NCSHA
National Council *of*
State Housing Agencies

May 15, 2020

MEMORANDUM

TO: Interested Parties

FR: NCSHA Staff

RE: Summary of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act

Executive Summary

As of this writing midday Friday, the House is scheduled to consider and expected to pass on a largely party-line vote the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which would provide more than $3 trillion for coronavirus relief in programs across government agencies, including state and local assistance, additional individual payments, and significant funding for education, public health, and affordable housing.

The HEROES Act includes two of NCSHA's top COVID-19 legislative priorities — $100 billion for emergency rental assistance and $75 billion for the Homeowner Assistance Fund, providing resources directly to state Housing Finance Agencies (HFAs) to help homeowners make mortgage payments.

The bill also addresses another major NCSHA priority by directing the Secretary of the Treasury and the Federal Reserve System to provide liquidity to servicers of multifamily mortgage loans covered under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (as amended by the HEROES Act) and requiring the Treasury Department to ensure that servicers of single-family mortgage loans have the opportunity to participate in the loans, loan guarantees, or other investments it makes under the CARES Act.

The legislation does not include a minimum 4 percent credit rate for multifamily bond-financed Housing Credit properties, a lowering of the 50 percent "financed-by" test, additional HOME block grant funding, or modifications to the Mortgage Revenue Bond and Mortgage Credit Certificate programs, all of which are also NCSHA priorities and for which we will continue to advocate.

Senate leaders have indicated the Senate is still evaluating the impact of previous coronavirus-related legislation, is unlikely to act quickly on additional relief legislation, and will have different priorities than the House. When and if the Senate does consider further coronavirus relief, it is unlikely to be as comprehensive or increase federal spending as much as the HEROES Act.

This memorandum summarizes the housing-specific provisions in the HEROES Act relevant to state HFAs.

Emergency Rental Assistance

The HEROES Act authorizes and appropriates $100 billion in funding for emergency rental assistance under the Emergency Solutions Grant (ESG) program, with important modifications to adapt ESG rules so program administrators can use this resource more efficiently to address COVID-19 pandemic-related needs.

Households earning up to 80 percent of area median income (AMI) would be eligible to receive assistance. At least 40 percent of the funding would be targeted to households earning 30 percent or less of AMI, and 70 percent of the funding would be targeted to households earning 50 percent or less of AMI (inclusive of the 40 percent targeted to those at 30 percent or less of AMI). HUD could allow a grantee to serve households earning as much as 120 percent of AMI if the grantee demonstrates it is adequately serving those with incomes under 80 percent of AMI. Household incomes would be calculated based on their income at the time of application to allow households that recently lost employment or had a reduction in income to qualify, regardless of their previous incomes.

Existing ESG grantees — including states, U.S. territories, cities, and counties — would administer the rental assistance. However, in a departure from normal ESG rules, state-level ESG grantees could directly administer all the funding they receive under the program, rather than having to subgrant that funding to local entities or nonprofits. State-level grantees must serve households throughout the state, including those in rural communities and small towns. In addition, a local-level ESG grantee may elect to transfer its grants to the state-level grantee to provide assistance to households residing within that locality, rather than administer the assistance directly. Grantees also may administer rental assistance in partnership with other entities, including public housing authorities or other state-level departments (thus if a state department other than the HFA is the state-level grantee, it could partner with the state HFA to administer the program).

Eligible activities include rental assistance for up to 24 months and arrearages for unpaid rent. Grantees also could spend up to 25 percent of their allocations helping households at 50 percent or less of AMI with housing relocation or stabilization services, which includes housing search, mediation or outreach to property owners, legal services, credit repair, and other activities. Grantees would be able to use up to 10 percent of their allocation for administrative costs. Grantees are not required to provide matching funds for the rental assistance resources provided by the HEROES Act.

Grantees must spend at least 60 percent of their grants within two years. Unspent funding up to the 60 percent level would be reallocated to other grantees after two years. All funding must be spent within three years.

Homeowner Assistance Fund

The bill authorizes and appropriates $75 billion for a Homeowner Assistance Fund at the Department of the Treasury to provide grants to state Housing Finance Agencies to help homeowners avoid defaults and foreclosures. Each state, the District of Columbia, and Puerto Rico would receive a minimum grant of $250 million. The bill reserves $200 million for U.S. territories other than Puerto Rico, which would be divided based on population. It sets aside five percent of the funds for Indian Tribes and Native Hawaiians and an additional five percent for Treasury's program administration and oversight costs.

Eligible activities include mortgage payment assistance, help for borrowers to reinstate their mortgages after a period of forbearance, principal reduction, and rate reduction. HFAs could also assist home buyers with taxes, hazard insurance, flood insurance, mortgage insurance, homeowners' association fees, utility payments, and broadband access. HFAs participating in the Hardest Hit Fund (HHF) would have the option to use the new funds for their HHF programs. HFAs would be able to use up to 15 percent of the funding to cover their administrative costs.

HFAs would need to reserve at least 60 percent of the funding to assist homeowners with incomes at 80 percent of AMI or less, with their incomes calculated as of the time of application for assistance.

HFAs would need to submit to the Treasury a plan(s) for program administration. In order to expedite the process, NCSHA suggested, and congressional staff included in the bill, a provision requiring Treasury to publish within 30 days templates states could use to draft their plans, including standard program terms or requirements and any required legal language. HFAs would be able to modify the template with the consent of the Secretary.

Liquidity for Servicers

The CARES Act provided $454 billion to the Treasury Department to provide loan guarantees and other investments in programs or facilities established by the Federal Reserve to provide liquidity for lending to eligible businesses, states, and municipalities. The bill adds single-family servicers to this list and further directs Treasury to establish a facility for multifamily loan servicers within the $454 billion allocation. This facility would make long-term, low-cost loans to residential rental property owners to temporarily compensate them for documented financial losses caused by reductions in rent payments. Owners could defer payments on the loans until after six months after the date of the enactment of the CARES Act (March 27, 2020). As a condition of receiving such loans, property owners may not evict a tenant solely for nonpayment of rent or fees, nor charge any late fees to the tenant. Lastly, the bill requires the Federal Reserve to report to Congress on the multifamily liquidity facility.

Funding for Affordable Housing and Related Programs

The HEROES Act provides more than $1 trillion in funding across various federal agencies to programs that are either entirely or could be in part devoted to affordable housing activities. These include:

- $915 billion for state and local Coronavirus Fiscal Relief Funds to assist state and local governments address the fiscal impacts resulting from the pandemic (see section below);
- $100 billion for emergency rental assistance funded through the ESG program (see section above);
- $75 billion for the Homeowner Assistance Fund (see section above);
- $11.5 billion for ESG in addition to the $100 billion in ESG emergency rental assistance;
- $5 billion for the Community Development Block Grant program;
- $4 billion for tenant-based rental assistance, including $500 million for public housing agency administrative expenses, $2.5 billion for adjustments in 2020 to voucher renewal funding, and $1 billion for incremental voucher assistance for people experiencing or at risk of homelessness;
- $2 billion for the Public Housing Operating Fund to cover coronavirus-related cost increases for the operation and management of public housing units;
- $1 billion for community development financial institutions to support recovery in distressed communities;
- $755 million in additional assistance to the District of Columbia under the Coronavirus Relief Fund;
- $750 million for project-based rental assistance to ensure the continuation of housing assistance for individuals and families living in properties with project-based rental assistance and to ensure housing providers can take the necessary actions to prevent, prepare for, and respond to the pandemic;
- $500 million for the Section 202 Housing for the Elderly program to maintain operations at properties providing affordable housing for persons with disabilities and ensure housing providers can take the necessary actions to prevent, prepare for, and respond to the pandemic;
- $309 million for rural rental assistance to absorb reductions in tenant rent contributions and to provide rental assistance to unassisted households living in U.S. Department of Agriculture-subsidized properties;
- $200 million for the Section 811 Housing for Persons with Disabilities program to maintain operations at properties providing affordable housing for persons with disabilities and ensure housing providers can take the necessary actions to prevent, prepare for, and respond to the pandemic;
- $100 million for housing counseling to enable housing counselors to respond to the surge in demand for services, which include foreclosure and eviction mitigation counseling and the purchase of technology and equipment so that services can be provided virtually;
- $15 million for the Housing Opportunities for Persons with AIDS (HOPWA) program to maintain operations, rental assistance, supportive services, and other necessary actions;
- $15 million for transitional housing grants under the Violence Against Women Act to help victims of domestic violence; and
- $14 million for fair housing activities.

Financial Assistance for State and Local Governments

Coronavirus State Fiscal Relief Fund

The HEROES Act would allocate $540 billion to states, territories, and tribal governments to "mitigate the fiscal effects" caused by COVID-19 that were not projected as of January 31, 2020. $500 billion would be designated for the 50 states and the District of Columbia (DC). Of the $500 billion, $102 billion would be split evenly between each of the states and DC, $150 billion would be assigned based on population, $49 billion would be determined by the number of confirmed and suspected cases of COVID-19 in each state and DC, and $199 billion would be allocated based on unemployment statistics from the Bureau of Labor Statistics. $20 billion would be designated for U.S. territories, with $10 billion to be split equally among the five U.S. territories and the remaining half meted out based on population. $20 billion will also be set aside for tribal governments.

Coronavirus Local Fiscal Relief Fund

The HEROES Act would also establish a similar $375 billion fund for cities, counties, and other units of local government. Of that total amount, $187.5 billion would be designated for metropolitan cities and other units of local government as defined in section 102 of the Housing and Community Development Act of 1974. The funds would be distributed based on a formula to be created by HUD. The remaining $187.5 billion would be awarded directly to states, DC, and the five U.S. territories, based on population, for assistance to local governments in their jurisdictions.

Eviction Moratorium

The bill replaces the eviction moratorium previously implemented in the Coronavirus Aid, Relief, and Economic Security (CARES) Act with a new eviction moratorium lasting for 12 months from the passage of the CARES Act (March 27, 2020). The eviction moratorium in the HEROES Act covers all renters, regardless of whether or not the property in which the tenant lives has a federally backed mortgage or is assisted using a federal housing program. The expansion to all renters appears to be retroactive to the date the CARES Act was enacted. The moratorium is specific to nonpayment of rent; during the covered period owners would not be able to assess any fees or other charges. At the end of the 12-month moratorium, if an owner initiates an eviction, the tenant would have an additional 30-day period to vacate the property.

Forbearance for Multifamily Loans

The bill further amends the CARES Act to expand its forbearance allowance to owners of any rental property, regardless of whether the property has a federally backed mortgage loan. It also aligns the time period for forbearance with that of the 12-month eviction moratorium.

Borrowers taking advantage of forbearance may not evict any tenant for nonpayment of rent or other fees or charge any late fees or penalties to their tenants.

Multifamily loan servicers are required to provide borrowers 12 months after the forbearance period ends to become current on their loans, without charging late fees or penalties or reporting adverse information to a credit rating agency as long as outstanding payments on the loan are current by the end of the 12-month period after forbearance ends.

Forbearance and Foreclosure Protections for Homeowners

The bill substantially expands the scope of the CARES Act mortgage relief provisions. It extends the applicability of the forbearance and foreclosure protections from "federally backed mortgage loans" to all single-family mortgages except for credit transactions under an open-ended credit plan (other than reverse mortgages). It also grants an automatic 60-day forbearance to certain already-delinquent borrowers who had not already requested a COVID-19 forbearance. The bill includes new protections for owners of personal property, including any recreational or motor vehicle being used as a dwelling, and directs that such personal property may not be repossessed or taken possession of for six months after enactment of the bill.

The bill also adds a number of mortgage servicing clarifications relating to the COVID-19 forbearance authorized by the CARES Act. These changes allow servicers to grant an initial forbearance of not less than 90 days provided that it is automatically extended for 90 days more (unless the borrower does not want to do so); give servicers the ability to offer a loan modification option at the end of forbearance that includes the capitalization of past-due principal, interest, and escrow payments as long as the borrower's principal and interest payment under the loan modification remains at or below the contractual principal and interest payments owned in the original mortgage loan; and state a borrower's oral request for forbearance and affirmation of hardship are sufficient to receive a COVID-19 forbearance. The bill also adds the requirement that servicers must communicate with disabled borrowers using the borrower's preferred method of communication.

Similar to the multifamily foreclosure moratorium, the bill extends the foreclosure moratorium on single-family housing until six months after the enactment of the CARES Act. Vacant or abandoned properties remain exempted from this provision. This is notably longer than the current temporary moratoria put in place by FHA, Fannie Mae, and Freddie Mac.

Protections for Servicers

The HEROES Act includes safe harbor protections for servicers of both single-family and multifamily mortgage loans providing forbearance to borrowers. It specifies that these servicers are not liable to investors for implementing forbearance policies under the Act and not in violation of any duty or contractual obligation owed to investors or other parties relating to loans in forbearance during the covered period.

GSE Qualified Mortgage Patch

Additionally, the bill extends from January 10, 2021, to June 1, 2022, at the earliest, the "Qualified Mortgage Patch," which exempts mortgages eligible for purchase by Fannie Mae or Freddie Mac from the 43 percent debt-to-income ratio cap established as part of the Qualified Mortgage definition in the Consumer Financial Protection Bureau's Ability to Repay rule.