

# Guidelines for Payroll Support to Passenger Air Carriers and Contractors

## U.S. Department of the Treasury

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### INTRODUCTION

These guidelines for payroll support to passenger air carriers and contractors are issued pursuant to section 7301 of the American Rescue Plan Act of 2021 (the ARP). These guidelines may be updated, revised, or modified at any time, and the Secretary of the Treasury may waive these requirements in her 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. Subtitle A of Title IV of Division N of the Consolidated Appropriations Act, 2021 (the PSP Extension Law), which was enacted into law on December 27, 2020, authorized Treasury to provide further financial assistance to passenger air carriers and certain contractors (PSP2). The ARP was enacted on March 11, 2021, authorizing Treasury to provide additional assistance to passenger air carriers and contractors that received financial assistance under PSP2 (PSP3).

These guidelines apply only to PSP3 under the ARP. For information regarding PSP1 or PSP2, please refer to the guidance and procedures Treasury issued in connection with those programs, available on the Treasury website.

*Aggregate Amounts.* Under the ARP, Treasury will provide financial assistance in an aggregate amount of up to \$14 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 ARP.

“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 a passenger air carrier or contractor is eligible to receive under PSP3.

“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.

“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 PSP3**

Under the ARP, Treasury has authority only to provide financial assistance under PSP3 to a passenger air carrier or contractor that (1) received assistance under PSP2; (2) provided air transportation or performed eligible contractor functions, as the case may be, as of March 31, 2021; and (3) has not conducted involuntary terminations or furloughs or reduced pay rates or benefits between March 31, 2021, and the date on which the air carrier or contractor makes certain certifications that will be included in its PSP3 agreement with Treasury. Only an entity (whether in the form of a corporation, limited liability company, sole proprietorship, or otherwise) that is individually eligible for PSP3 may receive payroll support.

### **REQUIRED ASSURANCES AND OTHER CONDITIONS FOR PSP3 RECIPIENTS**

The ARP requires that Treasury provide financial assistance under PSP3 in the same form and on the same terms and conditions as under PSP2.

*Assurances.* Pursuant to the ARP, to be eligible to receive financial assistance under PSP3, passenger air carriers and contractors must agree to:

- use such payments exclusively for the continuation of employee wages, salaries, and benefits;
- until the later of September 30, 2021, or the date on which the entity’s PSP3 funds are exhausted, refrain from conducting involuntary terminations or furloughs, or reducing pay rates and benefits, of employees of the air carrier or contractor;
- through September 30, 2022, ensure that neither the air carrier or contractor, nor any affiliate thereof, purchases, in any transaction, an equity security of the air carrier or contractor, or of any direct or indirect parent company of the air carrier or contractor, that, in either case, is listed on a national securities exchange; and

- through September 30, 2022, not pay dividends, or make any other capital distributions, with respect to the common stock (or equivalent equity interest) of the air carrier or contractor.

*Limitation on Certain Employee Compensation.* Under the ARP, all PSP3 recipients must enter into an agreement with Treasury providing that during the two-year period beginning April 1, 2021 and ending April 1, 2023:

- 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 March 11, 2021) 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.* Under the ARP, to provide appropriate compensation to the Federal Government for the provision of financial assistance under PSP3, certain passenger air carriers or contractors will be required to provide warrants or notes to Treasury in the same form and amount, and under the same terms and conditions, as required under PSP2. Under PSP2:

- Passenger air carriers that received over \$100 million in payroll support were required to provide notes and warrants. The note principal amount in PSP2 was equal to 30 percent of the payroll support provided to the air carrier or contractor 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 PSP2 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 PSP2 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.* Treasury’s approval of any entity to participate in PSP3 may be subject to the entity providing certifications, documentation, or information, reasonably satisfactory to Treasury, that the entity was entitled to receive the amount of its financial assistance under PSP2 (and PSP1, if applicable), and that the entity is in compliance with the terms of its agreement with Treasury under PSP2 (and PSP1, if applicable). Similarly, if an entity received a loan from Treasury pursuant to section 4003 of the CARES Act, Treasury’s approval of the entity to participate in PSP3 may be subject to the entity providing certifications, documentation, or information, reasonably satisfactory to Treasury, that the entity is in compliance with the terms of its loan agreement and related transaction documentation. In addition, if an entity that received financial assistance in PSP1 or PSP2 owes a debt to Treasury, including as a result of an obligation to repay a portion of the PSP1 or PSP2 funds, Treasury may offset the entity’s awardable amount in PSP3 against such debts.

*Bankruptcy.* If an entity has taken, or is evaluating, any action to commence a bankruptcy or insolvency filing in any jurisdiction, Treasury may impose additional requirements on the entity’s receipt of funds in PSP3.

*Consultation with Department of Transportation.* Treasury may consult with the Department of Transportation on the implementation of PSP3.

### **PSP3 AWARDABLE AMOUNTS**

The ARP sets forth the methodologies for calculating the awardable amounts for passenger air carriers and for contractors.

*Passenger air carriers.* For each eligible passenger air carrier, the awardable amount is equal to \$14 billion (the total available PSP3 funds for passenger air carriers) *times* (2) the ratio that the amount received by the air carrier in PSP2 bears to \$15 billion. This calculation may be expressed as:

$$\text{\$14 billion} \times (\text{PSP2 amount} / \text{\$15 billion}) = \text{PSP3 amount}$$

For example, if a passenger air carrier received \$150 million in PSP2, it would be eligible to receive \$140 million in PSP3:

$$\text{\$14 billion} \times (\text{\$150 million} / \text{\$15 billion}) = \text{\$140 million}$$

*Contractors.* For each eligible contractor, the awardable amount is equal to the amount such contractor received in PSP2.

*Administrative Expenses.* If necessary, awardable amounts in PSP3 may be reduced on a pro rata basis to take into account the \$10 million made available to Treasury under the ARP for administrative expenses associated with PSP3.

## **PSP3 AGREEMENT**

PSP2 recipients will not be required to apply for PSP3. Instead, Treasury will contact each PSP2 recipient to complete the necessary program documentation to participate in PSP3.

Each approved entity must enter into an agreement with Treasury, which Treasury will provide. 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 passenger air carrier's or contractor's failure to satisfy certain assurances, conditions, or covenants.

## **APPROVALS OF ELIGIBLE ENTITIES**

In determining whether to approve an entity for participation in PSP3, Treasury may consider the requirements under and purposes of the ARP; the eligibility of the entity; the availability of funds; the entity's ability to comply with the PSP3 agreement; whether the entity is in compliance with the terms of its agreement under PSP2 (and PSP1, if applicable); the entity's provision of certifications, documentation, or information reasonably satisfactory to Treasury to confirm the entity's compliance with its agreement under PSP2 (and PSP1, if applicable); and any other factors that Treasury deems appropriate.

## **PSP3 PAYMENTS**

Entities approved to participate in PSP3 should expect to receive payroll support in two payments. The amounts, timing, and conditions of such payments will be determined by Treasury in its sole discretion.