

Q&A: Payroll Support to Air Carriers and Contractors
April 20, 2020

Following are answers to FAQs regarding the Payroll Support Program under Division A, Title IV, Subtitle B of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Applicants to the Payroll Support Program whose applications are approved by the Treasury Department enter into a Payroll Support Program Agreement (Agreement), a form of which is available [here](#).

APPLICATIONS AND ELIGIBILITY

1. When can applicants expect to hear from the Treasury Department about applications they have submitted?

The Treasury Department has received hundreds of Payroll Support Program applications and is working to review all applications as quickly as possible. Some applications require additional information before the Treasury Department's review can be completed. The Treasury Department will contact you directly if you are required to provide additional information.

2. Are Part-145 certified repair station operators and ticket agents that are eligible for loans under Division A, Title IV, Subtitle A of the CARES Act also eligible to apply for the Payroll Support Program as contractors?

Yes, if they meet the eligibility requirements for the Payroll Support Program. Eligibility for contractors under the Payroll Support Program will be determined without regard to eligibility for loans under Division A, Title IV, Subtitle A of the CARES Act. A contractor applicant for Payroll Support should consider whether it qualifies as an eligible "contractor" under the Payroll Support Program. For purposes of the Payroll Support Program, an eligible contractor must perform, under contract with a passenger air carrier, (a) catering functions, or (b) functions on the property of an airport that are directly related to the air transportation of persons, property, or mail, such as loading and unloading of property on aircraft; assistance to passengers under 14 CFR part 382; security; airport ticketing and check-in functions; ground-handling of aircraft; or aircraft cleaning and sanitization functions and waste removal. A subcontractor that performs such functions is also eligible.

3. Can an air carrier or contractor apply for the Payroll Support Program if it is in bankruptcy?

Air carriers and contractors currently in bankruptcy proceedings or contemplating bankruptcy may submit applications for the Payroll Support Program. The Treasury Department will consider these circumstances in connection with its review of each application.

4. For cargo air carriers and contractors, what financial instruments will be required as appropriate compensation to taxpayers?

The Treasury Department is considering this question and intends to issue further guidance.

PAYROLL SUPPORT PROGRAM AGREEMENT: REPORTING

5. When does the requirement to provide quarterly reports to Treasury under paragraph 12 of the Agreement expire?

Recipients of Payroll Support (Recipients) must report certain information to the Treasury Department on a quarterly basis under paragraph 12 of the Agreement, and all Recipients must continue to submit these periodic reports at least until the calendar quarter that begins after March 24, 2022.

In addition, if a Recipient or its affiliate has issued notes, warrants, or other financial instruments to the Treasury Department as compensation for the Payroll Support (which we refer to as Taxpayer Protection Instruments), the Recipient must continue to submit quarterly reports to the Treasury Department until the Taxpayer Protection Instruments are either no longer outstanding or no longer held by the Federal Government. However, with respect to these Recipients, beginning with the calendar quarter that begins after March 24, 2022, only the financial statements described in paragraph 12(b) will be required. In addition, if the relevant Taxpayer Protection Instrument is a warrant, it will be considered no longer outstanding if it has been exercised in full.

Treasury may waive, in its sole discretion, any requirement to report information under Paragraph 12 that it determines is no longer necessary for determining compliance with the Agreement.

All Recipients will remain subject to the other reporting and recordkeeping requirements under the Agreement, in addition to those under paragraph 12, as set forth in the Agreement.

6. Are all Recipients required to submit audited financial statements to the Treasury Department?

Paragraph 12(b) of the Agreement requires Recipients to periodically provide the Treasury Department with their financial statements. In the case of annual financial statements, such statements must generally be audited by an independent certified public accountant. However, if a Recipient does not prepare audited financial statements in the ordinary course of its business, the Treasury Department will permit the Recipient to submit certified financial statements that are unaudited.

7. May Recipients submit their financial statements to the Treasury Department by providing a link to the Recipients' SEC filings?

Yes. Recipients that file their financial statements with the Securities and Exchange Commission may provide a link to the relevant filing on EDGAR in order to satisfy the requirement in paragraph 12(b) of the Agreement to provide their financial statements to the Treasury Department.

8. For purposes of paragraph 38 of the Agreement, may Recipients rely on proxy statements in addition to other reports filed with the SEC?

Under paragraph 38 of the Agreement, Recipients must report certain executive compensation if certain conditions are met and the public does not have access to such information through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986. For purposes of this paragraph, it is also sufficient if the public has access to such information through proxy statements filed with the SEC under section 14 of the Securities Exchange Act; those companies will not be required to report under paragraph 38.

PAYROLL SUPPORT PROGRAM AGREEMENT: AFFILIATES

9. For purposes of the Agreement, are a Recipient's directors and officers considered to be "Affiliates"?

No. Directors and officers of the Recipient, as well as other natural persons, will not be considered to be "Affiliates" for purposes of the Agreement.

10. For purposes of paragraph 6 of the Payroll Support Program Agreement, are subsidiaries of the Recipient allowed to pay dividends to the Recipient?

Under paragraph 6 of the Payroll Support Program Agreement, through September 30, 2021, the Recipient is prohibited from paying dividends, or making any other capital distributions, with respect to the common stock (or equivalent equity interest) of the Recipient. This prohibition only applies to the entity that signs the Agreement and any of its Affiliates that are air carriers. Accordingly, the prohibition in paragraph 6 applies to subsidiaries of the Recipient that are air carriers but does not apply to the Recipient's other subsidiaries.

PAYROLL SUPPORT PROGRAM AGREEMENT: STOCK BUYBACKS

11. Does the prohibition on stock buybacks restrict the issuance or settlement of convertible debt, or net settlement of stock-based compensation?

Under paragraph 5 of the Agreement, the Recipient and its Affiliates are prohibited from purchasing an equity security of the Recipient or of any direct or indirect parent company of the Recipient that is listed on a national securities exchange. Paragraph 5 does not prohibit a

Recipient from engaging in transactions in which the Recipient and its Affiliates do not repurchase outstanding shares of the Recipient's or parent company's publicly traded stock.

For example, a Recipient is not prohibited from issuing convertible debt securities. Further, a net share settlement of outstanding convertible debt securities will not violate paragraph 5 of the Agreement if it does not involve the company's repurchase of shares of publicly traded stock. The exercise of a call right to repurchase convertible debt securities that are not listed on a national securities exchange will also not violate paragraph 5 of the Agreement.

With respect to stock-based compensation, paragraph 5 does not prohibit net exercises of stock options or other types of net issuance, if the transaction does not involve the company repurchasing shares. For example, without violating paragraph 5, in a net settlement of stock options the Recipient may reduce the number of shares it issues in connection with the exercise of the stock option, to reflect the exercise price or withholding taxes associated with the exercise. Similarly, paragraph 5 does not prohibit the net issuance of shares upon the vesting of restricted stock units, where the number of shares issued is net of the number of shares required to satisfy tax withholding obligations or other taxes associated with the vesting of the restricted stock unit. In these examples, the prohibition under paragraph 5 is not implicated because the Recipient is reducing the number of shares it issues but is not repurchasing outstanding shares.

PAYROLL SUPPORT PROGRAM AGREEMENT: CONTINUATION OF SERVICE

12. If the Department of Transportation exempts the Recipient from a continuation of service obligation, can the Recipient terminate its service consistent with the exemption?

Paragraph 10 of the Agreement requires recipients to comply with any applicable requirement issued by the Secretary of Transportation under Section 4114(b) of the CARES Act to maintain scheduled air transportation service to any point served by the Recipient before March 1, 2020. The recipient must therefore comply with all applicable orders issued by the Department of Transportation under Section 4114(b). A recipient subject to an exemption issued by the Department of Transportation will not violate paragraph 10 of the Agreement by acting in accordance with the exemption.

USE OF PAYROLL SUPPORT FUNDS

13. Can Recipients use Payroll Support for the payment of employee wages, salaries, and benefits after September 30, 2020?

Yes. There is no deadline for a Recipient to use Payroll Support, provided the Recipient uses the funds exclusively for the continuation of employee wages, salaries, and benefits. Certain restrictions and requirements under the Agreement continue to apply after the Recipient has used all of the Payroll Support funds.

TAX

14. Are Payroll Support payments taxable under the Internal Revenue Code?

The IRS will post FAQs on the Federal income tax consequences of Payroll Support payments, which will be available [here](#).