

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

March 30, 2020

INTRODUCTION

These application procedures for payroll support to air carriers and contractors are issued pursuant to the Coronavirus Aid, Relief, and Economic Security Act (Act). These procedures may be updated, revised, or modified at any time, and the requirements contained herein may be waived by the Secretary of the Treasury in his sole discretion to the extent permitted by law.

General Authority. Section 4112(a) of the Act authorizes the Department of the Treasury (Treasury Department) to provide payments to passenger air carriers, cargo air carriers, and certain contractors that must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. Section 4113(b)(1)(A) of the Act authorizes the Treasury Department to provide such payroll support in such form, and on such terms and conditions, as he determines appropriate.

These application procedures are issued pursuant to Section 4113(b)(1) of the Act and apply only to payroll support under Division A, Title IV, Subtitle B, of the Act.

Aggregate Amounts. Section 4112(a) of the Act authorizes the Treasury Department to provide payments to passenger air carriers, cargo air carriers, and certain contractors up to the following aggregate amounts:

- Passenger air carriers: \$25 billion.
- Cargo air carriers: \$4 billion.
- Contractors: \$3 billion.

DEFINITIONS

Following are definitions that the Treasury Department will apply for purposes of these procedures. These definitions supplement and interpret certain terms in the Act.

“Act” means the Coronavirus Aid, Relief, and Economic Security Act (S. 3548, 116th Cong.).

“Air carrier” has the meaning given to such term under 49 U.S.C. § 40102.

“Cargo air carrier” means an air carrier that, during the time period from April 1, 2019 to September 30, 2019, derived more than 50% of its air transportation revenue from the transportation of property or mail, or both.

“Contractor” means:

- 1) a person that performs, under contract with a passenger air carrier conducting operations under part 121 of title 14, Code of Federal Regulations:
 - 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, including but not limited to the loading and unloading of property on aircraft; assistance to passengers under 14 C.F.R. part 382; security; airport ticketing and check-in functions; ground-handling of aircraft; or aircraft cleaning and sanitization functions and waste removal; or
- 2) a subcontractor that performs the above functions.

“Catering functions” means the preparation, assembly, or both, of food, beverage, provisions and related supplies for delivery, and the delivery of such items, directly to aircraft or to a location on or near airport property for subsequent delivery to aircraft.

“Employee” means an individual, other than a corporate officer, who is employed by an air carrier or a contractor in the United States (including its territories and possessions).

“Passenger air carrier” means an air carrier that, during the period from April 1, 2019, to September 30, 2019, derived more than 50% of its air transportation revenue from the transportation of passengers.

“Wages, salaries, benefits, and other compensation,” for purposes of Section 4113(a)(2) and (3) of the Act, means remuneration paid by the applicant to its employees for personal services and includes salaries, wages, overtime pay, cost-of-living differentials, and other similar compensation, as distinguished from per diem allowances or reimbursement for expenses incurred by personnel for the benefit of the applicant.

ELIGIBILITY

Payments may only be provided to applicants that are air carriers or contractors.

REQUIRED ASSURANCES AND OTHER CONDITIONS

Pursuant to Sections 4113(b)(1)(A) and 4114 of the Act, to be eligible to receive payments, an applicant must agree to:

- use such payments exclusively for the continuation of employee wages, salaries, and benefits;
- 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, 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; and

- through September 30, 2021, 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 or any subsidiary thereof.

Collective Bargaining Agreements. Under Section 4115 of the Act, through September 30, 2020, neither the Treasury Department nor any other actor, department, or agency of the Federal Government may condition the provision of payroll support payments on the applicant's implementation of measures to enter into negotiations with the certified bargaining representative of a craft or class of employees of the applicant under the Railway Labor Act (45 U.S.C. § 151 *et seq.*) or the National Labor Relations Act (29 U.S.C. § 151 *et seq.*), regarding pay or other terms of employment.

Limitation on Certain Employee Compensation. The Treasury Department may only provide payroll support payments to an applicant after the applicant enters into an agreement with the Treasury Department limiting, during the two-year period beginning March 24, 2020 and ending March 24, 2022, the total compensation (including salary, bonus, awards of stock, and other financial benefits) of certain employees of the applicant, as set forth in Section 4116 of the Act.

Taxpayer Protection. Under Section 4117 of the Act, the Treasury Department is authorized to receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by recipients of payroll support which, in the sole determination of the Treasury Department, provide appropriate compensation to the Federal Government for the provision of the payroll support.

Audits and Reports. Under Section 4113(d) of the Act, the Inspector General of the Treasury Department will audit certifications regarding an applicant's awardable amount. Under Section 4118 of the Act, the Treasury Department will report to Congress on the payroll support provided.

Suspension or Debarment. The Treasury Department may refuse to provide payroll support payments to applicants that have been debarred, suspended, deemed ineligible, or voluntarily excluded from participation.

Insolvency. The Treasury Department may refuse to provide payroll support payments to applicants that have taken, or are currently evaluating, any action to commence a bankruptcy or insolvency filing in any applicable jurisdiction.

Consultation with Transportation. Under Section 4119 of the Act, the Treasury Department may disclose to the Department of Transportation any information submitted as part of an application for payroll support, and may consult with the Department of Transportation on any aspect of application screening or evaluation.

Continuation of Certain Air Service. Under Section 4114(b) of the Act, an air carrier applicant provided payroll support may be required, to the extent reasonable and practicable, by the Secretary of Transportation to maintain scheduled air transportation service, as the Secretary of

Transportation deems necessary to ensure services to any point served by that carrier before March 1, 2020.

AWARDABLE AMOUNTS

Under Section 4113(a) of the Act, payroll support will be awardable to an approved applicant in an amount 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 period from April 1, 2019 through September 30, 2019 (Awardable Amount).

The Awardable Amount is determined in one of three ways:

- For an air carrier that reports salaries and benefits to the Department of Transportation pursuant to 14 C.F.R. part 241, the Awardable Amount is an amount equal to the salaries and benefits reported by such air carrier on such reports pertaining to the time period.
- For an air carrier that does not transmit reports under 14 C.F.R. part 241, the Awardable Amount is an amount that such carrier certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation paid by such carrier during the time period.
- For a contractor, the Awardable Amount is an amount that such contractor certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation that such contractor paid its employees during the time period.

Pro Rata Authority. In the event that Awardable Amounts payable to approved applicants in any category (passenger air carriers, cargo air carriers, or contractors) exceed the aggregate amount authorized to be provided to such category, the Treasury Department may reduce, on a pro rata basis, the amounts payable to approved applicants in such category in order to address such shortfall.

APPLICATION FORM AND DEADLINES

To be eligible for payroll support, an applicant must complete the Payroll Support Application Form, including a proposal identifying a financial instrument (or instruments) and proposed terms for such instruments that would provide appropriate compensation to the Federal Government in exchange for payroll support. If the applicant is not an air carrier that reports salaries and benefits to the U.S. Department of Transportation under 14 C.F.R. part 241, the applicant must also include a sworn financial statement certifying the amount of compensation paid to its employees during the period from April 1, 2019, through September 30, 2019. The Treasury Department may request appropriate documentation in support of the sworn financial statement at a later time.

An applicant must also complete a Payroll Support Agreement, which will be provided by the Treasury Department after an application is received. The Payroll Support Agreement will include terms containing:

- the assurances described above;
- the compensation limitations in Section 4116 of the Act;
- certain other conditions and covenants; and
- provisions for the clawback of payments upon the applicant's failure to satisfy its assurances, conditions, or agreements.

To receive approval of their applications as soon as possible, applicants should submit their completed application materials not later than 5:00 p.m. EDT on April 3, 2020. Applicants may submit their application materials to PayrollSupportApplications@treasury.gov. In the coming days, the Treasury Department will provide a web-based form for application submissions.

Applications received after 5:00 p.m. EDT on April 3 will be considered, but may not receive approval as quickly. Applications received after 11:59 p.m. EDT on April 27, 2020, may not be considered, but the Secretary of the Treasury may, in his discretion and subject to the availability of funds, consider such applications for approval.

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APPLICATION EVALUATION

Applications determined to be complete will be reviewed and evaluated by the Treasury Department. The Treasury Department will consider the eligibility of the applicant, the adequacy of the proposed financial instruments for providing compensation to the Federal Government, the availability of funds, the applicant's willingness to be bound by the Payroll Support Agreement, and the purposes of the Act in determining whether to approve an application.

PAYROLL SUPPORT PAYMENTS

Approved applicants may receive payroll support in multiple payments, and the amounts and timing of such payments will be determined by the Secretary of the Treasury in his discretion.

To the extent an approved applicant's initial payment or payments are less than the applicant's Awardable Amount, the Treasury Department will make additional payments to the applicant up to its Awardable Amount from any funds remaining available. If there is any shortfall in available funds, the Treasury Department may reduce the Awardable Amounts to be received by approved applicants, as described under "Pro Rata Authority" above.

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is two hours per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.