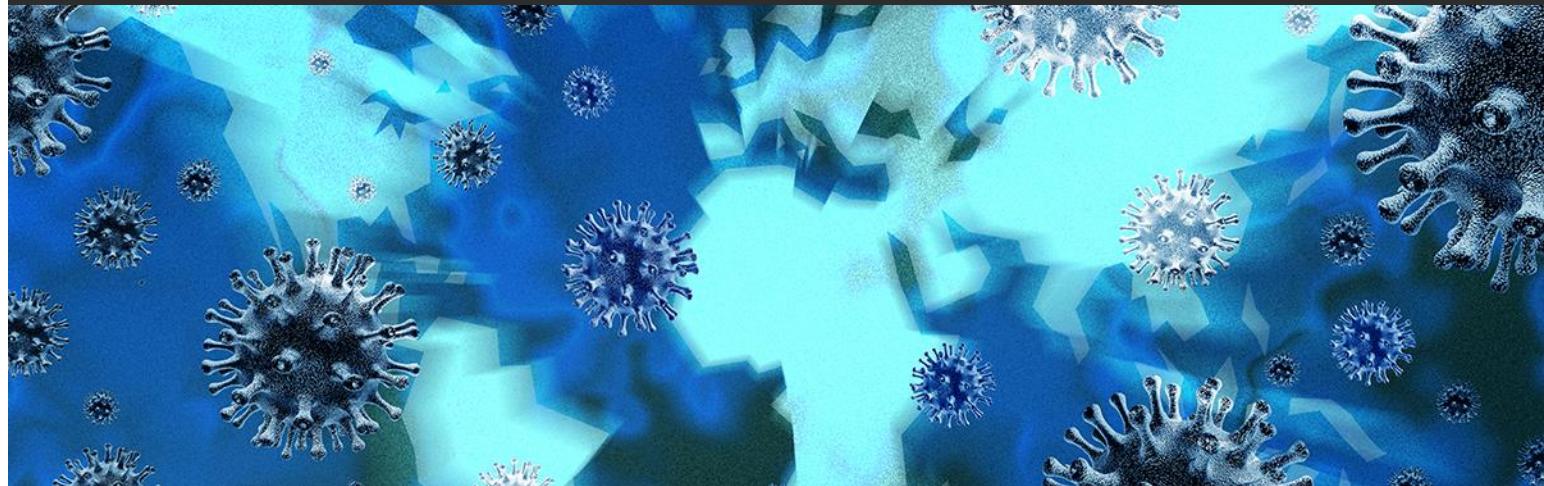


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



April 1, 2020

Treasury Establishes COVID-19 Emergency Payroll Support to Air Carriers and Contractors

On March 30, 2020, the U.S. Department of the Treasury (Treasury) issued guidance on assistance to the air carrier industry as contemplated by the emergency relief provisions of Section 4112 of the Coronavirus Aid, Relief, and Economic Security Act (Cares Act). The guidance provides guidelines and application procedures for payroll support to air carriers and contractors.

The Program

Under Section 4112(a) of the CARES Act, Treasury is authorized 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.

Basic Definitions

Who is an air carrier?

- an individual who is a citizen of the United States;

- a partnership, each of whose partners is an individual who is a citizen of the United States; or
- a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75% of the voting interest is owned or controlled by persons that are citizens of the United States, in each case undertaking by any means, directly or indirectly, to provide foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

Who is a cargo air carrier? 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.

Who is a contractor?

- a person that performs, under contract with a passenger air carrier conducting operations under 14 C.F.R. Part 121:
 - catering functions, or
 - 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
- a subcontractor that performs the above functions.

What are catering functions? 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.

Who is an employee? 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).

Who is a passenger air carrier? 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.

What are wages, salaries, benefits, and other compensation? For purposes of Section 4113(a)(2) and (3) of the CARES Act, 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.

Program Eligibility

To be eligible to receive payments under the payroll support program, 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.

Awardable Amounts

The amount that may be awarded to an approved applicant is an amount equal to the compensation paid by the applicant to its employees, as determined by the Secretary of Treasury in his sole discretion, for the period 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.

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, Treasury may reduce, on a pro rata basis, the amounts payable to approved applicants in such category in order to address such shortfall.

Other Restrictions

Additional restrictions on applicants include undertakings with respect to other items specified in the CARES Act, including:

- collective bargaining agreements;
- limitations on certain employee compensation;
- the issuance of financial instruments to Treasury to compensate it for the award of funds;
- audit and reporting requirements;
- prohibitions on suspension or debarment;
- limitations or prohibitions on insolvent or nearly insolvent applicants;

- disclosure of information to the Department of Transportation; and
- continuation of certain air service.

How to Apply

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. Treasury 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 Treasury 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 CARES 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.

Timing

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, Treasury 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.

Application Form

The [application form](#), as well as additional guidance on the program, is available on Treasury's website.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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