

COVID-19: AIR CARRIER WORKER SUPPORT UNDER THE CARES ACT

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Aviation Alert

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Last Friday, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act"), which will provide, among other things, financial assistance directed towards the continued compensation of air carrier industry workers. To this end, it authorizes the secretary of the treasury (the "Secretary") to provide financial assistance for the continuation of payment of employee wages, salaries, and benefits to air carrier industry workers, up to a total of \$32,000,000,000.

TYPES OF ASSISTANCE FOR AVIATION WORKERS

The financial assistance described above is divided into the following categories:

- Up to \$25 billion in assistance for passenger air carriers;
- Up to \$4 billion in assistance for cargo air carriers; and
- Up to \$3 billion in assistance for contractors. "Contractors" is defined in the CARES Act and includes companies under contract (or their subcontractors) with a passenger air carrier to perform functions on the property of an airport directly related to the air transport of persons, property, or mail, including (a) loading and unloading property on aircraft; (b) assisting passengers; and (c) providing catering, security, airport ticketing, check-in, ground handling of aircraft, airport cleaning, sanitization, and waste removal services.

DISCRETION OF THE SECRETARY

The Secretary is given some leeway to specify the terms and conditions of such financial assistance and has discretion to approve the submission requests by air carriers and contractors for financial assistance.

Application procedures to submit requests for financial assistance are required to be published by the Secretary within five days of the entry into force of the CARES Act.

The Secretary may also cause the federal government to enter into profit participation agreements pursuant to which the federal government could participate in the future gains of air carriers, contractors, or their security holders by being granted options, warrants, preferred stock, debt securities, notes, or other financial instruments.

ELIGIBILITY CRITERIA

To qualify for financial assistance under the CARES Act, air carriers and contractors applying for financial assistance need to enter into an agreement with the Secretary or certify that they will comply with the following requirements:

- Refrain from involuntary furloughs or reducing pay rates and benefits through September 30, 2020;
- Ensure that neither the air carrier nor contractor (nor any affiliate) purchases any equity security of the air carrier or contractor (or its parent) that is listed on a national securities exchange through September 30, 2021;
- Refrain from paying dividends or making other capital distributions of the common stock or equivalent interest of the air carrier or contractor through September 30, 2021; and
- For two years, beginning on March 24, 2020, ensure no officer or employee of the air carrier or contractor whose total compensation exceeded \$425,000 in calendar year 2019 (not including employees' compensation established by an existing collective bargaining agreement) (a) will receive compensation exceeding the amount of total compensation received in 2019 and (b) upon termination of employment, will receive no more than twice the maximum total compensation received in 2019 in termination benefits/severance.

AMOUNT OF FINANCIAL ASSISTANCE

The amount of financial assistance provided to an air carrier or contractor will be based on its financial reporting or other documentation, as follows:

- For air carriers, the amount of salaries and benefits reported to the Department of Transportation for the period from April 1, 2019 through September 30, 2019;
- For air carriers which do not provide reports to the Department of Transportation, the amount of wages, salaries, benefits, and other compensation paid to employees provided in sworn financial statements or other appropriate documentation for the period from April 1, 2019 through September 30, 2019; and
- For contractors, the amount of wages, salaries, benefits, and other compensation paid to employees provided in sworn financial statements or other appropriate documentation for the period from April 1, 2019 through September 30, 2019.

DISTRIBUTION OF FINANCIAL ASSISTANCE

Payments for approved financial assistance requests from air carriers and contractors are required to be made by the Secretary within 10 days of the entry into force of the CARES Act. The Secretary is given some discretion to approve and distribute subsequent requests for financial assistance after the initial financial assistance payments are made and has the right to reduce the amounts due to air carriers and contractors on a pro rata basis to the extent necessary.

MANDATE FOR ESSENTIAL AIR SERVICE

The secretary of transportation is authorized to require a recipient of financial assistance under this CARES Act to continue to provide scheduled air transport to any destination served by such carrier prior to March 1, 2020,

taking into account air transport needs of small and remote communities and the needs of the health care supply chain. This authority expires on March 1, 2022.

COLLECTIVE BARGAINING AGREEMENTS

The financial assistance provided under the CARES Act does not require air carriers or contractors to negotiate pay or terms and conditions of employment with certified bargaining representatives of the air carrier or contractor under the Railway Labor Act or the National Labor Relations Act.

APPLICATION FORM AND DEADLINES

Under the CARES Act, payments may only be provided to passenger air carriers, cargo air carriers, and certain contractors. An applicant must complete a Payroll Support Application Form not later than 5:00 p.m. EDT on April 3, 2020. Please refer to the attached guidance entitled, "Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors under Division A, Title IV, Subtitle B of the Coronavirus Aid, Relief, and Economic Security Act" for application information.

KEY CONTACTS



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