



NEW YORK
CITY BAR

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July 24, 2020

Hon. Charles Schumer
Democratic Leader
U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

Hon. Kirsten Gillibrand
U.S. Senate
478 Russell Senate Office Building
Washington, DC 20510

Re: COVID-19 Pandemic Response – Support for Provisions of the HEROES Act

Dear Senator Schumer and Senator Gillibrand:

As the country continues to respond to the coronavirus (COVID-19) pandemic, the New York City Bar Association (City Bar) supports efforts in Congress to provide much-needed financial assistance and relief to citizens and organizations reeling from the viruses' impact. We applaud the adoption of the Paycheck Protection Program (PPP) Flexibility Act, which extends the PPP and rehire deadline through the end of the year, expands the covered period for loan use from eight weeks to 24 weeks and includes and provides much-needed relief for nonprofits.¹

On May 15th, the House of Representatives passed its proposed relief package, the HEROES Act (H.R.6800).² While we recognize that this bill is a starting point for negotiations

¹ Public Law No: 116-142, <https://www.congress.gov/bill/116th-congress/house-bill/7010/text>; *see also* "Nonprofit PPP Flexibility Act Passes House – May 28, 2020," Inside Charity, <https://insidecharity.org/2020/05/28/nonprofit-ppp-flexibility-act/>. The City Bar has urged that COVID-19 related stimulus funds include nonprofits (*see* <https://www.nycbar.org/media-listing/media/detail/covid-19-stimulus-must-include-nonprofits>) and has urged modifications to the PPP program that align with what was adopted in the PPP Flexibility Act (*see* <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/relief-measures-for-the-fashion-and-retail-industries-covid-19>)(all websites last visited July 22, 2020).

² *See* <https://www.congress.gov/bill/116th-congress/house-bill/6800>; *see also* H.R. 6800, The Heroes Act, Title-By-Title Summary, <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Heroes%20Act%20Summary.pdf>.

with the Senate, the City Bar supports a number of provisions contained in the bill and would urge their inclusion in any final relief package that is adopted.³

ADOPT CRITICAL LEGAL SERVICES FUNDING

The HEROES Act provides \$50 million in additional COVID-19 relief funding to help Legal Services Corporation (LSC) grantees across the country assist low-income individuals facing job losses, evictions, domestic violence and other problems stemming from the pandemic.⁴ That figure represents 50% of what LSC estimates will be needed to address additional legal services needs arising out of the pandemic. Leaders from the judiciary, Congress (including a bipartisan group of senators), and a broad swath of the legal community have issued statements supporting additional LSC funding.⁵

Legal services organizations represented by the City Bar, including our affiliate organization the City Bar Justice Center, can attest to the dire need for continued funding for civil legal services as a whole, the demand for which will only increase as court systems reopen and millions of Americans begin to confront job loss, evictions, consumer fraud, and family disputes. At the same time, other critical funding streams are imperiled. The National Association of IOLTA Programs projected national revenues available for legal services to drop by \$157.4 Million in 2020 as compared to 2019, due to interest rate cuts and filing fee losses due to court closures.⁶ In New York State alone, IOLA account interest is expected to drop in 2020 by nearly \$35 Million, a decrease of over 50% relative to 2019 levels, and, if interest rates remain where they are, by over \$46 Million, nearly 75%, in 2021. These losses could spell disaster for numerous organizations in New York and across the country that significantly rely on IOLTA grants to fund free legal assistance that will be critical to the recovery as we emerge from the pandemic.

With the pandemic and resulting social and economic dislocation now also accompanied by civil unrest over our nation's systemic failures to realize racial equality, sustaining financial support for nonprofit organizations working to ensure equal access to justice is as morally urgent as it is fiscally necessary. Investing in proven legal services delivery models that aid the most vulnerable among us and that are supported by the private bar and public interest community alike can only strengthen the social fabric we all share and safeguard the liberty for which we all strive. The City Bar would urge any relief package to include this vital legal services funding.

³ This letter addresses a subset of issues related to the COVID-19 pandemic and is not intended to be a statement on the entirety of the HEROES Act. We are mindful that significant policy and funding decisions need to be made across a wide variety of areas in crisis, including housing and education. We limit ourselves here to those areas on which the City Bar has previously urged Congressional action.

⁴ See "COVID-19 Relief Funding for Legal Services Corporation Included in HEROES Act," Legal Services Corporation, May 12, 2020, <https://www.lsc.gov/media-center/press-releases/2020/covid-19-relief-funding-legal-services-corporation-included-heroes>.

⁵ *Id.*

⁶ See Press Release: \$157.4 Million Projected Loss in Critical Sources of State Funding for Civil Legal Aid, National Association of IOLTA Programs, May 29, 2020, <https://www.iolta.org/images/NAIP-Press-Release-5-29-20.pdf>.

PROVIDE PROPORTIONATE RELIEF TO NONPROFITS

The City Bar echoes the calls of the nonprofit community in urging Congress to comprehensively include nonprofits in its COVID-19 relief package. Nonprofits are a significant portion of that economy. They employ 12.3 million people⁷ and contribute approximately \$900 billion to the GDP.⁸ The services that nonprofits provide are fundamental. Many are critical lifelines for food, shelter, health and mental health assistance, legal services, and much more to the millions across the country who rely on them. Institutions of faith, culture, and community anchor the emotional and mental well-being of our citizens while acting as conduits for still more critical material services.

The HEROES Act provides that the Main Street Lending Program (established utilizing CARES Act funds), include non-profit organizations as eligible borrowers, and stipulates that the Federal Reserve “immediately offer a low-cost loan option tailored to the unique needs of nonprofit organizations with deferred payments.”⁹ We believe that any final stimulus package must afford a proportionate share of relief to the nonprofit sector. This important sector of our economy employs more people than do the transportation, construction, and even manufacturing industries.¹⁰ Nonprofits are as worthy of receiving assistance and access to loan and grant opportunities as for-profit entities given their indispensable contributions to society. Moreover, nonprofits are not eligible for tax credits in the way that for-profit entities are; thus, to the extent the bill includes tax relief for the latter, it should include commensurate relief for nonprofits.

Nonprofits face stark and drastic choices as the pandemic recession sinks in. Many won’t be able to pay the employees they need to provide services. Funding and revenue streams are already rapidly declining, but need certainly has not. In order for nonprofits to continue to serve their communities; in order for nonprofits to support the millions of workers who rely on them; and in order for nonprofits to act as community lifelines, which are certain to become all the more necessary as events unfold, Congress must act to extend as proportionate a share of aid to nonprofits as it will to businesses.

REDUCE AND PROTECT PRISON POPULATIONS

The City Bar has urged local, state and federal authorities to take steps to lower the number of incarcerated individuals in an effort to prevent the spread of COVID-19 through our

⁷ National Council of Nonprofits, Economic Impact (2020), <https://www.councilofnonprofits.org/economic-impact>.

⁸ Urban Institute, National Center for Charitable Statistics, The Nonprofit Sector in Brief 2018: Public Charities, Giving, and Volunteering, <https://nccs.urban.org/publication/nonprofit-sector-brief-2018#the-nonprofit-sector-in-brief-2018-public-charities-giving-and-volunteering>.

⁹ Review and Recap of Nonprofit Provisions in the HEROES Act, National Council of Nonprofits, <https://www.councilofnonprofits.org/trends-policy-issues/review-and-recap-of-nonprofit-provisions-the-heroes-act>.

¹⁰ *Supra*, n. 6.

jail and prison system.¹¹ This call stems from a collective desire to prevent further spread of COVID-19 in our jail system and to protect those most vulnerable to COVID-19. Every day there are reports of further individuals who are either incarcerated, or who work in a jail or prison, testing positive for COVID-19, and individuals in juvenile detention centers have also tested positive for COVID-19.

The HEROES Act contains an extensive section on prisons and jails¹² which addresses a number of our concerns. The Act provides funding for multiple agencies - and offers grants - aimed at preventing and responding to COVID-19 in prisons. We also support provisions which would: mandate release of non-violent offenders; streamline compassionate release and civil rights' lawsuits; increase home detention for elderly defendants; and improve video conference capabilities.

CONSUMER PROTECTIONS

The COVID-19 pandemic is causing devastating and lasting economic hardship, particularly for low- and moderate-income Americans and communities of color. These communities, home to so many frontline workers, are the same ones that have been hardest-hit by debt collection. In a time of unprecedented job loss and lost wages, continued debt collection and judgment enforcement threaten the limited income and savings people are relying on to keep their families safe during this global pandemic and to pay for basic necessities, such as food, rent, utilities, and healthcare.

The HEROES Act suspends negative consumer credit reporting during the pandemic and provides a temporary moratorium on consumer debt collection during the pandemic and for 120 days thereafter.¹³ These measures would provide much-needed relief for those hardest hit by the pandemic.

¹¹ New York City Must Lead to Protect People in Jails During COVID-19 Crisis: Letter to Mayor de Blasio, May 19, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-city-must-lead-to-protect-people-in-jails-during-covid-19-crisis>; Letter to Governor Cuomo Urging Further Action to Enhance Health & Safety Protections for Incarcerated People During COVID-19 Pandemic, May 15, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/protect-people-in-prisons-and-jails-during-covid-19-pandemic>; City Bar Statement Urging Swifter Action to Reduce Prison and Jail Populations in Light of Coronavirus Pandemic, April 15, 2020, <https://www.nycbar.org/media-listing/media/detail/reduce-prison-and-jail-populations-in-light-of-coronavirus-pandemic>; Letter to Governor Cuomo Urging Release of New York State Prison Inmates at Risk of Coronavirus Infection, March 25, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/covid-19-response-clemency-for-at-risk-inmates-in-state-detention>; Statement of New York City Bar Association Setting Forth Legal Authority to Release Certain Categories of Incarcerated Persons from Local, State and Federal Jails and Prisons to Prevent the Further Spread of COVID-19, March 25, 2020, <https://www.nycbar.org/media-listing/media/detail/legal-authority-to-release-certain-incarcerated-persons-prevent-covid-19-spread>; Statement of the New York City Bar Association Urging Immediate Steps to Reduce Prison and Jail Populations to Prevent Spread of the Covid-19 Virus, March 20, 2020, <https://www.nycbar.org/media-listing/media/detail/statement-of-the-new-york-city-bar-association-urging-immediate-steps-to-reduce-prison-and-jail-populations-to-prevent-spread-of-the-covid-19-virus>.

¹² See H.R. 6800, The Heroes Act, Title-By-Title Summary, at 84, *supra* note 2.

¹³ G. Hunter Bates, Brian Arthur Pomper, James Romney Tucker Jr., M. Todd Tuten, Hans Christopher Rickhoff, Josh Teitelbaum, Alex Monie, Taylor Daly, Christina Barone, Camillo Morales, "COVID-19 Policy Update –

Thank you for your consideration of these recommendations.

Respectfully,

A handwritten signature in blue ink, appearing to read "Elizabeth Kocienda". The signature is fluid and cursive, with a long horizontal stroke at the end.

Elizabeth Kocienda

Cc: Members of the NYS Congressional Delegation

May 12, 2020," Akin Gump, May 12, 2020, <https://www.akingump.com/en/experience/industries/national-security/covid-19-resource-center/covid-19-policy-update-may-12-2020.html>.