

**Summary of the Insolvency Provisions Proposed in the Health, Economic Assistance,
Liability Protection and Schools (HEALS) Act**

Prepared by ABI's Legislation Committee

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The Senate GOP's proposed coronavirus relief legislation package, commonly known as the HEALS Act, contains numerous provisions that will be of especial import to insolvency professionals. The HEALS Act is comprised of eight smaller bills targeting specific areas of concern.

Sens. Marco Rubio (R-Fla.) and Susan Collins's (R-Maine) bill, the "Continuing Small Business Recovery and Paycheck Protection Program Act," explicitly implicates rights under the Bankruptcy Code. It amends § 364 by adding a provision that would enable a debtor in possession or trustee to obtain a PPP loan under the Small Business Act. The bill would enable the Small Business Administrator to authorize certain eligible small business debtors to receive these PPP loans through a special procedure in the bankruptcy courts. Court approval would be required for the disbursement of these loans, which would then be treated as debts and given superpriority status in the bankruptcy process. Section 503(b) is also amended to allow this debt to be classified as an administrative expense. The provisions in the Bankruptcy Code concerning confirmation of the plan for reorganization (§ 1191), family farmers and fishermen (§ 1225), and individuals (§ 1325) would all be amended to indicate that plans providing for payments of loans under modified § 503(b) may be confirmed if the plan proposes to make payments under the terms of the loan when due. These provisions would all sunset two years from the date of enactment of this bill.

Eligible expenses for forgiveness in using PPP funds would be expanded under Rubio and Collins's bill to include (1) covered operation expenditures, such as payment for business software or cloud-computing service that facilitates business operations; (2) covered property damage costs, meaning those arising from vandalism or looting during the public disturbances of 2020; (3) covered supplier costs, meaning expenditures to suppliers pursuant to contracts for essential goods in effect before Feb. 15, 2020; and (4) covered worker-protection expenditures, meaning those operating or capital expenditures necessary to comply with federal health guidelines. Lenders who rely in good faith on documentation submitted as part of an application for covered PPP loans would be protected from any enforcement action. The maximum amount of a first-time PPP loan would be reduced from \$10 million to \$2 million. In order to receive a second-draw PPP loan under this bill, an eligible entity must (1) meet the SBA's revenue size standard, if applicable; (2) employ no more than 300 employees; and (3) show a 50 percent or greater reduction in revenue for the first or second quarter of 2020 as compared to the same quarter in 2019. The general terms of a second-draw loan would provide that it shall not exceed 2.5 times the average total monthly payroll costs for the year prior to receipt of the loan. The maximum amount that may be received is \$2 million. Seasonal employers and new entities are subject to different calculations for their loan applications. Eligibility to receive PPP loans would be expanded to include 501(c)(6) organizations that have fewer than 300 employees, take in fewer than 10 percent of revenues from lobbying, and do not have lobbying activities constituting more than 10 percent of their overall revenue.

Sen. Chuck Grassley's (R-Iowa) American Workers, Families, and Employers Assistance Act provides for another round of stimulus payments in the amount of \$1,200 to individuals with less than \$75,000 in income. Filers with dependents of any age are also eligible to receive an

additional \$500 payment. These rebates are protected from the operation of any bankruptcy law. This bill also includes several important tax-credit provisions. First, it increases the employee retention tax credit from 50 percent of \$10,000 in wages to 65 percent of \$30,000 in wages. Employer eligibility would also be expanded under this bill, as the required minimum reduction in revenues would be decreased from 50 percent to 25 percent. This bill features a work opportunity tax credit of 50 percent of the first \$10,000 in wages paid to an employee who has previously qualified for unemployment assistance. Additionally, there is a payroll tax credit of 50 percent for expenses related to maintaining a safe and healthy workplace, which includes procuring personal protective equipment (PPE) for employees, providing COVID-19 testing, and reconfiguring workspaces to better counteract the spread of the coronavirus. Sen. John Cornyn's (R-Texas) Safe to Work Act proposes a liability shield from COVID-19-related lawsuits until Oct. 1, 2024, provided that these businesses do not engage in gross negligence and take reasonable efforts to comply with federal health guidelines on COVID-19.