Insight

Financial Services Provisions in the HEROES Act

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Executive Summary

- House Democrats have released the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, an ambitious proposal for the next round of federal aid in response to the COVID-19 pandemic that nevertheless has only limited implications for financial services.
- HEROES proposes significant revisions to the Paycheck Protection Program, although it does not allocate any additional funding despite the program's funding being near exhaustion.
- The Act's other financial services provisions impact credit models, credit ratings and legal cannabis businesses.

Introduction

On May 12, Democrats in the House of Representatives released the text of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, a $3 trillion statement of intent setting out their priorities for the next round of COVID-19-related federal aid.

Unlike in the CARES Act, financial services policy has taken something of a back seat in the HEROES proposal. While the Democrats' proposal includes considerable changes to the Paycheck Protection Program (PPP), this does not include any additional funding. The second round of PPP loans is close to exhaustion, so the effect is to gold plate the barn door after the horse has bolted. The HEROES Act also shines a spotlight on two particular industries: the providers of credit models and legal cannabis businesses, to the noteworthy benefit of one and not the other.

The Paycheck Protection Program

The PPP, established by the CARES Act, authorized $659 billion in financial assistance in the form of loans provided through existing Small Business Administration (SBA) programs. The program provided an immediate lifeline to businesses in need and for many struggling businesses became the most obvious ramification of the CARES Act. The Senate succeeded in getting enormous sums of money to businesses that needed it in an extraordinarily short timescale. Despite, or largely because of, the speed at which the Senate and the SBA proceeded, the PPP came under considerable criticism. Critiques range from the operational demands the PPP placed on the SBA, to burdensome requirements on recipients of PPP loans, to concerns that publicly traded companies were beneficiaries of emergency funding.

The HEROES Act would amend the PPP to address many of these concerns. One particularly onerous demand of CARES was the requirement that PPP recipients spend any relief funds within eight weeks of receiving the funds, a requirement that does not reflect the complicated nature of small-business financial obligations. HEROES would extend this period to 24 weeks. Similarly, the HEROES Act would remove the requirement that businesses could spend no more than 75 percent of funds from a PPP loan on expenses outside of payroll. The HEROES Act would also disentangle an unintentional result of the CARES Act that permanently linked the PPP with the SBA's existing relief programs, ending those relief programs when PPP funding disappears. Not all proposed changes to the program would be necessarily positive, however. Also included is a provision that would open the PPP program to trade associations that lobby in Washington, a change that would cause some controversy.

Despite these largely sensible suggestions, the HEROES Act curiously provides no actual additional funding for the program (although it does create new carve-outs for the smallest of small businesses, and a set-aside for community financial institutions, requiring that a fraction of PPP funding come through these institutions). This omission is notable given that the first round of PPP funding was exhausted in two weeks, with all estimations indicating that only 20 to 40 percent of PPP funds remain available. Even if there were a viable path forward for the HEROES Act in Congress, it seems extremely unlikely that the PPP would have funds available by the time these program enhancements were enacted. Even reports that interest in the PPP is waning indicate that the time of the PPP's greatest impact may have passed, with focus reportedly shifting to the launch of the Federal Reserve's Main Street Lending Program as being the next primary source of emergency funding for struggling businesses (although the HEROES Act does address this by requiring that the Main Street Lending Program provide low-cost options). The HEROES Act, although in theory improving the PPP, does nothing to actually prolong the life of the program.

Credit Reporting

The HEROES Act builds on credit-reporting protections provided in the CARES Act by suspending negative credit reporting for the duration of the national emergency plus 120 days, and permanently banning the reporting of medical debt as a result of COVID-19 treatments. More broadly the HEROES Act would also prevent the collection of small business and nonprofit debt for the same period.

The HEROES Act goes even further, however, by prohibiting furnishers of credit-score models to credit-rating agencies (most obviously FICO) from introducing new models that would lower consumer credit scores during the national emergency – or other major disaster periods. In addition to being something of an overreach into the business of these credit score modelers, this provision would prevent the introduction of better scoring models that more accurately represent risk in these atypical times. Although some individuals may receive lower scores, credit-rating agencies and by extension banks would have a better picture of the health of consumers.

Cannabis Banking

The HEROES Act includes wholesale language taken from the SAFE Banking Act, which passed the House in September 2019, that seeks to address issues caused by a lack of access to banking services for legal cannabis businesses. The SAFE Act would prohibit federal regulators from bringing enforcement actions against banks that service cannabis businesses in states where cannabis is legal. Cannabis banking is an issue that has enjoyed significant bipartisan support, not just in the SAFE Act in the House, but in the similar STATES Act in the Senate. To the surprise of some in the industry, President Trump also announced that he would "probably" support the bill. That this legislation will eventually be successful in Congress is not considered a controversial opinion. It is considerably less obvious, however, why cannabis banking should appropriately be attached to the next round of coronavirus-relief legislation – particularly when considered next to other actors, including the mortgage-service industry, that the CARES Act directly impaired. It is difficult to justify the inclusion of such targeted industry support in pandemic-response legislation.

Conclusions

With no obvious congressional path to passage, the HEROES Act is an extraordinarily detailed statement of intent on behalf of House Democrats to the Senate for consideration in the next Senate-led stimulus package. The financial services implications of the Act are, however, relatively limited. The Democrats would appropriate next to zero additional funds for relief of small businesses, would amend a program that does not necessarily have a

future, and are no less prone to picking regulatory winners and losers in the industries this Act would favor.