

What The CARES Act Means for Airports, Airlines, and Other Airport Tenants



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On March 29, 2019, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 (the "CARES Act") providing an unprecedented \$2 trillion in aid to individuals, businesses and state and local government entities affected by the COVID-19 pandemic. Among the recipients of this aid are airports and the air transportation industry, which have been hit especially hard by the pandemic.

Aid to Airports

The CARES Act allocates \$10 billion in funding for grants-in-aid for airport sponsors to prevent, prepare for, and respond to the COVID-19 pandemic:

- Up to \$500,000,000 will be used to relieve airport sponsors of their obligations to provide their local matching share for Airport Improvement Program (AIP) grants and other discretionary grants already planned for fiscal year 2020.
- At least \$7.4 billion will be available to commercial service airports:
- \$3.7 billion will be allocated among all commercial service airports based on each sponsor's 2018 enplanements as a percentage of total 2018 enplanements for all commercial service airports.
- \$1.85 billion will be allocated among commercial service airports based on each sponsor's fiscal year 2018 debt service as a percentage of the debt service for all commercial service airports *and*
- \$1.85 billion will be allocated among commercial service airports based on each sponsor's ratio of unrestricted reserves to their respective debt service. There is some confusion in the airport industry as to how this last metric will be implemented, as it is unclear whether it is meant to favor airports with higher or lower reserve to debt ratios.
- Up to \$2 billion will be available to hub and primary airports based on the typical AIP entitlement formula, except that apportionments will not be reduced to account for PFCs and will not be subject to maximum apportionment limits.

- At least \$100 million will be available to general aviation airports based on the development costs associated with each category of airport as reflected in the National Plan of Integrated Airport Systems (NPIAS).

All of the funding for airports may be used for any lawful purpose for which airport revenue may be used. However, as explained in the [FAA's FAQs regarding the CARES Act issued on April 4](#), an airport seeking to use CARES Act funds to award a new construction contract after March 27, 2020 should contact its local Airports District Office or Airports Regional Office for additional guidance.

In exchange for this funding, the CARES Act imposes only one condition: hub and primary airports must retain at least 90% of the number of employees they had as of March 28 until December 31, 2020 (after making adjustments for retirements or voluntary separations). DOT may waive this requirement due to economic hardship or for safety and security reasons.

Aid to the Air Transportation Industry

Aeronautical users and other airport tenants and contractors may also be entitled to various forms of relief under the CARES Act. The CARES Act earmarks \$25 billion in aid for passenger air carriers, \$4 billion in aid for cargo air carriers and \$3 billion for contractors to passenger air carriers. "Contractors" include contractors that provide catering functions for air carriers on or off the airport, and functions on airport property directly related to the air transportation of persons, property, or mail. This category includes security, airport ticketing and check-in, ground handling, aircraft cleaning and sanitation, and waste removal.

Congress directed that the financial assistance be used "for the continuation of payment of employee wages, salaries, and benefits" in these portions of the air transportation industry. It also directed DOT to award the financial assistance based on air carriers and contractors' salaries and benefits during the period of April 1 to September 30, 2019. CARES Act, § 4113(a).

In exchange for this funding, entities receiving aid must provide certain assurances, including an assurance that the recipient will (a) refrain from involuntary furloughs or pay cuts, (b) not buy back its own securities or stock or pay out dividends or capital distributions; and (c) limit salaries, salary increases, and severance packages for higher paid officers and employees. *Id.* at §§ 4114(a); 4116. DOT is also authorized to require that an air carrier receiving assistance maintain scheduled air transportation services as DOT deems necessary to any point the air carrier served before March 1, 2020. *Id.* at § 4114(b).

Additional aid may be available to airport tenants and contractors under other portions of the CARES Act. In particular, the CARES Act allocated \$350 billion for small business relief under the Paycheck Protection Program ("PPP"). Starting April 3, owners of businesses or non-profit with fewer than 500 employees (which for accommodation and food service employers includes businesses with fewer than 500 employees per physical location), or which otherwise meets the Small Business Administration's standard can apply for loans of up to two and a half times their average monthly payroll costs, up to \$10 million total.

PPP aid recipients may use the assistance to pay wages and benefits for workers, as well as other costs of doing business such as rent, utility costs and interest on debt for the period of February 15 to June 30, 2020. *Id.* at § 1102. Borrowers may be eligible for loan forgiveness under the PPP for amounts up to the sum of eligible costs they actually pay within the eight weeks following loan origination.