

## CLIENT ALERT

### CARES Act Payroll Support Program: It's Not Just for Airlines

April 6, 2020

One of the significant lifelines to the aviation industry provided by the CARES Act is financial assistance for payroll support in the form of a grant. This is part of an overall multi-billion dollar financial support package for the aviation industry which also includes direct loans and loan guarantees. The payroll support provisions (CARES Act §§ 4112-4117) cover U.S. providers of commercial air transportation operating both large and small aircraft, transporting passengers or cargo. This program also covers contractors to Part 121 air carriers (typically, airlines), including contractors performing catering services, loading and unloading property on and from aircraft, assistance to passengers with disabilities, airport ticketing and check-in functions, ground handling, aircraft cleaning, sanitation and waste removal, or subcontractors performing these functions.

Treasury will consider applications submitted up until 11:59 PM on April 27th. Applications received after 11:59 PM on April 27th will be considered only at Treasury's discretion. Treasury announced last night that all applications must be submitted using Treasury's online tool, [which is available here](#). Treasury will not accept applications via email.

To qualify for assistance, an applicant must complete the relatively brief [Payroll Support Application Form](#). Among other things, the applicant must provide information about the type of operations it conducts, and its employment levels. The maximum amount of assistance available that may be provided to a given applicant will depend on the salaries, wages, benefits, and other compensation paid from April 1, 2019 through September 30, 2019 as reflected in the application. If the applicant is not required to report salaries and benefits to the Department of Transportation (DOT), the applicant execution of the application containing payroll information will suffice as a sworn financial statement certifying the amount of compensation paid to its employees during the calculation period.

In addition, the applicant must identify financial instruments that could be issued to Treasury that, in Treasury's opinion, provide "appropriate compensation to the Federal Government for the provision of payroll support." Recently released Treasury guidance lists warrants, options, preferred stock, debt securities, notes, or other financial instruments as examples of financially instruments it may deem acceptable. While these requirements are relatively straightforward for large and publicly traded companies, it is unclear what would constitute an acceptable proposal under this provision for a privately held company. Although industry groups have requested clarification from Treasury on what may be an acceptable instrument for privately held companies, Treasury declined to provide any such guidance and indicated that there are no internal guidelines or benchmarks for evaluating proposals from privately held companies. Some suggestions from the industry have included a non-recourse loan for a percentage of a company's payroll or providing secured collateral. It would seem, however, that imposing too significant a financial burden in connection for this type of financial support, could deter eligible businesses from making application, thereby leading to additional layoffs by already cash strapped enterprises. That would fly in the face of the stated purpose of the legislation which is to "preserve aviation jobs." It remains to be seen what standards Treasury will apply when evaluating whether the offered financial instrument is "appropriate compensation."

If a company's application is accepted, they must adhere to certain restrictions in order to receive the assistance. Specifically, the company may not:

- Institute furloughs or reduce pay rates or benefits until September 30, 2020.
- Engage in stock buy-backs in any form until October 1, 2021.
- Pay dividends or make other capital distributions until October 1, 2021.
- Increase compensation or provide severance pay or other benefits for certain highly-compensated employees (employees making more than \$425,000 per year in total compensation) until March 24, 2022.

In addition, DOT may require recipients to maintain scheduled air service to any point that the air carrier serviced prior to March 1, 2020, to the extent reasonably practicable. DOT may exercise this authority until March 2, 2022. DOT has issued an order, effective April 7, 2020, limiting this requirement to air carriers providing scheduled service and not to charter airlines or air taxi operators.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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