

**Q&A: Payroll Support to Air Carriers and Contractors**  
**Updated as of December 16, 2020**

Following are answers to frequently asked questions regarding the Payroll Support Program under Division A, Title IV, Subtitle B of the Coronavirus Aid, Relief, and Economic Security (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 <https://home.treasury.gov/system/files/136/Form-of-PSP-Agreement.pdf>

**1) Are air carriers or contractors subject to a court-supervised bankruptcy proceeding eligible to receive assistance under the Payroll Support Program?**

Applicants for the Payroll Support Program subject to a court-supervised bankruptcy proceeding may be eligible under certain conditions. Such an applicant will be asked to provide additional information to enable the Treasury Department to evaluate whether the applicant will be able to satisfy its obligations in the program and is eligible as an air carrier or contractor under the statutory definitions. Treasury may also request a written statement from the applicant regarding its ability to comply with the terms of the program and a reorganization plan, if any.

If the Treasury Department determines that an applicant’s bankruptcy does not create a material risk that it would be unable to satisfy its obligations in the program or that it would cease to be eligible as an air carrier or contractor, the applicant may be approved, subject to certain additional conditions. These include requirements that payroll support funds be kept in a segregated bank account, that the account receive no more than one-sixth of the total awardable amount at any one time, and that certifications of compliance be provided before receiving disbursements of payroll support.

**2) Is compensation that air carriers and contractors pay to independent contractors eligible to be included in the calculation of awardable amounts?**

No. For applicants that do not transmit reports to the Department of Transportation under 14 CFR 241, the CARES Act provides that the calculation of the awardable amount includes only the amount of wages, salaries, benefits, and other compensation that the air carrier or contractor paid the employees of such air carrier or contractor between April and September 2019. Independent contractors are not employees of the company, so amounts paid to independent contractors are not eligible for payroll support, and recipients may not use payroll support funds to pay independent contractors.

**3) Air carrier or contractor applicants that are eligible for payroll support may have subsidiaries or be under common ownership with other legal entities that provide services to the applicant. May such subsidiaries or affiliated entities receive payroll support or be included in the calculation of awardable amounts?**

Only legal entities that are individually eligible for payroll support may receive payroll support or be included in the calculation of awardable amounts. Each individual legal entity will be evaluated for eligibility as an air carrier or contractor, and for applicants that do not transmit reports to the Department of Transportation under 14 CFR 241, the awardable amount can only include the amount of wages, salaries, benefits and other compensation that an eligible air carrier or contractor paid the employees of such air carrier or contractor between April and September 2019. Affiliated entities that are not themselves eligible air carriers or contractors, as defined in the CARES Act, cannot be included, regardless of whether they are under common ownership with, or provide services to, an eligible air carrier or contractor.

**4) Does the Agreement prohibit dividends or other capital distributions for the purposes of paying tax liabilities of air carrier or contractor recipients that are organized as pass-through entities for tax purposes?**

No. A Payroll Support Program participant that is an S-corporation or other tax pass-through entity may pay dividends or make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings. Such distributions must be subject to an annual reconciliation, with any surplus or deficiency to be deducted from or added to distributions, as applicable, in the following year.

**5) Over what time period should the compensation limitations in Section 8 of the Agreement be calculated?**

Section 8 of the Agreement imposes certain limits on compensation for employees of a Payroll Support Program participant whose total compensation exceeded \$3 million in 2019. Consistent with section 4116(a)(3) of the CARES Act, this limitation applies with respect to compensation during any 12 consecutive months during the period beginning March 24, 2020, and ending March 24, 2022.

**6) Will applications that were submitted after the deadline be considered?**

The Treasury Department does not expect to consider applications for the Payroll Support Program from passenger air carriers or contractors that were submitted after the April 27, 2020 deadline, which was set in guidance issued by the Treasury Department on March 30, 2020, because available program funds are expected to be exhausted based on applications that were submitted before the deadline. However, the Treasury Department may consider applications for the Payroll Support Program from cargo air carriers that were submitted after the April 27, 2020 deadline, due to remaining available funds.

**7) The Agreement prohibits Payroll Support Program recipients and their affiliates from purchasing an equity security of the recipient or any parent company that is listed on a national securities exchange. What is a "parent company" for this purpose?**

Under section 4114 of the CARES Act and section 5 of the Agreement, neither a Payroll Support Program recipient nor any of its affiliates may, in any transaction, purchase an equity security of the recipient or of any direct or indirect parent company of the recipient that, in either case, is listed on a national securities exchange. For purposes of this restriction, "parent company" means any company that consolidates the recipient for purposes of financial reporting, such as under rules of consolidation established by the Securities and Exchange Commission or U.S. generally accepted accounting principles.