

## Aid for Airports and the Aviation Industry in the 2021 Appropriations Act



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On December 21, 2020, Congress passed the [Consolidated Appropriations Act of 2021, H.R. 133 \(the “2021 Appropriations Act”\)](#). The President signed the legislation on December 27. The 2021 Appropriations Act authorizes \$2.3 trillion in federal spending, including a second round of aid for airports and the air transportation industry in response to the massive decline in air traffic during the COVID-19 pandemic.<sup>[1]</sup>

### Aid to Airports

The 2021 Appropriations Act allocates \$2 billion in additional funding for grants-in-aid for airport sponsors to prevent, prepare for, and respond to COVID-19. As with the bulk of funding allocated to airports in April of this year, airport sponsors will not be required to pay a local matching share of funds to receive these grants.

- \$1.75 billion will be available for primary airports and certain cargo airports for airport operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. This funding will be apportioned based on the typical AIP entitlement formula. These apportionments will not be reduced to account for PFCs.
- \$200 million will be available to primary airports to provide rent and minimum annual guarantee (MAG) relief to airport concessionaires, on-airport car rental companies, and on-airport parking concessionaires. This amount will be apportioned based on enplanements. This funding is subject to several conditions:
  - Airport sponsors must provide relief to **all** eligible airport concessionaires “in an amount that reflects each eligible airport concession’s proportional share of the total amount of the rent and minimum annual guarantees of all the eligible airport concessions at such airport.”
  - Airport sponsors are to prioritize relief to minority-owned businesses.
  - Airport concessionaires are not eligible for this funding if they have also received Small Business Administration Loan assistance to pay MAGs or rent.
  - Airports may retain 2% of the grant funding for administrative costs

associated with the relief program.

FAA had issued updated [Information for Airport Sponsors Considering COVID-19 Restrictions or Accommodations on December 22](#), which does not address the new legislation. We anticipate FAA will provide further updates to this document in light of the language in the 2021 Appropriations Act. Among other things, FAA may need to clarify the relationship between the conditions requiring relief to all concessionaires and those requiring sponsors to prioritize minority-owned businesses.

- \$45 million will be available to aviation and commercial service airports that are not primary airports. \$5 million of this amount will be provided to airports that participate in the FAA's Contract Tower Program to support tower operations. The remainder will be apportioned based on the development costs associated with each category of the airport as reflected in the National Plan of Integrated Airport Systems (NPIAS).
- \$5 million is available to U.S. DOT to administer the Small Community Air Service Development Program. DOT is required to prioritize funding from this amount to communities that have lost air service due to the COVID-19 pandemic.

In exchange for the funding described above, Congress has extended the requirement in the CARES Act that hub and primary airports retain at least 90% of the number of employees they had as of March 27 through December 31, 2020 (after making adjustments for retirements or voluntary separations) to **February 15, 2021**. DOT may waive this requirement due to economic hardship or for safety and security reasons.

#### **Aid to the Air Transportation Industry**

The legislation also earmarks \$15 billion in aid for passenger air carriers and \$1 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. While cargo carriers received \$ 4 billion in aid under the CARES Act, they are not allocated funding under the 2021 Appropriations Act.

As was the case under the CARES Act, 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. Funds are to be allocated based on the amounts distributed pursuant to the CARES Act, with certain adjustments for airlines that did not take full advantage of CARES Act funding.

In exchange for this funding, an entity receiving aid must provide certain assurances, including an assurance that the recipient will (a) refrain from involuntary furloughs or pay cuts through at least March 31, 2021, (b) not buy back its own securities or stock or pay out dividends or capital distributions through at least March 31, 2022; and (c) limit salaries, salary increases, and severance packages for higher paid officers and employees through at least March 31, 2021. To the extent a passenger carrier or contractor furloughed or terminated employees during the pandemic it will be required to recall certain of those employees and provide back pay. Congress also extended DOT's authority 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. DOT's earlier administration of this program generally permitted significant service reductions.

As was the case under the CARES Act, additional aid may be available to particular airport tenants and contractors under other portions of the 2021 Appropriations Act. In particular, the legislation provides small businesses relief of up to \$2 million under the "Second Draw" Paycheck Protection Program ("PPP"). As explained above, however, airport tenants that receive Second Draw funding may not be eligible for the aid allocated specifically for airport concessionaires.

[1] The 2021 Appropriations Act also makes annual appropriations for FAA and includes several provisions regarding aircraft safety certification in response to recent investigations of Boeing 737-Max crashes.