Congressional Research Service
Informing the legislative debate since 1914

# Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act: Division B—Revenue Provisions

May 15, 2020

**Congressional Research Service**
https://crsreports.congress.gov
R46358

CRS REPORT
Prepared for Members and
Committees of Congress

Congress continues to consider proposals intended to alleviate the economic effects associated with the Coronavirus Disease 2019, or COVID-19, pandemic. One such proposal, the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800), was introduced in the House on May 12, 2020.

Division B of the HEROES Act, or the COVID-19 Tax Relief Act of 2020, contains a number of individual and business tax provisions, including

- a one-time direct payment for eligible individuals, and an expansion of eligibility for the direct payments provided in the CARES Act;
- enhanced benefits and/or expanded eligibility for the earned income tax credit (EITC), child tax credit, and child and dependent care tax credit, and suspension of the limitation on the deduction for state and local taxes paid;
- expansions of tax credits for paid sick leave and paid family leave;
- tax credits for employers and employees in businesses susceptible to COVID-19-related interruptions;
- expanded utilization options for certain employee health and dependent care benefits; and
- a permanent limitation on using noncorporate business losses to offset nonbusiness income, and reduced ability to carry back recent net operating losses.

Consideration of the HEROES Act follows enactment of other laws addressing the COVID-19 crisis. Those laws are (1) the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123); (2) the Families First Coronavirus Response Act (FFCRA; P.L. 116-127); (3) the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136);[1] and (4) the Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139).

**Table 1** briefly summarizes the major tax provisions in Division B of the HEROES Act, as introduced. Links to CRS resources with additional relevant information, where available, are provided in the table.

[1] For more on tax provisions in the CARES Act, see CRS Report R46279, *The Coronavirus Aid, Relief, and Economic Security (CARES) Act—Tax Relief for Individuals and Businesses*, coordinated by Molly F. Sherlock. For more on other CARES Act provisions, see CRS Report R46299, *Coronavirus Aid, Relief, and Economic Security (CARES) Act: CRS Experts*, by William L. Painter and Diane P. Horn.

**Table 1. HEROES Act (H.R. 6800): Division B—Revenue Provisions**
(COVID-19 Tax Relief Act of 2020)

| Section Title | Description | CRS Resources |
|---|---|---|
| **Title I—Economic Stimulus** | | |
| *Subtitle A—2020 Recovery Rebates Improvement* | | |
| Dependents Taken into Account in Determining Credits and Rebates | Would make all dependents—including dependent children over 16 years old and adult dependents—eligible for the $500 amount included in the direct payments enacted under the CARES Act. Under the CARES Act, only child tax credit-eligible children—generally dependent children 16 years old and younger—are eligible for the $500 amount. This change would be retroactive to enactment of the CARES Act. | For more, see<br>• CRS Insight IN11358, *Older Children, Adult Dependents, and Eligibility for the 2020 Recovery Rebates*, by Margot L. Crandall-Hollick. |
| Individuals Providing Taxpayer Identification Numbers Taken into Account in Determining Credits and Rebates | Would allow eligible taxpayers who provide a taxpayer ID number—either a Social Security number (SSN) or individual taxpayer identification number (ITIN)—to receive the direct payment enacted under the CARES Act. Under the CARES Act, eligible taxpayers and qualifying children generally have to have a work-authorized SSN in order to receive the payment. This change would be retroactive to enactment of the CARES Act. | For more, see<br>• CRS Insight IN11376, *Noncitizens and Eligibility for the 2020 Recovery Rebates*, by Margot L. Crandall-Hollick and Abigail F. Kolker.<br>• CRS Legal Sidebar LSB10442, *Recovery Rebates and Unemployment Compensation under the CARES Act: Immigration-Related Eligibility Criteria*, by Ben Harrington. |
| 2020 Recovery Rebates not Subject to Reduction or Offset with Respect to Past-Due Support | Would prohibit the CARES Act direct payments from being offset by the Treasury for past-due child support. Under the CARES Act, the direct payments can generally not be reduced for debts owed to or collected by governmental agencies, but can be reduced for past-due child support. | For more, see<br>• CRS Insight IN11322, *The Child Support Federal Tax Offset of CARES Act Economic Impact Payments*, by Jessica Tollestrup. |
| Protection of 2020 Recovery Rebates | Would expand the provisions of the CARES Act that currently protect 2020 recovery rebates from reduction or offset for specified types of governmental debts by exempting those rebates from garnishment, levy, attachment, and other similar debt collection actions by private or governmental creditors. | For background, see<br>• CRS Insight IN11282, *COVID-19 and Direct Payments to Individuals: Summary of the 2020 Recovery Rebates/Economic Impact Payments in the CARES Act (P.L. 116-136)*, by Margot L. Crandall-Hollick. |

| Section Title | Description | CRS Resources |
|---|---|---|
| Payments to Representative Payees and Fiduciaries | Would clarify that if a direct payment for a specified Social Security, Supplemental Security Income (SSI), Railroad Retirement, or Veterans beneficiary was deposited into the account of a representative payee ("payee") or fiduciary, it shall be provided to the entitled beneficiary or used only for the benefit of the entitled beneficiary. The payee and fiduciary enforcement provisions would apply as under current law. Under the CARES Act, the treatment of payments deposited in the accounts of payees and fiduciaries is not specified. This change would be retroactive to enactment of the CARES Act. | |
| Application to Taxpayers with Respect to Whom Advance Payment has Already Been Made | Would instruct Treasury to issue additional payments in 2020 to individuals whose 2020 direct payments under the CARES Act would have been larger as a result of the previous changes (i.e., eligible for an additional $500 for an adult dependent). The additional amount would be equal to their new rebate amount less the payment they already received in 2020. | |

| Section Title | Description | CRS Resources |
|---|---|---|
| *Subtitle B—Additional Recovery Rebates to Individuals* | | |
| Additional Recovery Rebates to Individuals | Would enact additional direct payments for individuals. These payments would be structured as refundable tax credits against 2020 income taxes, but would be advanced (and hence received) in 2020, as opposed to 2021 (when 2020 income tax returns will be filed). Amount and eligibility for the advanced credit would generally be based on information from 2019 income tax returns (or 2018 returns, if 2019 had not been filed).<br>Payments would equal $1,200 per eligible individual ($2,400 for married joint filers), and $1,200 for each eligible dependent (up to three dependents, as defined in Subtitle A).<br>The payment would phase out at a rate of $5 per $100 of income above $75,000 ($112,500 for head of household filers, $150,000 for married joint filers).<br>Eligible individuals would need to provide a taxpayer ID—either an SSN or ITIN—to receive the payment (as defined in subtitle A).<br>These payments would generally be exempt from reduction for debts owed to or collected by governmental agencies (including past-due child support) and private/commercial debts (as defined in Subtitle A).<br>For eligible individuals who did not file a 2019 or 2018 income tax return and who were recipients of Social Security, Supplemental Security Income (SSI), or Department of Veterans Affairs (VA) benefits, Treasury would be directed to issue payments based on information provided to the Social Security Administration (SSA) or VA. (The treatment of the payments regarding representative payees would be the same as described in Subtitle A.) Treasury would be directed to conduct outreach to other eligible nonfilers.<br>Any checks could not include the name, signature, image, or likeness of any elected official, including the President or Vice President of the United States.<br>Treasury would be required to provide weekly updates to Congress on the number and amount of payments made.<br>If a taxpayer received a larger advanced credit in 2020 than they were eligible for on their 2020 income tax return, they generally would not be required to pay it back. If an individual received an advanced payment less than what they were eligible for on their 2020 income tax return, they could claim the difference on that return (filed in 2021). | For background, see<br>• CRS Insight IN11282, *COVID-19 and Direct Payments to Individuals: Summary of the 2020 Recovery Rebates/Economic Impact Payments in the CARES Act (P.L. 116-136)*, by Margot L. Crandall-Hollick.<br>• CRS Insight IN11247, *COVID-19 and Direct Payments to Individuals: Considerations on Using Advanced Refundable Credits as Economic Stimulus*, by Margot L. Crandall-Hollick.<br>• CRS Insight IN11256, *COVID-19 and Direct Payments to Individuals: Historical Precedents*, by Gene Falk.<br>• CRS Insight IN11255, *COVID-19 and Direct Payments to Individuals: How Did the 2008 Recovery Rebates Work?*, by Margot L. Crandall-Hollick.<br>• CRS Insight IN11294, *COVID-19 and Direct Payments to Individuals: Summary of the 2020 Economic Assistance Payments in H.R. 6379, the Take Responsibility for Workers and Families Act*, by Margot L. Crandall-Hollick.<br>• CRS Insight IN11234, *Tax Cuts as Fiscal Stimulus: Comparing a Payroll Tax Cut to a One-Time Tax Rebate*, by Molly F. Sherlock and Donald J. Marples.<br>• CRS Report RS21126, *Tax Cuts and Economic Stimulus: How Effective Are the Alternatives?*, by Jane G. Gravelle. |

| Section Title | Description | CRS Resources |
|---|---|---|
| *Subtitle C—Earned Income Tax Credit* | | |
| Strengthening the Earned Income Tax Credit for Individuals with No Qualifying Children | Would temporarily for 2020 expand both eligibility for and the amount of the EITC for taxpayers without qualifying children by modifying the eligibility age and credit formula.<br>Regarding eligibility age, would expand eligibility for the earned income tax credit (EITC) for individuals with no qualifying children—sometimes referred to as the "childless EITC"—by increasing the maximum eligibility age from 64 to 65, and by allowing eligible taxpayers ages 19 to 24 to claim the childless EITC so long as they are not students. Qualified foster youth and homeless youth aged 18-24 would be allowed to claim the credit even if they are students.[a]<br>Regarding the credit amount, would temporarily increase the childless EITC by increasing the earned income amount and phaseout threshold amounts to $9,720 and $11,590, respectively, while also doubling the phase-in and phaseout rates from 7.65% to 15.3%. The maximum EITC would increase from $538 to $1,487 in 2020. | For background, see<br>• CRS Report R43805, *The Earned Income Tax Credit (EITC): An Overview*, by Gene Falk and Margot L. Crandall-Hollick. |
| Taxpayers Eligible for Childless Earned Income Credit in Case of Qualifying Children who Fail to Meet Certain Identification Requirements | Would permanently allow taxpayers who currently cannot claim the childless EITC because all of their qualifying children do not have SSNs to be eligible to claim the childless EITC. | |
| Credit Allowed in Case of Certain Separated Spouses | Would permanently allow married taxpayers who file their tax returns as married filing separately to claim the EITC if they live with a child for whom they can claim the EITC for more than half the year and either (1) do not have the same principal place of abode as their spouse for the last six months of the year, or (2) have a decree, instrument, or agreement (i.e., other than a divorce decree) and do not live with their spouse at the end of the year. | |
| Elimination of Disqualified Investment Income Test | Would permanently eliminate the disqualified investment income test. Under current law, taxpayers with investment income over a certain threshold—$3,650 in 2020—are ineligible for claiming the EITC. Disqualified investment income is defined as interest income (including tax-exempt interest), dividends, net rent, net capital gains, and net passive income. It also includes royalties from sources other than the filer's ordinary business activities. | |

| Section Title | Description | CRS Resources |
|---|---|---|
| Application of Earned Income Tax Credit in Possessions of the United States | Would permanently provide authority to make payments to Puerto Rico, American Samoa, and mirror-code territories for amounts they pay out in the EITC. For Puerto Rico and American Samoa, such payments would be contingent upon increasing the amount of their EITC or enacting an EITC, respectively. | For background, see<br>• CRS Report R44651, *Tax Policy and U.S. Territories: Overview and Issues for Congress*, by Sean Lowry. |
| Temporary Special Rule for Determining Earned Income for Purposes of Earned Income Tax Credit | For the purposes of calculating their EITC on their 2020 income tax return, would allow taxpayers to substitute their 2019 earned income for their 2020 earned income if their earned income at the end of 2020 was less than their prior-year earned income. | |
| *Subtitle D—Child Tax Credit* | | |
| Child Tax Credit Improvements for 2020 | Would eliminate the phase-in of the refundable portion of the child credit (often referred to as the "additional child credit" or ACTC) and eliminate the maximum amount of the ACTC ($1,400), making the credit "fully refundable" for that year. As a result, families with little or no income would be able to receive the maximum amount of the child tax credit as a refund. (For these families, the entire amount of their child tax credit would be received as the ACTC.)<br>Would increase the eligibility age for a qualifying child to include 17-year-olds.<br>Would increase the per-child credit amount to $3,000 for each of a taxpayer's qualifying children ages 6 to 17 years, and $3,600 for each of a taxpayer's qualifying children aged 0-5.<br>Would direct the IRS to establish a program to advance the expanded credit to taxpayers on a monthly basis (or as frequently as deemed feasible by the Treasury Secretary). If the advanced amounts were greater than the allowed amount, the excess would be paid back by the taxpayer.<br>All changes would be temporary for 2020. | For background, see<br>• CRS Report R41873, *The Child Tax Credit: Current Law*, by Margot L. Crandall-Hollick. |
| Application of Child Tax Credit in Possessions | Would effectively expand child credit eligibility to residents of Puerto Rico and mirror-code territories by providing payments to Puerto Rico and the territories for amounts they pay out in the child credit. This change would be permanent. Authorizes payments to American Samoa in the amount that would have been paid to residents of American Samoa if the credit would have been provided to such residents. | For background, see<br>• CRS Report R44651, *Tax Policy and U.S. Territories: Overview and Issues for Congress*, by Sean Lowry. |

| Section Title | Description | CRS Resources |
|---|---|---|
| *Subtitle E—Dependent Care Assistance* | | |
| Refundability and Enhancement of Child and Dependent Care Tax Credit | Would create a more generous formula for the child and dependent care tax credit (CDCTC) and make the credit refundable for 2020. The expanded formula would allow eligible taxpayers to claim up to 50% of employment-related child care expenses for the credit (up from 35%) and increase to $120,000 the income level at which that percentage begins to phase out (up from $15,000). Hence, the credit rate would phase down to 20% when the taxpayer's income was greater than $180,000 (versus $43,000 under current law). Would also double the maximum amount of qualified expenses to $6,000 for taxpayers with one qualifying dependent and $12,000 for taxpayers with two or more qualifying dependents (up from $3,000 and $6,000, respectively). In addition, would temporarily make the CDCTC refundable. | For background, see<br>• CRS Report R44993, *Child and Dependent Care Tax Benefits: How They Work and Who Receives Them*, by Margot L. Crandall-Hollick. |
| Increase in Exclusion for Employer-Provided Dependent Care Assistance | Would increase the amount of qualifying child care expenses that eligible taxpayers could exclude from their income from $5,000 to $10,500 for 2020. | |
| *Subtitle F—Flexibility for Certain Employee Benefits* | | |
| Increase in Carryover for Health Flexible Spending Arrangements | Would permit employers to allow participants in health flexible savings accounts to carry over unspent amounts up to $2,750 (the maximum amount for 2020) in the plan year ending in 2020 to the plan year ending in 2021. IRS regulations allow either a carryover of $550 or a grace period of 2.5 months. IRS regulations released on May 12, 2020 (Notice 2020-29 and Notice 2020-33), allow full carryover through calendar year 2020 and increase on a permanent basis the $500 carryover amount to 20% of the maximum amount. | For background, see<br>• CRS Committee Print CP10003, *Tax Expenditures: Compendium of Background Material on Individual Provisions—A Committee Print Prepared for the Senate Committee on the Budget, 2018*, by Jane G. Gravelle et al. ("Exclusion of Benefits Provided Under Cafeteria Plans," pp. 751-757). |
| Carryover for Dependent Care Flexible Spending Arrangements | Would permit employers to allow participants in dependent care flexible savings accounts to carry over all unspent amounts (the maximum is $5,000) in plan year ending in 2020 to the plan year ending in 2021. Currently, unused benefits are forfeited. IRS regulations released on May 12, 2020 (Notice 2020-29), allow full carryover through calendar year 2020. | For background, see<br>• CRS Report R44993, *Child and Dependent Care Tax Benefits: How They Work and Who Receives Them*, by Margot L. Crandall-Hollick. |

| Section Title | Description | CRS Resources |
|---|---|---|
| Carryover of Paid Time Off | Would permit employers to allow participants in cafeteria benefit plans (which allow participants to choose from certain pretax benefits) to carry over all unused paid time off for plans ending in 2020 to plans ending in 2021. Currently, unused benefits are forfeited. | For background, see<br>• CRS Committee Print CP10003, *Tax Expenditures: Compendium of Background Material on Individual Provisions—A Committee Print Prepared for the Senate Committee on the Budget, 2018*, by Jane G. Gravelle et al. ("Exclusion of Benefits Provided Under Cafeteria Plans," pp. 751-757). |
| Change in Election Amount | Would permit employers to allow participants to make changes to 2020 health flexible savings accounts without regard to changes in status or to paid time off during 2020. Currently such elections must be made prior to the plan year and can only be changed with certain changes in status. IRS regulations released on May 12, 2020 (Notice 2020-29), allow elections for changes in health and dependent care coverage during calendar year 2020. | For background, see<br>• CRS Committee Print CP10003, *Tax Expenditures: Compendium of Background Material on Individual Provisions—A Committee Print Prepared for the Senate Committee on the Budget, 2018*, by Jane G. Gravelle et al. ("Exclusion of Benefits Provided Under Cafeteria Plans," pp. 751-757). |
| Extension of Grace Periods, Etc. | Would allow a benefits plan to retain its status as a cafeteria plan, health flexible savings account, or dependent care account if the grace period for a 2020 plan is extended to 12 months after the end of the 2020 plan year. Would also permit employers to allow employees who cease participation (for example, because of termination) to receive unused benefits for the rest of the plan year including the grace period. | For background, see<br>• CRS Committee Print CP10003, *Tax Expenditures: Compendium of Background Material on Individual Provisions—A Committee Print Prepared for the Senate Committee on the Budget, 2018*, by Jane G. Gravelle et al. ("Exclusion of Benefits Provided Under Cafeteria Plans," pp. 751-757). |
| Plan Amendments | Would allow employers to make retroactive amendments to cafeteria plans, health flexible spending arrangements, and dependent care arrangements to permit the changes made in these provisions. | For background, see<br>• CRS Committee Print CP10003, *Tax Expenditures: Compendium of Background Material on Individual Provisions—A Committee Print Prepared for the Senate Committee on the Budget, 2018*, by Jane G. Gravelle et al. ("Exclusion of Benefits Provided Under Cafeteria Plans," pp. 751-757). |

| Section Title | Description | CRS Resources |
|---|---|---|
| *Subtitle G—Deduction of State and Local Taxes* | | |
| Elimination for 2020 and 2021 of Limitation on Deduction of State and Local Taxes | Taxpayers that itemize their deductions may claim a deduction for certain state and local taxes paid (the SALT deduction). The 2017 tax revision (P.L. 115-97) limited SALT deduction claims for tax years 2018 through 2025, set to $10,000 for single taxpayers and married couples filing jointly and $5,000 for married taxpayers filing separately. That law also excluded foreign real property taxes paid from SALT deduction claims over the same time frame.<br>Would repeal the SALT deduction limit for tax years 2020 and 2021; would not modify the foreign real property tax exclusion. | For more, see<br>• CRS Report R46246, *The SALT Cap: Overview and Analysis*, by Grant A. Driessen and Joseph S. Hughes.<br>• CRS Report RL32781, *Federal Deductibility of State and Local Taxes*, by Grant A. Driessen and Steven Maguire. |
| **Title II—Additional Relief for Workers** | | |
| *Subtitle A—Additional Relief* | | |
| Increase in Above-the-Line Deduction for Certain Expenses of Elementary and Secondary School Teachers | Teachers are currently allowed an above-the-line deduction of up to $250 for unreimbursed out-of-pocket supply costs, including books, computer equipment, software, and other supplemental classroom materials. This provision would permanently increase the deduction amount to $500 starting in 2020, with the $500 amount adjusted for inflation over time. | For background, see<br>• CRS Insight IN10021, *The Deduction for Out-of-Pocket Teacher Expenses*, by Molly F. Sherlock and Margot L. Crandall-Hollick. |
| Above-the-Line Deduction Allowed for Certain Expenses of First Responders | Would provide first responders a permanent above-the-line deduction allowing them to deduct up to $500 for unreimbursed uniform expenses or tuition and fees associated with professional development courses related to service as a first responder. First responders are defined as employees who provide at least 1,000 hours of service during the year as a law enforcement officer, firefighter, paramedic, or emergency technician. The deduction would be available starting in 2020, with the $500 amount adjusted for inflation over time. | |
| Temporary Above-the-Line Deduction for Supplies and Equipment of First Responders and COVID-19 Front Line Employees | Would allow an above-the-line deduction in 2020 for unreimbursed uniform, supply, and equipment expenses of COVID-19 front line employees. COVID-19 front line employees are defined as individuals performing at least 1,000 hours of essential work in 2020. Essential work covers a broad range of workers, defined in Division Q of the HEROES Act, who generally have physical interactions with persons or handle objects handled by other persons or are employed in essential industries (e.g., health care, first responders, grocery stores, transportation). | |

| Section Title | Description | CRS Resources |
|---|---|---|
| Payroll Credit for Certain Pandemic-Related Employee Benefit Expenses Paid by Employers | Would provide a refundable payroll tax credit for pandemic-related employee benefit expenses. For each employee, up to $5,000 in pandemic-related employee benefit expenses may be tax credit eligible per quarter. For pandemic-related essential employees, the tax credit amount is 50% of benefit expenses paid (e.g., a tax credit of up to $2,500 per quarter). The tax credit amount is 30% for other employees. The credit would be available for pandemic-related employee benefit expenses paid after March 12, 2020, and before January 1, 2021.<br>A general fund transfer of revenue to the Old-Age and Survivors Insurance Trust Fund, Federal Disability Insurance Trust Fund, and Railroad Retirement Trust Fund would be made to maintain trust fund balances. | |
| *Subtitle B—Tax Credits to Prevent Business Interruption* | | |
| Improvements to Employee Retention Credit | Would modify the employee retention tax credit to (1) increase the credit rate from 50% to 80%; (2) increase the amount of wages that can qualify for the credit from $10,000 annually to $15,000 per quarter (limited to $45,000 for the year); (3) modify credit limitations for large employers, defining large employers as those with more than 1,500 full-time employees in 2019 and gross receipts of more than $41.5 million in 2019 (rather than an employer with more than 100 employees); (4) allow a partial credit for businesses with a 10% to 50% decline in gross receipts; and (5) allow state and local governments, and some federal instrumentalities, to claim the credit.<br>Would apply retroactively to the effective date provided in the CARES Act. | For more, see<br>• CRS Insight IN11299, *COVID-19: The Employee Retention Tax Credit*, by Molly F. Sherlock. |

| Section Title | Description | CRS Resources |
|---|---|---|
| Payroll Credit for Certain Fixed Expenses of Employers Subject to Closure by Reason of COVID-19 | Would provide a refundable payroll tax credit for employers' fixed costs, including rent or mortgage obligations and utility payments. A tax credit of 50% could be claimed on qualifying fixed expenses. Qualifying expenses limited to the lesser of qualified fixed expenses paid in the same calendar quarter in 2019; $50,000; or the greater of 25% of wages paid or 6.25% of gross receipts during the same calendar quarter in 2019.<br>Eligible employers would be those with no more than 1,500 full-time employees in 2019 and gross receipts of no more than $41.5 million in 2019 who had operations fully or partially suspended due to COVID-19 or who had a significant decline in gross receipts (gross receipts were less than 90% of gross receipts for the same calendar quarter in 2019). Credit is available at a reduced rate (or phases in) for employers with a decline in gross receipts between 10% and 50%. Credit could be claimed for fixed expenses paid or accrued after March 12, 2020, and before January 1, 2021.<br>A general fund transfer of revenue to the Old-Age and Survivors Insurance Trust Fund, Federal Disability Insurance Trust Fund, and the Railroad Retirement Trust Fund would be made to maintain trust fund balances. | |
| Business Interruption Credit for Certain Self-Employed Individuals | Eligible self-employed individuals who have experienced a significant loss in income would be allowed a refundable income tax credit. The credit rate is 90%. The base of the credit is the loss in self-employment income that exceeds a 10% reduction from 2019 to 2020, scaled using the ratio of net self-employment earnings to self-employment gross income in 2019. The maximum amount of self-employment income that can be taken into account in computing the credit is the lesser of $45,000 or the reduction in adjusted gross income (AGI) from 2019 to 2020. The credit phases out at a rate of $50 for every $100 of income once modified AGI exceeds $60,000 ($120,000 for joint filers). | |
| *Subtitle C—Credits for Paid Sick and Family Leave* | | |
| Extension of Credits | The Families First Coronavirus Response Act (FFCRA; P.L. 116-127) includes refundable payroll tax credits for certain required paid sick and family leave for 2020. This provision would extend the tax credits through 2021. | For more, see<br>• CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock. |

| Section Title | Description | CRS Resources |
|---|---|---|
| Repeal of Reduced Rate of Credit for Certain Leave | The payroll tax credit for paid sick leave wages in FFCRA is limited to $200 per day for certain qualified leave taking, generally caring for an individual affected by COVID-19 or caring for their child whose school or place of care is unavailable due to COVID-19. The credit is limited to $511 per day if employees are taking other forms of qualified sick leave, generally for their own COVID-19 related purposes. This provision would increase the maximum tax credit to $511 for all sick leave purposes in FFCRA. | For more, see<br>• CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock. |
| Increase in Limitations on Credits for Paid Family Leave | The tax credit for family leave wages is limited to $200 per day, and $10,000 total per employee. For self-employed individuals, the family leave credit is limited to 50 days. This provision would increase the total credit amount to $12,000 per employee, and allow self-employed individuals to claim the credit for up to 60 days. This provision is effective as if included in FFCRA. | For more, see<br>• CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock. |
| Election to Use Prior-Year Net Earnings from Self-Employment in Determining Average Daily Self-Employment Income | Average daily self-employment income is an amount equal to the net earnings from self-employment for the taxable year divided by 260. This provision would allow individuals to elect to use average daily self-employment income from 2019, instead of 2020, to compute the credit. This provision is effective as if included in FFCRA. | For more, see<br>• CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock. |
| Federal, State, and Local Governments Allowed Tax Credits for Paid Sick and Paid Family and Medical Leave | The payroll tax credits for paid sick and family leave in FFCRA do not apply to federal, state, or local government employers, or any agency or instrumentality of such governments. Government employers are subject to new sick and family leave requirements in FFCRA. This provision would allow government employers to claim payroll tax credits for required sick and family leave. This provision is effective as if included in FFCRA. | For more, see<br>• CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock. |
| Certain Technical Improvements | Technical changes would coordinate the definitions of qualified wages for paid sick leave, paid family and medical leave, and the exclusion of such leave from employer Old-Age, Survivors, and Disability Insurance (OASDI) tax. This provision is effective as if included in FFCRA. | For more, see<br>• CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock. |
| Credit Not Allowed to Certain Large Employers | This provision would provide that private-sector employers with 500 or more employees are not eligible for tax credits for paid sick or family leave. This restriction would not apply to federal, state, or local government employers. The provision would apply to wages paid after the date of enactment. | For more, see<br>• CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock. |
| *Subtitle D—Other Relief* | | |

| Section Title | Description | CRS Resources |
|---|---|---|
| Payroll Tax Deferral Allowed For Recipients of Certain Loan Forgiveness | Would allow businesses receiving Paycheck Protection Program loan forgiveness to defer payment of payroll taxes under Section 2302 of the CARES Act. | For more, see<br>• CRS Insight IN11260, *COVID-19 Economic Stimulus: Business Payroll Tax Cuts*, by Molly F. Sherlock and Donald J. Marples.<br>For general information on the Paycheck Protection Program, see<br>• CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry. |
| Emergency Financial Aid Grants | Would exclude postsecondary emergency financial aid grants awarded in response to the coronavirus emergency from gross income. Thus, these grants would not be taxable. Excluded emergency financial aid would not reduce qualified expenses for the purposes of calculating the American Opportunity Tax Credit, Lifetime Learning Credit, or Tuition and Fees Deduction. Generally, education expenses used to calculate these three tax benefits must be reduced by any tax-free financial aid (i.e., excluded from gross income), which may reduce the value of these tax benefits.[b] | For more information on CARES Act Higher Education Provisions, see<br>• CRS In Focus IF11497, *CARES Act Higher Education Provisions*, coordinated by Cassandria Dortch. |
| Certain Loan Forgiveness and Other Business Financial Assistance under CARES Act Not Includable in Gross Business Income | Loan forgiveness for additional lenders to participate in the Payment Protection Program, advance payments for Emergency Injury Disaster Loan (EIDL) grants, and payments of principle, interest, and fees on behalf of borrowers under covered loans, all authorized in the CARES Act, would not be included in gross income for tax purposes. | For more on the Payment Protection Program, see<br>• CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry.<br>For more on the EIDL program, see<br>• CRS Insight IN11370, *SBA EIDL and Emergency EIDL Grants for COVID-19*, by Bruce R. Lindsay. |
| Authority to Waive Certain Information Reporting Requirements | Would provide the Secretary of the Treasury with the authority to waive information reporting requirements with respect to income that is exempt from tax as excludible loan forgiveness under the Paycheck Protection Program or under the exclusions for emergency financial grants for students, or the loans for additional lenders, EIDL, and payments of principle, interest and fees for covered loans. | For more on the Payment Protection Program, see<br>• CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry. |

| Section Title | Description | CRS Resources |
|---|---|---|
| Clarification of Treatment of Expenses Paid or Incurred with Proceeds from Certain Grants and Loans | This section clarifies that expenses paid out of forgiven loans under the Payment Protection Program or other related payments that are excluded from income would be deductible. This legislation reverses recent Internal Revenue Service guidance (Notice 2020-32) that held these expenses were not deductible. | For more, see<br>• CRS Insight IN11378, *IRS Guidance Says No Deduction is Allowed for Business Expenses Paid with Forgiven PPP Loans*, by Sean Lowry and Jane G. Gravelle. |
| Reinstatement of Certain Protections for Taxpayer Return Information | Would repeal certain provisions of the CARES Act that amended the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act (P.L. 116-91).<br>These specific CARES Act provisions:<br>(i) allow for Department of Education and its contractors to re-disclose specified IRS returns and return information to designated persons, who are not subject to certain taxpayer return protection obligations, solely for the use in financial aid programs; and<br>(ii) eliminate the requirement that the IRS maintain a permanent system of standardized records or accountings of all disclosures and re-discloses made to carry out the Higher Education Act of 1965. | |
| ***Title III—Net Operating Losses*** | | |
| Limitation on Excess Business Losses of Noncorporate Taxpayers Restored and Made Permanent | Would reinstitute the limits on noncorporate business losses that existed prior to the CARES Act and would make the limits permanent. The changes would apply to taxable years beginning on or after January 1, 2018.<br>Prior to the CARES Act, under revisions made by P.L. 115-97 (commonly referenced as the Tax Cuts and Jobs Act [TCJA]), pass-through business owners could use losses to offset other nonbusiness income up to an annual limit: $250,000 (single filers) or $500,000 (married filers). Losses above these limits were considered excess business losses and could be carried forward indefinitely subject to the more general rules for net operating losses (NOLs). These limits on excess business losses are scheduled to expire after 2025, at which time businesses will not be limited in the amount of nonbusiness income they may offset with business losses.<br>The CARES Act suspended the $250,000/$500,000 limits on offsetting nonbusiness income for 2018, 2019, and 2020. | For more, see<br>• CRS Insight IN11240, *COVID-19: Potential Role of Net Operating Loss (NOL) Carrybacks in Addressing the Economic Effects*, by Mark P. Keightley.<br>• CRS Insight IN11296, *Tax Treatment of Net Operating Losses (NOLs) in the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, by Jane G. Gravelle. |

| Section Title | Description | CRS Resources |
|---|---|---|
| Certain Taxpayers Allowed Carryback of Net Operating Losses Arising in 2019 and 2020 | This provision would limit the carryback of NOLs to losses incurred in 2019 and 2020. Losses could be carried back until 2018. Businesses with excessive employee compensation under IRC 162(m), golden parachute payments under IRC 280G, or excessive dividend payment and stock buybacks would be prohibited from carrying back 2019 and 2020 losses.<br>Under the temporary revisions enacted by the CARES Act, businesses are currently allowed to carry back losses generated in calendar years 2018, 2019, and 2020 to up to the five years preceding the loss year. The CARES Act suspended the limit to 80% of taxable income for those years. After 2020, NOLs can only be carried forward and are limited to 80% of taxable income, under the rules adopted in the TCJA. | For more, see<br>• CRS Insight IN11240, *COVID-19: Potential Role of Net Operating Loss (NOL) Carrybacks in Addressing the Economic Effects*, by Mark P. Keightley.<br>• CRS Insight IN11296, *Tax Treatment of Net Operating Losses (NOLs) in the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, by Jane G. Gravelle. |

**Source:** CRS analysis of the HEROES Act (H.R. 6800).

**Notes:**

a. The legislation includes as part of the definition of a student someone carrying half or more of the normal full-time work load for their program of study, as defined under IRC §25A(b)(3).

b. On May 7, 2020, the IRS provided similar but less expansive guidance to the same effect. See IRS, "FAQs: Higher Education Emergency Relief Fund and Emergency Financial Aid Grants under the CARES Act," at https://www.irs.gov/newsroom/faqs-higher-education-emergency-relief-fund-and-emergency-financial-aid-grants-under-the-cares-act.

# Author Information

Molly F. Sherlock, Coordinator
Specialist in Public Finance

Jane G. Gravelle
Senior Specialist in Economic Policy

Margot L. Crandall-Hollick
Acting Section Research Manager

Mark P. Keightley
Specialist in Economics

Grant A. Driessen
Analyst in Public Finance

Donald J. Marples
Specialist in Public Finance

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.