

Guidelines and Application Procedures for Payroll Support to Passenger Air Carriers and Contractors

U.S. Department of the Treasury

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INTRODUCTION

These guidelines and application procedures for payroll support to passenger air carriers and contractors are issued pursuant to Subtitle A of Title IV of Division N of the Consolidated Appropriations Act, 2021 (the PSP Extension Law). These guidelines and application procedures may be updated, revised, or modified at any time, and the Secretary of the Treasury may waive these requirements in his sole discretion to the extent permitted by law.

General Authority. In March 2020, the Department of the Treasury (Treasury) created the Payroll Support Program (PSP1) under Division A, Title IV, Subtitle B, of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, to provide payments to passenger air carriers, cargo air carriers, and certain contractors to be exclusively used for the continuation of payment of employee wages, salaries, and benefits. The PSP Extension Law, which was enacted into law on December 27, 2020, authorizes Treasury to provide further financial assistance to passenger air carriers and certain contractors (PSP2).

These guidelines and application procedures apply only to PSP2 under the PSP Extension Law. For information regarding PSP1 under the CARES Act, please refer to the guidance and procedures Treasury issued in connection with that program, available on the Treasury website.

Aggregate Amounts. Under the PSP Extension Law, Treasury will provide financial assistance in an aggregate amount of up to \$15 billion to passenger air carriers and up to \$1 billion to eligible contractors.

DEFINITIONS

Treasury will apply the following definitions for purposes of these guidelines and procedures. These definitions supplement and interpret certain terms in the PSP Extension Law.

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

“Awardable amount” means the amount of financial assistance Treasury determines an applicant is eligible to receive under PSP2, prior to any pro rata reduction in accordance with the PSP Extension Law.

“Benefits” means, without duplication of any amounts counted as salary or wages, pension expenses in respect of employees, all expenses for accident, sickness, hospital, and death benefits to employees, and the cost of insurance to provide such benefits; any severance pay or other benefits payable to employees pursuant to a bona fide voluntary early retirement program

or voluntary furlough; and any other similar expenses paid by a passenger air carrier or contractor for the benefit of employees, including any other fringe benefit expense described in lines 10 and 11 of Financial Reporting Schedule P-6, Form 41, as published by the Department of Transportation, but excluding any Federal, state, or local payroll taxes paid by a passenger air carrier or contractor.

“Catering functions” means the preparation, assembly, or both, of food, beverages, 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.

“Contractor” means:

- 1) a person that performs, under contract with a passenger air carrier conducting operations under 14 CFR part 121:
 - 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 CFR 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 such functions.

“Corporate officer” means, with respect to a passenger air carrier or contractor, a president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy-making functions for the passenger air carrier or contractor. Executive officers of subsidiaries or parents of a passenger air carrier or contractor may be deemed corporate officers of the passenger air carrier or contractor if they perform such policy-making functions for the passenger air carrier or contractor.

“Employee” means an individual who is employed by an air carrier or a contractor and whose principal place of employment is in the United States (including its territories and possessions), including salaried, hourly, full-time, part-time, temporary, and leased employees, but excluding any individual who is a corporate officer or independent contractor.

“Involuntary termination or furlough” means a passenger air carrier or contractor terminating the employment of one or more employees or requiring one or more employees to take a temporary suspension or unpaid leave for any reason, including a shut-down or slow-down of business; provided, however, that an involuntary termination or furlough does not include a permitted termination or furlough.

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

“Permitted termination or furlough” means, with respect to an employee, (1) a voluntary furlough, voluntary leave of absence, voluntary resignation, or voluntary retirement; (2)

termination of employment resulting from such employee's death or disability; or (3) a passenger air carrier or contractor terminating the employment of such employee for cause or placing such employee on a temporary suspension or unpaid leave of absence for disciplinary reasons, in either case, as reasonably determined by the passenger air carrier or contractor acting in good faith.

“Recall” means the dispatch of a notice by a passenger air carrier or contractor, via mail, courier, or electronic mail, to an involuntarily terminated or furloughed employee notifying the employee that:

- 1) the employee must, within a specified period of time, elect either:
 - a) to return to employment or bypass return to employment, in accordance with an applicable collective bargaining agreement or, in the absence of a collective bargaining agreement, company policy; or
 - b) to permanently separate from employment with the passenger air carrier or contractor; and
- 2) failure to respond within such time period specified shall be considered an election to permanently separate from employment with the passenger air carrier or contractor.

“Returning employee” means an involuntarily terminated or furloughed employee who has elected to return to employment pursuant to a recall notice.

“Salary” means, without duplication of any amounts counted as benefits, a predetermined regular payment, typically paid on a weekly or less frequent basis but which may be expressed as an hourly, weekly, annual or other rate, as well as cost-of-living differentials, vacation time, paid time off, sick leave, and overtime pay, paid by a passenger air carrier or contractor to its employees, but excluding any Federal, state, or local payroll taxes paid by the passenger air carrier or contractor.

“Wage” means, without duplication of any amounts counted as benefits, a payment, typically paid on an hourly, daily, or piecework basis, including cost-of-living differentials, vacation, paid time off, sick leave, and overtime pay, paid by a passenger air carrier or contractor to its employees, but excluding any Federal, state, or local payroll taxes paid by the passenger air carrier or contractor.

ELIGIBILITY FOR PSP2

Under the PSP Extension Law, Treasury has authority only to provide financial assistance to PSP2 applicants that are passenger air carriers or contractors. Only an entity (whether in the form of a corporation, limited liability company, sole proprietorship, or otherwise) that is individually eligible for PSP2 may receive payroll support. If an application includes more than one affiliated legal entity, Treasury will review each entity to determine whether it meets the eligibility criteria as a passenger air carrier or contractor. Any entity that is not itself an eligible passenger air carrier or contractor should not be included on a PSP2 application.

REQUIRED ASSURANCES AND OTHER CONDITIONS FOR PSP2 RECIPIENTS

Passenger Air Carriers. Pursuant to the PSP Extension Law, to be eligible to receive financial assistance under PSP2, passenger air carrier applicants must agree to:

- use such payments exclusively for the continuation of employee wages, salaries, and benefits;
- until March 31, 2021, refrain from conducting involuntary terminations or furloughs, or reducing pay rates and benefits, of employees of the applicant;
- through March 31, 2022, ensure that neither the applicant nor any affiliate thereof purchases, in any transaction, an equity security of the applicant or of any direct or indirect parent company of the applicant that, in either case, is listed on a national securities exchange;
- through March 31, 2022, not pay dividends, or make any other capital distributions, with respect to the common stock (or equivalent equity interest) of the applicant;
- not later than 72 hours after entering into a PSP2 agreement with Treasury, recall any employees involuntarily terminated or furloughed by the applicant between March 27, 2020 (for applicants that did not receive financial assistance under PSP1) or October 1, 2020 (for applicants that received financial assistance under PSP1), and the date of the applicant's PSP2 agreement;
- compensate such returning employees for lost pay and benefits (offset by any amounts received by the employee from the applicant as a result of the employee's termination or furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between December 1, 2020, and the date of the applicant's PSP2 agreement with Treasury; and
- restore the rights and protections for such returning employees as if they had not been involuntarily terminated or furloughed.

Contractors. Pursuant to the PSP Extension Law, to be eligible to receive financial assistance under PSP2, contractor applicants must agree to:

- use such payments exclusively for the continuation of employee wages, salaries, and benefits;
- until March 31, 2021, or the date on which the applicant exhausts such financial assistance, whichever is later, refrain from conducting involuntary terminations or furloughs, or reducing pay rates and benefits, of employees of the applicant;
- through March 31, 2022, or the date on which the applicant exhausts such financial assistance, whichever is later, ensure that neither the applicant nor any affiliate thereof purchases, in any transaction, an equity security of the applicant or of any direct or indirect parent company of the applicant that, in either case, is listed on a national securities exchange;
- through March 31, 2022, or the date on which the applicant exhausts such financial assistance, whichever is later, not pay dividends, or make any other capital distributions, with respect to the common stock (or equivalent equity interest) of the applicant;
- not later than 72 hours after entering into a PSP2 agreement with Treasury, recall any employees involuntarily terminated or furloughed by the applicant between March 27, 2020 (for applicants that did not receive financial assistance under PSP1) or October 1,

2020 (for applicants that received financial assistance under PSP1), and the date of the applicant's PSP2 agreement;

- compensate such returning employees for lost pay and benefits (offset by any amounts received by the employee from the applicant as a result of the employee's termination or furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between December 27, 2020, and the date of the applicant's PSP2 agreement with Treasury; and
- restore the rights and protections for such returning employees as if they had not been involuntarily terminated or furloughed.

Collective Bargaining Agreements. Under the PSP Extension Law, neither Treasury nor any other actor, department, or agency of the Federal Government may condition the issuance of financial assistance under PSP2 on an 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. With respect to passenger air carriers, this restriction applies from the date on which the passenger air carrier is first issued such assistance and ending on March 31, 2021. With respect to contractors, this restriction applies from the date on which the contractor is first issued such assistance and ending on March 31, 2021, or the date on which the applicant exhausts all such financial assistance, whichever is later.

Limitation on Certain Employee Compensation. Under the PSP Extension Law, all PSP2 recipients must enter into an agreement with Treasury providing that during the two-year period beginning October 1, 2020 and ending October 1, 2022:

- no officer or employee of the passenger air carrier or contractor whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to December 27, 2020) will receive from the passenger air carrier or contractor:
 - total compensation that exceeds, during any 12 consecutive months of such two-year period, the total compensation received by the officer or employee in 2019; or
 - severance pay or other benefits upon termination of employment with the passenger air carrier or contractor which exceeds twice the maximum total compensation received by the officer or employee in 2019; and
- no officer or employee of the passenger air carrier or contractor whose total compensation exceeded \$3,000,000 in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of:
 - \$3,000,000; and
 - 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee in 2019.

Taxpayer Protection. To provide appropriate compensation to the Federal Government for the provision of financial assistance under PSP2, certain applicants will be required to provide

warrants or notes to Treasury in a manner consistent with the warrants and notes required under PSP1. Under PSP1:

- Passenger air carriers that received over \$100 million in payroll support were required to provide notes and warrants. The note principal amount in PSP1 was equal to 30 percent of the payroll support provided to the applicant over \$100 million. The notes had 10-year terms, and the cash interest rate was 1 percent per year in the first five years and the Secured Overnight Financing Rate plus 2 percent per year in the last five years.
- Contractors that received over \$37.5 million in payroll support were required to provide notes. The note principal amount in PSP1 was equal to 44 percent of the payroll support provided to the participant over \$37.5 million. The notes had 10-year terms, and the cash interest rate was 1 percent per year in the first five years and the Secured Overnight Financing Rate plus 2 percent per year in the last five years. The notes also included a payment-in-kind interest rate of 3 percent per year in the first five years, with an increase of 1 percentage point per year in years six through ten.

The warrants under PSP1 provided Treasury with the right to purchase shares of common stock or receive a cash payment. The number of warrants required equaled 10 percent of the principal amount of the note issued by the participant, divided by an exercise price.

Compliance. If an applicant for PSP2 received financial assistance in PSP1, Treasury's approval of the PSP2 application may be subject to the applicant providing certifications, documentation, or information, reasonably satisfactory to Treasury, that the applicant was entitled to receive the amount of its financial assistance under PSP1 and that the applicant is in compliance with the terms of its agreement with Treasury under PSP1. Similarly, if an applicant for PSP2 received a loan from Treasury pursuant to section 4003 of the CARES Act, Treasury's approval of the PSP2 application may be subject to the applicant providing certifications, documentation, or information, reasonably satisfactory to Treasury, that the applicant is in compliance with the terms of its loan agreement and related transaction documentation. In addition, if an applicant that received financial assistance in PSP1 owes a debt to Treasury, including as a result of an obligation to repay a portion of the PSP1 funds, Treasury may offset the applicant's awardable amount in PSP2 against such debts.

Audit. Under the PSP Extension Law, the Treasury Inspector General will audit applicants' certifications regarding their awardable amounts.

Bankruptcy. If an applicant has taken, or is evaluating, any action to commence a bankruptcy or insolvency filing in any jurisdiction, Treasury may impose additional requirements on the applicant's receipt of funds in PSP2.

Consultation with Department of Transportation. Under the PSP Extension Law, Treasury will consult with the Department of Transportation on the implementation of PSP2.

Minimum Air Service Guarantees. Under the PSP Extension Law, the Department of Transportation may require a passenger air carrier that receives financial assistance under PSP2 to maintain scheduled air transportation service, as the Department of Transportation deems necessary to ensure services to any point served by that air carrier before March 1, 2020.

AWARDABLE AMOUNTS FOR PSP2 APPLICANTS

The PSP Extension Law provides several alternative methods for calculating an applicant's awardable amount under PSP2. These methods are described below.

For a passenger air carrier that was required to report salaries and benefits to the Department of Transportation pursuant to 14 CFR part 241 as of March 27, 2020, the awardable amount is equal to:

- 1) if the passenger air carrier received financial assistance under PSP1:
 - a) the amount such passenger air carrier was approved to receive (without taking into account any pro rata reduction) under PSP1; or
 - b) at the request of such passenger air carrier, the amount of salaries and benefits reported by the passenger air carrier to the Department of Transportation pursuant to 14 CFR part 241, for the period from October 1, 2019 through March 31, 2020; or
- 2) if the passenger air carrier did not receive financial assistance under PSP1, the amount of salaries and benefits reported by such passenger air carrier to the Department of Transportation pursuant to 14 CFR part 241, for the period from October 1, 2019 through March 31, 2020.

For a passenger air carrier that was not required to report salaries and benefits to the Department of Transportation pursuant to 14 CFR part 241 as of March 27, 2020, the awardable amount is equal to:

- 1) if the passenger air carrier received financial assistance under PSP1:
 - a) the amount such passenger air carrier was approved to receive (without taking into account any pro rata reduction) under PSP1, plus an additional 15 percent of such amount; or
 - b) at the request of such passenger air carrier, the sum of:
 - i) the amount that such passenger air carrier certifies, using sworn financial statements or other appropriate data, as the amount of total salaries and related fringe benefits that such passenger air carrier incurred and would be required to be reported to the Department of Transportation pursuant to 14 CFR part 241, if such passenger air carrier were required to transmit such information during the period from April 1, 2019 through September 30, 2019; and
 - ii) an additional amount equal to the difference between the amount certified under clause (i) and the amount the passenger air carrier received under PSP1; or
- 2) if the passenger air carrier did not receive financial assistance under PSP1, the amount that such passenger air carrier certifies, using sworn financial statements or other appropriate data, as the amount of total salaries and related fringe benefits that such passenger air carrier incurred and would be required to be reported to the Department of Transportation pursuant to 14 CFR part 241, if such passenger air carrier were required to transmit such information during the period from October 1, 2019 through March 31, 2020.

For a contractor, the awardable amount is equal to:

- 1) if the contractor received financial assistance under PSP1, the amount such contractor was approved to receive (without taking into account any pro rata reduction) under PSP1; or
- 2) if the contractor did not receive financial assistance under PSP1, an amount that the contractor certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation that such contractor paid the employees of such contractor during the period from October 1, 2019 through March 31, 2020.

Pro Rata Authority. In the event that the aggregate PSP2 awardable amounts for passenger air carriers or for contractors exceed the amounts available under the PSP Extension Law, Treasury will reduce, on a pro rata basis, the amounts due to approved applicants to address such shortfall.

APPLICATION FORM AND PSP2 AGREEMENT

Treasury will post a web-based application form for PSP2 applicants to complete and submit.

Each approved applicant must also enter into an agreement with Treasury, which Treasury will provide after an application is approved. The agreement will include terms containing:

- the required assurances and other conditions described above;
- certain other conditions and covenants; and
- provisions for the clawback of payments upon the applicant's failure to satisfy certain assurances, conditions, or covenants.

APPLICATION EVALUATION BY TREASURY

Complete applications will be reviewed and evaluated by Treasury. In determining whether to approve an application and the applicant's requested awardable amount, Treasury may consider the requirements under and purposes of the PSP Extension Law; the eligibility of the applicant; whether the requested awardable amount was calculated consistent with applicable requirements; the availability of funds; the applicant's ability to comply with the PSP2 agreement; whether the applicant is in compliance with the terms of its agreement under PSP1, if applicable; the applicant's provision of certifications, documentation, or information reasonably satisfactory to Treasury to confirm the applicant's compliance with its agreement under PSP1; and any other factors that Treasury deems appropriate.

PSP2 PAYMENTS

Approved applicants should expect to receive payroll support in multiple payments. The amounts, timing, and conditions of such payments will be determined by Treasury in its sole discretion. To the extent an approved applicant's initial payment is less than the applicant's awardable amount, Treasury may make additional payments to the applicant, resulting in a total payment up to the applicant's awardable amount.