

CODIFICATION

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

§ 9093. Procedures for providing payroll support

(a) Awardable amounts

The Secretary shall provide financial assistance under this part—

(1) to a passenger air carrier required to file reports pursuant to part 241 of title 14, Code of Federal Regulations, as of March 27, 2020, in an amount equal to—

(A) the amount such air carrier was approved to receive (without taking into account any pro rata reduction) under section 9073 of this title; or

(B) at the request of such air carrier, or in the event such air carrier did not receive assistance under section 9073 of this title, the amount of the salaries and benefits reported by the air carrier to the Department of Transportation pursuant to such part 241, for the period from October 1, 2019, through March 31, 2020;

(2) to a passenger air carrier that was not required to transmit reports under such part 241, as of March 27, 2020, in an amount equal to—

(A) the amount such air carrier was approved to receive (without taking into account any pro rata reduction) under section 9073 of this title, plus an additional 15 percent of such amount;

(B) at the request of such air carrier, provided such air carrier received assistance under section 9073 of this title, the sum of—

(i) the amount that such air carrier certifies, using sworn financial statements or other appropriate data, as the amount of total salaries and related fringe benefits that such air carrier incurred and would be required to be reported to the Department of Transportation pursuant to such part 241, if such air carrier was required to transmit such information during the period from April 1, 2019, through September 30, 2019; 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 9073 of this title; or

(C) in the event such air carrier did not receive assistance under section 9073 of this title, an amount that such an air carrier certifies, using sworn financial statements or other appropriate data, as the amount of total salaries and related fringe benefits that such air carrier incurred and would be required to be reported to the Department of Transportation pursuant to such part 241, if such air carrier was required to transmit such information during the period from October 1, 2019, through March 31, 2020; and

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

(A) the amount such contractor was approved to receive (without taking into ac-

count any pro rata reduction) under section 9073 of this title; or

(B) in the event such contractor did not receive assistance under section 9073 of this title, 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

(A) Forms; terms and conditions

Financial assistance provided to a passenger air carrier or contractor under this part shall—

(i) be, to the maximum extent practicable, in the same form and on the same terms and conditions (including requirements for audits and the clawback of any financial assistance provided upon failure by a passenger air carrier or contractor to honor the assurances specified in section 9094 of this title), as agreed to by the Secretary and the recipient for assistance received under section 9073 of this title, except if inconsistent with this part; or

(ii) in the event such a passenger air carrier or a contractor did not receive assistance under section 9073 of this title, be, to the maximum extent practicable, in the same form and on the same terms and conditions (including requirements for audits and the clawback of any financial assistance provided upon failure by a passenger air carrier or contractor to honor the assurances specified in section 9094 of this title), as agreed to by the Secretary and similarly situated recipients of assistance under section 9073 of this title.

(B) Procedures

The Secretary shall, to the maximum extent practicable, publish streamlined and expedited procedures not later than 5 days after December 27, 2020, for passenger air carriers and contractors to submit requests for financial assistance under this part.

(2) Deadline for immediate payroll assistance

Not later than 10 days after December 27, 2020, the Secretary shall make initial payments to passenger air carriers and contractors that submit requests for financial assistance approved by the Secretary.

(3) Subsequent payments

The Secretary shall determine an appropriate method for the timely distribution of payments to passenger air carriers and contractors with approved requests for financial assistance from any funds remaining available after providing initial financial assistance payments under paragraph (2).

(c) Pro rata reductions

The Secretary shall have the authority to reduce, on a pro rata basis, the amounts due to passenger air carriers and contractors under subsection (a) in order to address any shortfall

in assistance that would otherwise be provided under such subsection.

(d) Audits

The Inspector General of the Department of the Treasury shall audit certifications made under subsection (a).

(Pub. L. 116-260, div. N, title IV, § 403, Dec. 27, 2020, 134 Stat. 2053.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in subssecs. (a) and (b)(1), was in the original “this subtitle”, meaning subtitle A (§§ 401-412) of title IV of div. N of Pub. L. 116-260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

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§ 9094. Required assurances

(a) In general

To be eligible for financial assistance under this part, a passenger air carrier or a contractor shall enter into an agreement with the Secretary, or otherwise certify in such form and manner as the Secretary shall prescribe, that the passenger air carrier or contractor shall—

(1) refrain from conducting involuntary furloughs or reducing pay rates and benefits until—

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

(B) with respect to contractors, March 31, 2021, or the date on which the contractor expends such financial assistance, whichever is later;

(2) ensure that neither the passenger air carrier or contractor nor any affiliate of the passenger air carrier or contractor may, in any transaction, purchase an equity security of the passenger air carrier or contractor or the parent company of the passenger air carrier or contractor that is listed on a national securities exchange through—

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

(B) with respect to contractors, March 31, 2022, or the date on which the contractor expends such financial assistance, whichever is later;

(3) ensure that the passenger air carrier or contractor shall not pay dividends, or make other capital distributions, with respect to common stock (or equivalent interest) of the carrier or contractor through—

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

(B) with respect to contractors, March 31, 2022, or the date on which the contractor expends such financial assistance, whichever is later; and

(4) meet the requirements of sections 9095 and 9096 of this title.

(b) Recalls of employees

An agreement or certification under this section shall require a passenger air carrier or contractor to perform the following actions:

(1) In the case of a passenger air carrier or contractor that received financial assistance under title IV of the CARES Act [15 U.S.C. 9041 et seq., 9071 et seq.]—

(A) recall (as defined in section 9091 of this title), not later than 72 hours after executing such agreement or certification, any employees involuntarily furloughed by such passenger air carrier or contractor between October 1, 2020, and the date such passenger air carrier or contractor enters into an agreement with the Secretary with respect to financial assistance under this part;

(B) compensate returning employees for lost pay and benefits (offset by any amounts received by the employee from a passenger air carrier or contractor as a result of the employee’s furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between—

(i) in the case of a passenger air carrier, December 1, 2020, and the date on which such passenger air carrier enters into an agreement with the Secretary with respect to financial assistance under this part; or

(ii) in the case of a contractor, December 27, 2020, and the date on which such contractor enters into an agreement with the Secretary with respect to financial assistance under this part; and

(C) restore the rights and protections for such returning employees as if such employees had not been involuntarily furloughed.

(2) In the case of a passenger air carrier or contractor that did not receive financial assistance under title IV of the CARES Act [15 U.S.C. 9041 et seq., 9071 et seq.] to—

(A) recall (as defined in section 9091 of this title), within 72 hours after executing such agreement or certification, any employees involuntarily furloughed by such passenger air carrier or contractor between March 27, 2020, and the date such passenger air carrier or contractor enters into an agreement with the Secretary for financial assistance under this part;

(B) compensate returning employees under this paragraph for lost pay and benefits (offset by any amounts received by the employee from a passenger air carrier or contractor as a result of the employee’s furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between—

(i) in the case of a passenger air carrier, December 1, 2020, and the date such passenger air carrier enters into an agreement with the Secretary for financial assistance under this part; or

(ii) in the case of a contractor, December 27, 2020, and the date on which such contractor enters into an agreement with the Secretary with respect to financial assistance under this part; and

(C) restore the rights and protections for such returning employees as if such employees had not been involuntarily furloughed.