 to a maximum of 80 percent of \$15,000 for up to three quarters, and clarifies the cost of healthcare is covered even if wages are not paid during the period (Section 20211)
- Modifies the existing gross receipts requirement (triggered by a decline of 50 percent) to allow a partial credit, phased in for a decline in gross receipts (calculated by nonprofits using Form 990, Line G) between 10 percent and 50 percent compared to the same calendar quarter of the previous year (Section 20211)
- Changes retroactive to the effective date of the CARES Act (Section 20211)
- Would provide a 50 percent refundable payroll tax credit for qualified fixed costs, including rent, mortgage, and utility payments, which are defined the same as under Section 1106 of the CARES Act, relating to the forgiveness of PPP loans; this provision is limited to employers with 1,500 or fewer employees or gross receipts (calculated using Form 990, Line G) of no more than \$41,500,000 in 2019 (Section 20212)

Delayed payment of payroll taxes

- Removes prohibition to allow nonprofits receiving PPP loan forgiveness to delay payment of the employer portion payroll taxes in 2020; payable in equal halves in 2021 and 2022 (Section 20231)

Nonprofit New York thanks Senator Schumer, Senator Gillibrand, Congresswoman Velazquez, Congresswoman Maloney, Congresswoman Lowey, Chairman Nadler, Congressman Engel, and the entire New York Congressional Delegation for working closely with nonprofits over the past several weeks, meeting with us, and identifying policy solutions to support all New Yorkers.

⁴ As documented by the [National Council of Nonprofits](#).