

116TH CONGRESS
2D SESSION

H. R. 8504

To extend the Payroll Support Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2020

Mr. DEFAZIO (for himself and Mr. LARSEN of Washington) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Transportation and Infrastructure, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To extend the Payroll Support Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Payroll Support Pro-
5 gram Extension Act”.

6 **SEC. 2. DEFINITIONS.**

7 Unless otherwise specified, the definitions in section
8 40102(a) of title 49, United States Code, shall apply to
9 this Act, except that—

1 (1) the term “airline catering employee” means
2 an employee who performs airline catering services;

3 (2) the term “airline catering services” means
4 preparation, assembly, or both, of food, beverages,
5 provisions and related supplies for delivery, and the
6 delivery of such items, directly to aircraft or to a lo-
7 cation on or near airport property for subsequent
8 delivery to aircraft;

9 (3) the term “contractor” means—

10 (A) a person that performs, under contract
11 with a passenger air carrier conducting oper-
12 ations under part 121 of title 14, Code of Fed-
13 eral Regulations—

14 (i) catering functions; or

15 (ii) functions on the property of an
16 airport that are directly related to the air
17 transportation of persons, property, or
18 mail, including but not limited to the load-
19 ing and unloading of property on aircraft;
20 assistance to passengers under part 382 of
21 title 14, Code of Federal Regulations; se-
22 curity; airport ticketing and check-in func-
23 tions; ground-handling of aircraft; or air-
24 craft cleaning and sanitization functions
25 and waste removal; or

1 (B) a subcontractor that performs such
2 functions;

3 (4) the term “employee” means an individual,
4 other than a corporate officer, who is employed by
5 an air carrier or a contractor; and

6 (5) the term “Secretary” means the Secretary
7 of the Treasury.

8 **SEC. 3. PANDEMIC RELIEF FOR AVIATION WORKERS.**

9 (a) FINANCIAL ASSISTANCE FOR EMPLOYEE WAGES,
10 SALARIES, AND BENEFITS.—Notwithstanding any other
11 provision of law, to preserve aviation jobs and compensate
12 air carrier industry workers, the Secretary shall provide
13 financial assistance that shall exclusively be used for the
14 continuation of payment of employee wages, salaries, and
15 benefits to—

16 (1) passenger air carriers, in an aggregate
17 amount up to \$25,500,000,000;

18 (2) cargo air carriers, in an aggregate amount
19 up to \$300,000,000; and

20 (3) contractors, in an aggregate amount up to
21 \$3,000,000,000.

22 (b) ADMINISTRATIVE EXPENSES.—Notwithstanding
23 any other provision of law, the Secretary may use funds
24 made available under section 4112(b) of the CARES Act
25 (15 U.S.C. 9072(b)) for costs and administrative expenses

1 associated with providing financial assistance under this
2 Act.

3 **SEC. 4. PROCEDURES FOR PROVIDING PAYROLL SUPPORT.**

4 (a) AWARDABLE AMOUNTS.—The Secretary shall
5 provide financial assistance under this Act—

6 (1) to an air carrier required to file reports pur-
7 suant to part 241 of title 14, Code of Federal Regu-
8 lations, as of March 27, 2020, in an amount equal
9 to—

10 (A) the amount such air carrier received
11 under section 4113 of the CARES Act (15
12 U.S.C. 9073); or

13 (B) at the request of such air carrier, or
14 in the event such an air carrier did not receive
15 assistance under section 4113 of the CARES
16 Act (15 U.S.C. 9073), the amount of the sala-
17 ries and benefits reported by the air carrier to
18 the Department of Transportation pursuant to
19 such part 241, for the period from October 1,
20 2019, through March 31, 2020;

21 (2) to an air carrier that did not transmit re-
22 ports under such part 241, as of March 27, 2020,
23 in an amount equal to—

24 (A) the amount such air carrier received
25 under section 4113 of the CARES Act (15

1 U.S.C. 9073), plus an additional 15 percent of
2 such amount;

3 (B) in the event such an air carrier did not
4 receive assistance under section 4113 of the
5 CARES Act (15 U.S.C. 9073), an amount that
6 such an air carrier certifies, using sworn finan-
7 cial statements or other appropriate data, as
8 the amount of total salaries and related fringe
9 benefits that such air carrier incurred and
10 would be required to be reported to the Depart-
11 ment of Transportation pursuant to such part
12 241, if the air carrier were required to transmit
13 such information during the period from Octo-
14 ber 1, 2019, through March 31, 2020; or

15 (C) at the request of such carrier, provided
16 such carrier received assistance under section
17 4113 of the CARES Act (15 U.S.C. 9073), the
18 sum of—

19 (i) the amount that such air carrier
20 certifies, using sworn financial statements
21 or other appropriate data, as the amount
22 of total salaries and related fringe benefits
23 that such air carrier incurred and would be
24 required to be reported to the Department
25 of Transportation pursuant to such part

241, if the carrier were required to transmit such information during the period from October 1, 2019, through March 31, 2020; and

(ii) an additional amount equal to the difference between the amount certified under clause (i) and the amount the air carrier received under section 4113 of the CARES Act (15 U.S.C. 9073); and

(3) to a contractor in an amount equal to—

(A) the amount such contractor received under section 4113 of the CARES Act (15 U.S.C. 9073); or

(B) in the event such contractor did not receive assistance under section 4113 of the CARES Act (15 U.S.C. 9073), an amount that the contractor certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation that such contractor paid the employees of such contractor during the period from October 1, 2019, through March 31, 2020.

(b) DEADLINES AND PROCEDURES.—

(1) IN GENERAL.—

1 (A) FORMS; TERMS AND CONDITIONS.—Fi-
2 nancial assistance provided to an air carrier or
3 contractor under this Act shall—

4 (i) be in such form, on such terms
5 and conditions (including requirements for
6 audits and the clawback of any financial
7 assistance provided upon failure by a pas-
8 senger air carrier, cargo air carrier, or con-
9 tractor to honor the assurances specified in
10 section 5), as agreed to by the Secretary
11 and the recipient for assistance received
12 under section 4113 of the CARES Act (15
13 U.S.C. 9073), except where inconsistent
14 with this Act; or

15 (ii) in the event such an air carrier or
16 contractor did not receive assistance under
17 section 4113 of the CARES Act (15
18 U.S.C. 9073), be in such form, on such
19 terms and conditions (including require-
20 ments for audits and the clawback of any
21 financial assistance provided upon failure
22 by a passenger air carrier, cargo air car-
23 rier, or contractor to honor the assurances
24 specified in section 5), as the Secretary de-
25 termines appropriate.

1 (B) PROCEDURES.—The Secretary shall
2 publish streamlined and expedited procedures
3 not later than 5 days after the date of enact-
4 ment of this Act for air carriers and contractors
5 to submit requests for financial assistance
6 under this Act.

7 (2) DEADLINE FOR IMMEDIATE PAYROLL AS-
8 SISTANCE.—Not later than 10 days after the date of
9 enactment of this Act, the Secretary shall make ini-
10 tial payments to air carriers and contractors that
11 submit requests for financial assistance approved by
12 to the Secretary.

13 (d) PRO RATA REDUCTIONS.—The amounts under
14 subsections (a)(1)(B) and (a)(2)(B) shall, to the max-
15 imum extent practicable, be subject to the same pro rata
16 reduction applied by the Secretary to air carriers or con-
17 tractors, as applicable, that received assistance under sec-
18 tion 4113 of the CARES Act (15 U.S.C. 9073).

19 (e) AUDITS.—The Inspector General of the Depart-
20 ment of the Treasury shall audit certifications made under
21 subsection (a).

22 **SEC. 5. REQUIRED ASSURANCES.**

23 (a) IN GENERAL.—To be eligible for financial assist-
24 ance under this Act, an air carrier or contractor shall
25 enter into an agreement with the Secretary, or otherwise

1 certify in such form and manner as the Secretary shall
2 prescribe, that the air carrier or contractor shall—

3 (1) refrain from conducting involuntary fur-
4 loughs or reducing pay rates and benefits until—

5 (A) with respect to air carriers, March 31,
6 2021; or

7 (B) with respect to contractors, March 31,
8 2021, or the date on which the contractor ex-
9 hausts such financial assistance, whichever is
10 later;

11 (2) ensure that neither the air carrier or con-
12 tractor nor any affiliate of the air carrier or con-
13 tractor may, in any transaction, purchase an equity
14 security of the air carrier or contractor or the parent
15 company of the air carrier or contractor that is list-
16 ed on a national securities exchange through—

17 (A) with respect to air carriers, March 31,
18 2022; or

19 (B) with respect to contractors, March 31,
20 2022, or the date on which the contractor ex-
21 hausts such financial assistance, whichever is
22 later;

23 (3) ensure that the air carrier or contractor
24 shall not pay dividends, or make other capital dis-
25 tributions, with respect to common stock (or equiva-

1 lent interest) of the air carrier or contractor
2 through—

3 (A) with respect to air carriers, March 31,
4 2022; or

5 (B) with respect to contractors, March 31,
6 2022, or the date on which the contractor ex-
7 hausts such financial assistance, whichever is
8 later;

9 (4) meet the requirements of sections 6 and 7;
10 and

11 (5) affirm that the air carrier or contractor
12 has—

13 (A) in the case of an air carrier or con-
14 tractor that received loans, loan guarantees,
15 other investments, or financial assistance under
16 title IV of the CARES Act, recalled any em-
17 ployees involuntarily furloughed by such air car-
18 rier or contractor between March 27, 2020, and
19 the date such air carrier or contractor enters
20 into an agreement with the Secretary for finan-
21 cial assistance under this Act, compensated
22 such employees for lost pay and benefits, and
23 restored the rights and protections for such em-
24 ployees as if they had not been involuntarily
25 furloughed; or

1 (B) in the case of an air carrier or con-
2 tractor that did not receive loans, loan guaran-
3 tees, other investments, or financial assistance
4 under title IV of the CARES Act, recalled any
5 employees involuntarily furloughed by such air
6 carrier or contractor between October 1, 2020,
7 and the date such air carrier or contractor en-
8 ters into an agreement with the Secretary for
9 financial assistance under this Act, com-
10 pensated such employees for lost pay and bene-
11 fits, and restored the rights and protections for
12 such employees as if they had not been involun-
13 tarily furloughed.

14 **SEC. 6. PROTECTION OF COLLECTIVE BARGAINING AGREE-**
15 **MENTS.**

16 (a) IN GENERAL.—Neither the Secretary, nor any
17 other actor, department, or agency of the Federal Govern-
18 ment, shall condition the issuance of financial assistance
19 under this Act on an air carrier’s or contractor’s imple-
20 mentation of measures to enter into negotiations with the
21 certified bargaining representative of a craft or class of
22 employees of the air carrier or contractor under the Rail-
23 way Labor Act (45 U.S.C. 151 et seq.) or the National
24 Labor Relations Act (29 U.S.C. 151 et seq.), regarding
25 pay or other terms and conditions of employment.

1 (b) AIR CARRIER PERIOD OF EFFECT.—With respect
2 to any air carrier to which financial assistance is provided
3 under this Act, this section shall be in effect with respect
4 to the air carrier beginning on the date on which the air
5 carrier is first issued such financial assistance and ending
6 on March 31, 2021.

7 (c) CONTRACTOR PERIOD OF EFFECT.—With respect
8 to any contractor to which financial assistance is provided
9 under this Act, this section shall be in effect with respect
10 to contractor beginning on the date on which the con-
11 tractor is first issued such financial assistance and ending
12 on March 31, 2021, or until the date on which all funds
13 are expended, whichever is later.

14 **SEC. 7. LIMITATION ON CERTAIN EMPLOYEE COMPENSA-**
15 **TION.**

16 (a) IN GENERAL.—The Secretary may only provide
17 financial assistance under this Act to an air carrier or con-
18 tractor after such carrier or contractor enters into an
19 agreement with the Secretary which provides that, during
20 the 2-year period beginning October 1, 2020, and ending
21 October 1, 2022, no officer or employee of the air carrier
22 or contractor whose total compensation exceeded
23 \$425,000 in calendar year 2019 (other than an employee
24 whose compensation is determined through an existing col-

1 lective bargaining agreement entered into prior to enact-
2 ment of this Act)—

3 (1) will receive from the air carrier or con-
4 tractor total compensation which exceeds, during
5 any 12 consecutive months of such 2-year period,
6 the total compensation received by the officer or em-
7 ployee from the air carrier or contractor in calendar
8 year 2019;

9 (2) will receive from the air carrier or con-
10 tractor severance pay or other benefits upon termi-
11 nation of employment with the air carrier or con-
12 tractor which exceeds twice the maximum total com-
13 pensation received by the officer or employee from
14 the air carrier or contractor in calendar year 2019;
15 and

16 (3) no officer or employee of the air carrier or
17 contractor whose total compensation exceeded
18 \$3,000,000 in calendar year 2019 may receive dur-
19 ing any 12 consecutive months of such period total
20 compensation in excess of the sum of—

21 (A) \$3,000,000; and

22 (B) 50 percent of the excess over
23 \$3,000,000 of the total compensation received
24 by the officer or employee from the air carrier
25 or contractor in calendar year 2019.

1 (b) TOTAL COMPENSATION DEFINED.—In this sec-
2 tion, the term “total compensation” includes salary, bo-
3 nuses, awards of stock, and other financial benefits pro-
4 vided by an air carrier or contractor to an officer or em-
5 ployee of the air carrier or contractor.

6 **SEC. 8. MINIMUM AIR SERVICE GUARANTEES.**

7 (a) IN GENERAL.—The Secretary of Transportation
8 is authorized to require, to the extent reasonable and prac-
9 ticable, an air carrier provided financial assistance under
10 this Act to maintain scheduled air transportation, as the
11 Secretary of Transportation determines necessary, to en-
12 sure services to any point served by that air carrier before
13 March 1, 2020, continues to receive a basic level of air
14 service.

15 (b) REQUIRED CONSIDERATIONS.—When considering
16 whether to exercise the authority provided by this section,
17 the Secretary of Transportation shall take into consider-
18 ation the air transportation needs of small and remote
19 communities, the need to maintain well-functioning health
20 care supply chains, including medical devices and supplies,
21 and pharmaceutical supply chains, and such other matters
22 as the public interest requires.

23 (c) SUNSET.—The authority provided under this sec-
24 tion shall terminate on September 1, 2022, and any re-

1 requirements issued by the Secretary of Transportation
2 under this section shall cease to apply after that date.

3 **SEC. 9. TAX PAYER PROTECTION.**

4 (a) CARES ACT ASSISTANCE RECIPIENTS.—With re-
5 spect to a recipient of assistance under section 4113 of
6 the CARES Act (15 U.S.C. 9073) that receives assistance
7 under this Act, the Secretary may receive warrants, op-
8 tions, preferred stock, debt securities, notes, or other fi-
9 nancial instruments issued by such recipient in the same
10 form and amount, and under the same terms and condi-
11 tions, as agreed to by the Secretary and the recipient for
12 assistance received under such section 4113 to provide ap-
13 propriate compensation to the Federal Government for the
14 provision of the financial assistance under this Act.

15 (b) OTHER APPLICANTS.—With respect to an appli-
16 cant that did not receive assistance under such section
17 4113, the Secretary may receive warrants, options, pre-
18 ferred stock, debt securities, notes, or other financial in-
19 struments issued by an applicant that receives assistance
20 under this Act in a form and amount that are, to the max-
21 imum extent practicable, the same as the terms and condi-
22 tions as agreed to by the Secretary and similarly situated
23 recipients of assistance under such section 4113 to provide
24 appropriate compensation to the Federal Government for
25 the provision of the financial assistance under this Act.

1 **SEC. 10. REPORTS.**

2 (a) REPORT.—Not later than May 1, 2021, the Sec-
3 retary shall update and submit to the Committee on
4 Transportation and Infrastructure and the Committee on
5 Financial Services of the House of Representatives and
6 the Committee on Commerce, Science, and Transportation
7 and the Committee on Banking, Housing, and Urban Af-
8 fairs of the Senate a report on the financial assistance
9 provided to air carriers and contractors under this Act,
10 which includes—

11 (1) a description of any financial assistance
12 provided to air carrier and contractors under this
13 Act;

14 (2) any audits of air carriers or contractors re-
15 ceiving financial assistance under this Act;

16 (3) any reports filed by air carriers or contrac-
17 tors receiving financial assistance under this Act;

18 (4) any non-compliances by air carriers or con-
19 tractors receiving financial assistance under this Act
20 with the terms and conditions of this Act or agree-
21 ments entered into with the Secretary to receive
22 such financial assistance; and

23 (5) information relating to any clawback of any
24 financial assistance provided to air carriers or con-
25 tractors under this Act.

1 (b) INTERNET UPDATES.—The Secretary shall up-
2 date the website of the Department of the Treasury on
3 a daily basis as necessary to reflect new or revised dis-
4 tributions of financial assistance under this Act with re-
5 spect to each air carrier or contractor that receives such
6 assistance, the identification of any applicant that applied
7 for financial assistance under this Act, and the date of
8 application.

9 (c) SUPPLEMENTAL UPDATE.—Not later than the
10 last day of the 1-year period following the date of enact-
11 ment of this Act, the Secretary shall update and submit
12 to the Committee on Transportation and Infrastructure
13 and the Committee on Financial Services of the House of
14 Representatives and the Committee on Commerce,
15 Science, and Transportation and the Committee on Bank-
16 ing, Housing, and Urban Affairs of the Senate, the report
17 submitted under subsection (a).

18 **SEC. 11. COORDINATION.**

19 In implementing this Act, the Secretary shall coordi-
20 nate with the Secretary of Transportation.

21 **SEC. 12. DIRECT APPROPRIATION.**

22 Notwithstanding any other provision of law, there is
23 appropriated, out of amounts in the Treasury not other-
24 wise appropriated, \$28,800,000,000 to carry out this Act.

1 **SEC. 13. TECHNICAL CORRECTIONS AND CLARIFICATION.**

2 (a) Section 4003(c)(1)(B) of the CARES Act (15
3 U.S.C. 9042(c)(1)(B)) is amended—

4 (1) by striking “As soon” and inserting the fol-
5 lowing:

6 “(i) IN GENERAL.—Subject to clause
7 (ii), as soon”; and

8 (2) by adding at the end the following:

9 “(ii) REQUIREMENT.—The procedures
10 and any related guidance issued under
11 clause (i) shall not prohibit any air carrier
12 from applying for or receiving a loan or
13 loan guarantee under paragraph (1), (2),
14 or (3) of subsection (b) based on the
15 amount of the loan or loan guarantee re-
16 quested.”.

17 (b) Section 4113(c) of the CARES Act (15 U.S.C.
18 9073(c)) is amended—

19 (1) by striking “ section 4112” and inserting
20 “subsection (a)”; and

21 (2) by striking “such section” and inserting
22 “such subsection”.

23 (c) Section 4114 of the CARES Act (15 U.S.C. 9074)
24 is amended by adding at the end the following new sub-
25 sections:

26 “(c) CONTINUED APPLICATION.—

1 “(1) IN GENERAL.—If, after September 30,
2 2020, a contractor expends funds made available
3 pursuant to section 4112 and distributed pursuant
4 to section 4113, the assurances under this section
5 shall continue to apply until all funds are expended,
6 notwithstanding the time limits included in para-
7 graphs (1) through (3) of subsection (a), or section
8 4115 or 4116.

9 “(2) SPECIAL RULE.—Not later than January
10 5, 2021, each contractor that has received funds
11 pursuant to such section 4112 shall report to the
12 Secretary on the amount of such funds that the con-
13 tractor has expended through December 31, 2020. If
14 the contractor has expended an amount that is less
15 than 50 percent of the total amount of funds the
16 contractor received under such section, the Secretary
17 shall initiate an action to recover any funds that re-
18 main unexpended as of January 31, 2021.

19 “(d) CLAWBACK OF ASSISTANCE.—Any contractor
20 that conducted involuntary furloughs or reduced pay rates
21 and benefits, between March 27, 2020, and the date on
22 which the contractor entered into an agreement with the
23 Secretary related to financial assistance under this sub-
24 title, shall recall employees who were involuntary fur-

1 loughed, or the Secretary shall claw back such financial
2 assistance, as necessary.”.

3 (d) With respect to loans issued under paragraph (1)
4 or (2) of section 4003(b) of the CARES Act (15 U.S.C.
5 9042(b)) after the date of enactment of this Act to an
6 air carrier, the Secretary may accept an unsecured debt
7 instrument (in addition to a senior secured debt instru-
8 ment) for a total loan allocation less than \$300,000,000,
9 if the air carrier certifies that the air carrier cannot fea-
10 sibly issue collateral sufficient to receive the full amount
11 of its loan allocation.

12 **SEC. 14. EMERGENCY REQUIREMENT.**

13 (a) IN GENERAL.—This Act is designated as an
14 emergency requirement pursuant to section 4(g) of the
15 Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).

16 (b) DESIGNATION IN SENATE.—In the Senate, this
17 Act is designated as an emergency requirement pursuant
18 to section 4112(a) of H. Con. Res. 71 (115th Congress),
19 the concurrent resolution on the budget for fiscal year
20 2018.

○