

**Q&A: Payroll Support Program Extension (PSP2) for Passenger Air Carriers and  
Contractors  
March 10, 2021**

This Q&A document supplements previous guidance, including another Q&A document, regarding the Payroll Support Program Extension (PSP2) under Division N, Title IV, Subtitle A of the Consolidated Appropriations Act, 2021 (Public Law 116-260), enacted on December 27, 2020 (PSP Extension Law). The previous guidance is available on Treasury's website at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/psp2/>.

**RECALLS AND LOST WAGES**

**1. How should PSP1 and PSP2 recipients determine lost pay and benefits for a recalled employee?**

The PSP Extension Law requires a passenger air carrier or contractor that received funds under the original Payroll Support Program (PSP1) and that also participates in PSP2 to recall certain involuntarily terminated or furloughed employees, compensate returning employees for lost pay and benefits (offset by any amounts received by the employee from a passenger air carrier or contractor as a result of the employee's termination or furlough, including, but not limited to, furlough pay, severance pay, or separation pay), and restore the rights and protections for such returning employees as if such employees had not been involuntarily terminated or furloughed. These terms are described in detail in the PSP2 Agreement that each PSP2 participant enters into with Treasury.

When calculating lost pay and benefits and making offers of re-employment, PSP recipients should treat returning employees as if they had not been involuntarily terminated or furloughed. In some cases, PSP recipients may need to make reasonable estimates to determine the amount of lost pay and benefits. PSP recipients must document the basis of such estimates, which may include comparisons to similarly situated employees, comparisons to prior years, collective bargaining terms, or company policies.

**2. How should PSP1 and PSP2 recipients determine the terms and conditions of re-employment for recalled employees?**

PSP recipients must offer re-employment with terms and conditions that would have applied to the employee if the employee had not been involuntarily terminated or furloughed, including regarding the employee's position, job duties, job locations, pay, and benefits. Offers of re-employment must be consistent with an applicable collective bargaining agreement or, in the absence of a collective bargaining agreement, company policy. Recipients must retain documentation of how offers of re-employment are consistent with the terms and conditions that would have applied to the employee if the employee had not been involuntarily terminated or furloughed.

**3. Are temporary or seasonal employees required to be recalled?**

If an employee was informed at the time of hiring that the position is temporary, either for a set period of time or until a specific activity is completed, then the employee's acceptance of that position is viewed as a consent to termination at the end of the temporary period. That employee would not be subject to the recall requirement if the employee was terminated at the end of the agreed-upon temporary period. However, the recipient must retain documentation evidencing that the employee was informed at the time of hiring that the position would be temporary, the temporary period established at the time of hiring, and the termination date.

**4. Are PSP2 recipients required to recall and reinstate an employee who is unable to resume employment within 30 days after the employee elects to return to work?**

If an employee timely responds to a recall notice, elects to return to work, and is able to resume work within 30 days after making the election, the recipient must use reasonable efforts to help the recalled employee return to work. For example, this may include obtaining any necessary security clearances for the employee. However, if the employee cannot resume work within 30 days due to circumstances outside of the recipient's control (for example, the employee is unavailable, COVID travel restrictions prohibit the employee from working, or the employee is unable to obtain a necessary work visa), then the employee's acceptance of the reemployment offer is invalid, and the recipient is not obligated to reinstate the employee. Recipients must retain documentation showing their compliance with the recall requirement, including, if applicable, documentation showing that any recalled employee was unable to return to work within 30 days of electing to do so and documentation of the recipient's efforts to help the recalled employee return to work.

**5. Are PSP2 recipients required to recall and reinstate employees who were subject to "Permitted Terminations or Furloughs" during the statutory period?**

No. PSP2 recipients are required to recall any employee who was subject to an "Involuntary Termination or Furlough" during the statutory recall period. PSP2 recipients are not, however, required to recall or reinstate employees who were subject to "Permitted Terminations or Furloughs," such as employees subject to voluntary furloughs or terminations for cause. These terms are defined in the PSP2 Agreement.

**6. If a PSP2 recipient already sent recall notices to some employees before executing the PSP2 Agreement, and these employees did not elect to return, is the recipient required to send these employees recall notices a second time?**

If the recall notice previously sent met the requirements for a recall notice under Section 4114(d) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) or Section 404 of the PSP Extension Law, regardless of when the recall notice was sent, and the employee did not elect to return to work, a new recall notice is not required.

## **ELIGIBILITY AND COVERAGE**

**7. What types of companies are eligible to participate in PSP2, and how can the money be used?**

Section 402 of the PSP Extension Law provides that only passenger air carriers and certain contractors are eligible to participate in PSP2. All PSP2 funds provided by Treasury must be used exclusively for the continuation of payment of employee wages, salaries, and benefits. The use of PSP2 funds for any other purpose is prohibited under the statute and the PSP2 Agreement.

**8. Will the application or receipt of Payroll Support affect the applicant's ability to receive support under another provision of the CARES Act or PSP Extension Law?**

An air carrier or contractor that has applied for or received support under other provisions of the CARES Act is not precluded, by virtue of such application or support, from applying for and receiving Payroll Support. The eligibility criteria for other programs are set forth in the Act and any applicable guidance or regulations.

**APPLICATION PROCEDURES AND DETERMINATION OF AWARDS**

**9. I submitted an application through the web portal. How will I know that my application has been received?**

You may check your application status by logging into the web portal. The application status is displayed at the top of the page. The contact person(s) on your company's application will receive an email confirmation when the application is submitted.

**10. When and how will the Payroll Support be provided?**

Approved applicants may receive Payroll Support in multiple payments. Treasury will, at its discretion, determine the amounts and timing of such payments. To the extent an approved applicant's initial payment is less than the maximum amount of Payroll Support that the applicant is entitled to receive, Treasury will make additional payments to the applicant up to the applicant's maximum allowable amount, subject to any required pro-rata reduction (as explained in Questions 22-23 below) and the applicant's compliance with applicable program requirements.

**11. When can applicants expect to hear from Treasury about applications they have submitted?**

Treasury has received hundreds of PSP2 applications and is working to review all applications as quickly as possible. Some applications require additional information before Treasury's review can be completed. Treasury will contact you directly if you are required to provide additional information.

**12. For purposes of the application, do employees include part-time employees?**

Yes. Certain PSP2 applicants calculate their awardable amounts based on compensation paid by the applicant to its employees during a specified prior period. Such employees

include full-time, part-time, temporary, and leased employees, but do not include independent contractors or “Corporate Officers” (as defined in the PSP2 Agreement).

**13. Some PSP2 applicants that participated in PSP1 included in their sworn financial statement impermissible amounts, such as officer compensation or employer-side payroll taxes, and therefore received excess Payroll Support amounts under PSP1. Even if the excess Payroll Support amounts were only used for otherwise allowable payroll costs, are applicants required to report the impermissible amounts listed on their sworn financial statements and return the excess PSP1 funds?**

Yes. Applicants must re-validate their PSP1 sworn financial statement and report any impermissible amounts that were included. Treasury will deduct from the applicants’ PSP2 payments an amount equal to the excess Payroll Support provided under PSP1.

**14. Is Payroll Support limited to employees who are based in the United States?**

Yes. Payroll Support funds must be used exclusively for the continuation of the payment of employee wages, salaries, and benefits. Individuals are considered to be employees for this purpose only if their principal place of employment is in the United States (including its territories and possessions).

**15. Are Part 145 certified repair station operators and ticket agents that are eligible for loans under Division A, Title IV, Subtitle A of the CARES Act also eligible to apply for PSP2 as contractors?**

Part 145 certified repair station operators and ticket agents are eligible for PSP2 if they meet the statutory PSP2 eligibility requirements. Not all entities eligible for loans under Division A, Title IV, Subtitle A of the CARES Act are eligible for PSP2. To be eligible for PSP2, a contractor must perform, under contract with a passenger air carrier that conducts 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, such as 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. A subcontractor that performs such functions is also eligible.

**16. Are air carriers or contractors that have taken action to commence, are considering, or were recently involved in a court-supervised bankruptcy proceeding eligible to receive assistance under PSP2?**

Applicants for PSP2 who have taken action to commence, are considering, or were recently involved in a court-supervised bankruptcy proceeding may be eligible for Payroll Support under certain conditions. Such applicants will be asked to provide additional information to enable Treasury to evaluate whether the applicants will be able to satisfy their obligations in the program and are 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 Treasury 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, that the final disbursement occur by a specified date, and that certifications of compliance be provided before receiving disbursements of Payroll Support.

**17. Air carrier or contractor applicants that are eligible for PSP2 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?**

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 or be included when calculating awardable amounts.

**18. May a recipient that received funds under PSP1 as a cargo carrier receive assistance under PSP2 as a passenger carrier?**

No. A recipient that received funds under PSP1 as a cargo carrier cannot receive assistance under PSP2 as a passenger carrier because an applicant cannot be both a passenger carrier and a cargo carrier under PSP definitions. Treasury has defined "passenger air carrier" as "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." Treasury defined a "cargo air carrier" as "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." Treasury is not reconsidering PSP1 applications.

## **CONFIDENTIALITY**

**19. Will the applications be made public or will they remain confidential?**

Treasury publishes the names of all PSP2 applicants and recipients on its website at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-extension-payments>.

Treasury does not intend to make the applications themselves publicly available, except as required by law, such as disclosure to the Department of Transportation, to coordinate the

implementation of PSP2, and to the Treasury Office of Inspector General. Treasury will also respond to requests for agency records as appropriate under the Freedom of Information Act (FOIA), including FOIA's provisions related to confidential business information.

**20. Will Treasury make the terms and conditions of the PSP2 Agreements public?**

Each passenger air carrier or contractor that participates in PSP2 enters into a uniform model of PSP2 Agreement, available at <https://www.Treasury.gov/CARES>.

**21. How may applicants endeavor to protect the confidentiality of materials they submit to Treasury?**

Applicants may mark information submitted to Treasury as containing information that the applicant believes may be excluded or exempted from public disclosure under FOIA. Treasury will determine, consistent with applicable law, whether the withholding of agency records is appropriate.

**PRORATION**

**22. What happens if the aggregate amount of Payroll Support requested in approved applications exceeds the maximum amounts allowed by the CARES Act?**

The aggregate amount of Payroll Support requested in approved PSP2 applications exceeds the amount of available funds for the program, so applicants' awardable amounts of Payroll Support will be reduced on a pro-rata basis.

**23. What are rules for how the pro-rata authority will be applied?**

Treasury is using the data and information provided by applicants to implement the pro-rata reduction of awards. In PSP2, Treasury preliminarily expects passenger carriers to receive 40% of the total award for which they are eligible and for contractors to receive 30.4% of the total award for which they are eligible.

**PSP2 AGREEMENT**

**24. What requirements are placed on the air carriers and contractors receiving Payroll Support under PSP2?**

Applicable requirements are set forth in the PSP2 Agreement, which is available at [www.Treasury.gov/CARES](http://www.Treasury.gov/CARES). These requirements include, but are not limited to, the following:

- the recipient must use the Payroll Support exclusively for the continuation of the payment of employee wages, salaries, and benefits;

- the recipient must refrain from conducting involuntary terminations or furloughs, or reducing pay rates and benefits, of employees of the recipient and its subsidiaries until (1) for passenger air carriers, March 31, 2021, or (2) for contractors, the later of March 31, 2021 or the date on which the Payroll Support is expended;
- the recipient must ensure that neither the recipient nor any subsidiary or affiliate thereof purchases, in any transaction, an equity security of the recipient or the direct or indirect parent company of the recipient that is listed on a national securities exchange until (1) for passenger air carriers, March 31, 2022, or (2) for contractors, the later of March 31, 2022 or the date on which the Payroll Support is expended;
- the recipient must not pay dividends, or make other capital distributions, with respect to the common stock (or equivalent equity interest) of the recipient until (1) for passenger air carriers, March 31, 2022, or (2) for contractors, the later of March 31, 2022 or the date on which the Payroll Support is expended;
- the recipient must recall, rehire, provide compensation for lost wages, and restore the rights of employees who were subject to involuntary terminations or furloughs during the required time period;
- the recipient must agree to certain limitations on the compensation of certain officers and employees; and
- for passenger air carriers, the recipient must maintain certain scheduled air transportation service as directed by the Secretary of Transportation (as explained in Question 27 below).

**25. May PSP2 recipients offer employees voluntary furloughs, retirement, buyouts, or other similar voluntary separation programs?**

Yes. Recipients must refrain from conducting involuntary layoffs, terminations, furloughs, or reductions in pay until March 31, 2021. However, voluntary separation programs are permitted. Specifically, the following are permissible under the PSP2 Agreements: (1) a voluntary furlough, voluntary leave of absence, voluntary resignation, or voluntary retirement; (2) termination of employment resulting from an employee's death or disability; or (3) the recipient terminating the employment of an employee for cause or placing an employee on a temporary suspension or unpaid leave of absence for disciplinary reasons, in each case, as reasonably determined by the recipient acting in good faith.

**26. Are there restrictions on airline executive compensation? Over what time period should the compensation limitations in Section 8 of the PSP2 Agreement be calculated?**

Sections 7 and 8 of the PSP2 Agreement impose compensation limits ending October 1, 2022. These restrictions apply to employees who received total compensation in excess of \$425,000 in 2019.

**27. Are there service requirements for air carriers receiving Payroll Support?**

The PSP Extension Law requires air carriers receiving Payroll Support to maintain certain scheduled air transportation service as directed by the Secretary of Transportation. For

more information, see Department of Transportation, Order 2021-1-5, available at <https://www.regulations.gov/document/DOT-OST-2020-0037-0390>.

**28. If the Department of Transportation exempts a recipient from a continuation of service obligation, can the recipient terminate its service consistent with the exemption?**

Paragraph 10 of the Agreement requires recipients to comply with any applicable requirement issued by the Secretary of Transportation under Section 407 of the PSP Extension Law to maintain scheduled air transportation service to any point served by the Recipient before March 1, 2020. The recipient must therefore comply with all applicable orders issued by the Department of Transportation under Section 407. A recipient subject to an exemption issued by the Department of Transportation will not violate paragraph 10 of the PSP2 Agreement by acting in accordance with the exemption.

**29. When does the requirement to provide quarterly reports to Treasury under paragraph 12 of the PSP2 Agreement expire?**

Recipients of Payroll Support must report certain information to Treasury on a quarterly basis under paragraph 12 of the PSP2 Agreement, and all recipients must continue to submit these periodic reports at least until the calendar quarter that begins after October 1, 2022.

In addition, if a Recipient or its affiliate has issued notes, warrants, or other financial instruments to Treasury as compensation for PSP2 (which we refer to as Taxpayer Protection Instruments), the Recipient must continue to submit quarterly reports to Treasury until the Taxpayer Protection Instruments are either no longer outstanding or no longer held by the Federal Government. However, with respect to these recipients, beginning with the calendar quarter that begins after October 1, 2022, only the financial statements described in paragraph 12(b) will be required. In addition, if the relevant Taxpayer Protection Instrument is a warrant, it will be considered no longer outstanding if it has been exercised in full.

Treasury may waive, in its sole discretion, any requirement to report information under Paragraph 12 that it determines is no longer necessary for determining compliance with the PSP2 Agreement.

All recipients will remain subject to the other reporting and recordkeeping requirements under the PSP2 Agreement, in addition to those under paragraph 12, as set forth in the PSP2 Agreement.

**30. Are all recipients required to submit audited financial statements to Treasury?**

Paragraph 12(b) of the Agreement requires recipients to provide Treasury with their financial statements on a quarterly and annual basis. Details regarding the reporting requirements are included in the PSP2 Agreement. In the case of annual financial



statements, such statements must generally be audited by an independent certified public accountant.

However, if a recipient does not prepare audited financial statements in the ordinary course of its business, Treasury will permit the recipient to submit certified financial statements that are unaudited.

**31. May recipients submit their financial statements to Treasury by providing a link to the recipients' SEC filings?**

Yes. Recipients that file their financial statements with the Securities and Exchange Commission may provide a link to the relevant filing on EDGAR in order to satisfy the requirement in paragraph 12(b) of the PSP2 Agreement to provide their financial statements to Treasury.

**32. For purposes of paragraph 38 of the PSP2 Agreement, may recipients rely on proxy statements in addition to other reports filed with the SEC?**

Under paragraph 38 of the PSP2 Agreement, recipients must report certain executive compensation if certain conditions are met and the public does not have access to such information through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986. For purposes of this paragraph, it is also sufficient if the public has access to such information through proxy statements filed with the SEC under section 14 of the Securities Exchange Act; those companies will not be required to report under paragraph 38.

**33. For purposes of the PSP2 Agreement, are a recipient's directors and officers considered to be "Affiliates"?**

No. Directors and officers of the recipient, as well as other natural persons, will not be considered to be "Affiliates" for purposes of the PSP2 Agreement.

**34. For purposes of paragraph 6 of the PSP2 Agreement, are subsidiaries of a recipient allowed to pay dividends to the recipient?**

Under paragraph 6 of the PSP2 Agreement, through September 30, 2021, the recipient is prohibited from paying dividends, or making any other capital distributions, with respect to the common stock (or equivalent equity interest) of the recipient. This prohibition only applies to the entity that signs the PSP2 Agreement and entities specified as "Additional Recipients" under the PSP2 Agreement. Accordingly, the prohibition in paragraph 6 applies to subsidiaries of the recipient that are specified as Additional Recipients but does not apply to the recipient's other subsidiaries.

**35. Does the PSP2 Agreement prohibit dividends or other capital distributions for the purposes of paying tax liabilities of air carrier or contractor recipients that are organized as passthrough entities for tax purposes?**

No. A PSP2 recipient 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.

**36. The PSP2 Agreement prohibits 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 5 of the Agreement, neither a PSP2 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 includes 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.

**37. Does the prohibition on stock buybacks restrict the issuance or settlement of convertible debt, or net settlement of stock-based compensation?**

Under paragraph 5 of the PSP2 Agreement, the recipient and its affiliates are prohibited from purchasing an equity security of the recipient or of any direct or indirect parent company of the recipient that is listed on a national securities exchange. Paragraph 5 does not prohibit a recipient from engaging in transactions in which the recipient and its affiliates do not repurchase outstanding shares of the recipient's or parent company's publicly traded stock. For example, a recipient is not prohibited from issuing convertible debt securities. Further, a net share settlement of outstanding convertible debt securities will not violate paragraph 5 of the PSP2 Agreement if it does not involve the company's repurchase of shares of publicly traded stock. The exercise of a call right to repurchase convertible debt securities that are not listed on a national securities exchange will also not violate paragraph 5 of the PSP2 Agreement. With respect to stock-based compensation, paragraph 5 does not prohibit net exercises of stock options or other types of net issuance, if the transaction does not involve the company repurchasing shares. For example, without violating paragraph 5, in a net settlement of stock options the recipient may reduce the number of shares it issues in connection with the exercise of the stock option, to reflect the exercise price or withholding taxes associated with the exercise. Similarly, paragraph 5 does not prohibit the net issuance of shares upon the vesting of restricted stock units, where the number of shares issued is net of the number of shares required to satisfy tax withholding obligations or other taxes associated with the vesting of the restricted stock unit. In these examples, the prohibition under paragraph 5 is not implicated because the recipient is reducing the number of shares it issues but is not repurchasing outstanding shares.

## USE OF PAYROLL SUPPORT FUNDS

### **38. Can recipients use Payroll Support for the payment of employee wages, salaries, and benefits after March 31, 2021?**

Yes. There is no deadline for a recipient to use Payroll Support, provided the recipient uses the funds exclusively for the continuation of employee wages, salaries, and benefits. Certain restrictions and requirements under the PSP2 Agreement continue to apply after the recipient has used all of the Payroll Support funds.

### **39. Can recipients use Payroll Support under the PSP2 Agreement for the payment of expenses incurred prior to the effective date of the agreement?**

No. Recipients cannot use Payroll Support under the PSP2 Agreement for the payment of expenses incurred prior to the effective date of that agreement (i.e., the date in which Treasury signed the PSP2 Agreement). Recipients can only use PSP2 funds for employee wages, salaries, benefits, and benefits paid after the effective date of the PSP2 Agreement.

## TAX

### **40. Are payroll support payments taxable?**

IRS FAQs on the Federal income tax consequences of Payroll Support Payments are available at <https://www.irs.gov/newsroom/payroll-support-for-air-carriers-and-contractors-under-the-cares-act-frequently-asked-questions>.

## TAXPAYER PROTECTION

### **41. How will taxpayer funds be protected?**

The PSP Extension Law authorizes Treasury to receive warrants, promissory notes, and other financial instruments issued by companies receiving Payroll Support. Treasury requires passenger carriers receiving over \$100 million in Payroll Support to provide warrants and notes, and Treasury requires contractors receiving over \$37.5 million in Payroll Support to provide notes. The taxpayer protection thresholds for PSP2 are calculated separately from the thresholds for PSP1.

### **42. Can the Federal Government get its money back if the recipient companies fail to satisfy the conditions of the support?**

The PSP2 Agreement includes provisions for the clawback of payments in the event a recipient fails to satisfy applicable requirements.