

Q&A: Payroll Support to Air Carriers and Contractors
April 2, 2020

GENERAL

1. What is the Payroll Support to Air Carriers and Contractors program?

The Coronavirus Aid, Relief and Economic Security Act (CARES Act or Act) provides a total of up to \$32 billion in Payroll Support to the airline industry to maintain employment and avoid job cuts. More specifically, passenger air carriers may receive up to \$25 billion in Payroll Support; cargo air carriers \$4 billion; and certain contractors \$3 billion.

2. Is the Payroll Support Program Different from the CARES Act Loan Program?

Yes. Payroll Support is intended to preserve aviation jobs and compensate air carrier industry workers by providing continuation of payment of employee wages, salaries, and benefits, and is authorized in Section 4112 of the CARES Act. The CARES Act includes a separate program to make loans to eligible businesses, including air carriers, to provide them liquidity. That program is authorized by Section 4003 of the CARES Act and has a separate application process.

There is also a Paycheck Protection Program, implemented by the Small Business Administration with support from the Department of the Treasury, which provides small businesses with funds to pay up to eight weeks of payroll costs including benefits, and certain overhead. Under this program, funds are provided in the form of loans that will be forgiven when used for payroll costs, and certain other expenses. More information on this program is available at www.sba.gov/coronavirus and www.Treasury.gov/CARES.

ELIGIBILITY AND COVERAGE

3. Who is eligible for Payroll Support and what is the nature of that support?

Passenger air carriers, cargo air carriers, and certain contractors providing services to air carriers can apply for Payroll Support under the CARES Act. For further details and application forms, please see the Guidelines and Procedures for Payroll Support to Air Carriers and Contractors available at www.Treasury.gov/CARES.

4. What is the amount of Payroll Support?

Eligible applicants may receive Payroll Support under the CARES Act equal to the compensation paid by the applicant to its employees, as determined by the Secretary of the Treasury in his sole discretion, for the six-month period between April and September 2019. Such employees include full-time, part-time, temporary, and leased employees, but do not include independent contractors or corporate officers.

5. How was it determined who will benefit from Payroll Support?

Section 4112 of the CARES Act specifies that up to \$32 billion in Payroll Support shall be provided to passenger and cargo air carriers and certain contractors exclusively for the continuation of payment of employee wages, salaries, and benefits.

6. When can companies apply for Payroll Support?

The Treasury Department is currently accepting applications. After 9:00 p.m. EDT on April 2, applicants **should no longer submit applications by email**. All applicants who have not already submitted an application by email should instead apply for Payroll Support using the Treasury Department's online application tool, which is available at <https://forms.treasury.gov/caresact/PayrollSupportRequestForAirCarriers>. Application materials should be submitted by 5:00 p.m. EDT on April 3 to ensure the most immediate consideration.

The Treasury Department will continue to accept applications until 11:59 p.m. EDT on April 27, 2020. However, applications submitted after April 3 may receive less immediate consideration. Applications received after April 27, 2020 may or may not be considered at the discretion of the Treasury Department, subject to the availability of funds.

7. If a company is also applying for and/or has received support under another provision of the CARES Act, will this affect its application for Payroll Support? Conversely, will the application or receipt of Payroll Support affect the applicant's ability to access support under another provision of the CARES Act?

An air carrier or contractor that has applied for or received support under other provisions of the CARES Act is not precluded, by virtue of such application or support, from applying for and receiving Payroll Support. The eligibility criteria for other CARES Act support programs are set forth in the Act and any applicable guidance or regulations.

TIMING AND AWARD AMOUNTS

8. If the application is submitted after April 3, will this affect the amount of Payroll Support awarded?

Submitting applications after April 3 but by the April 27 deadline could affect how quickly they will be evaluated and approved, but it will not affect the amount of any Payroll Support awards. Applications submitted after April 27 may or may not be considered at the discretion of the Treasury Department, subject to the availability of funds.

DETERMINATION OF AWARDS

9. When and how will the Payroll Support be provided?

Approved applicants may receive Payroll Support in multiple payments. The Treasury Department will, at its discretion, determine the amounts and timing of such payments. To the extent an approved applicant's initial payment or payments are less than the maximum amount of Payroll Support that the applicant is entitled to receive, the Treasury Department will make additional payments to the applicant up to the applicant's maximum allowable amount, subject to any required pro rata reduction (as explained in Question 13 below), and the applicant's compliance with the required assurances under the CARES Act.

10. Will business expenses beyond just employee compensation and benefits be considered for purposes of determining the awardable amount?

No. Section 4113 of the CARES Act specifies how support amounts will be determined. Those amounts will be determined by the actual amount of salaries, wages, benefits, and other compensation paid to eligible employees in the six months from April 1, 2019 to September 30, 2019. To determine these amounts, the Treasury Department will rely on either (i) salary and benefit reports provided to the Department of Transportation or (ii) sworn financial statements or other appropriate data provided by the applicant to the Treasury Department.

11. What are the steps after the application is submitted and reviewed by the Treasury Department? Will applicants have the opportunity to discuss the Treasury Department's evaluation and/or decision on the application?

Applicants are asked to include sufficient detail in their applications to allow the Treasury Department to make its eligibility determinations based on the statutory standards and applicable guidance. The Treasury Department will review with external financial and legal advisors how best to ensure that applicable standards and statutory obligations are fulfilled.

PRORATION

12. What happens if the total requests for Payroll Support exceed the maximum amounts allowed by the CARES Act?

If the aggregate amount of Payroll Support requested in approved applications exceeds the amount of available funds, applicants' awardable amounts of Payroll Support will be reduced on a pro-rata basis. The Treasury Department will use the data and information provided by applicants, together with input from its financial and legal advisors, to determine whether and when such a pro-rata reduction is necessary and, if so, to implement it.

13. What are rules for how the pro-rata authority will be applied?

The Treasury Department will reduce, on a pro-rata basis, the amounts due to air carriers and contractors as necessary to address any shortfalls in available funds. The Treasury Department, in consultation with its financial and legal advisors, will determine whether a pro-rata reduction in Payroll Support amounts is necessary and, if so, the necessary amount of such a reduction.

PROGRAM REQUIREMENTS AND RESTRICTIONS

14. Are there any requirements placed on the air carriers and contractors receiving Payroll Support?

Yes. Applicable requirements will be set forth in the Payroll Support Agreement, which the Treasury Department will soon provide. These requirements will include, but are not limited to, the following:

- the applicant must use the Payroll Support exclusively for the continuation of the payment of employee wages, salaries, and benefits;
- the applicant must refrain from conducting involuntary layoffs or furloughs, or reducing pay rates and benefits, of employees of the applicant and its subsidiaries (or, in the discretion of the Secretary of the Treasury, any affiliated entity) until September 30, 2020;
- through September 30, 2021, the applicant must ensure that neither the applicant nor any subsidiary or affiliate thereof purchases, in any transaction, an equity security of the applicant or the direct or indirect parent company of the applicant that is listed on a national securities exchange;
- through September 30, 2021, the applicant must ensure that the applicant shall not pay dividends, or make other capital distributions, with respect to the common stock (or equivalent interest) of the applicant; and
- the applicant must agree to certain limitations on the compensation of certain officers and employees.

In addition, air carriers receiving Payroll Support must maintain certain scheduled air transportation service as directed by the Secretary of Transportation and further explained in Question 16 below.

15. Are there restrictions on airline executive compensation?

Yes. Applicants receiving Payroll Support must agree to certain compensation limits ending March 24, 2022. These limits are outlined in detail in Section 4116 of the CARES Act.

16. Will there be service requirements for air carriers receiving Payroll Support?

The CARES Act requires air carriers receiving Payroll Support to maintain certain scheduled air transportation service as directed by the Secretary of Transportation. For more information, see Department of Transportation, Order 2020-3-10, available at <https://www.transportation.gov/sites/dot.gov/files/2020-03/Order%202020-3-10%20FINAL.pdf>

17. Is Payroll Support limited to employees who are based in the United States?

Yes. Employees will not be included unless they are based in the United States, including its territories and possessions.

TAXPAYER PROTECTION

18. How will taxpayer funds be protected?

The CARES Act authorizes the Treasury Department to receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by companies receiving Payroll Support. Applicants have been asked to submit proposals on what they are prepared to provide in the form of taxpayer protections. The Department will then evaluate these proposals, together with the other data and information provided in the applications and input from its financial and legal advisors, to determine whether, in the Department’s discretion, they provide adequate and appropriate taxpayer protections.

19. Are applicants required to include taxpayer protection proposals for their applications to be considered complete?

The CARES Act authorizes the Treasury Department to receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by Payroll Support recipient companies. Applicants have been asked to submit proposals on what can be provided in the form of taxpayer protections. Including this information will facilitate the effectiveness and timeliness of application evaluations by the Treasury Department.

20. Can the Federal Government get its money back if the recipient companies fail to satisfy the conditions of the support?

The Treasury Department anticipates that as part of the Payroll Support Agreement, there will be provisions for the clawback of payments in the event an applicant fails to satisfy its assurances, conditions, or agreements.

GUIDELINES

21. The guidelines issued are preliminary. Will there be final guidelines provided in the near future?

The Treasury Department will refine and update the guidance on an ongoing basis in response to questions and comments that it receives.

For further details and application forms, please see the Guidelines and Procedures for Payroll Support to Air Carriers and Contractors available at www.Treasury.gov/CARES.