

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Public Law 113-36 (signed into law on March 27, 2020)
Aviation Sector-Specific Financial Assistance Provisions

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Division A

Title IV—Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy

Subtitle A—Coronavirus Economic Stabilization Act of 2020

Section 4003: Authorizes the Secretary of the Treasury (“Secretary”) to make loans and loan guarantees to: (i) passenger air carriers, FAA-certificated repair stations, and ticket agents (\$25B in the aggregate); and (ii) cargo air carriers (\$4B in the aggregate).

- Loans shall be at a rate determined by the Secretary, taking into account the average yield for U.S. Government marketable obligations (e.g., Treasury bills or notes) of comparable maturity. 4003(c)(1). The Secretary may make or guarantee such loans if he determines that, in his discretion –
 - (i) credit is not reasonably available to the applicant; (ii) the borrowed amount is prudently incurred; and (iii) the loan is sufficiently secured or made at rate (x) that reflects the risk of the loan and, to the extent practicable (y) not less than a rate based on market conditions for comparable conditions prevailing prior to the outbreak of COVID-19. 4003(c)(2)(A) through (C).
 - The duration of the loan is as short as practicable but in no event more than 5 years. 4003(c)(2)(D).
 - The loan agreement provides that, while the loan is outstanding and for 12 months after it is satisfied, the following is prohibited: (i) stock buybacks (covering both the business’s stock and the stock of any of its affiliates, to the extent publicly traded) and (ii) dividend payments. 4003(c)(2)(E) and (F).
 - The loan agreement provides that the business will maintain, through September 30, 2020, employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce employment levels by more than 10 percent from the levels as of March 24th. 4003(c)(2)(G).
 - The business certifies in the loan agreement that it is created or organized in the U.S. or under the laws of the U.S., with significant operations, and a majority of its employees, in the U.S. 4003(c)(2)(H).
 - The business has incurred or is expected to incur direct or indirect losses as a result of COVID-19, such that its continued operations are jeopardized, as determined by the Secretary. 4003(c)(2)(I).

- As soon as practicable but no later than 10 days following enactment of Act, the Secretary shall publish procedures for applications and minimum requirements. 4003(c)(1).
- Loans may only be issued if the Secretary receives (i) a warrant or equity interest (for publicly traded companies) or, in the discretion of the Secretary (ii) a warrant, equity interest or senior debt instrument (for businesses other than publicly traded companies). 4003(d)(1). Terms shall be set by the Secretary, meeting the following requirements:
 - The reasonable participation by the Secretary, for the benefit of taxpayers, in equity appreciation or reasonable interest rate premiums (as applicable);
 - Sale, exercise or surrender by the Secretary of warrant or senior debt instrument, provided the Secretary shall not exercise voting power over shares of common stock acquired.
 - The Secretary may accept a senior debt instrument in amount and on terms set by the Secretary, if he determines business cannot feasibly issue warrants or other equity interests. 4003(d)(2).
- Loans may not be reduced through debt forgiveness. 4003(d)(3).
- Amounts collected by the Secretary through warrants, equity interest or senior debt instruments shall be deposited into financing accounts under the Federal Credit Reform Act and, after the sum of specified deposits therein are met, the Federal Old-Age and Survivors Insurance Trust Fund. 4003(e).

Section 4004: Loan agreement must provide that, from execution of agreement and up through 12 months from the satisfaction of the loan:

- No officer or employee whose total 2019 compensation exceeded \$425K shall receive (i) total compensation during any consecutive 12-month period which exceeds his or her total compensation for 2019, or (ii) severance pay or other termination benefits which exceeds twice his or her total 2019 compensation. Excluded from this cap are employees for whom compensation is covered by a collective bargaining agreement in place prior to March 1, 2020. 4004(a)(1).
- No officer or employee whose total 2019 compensation exceeded \$3M shall receive, during any consecutive 12-month period, total compensation in excess of the sum of (i) \$3M and (ii) 50% of the excess over \$3M of compensation received in 2019. 4004(a)(2).

Section 4005: Authorizes the U.S. Department of Transportation (“DOT”) to require that carriers receiving loans maintain scheduled air transportation service as deemed necessary to ensure services to any point provided by such carrier as of March 1, 2020, taking into consideration: (i)

the air transportation needs of small and remote communities, and (ii) the need to maintain well-functioning health care and pharmaceutical supply chains. This authority terminates on March 1, 2022.

Section 4006: Requires coordination between the Secretary and DOT with respect to air carrier loans.

Section 4007: Suspends the imposition of certain aviation excise taxes (ticket taxes and aviation fuel taxes) from the Act's enactment through December 31, 2020.

Subtitle B—Air Carrier Worker Support

Section 4112. Authorizes the Secretary to provide cash assistance, exclusively for the use of continuing payment of employee wages, salaries and benefits, to passenger air carriers (\$25B in the aggregate); cargo air carriers (\$4B in the aggregate); and “contractors,” e.g., ground handling companies and airline catering services, as well as their subcontractors (\$3B in the aggregate).

Section 4113. Financial assistance shall be based on salaries and benefits for the period April 1, 2019 through September 30, 2019, as reported to the DOT on Form 41 (for certificated air carriers operating large aircraft) or in certified, sworn financial statements (for all other air carriers and contractors). 4113(a)(1) through (3).

- The Secretary shall:
 - establish, terms and conditions, including requirements for audits and clawback of funds for failure to honor assurances specified in Section 4114, below;
 - publish expedited procedures, within 5 days of enactment of the Act, for applicants to submit requests for financial assistance;
 - make initial payments, within 10 days of enactment of the Act, to recipients;
 - determine the appropriate method for distribution of payments from any remaining funds to recipients; and
 - have the authority to reduce, on *pro rata* basis, amounts due to recipients in order to address any shortfall in assistance that otherwise would be provided under the Act. 4113(a) through (c).

- The Inspector General of the Treasury Department shall audit any certified, sworn financial statements submitted with an application. 4113(d).

Section 4114: Recipients of financial assistance shall enter into an agreement with, or submit certification to, the Secretary containing assurances that recipient shall:

- refrain from involuntary furloughs or reductions in pay rates and benefits until September 30, 2020; and
- ensure, through September 30, 2021, that it does not: (i) engage in any stock buybacks, both as to itself or any parent company to the extent such entity is publicly traded; or (ii) pay any dividends or make other capital distributions with respect to its common stock (or equivalent interest). 4114(a).

DOT also is authorized to require, to the extent reasonable and practicable, that carriers maintain scheduled service to any point served as of March 1, 2020, taking into consideration: (i) the air transportation needs of small and remote communities, and (ii) the need to maintain well-functioning health care and pharmaceutical supply chains. This authority terminates on March 1, 2022. 4114(b).

Section 4115: Prohibits any federal agency, through September 30, 2020, from conditioning aid on requirement that recipient enter into negotiations regarding pay or other employment terms with employees covered by a collective bargaining agreement.

Section 4116: Provides that, during the two-year period beginning on March 24, 2020:

- No officer or employee of recipient whose total 2019 compensation exceeded \$425K shall receive (i) total compensation during any consecutive 12-month period which exceeds his or her total compensation for 2019, or (ii) severance pay or other termination benefits which exceeds twice his or her total 2019 compensation. Excluded from this cap are employees for whom compensation is covered by a collective bargaining agreement in place prior to March 1, 2020).
- No officer or employee of recipient whose total 2019 compensation exceeded \$3M shall receive, during any consecutive 12-month period, total compensation in excess of the sum of (i) \$3M and (ii) 50% of the excess over \$3M of compensation received in 2019.

Section 4117: Allows the Secretary to receive warrants, options, preferred stock, debt securities, notes or other financial instruments issued by recipients, which in the Secretary's sole determination appropriately compensates the Federal Government.

Section 4118: Requires the Secretary to make reports to various congressional committees regarding the financial assistance provided, with the first such reports due by November 1, 2020, and updated reports due by the first anniversary of the enactment of the Act.

Section 4119: Requires coordination between the Secretary and DOT in implementing these financial assistance provisions.