

Aviation Regulatory Alert

CARES Act Update - Options for Small Businesses

Following up on our prior update, we are writing to provide you with additional information on the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, 2020.

DOT MANDATES MINIMUM SERVICE REQUIREMENT STANDARDS UNDER CARES ACT

The CARES Act authorizes the Secretary of Transportation to require those airlines that get federal aid under the Act to maintain certain service levels during the COVID-19 epidemic. Yesterday, the United States Department of Transportation (DOT) issued a Show Cause Order proposing that certain air carriers receiving financial assistance under the CARES Act maintain minimum air services on a nationwide basis, with some limited exceptions. The key points of the [Show Cause Order](#) are:

- The Order applies to (1) direct air carriers accepting financial assistance under the CARES Act that hold certificates of public convenience and necessity for scheduled passenger air transportation and (2) carriers that hold a Commuter Air Carrier Authorizations under 14 C.F.R. Part 298.
- The Department is not proposing service requirements for all-cargo airlines, charter airlines, or air taxi operators at this time. This is to give these carriers extra flexibility, especially in circumstances of a public health emergency like COVID-19. DOT did state that service requirements for these carriers may be set in the future “if it is necessary to maintain well- functioning health care and pharmaceutical supply chains.”
- The Order does give airlines flexibility on how frequently they would have to fly certain routes, with required rates dependent on how frequently they had previously served a destination. Because demand for air travel has significantly declined, DOT will not require covered carriers to operate full schedules and networks as they did before the public health emergency.
- DOT is not proposing to require airlines to serve international points, just points within the United States.
- Airlines will be able to request exemptions to the requirements if needed, which would be in effect at least through September.

Interested parties are being asked to file comments no later than two (2) business days from the service date of the Show Cause order, or by April 2, 2020.

DEPARTMENT OF TREASURY ISSUES GUIDANCE ON AIRLINES APPLYING FOR AID UNDER CARES ACT

On March 30, 2020, the U.S. Treasury Department issued initial guidance for airlines applying for payroll support under the CARES Act. The application procedures and guidelines for payroll support are [available here](#). Guidance on procedures and information about eligible borrowers, the statutory eligibility criteria, terms and conditions of the loans,

and application requirements are [available here](#). If any carrier has questions about their potential eligibility for the payroll support of loan programs under the CARES Act, please contact us.

SMALL BUSINESSES ASSISTANCE OPTIONS AVAILABLE UNDER THE CARES ACT

For our small business clients that may be struggling amidst this crisis, below are three assistance options available under the CARES Act.

- **Clients with current SBA 7A or 504 Loans**

The federal government has released over \$17 billion to the SBA in an effort to fund deferments on existing SBA 7A or 504 Loans. If you are interested in this option, we encourage you to talk directly to your lenders. We have several clients who received commitments to a 3-6 month deferment within minutes of making the request.

- **New Loans**

\$350 Billion of the funds in the CARES Act are dedicated to the SBA to provide new loans to qualifying small businesses. There are two different types of loans, Payroll Protection Program Loans and Emergency Economic Injury Disaster Loans. . While a business can apply for both types of loans, it cannot receive both loans and will have to choose between the two products, which are described below.

- **Payroll Protection Program**

The Payroll Protection Program is a new loan product created by the CARES Act. The primary goal is to keep small businesses (with 500 or less employees) from laying off workers. Under this program, any business with less than 500 employees will be eligible for a loan in the amount of 2.5 times the borrower's average monthly payroll costs up to a maximum of \$10 million. The loan is completely forgiven if:

- 1) The borrower has the same amount of employees on June 30, 2020 as it did on February 15, 2020; and
- 2) The borrower provides documentation that the money was used to cover payroll or non-payroll eligible expenses.

Eligible expenses include interest on mortgage (not principal), rent, or utilities as long as those obligations were incurred prior to February 15, 2020. There is a cap of non-payroll expenses and payments on any non-forgiven portion of the loan will be automatically deferred for six months.

Loans will be processed through local SBA lenders. . We have seen strong demand from our clients and anticipate there will be huge nationwide demand for this product. Accordingly, we highly recommend that interested parties contact their local SBA bankers and get applications submitted immediately. Additional information is available here: <https://home.treasury.gov/coronavirus>

- **Emergency Economic Injury Disaster Loan (EIDL)**

EIDL has been a longstanding SBA product in areas hard hit by physical disasters such as hurricanes, tornados, and earthquakes. Under the CARES Act, the program has been expanded to combat a viral outbreak.

Under this program, a business can get a loan up to \$2 million directly from the SBA. Payments of principal and interest are automatically deferred for a year from the execution of the Promissory Note, and borrowers could be eligible for deferment for up to four years under certain conditions. The loans may be used to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

If a borrower is interested in applying for an EIDL loan, it should submit an application ([available on the SBA website](#)) as promptly as possible, because the SBA has already seen a strong uptick in applications and the quicker a company applies, the quicker it can receive funding.



This Aviation Regulatory Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact author [Evelyn Sahr](#) at 202.659.6622 or esahr@eckertseamans.com; [Drew Derco](#) at 202-659-6665 or dderco@eckertseamans.com; or [Andy Orr](#) at 202-659-6625 or aorr@eckertseamans.com or any other attorney at Eckert Seamans with whom you have been working.