



TO: National Air Transportation Association
FROM: Monument Advocacy
RE: Key Issues in the CARES Act
DATE: March 30, 2020

Overview:

On March 27, 2020, President Trump signed into law the “Coronavirus Aid, Relief and Economic Security Act” (“CARES Act”), the third round of federal legislation responding to the COVID-19 pandemic and economic crisis. The CARES Act is a \$2 trillion package that includes \$500 billion in economic stabilization funds, as well as significant expansions in small business lending, tax relief to individuals and employers, and other measures intended to sustain the national economy.

Specifically, Title IV, Subtitle A of the CARES Act (§§ 4001 – 4029), the “Coronavirus Economic Stabilization Act of 2020,” authorizes the Secretary of the Treasury to provide up to \$500 billion in loans, loan guarantees, and other investments in support of eligible businesses, states, and municipalities.¹ Section 4003(b)(1) requires the Treasury Secretary to make available up to \$25 billion in loans and loan guarantees to passenger air carriers,² aircraft repair stations certified under 14 C.F.R. §145 (“repair stations”), and ticket agents. Likewise, Section 4003(b)(2) designates up to \$4 billion in loans and loan guarantees for cargo air carriers.

This memorandum seeks to address several key issues pertaining to these Title IV provisions and other CARES Act provisions affecting the air transportation industry.

I. LABOR REQUIREMENTS UNDER TITLE IV, SUBTITLE A

Question Presented: Whether air carriers, repair stations, and contractors must maintain a specific number or percentage of their employees in order to receive financial assistance under Section 4003(b)(1) and (b)(2) of the CARES Act.

¹ See, specifically, Section 4003(a).

² The act utilizes the definition of “air carrier” prescribed in 49 U.S. Code § 40102(a)(2) (“‘air carrier’ means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.”). Section 4002(1).



Answer: Section 4003(c)(2)(G) provides that air carriers and eligible repair stations seeking loans or loan guarantees under Section 4003(b)(1) or (b)(2) “must maintain [their] employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce [their] employment levels by more than 10 percent from the levels on such date.” A contractor that falls under the Act’s definitions for air carrier or repair station would be subject to this same employment level requirement. Otherwise, they would not be eligible for financial assistance under Section 4003(b)(1) or (b)(2).

Question Presented: Whether an air carrier or repair station that took staffing action in the form of furloughs or layoffs prior to the enactment of the CARES Act will be eligible for financial assistance.

Answer: Air carriers and repair stations that implemented furloughs and layoffs in the wake of the COVID-19 pandemic will remain eligible for loans and loan guarantees under Section 4003(b)(1) or (b)(2) so long as they maintain 90 percent of their employment levels as of March 24, 2020.³ Moreover, layoffs and furloughs carried out prior to the enactment of the CARES Act will not affect the financial assistance provided to air carriers for employee wages, salaries, and benefits under Section 4112.⁴

II. FINANCIAL ASSISTANCE LIMITATIONS FOR AIR CARRIERS AND REPAIR STATIONS

Question Presented: Whether an air carrier or repair station that accepts a loan or loan guarantee under Section 4003(b)(1) or (b)(2) will be precluded from receiving additional financial assistance from a Federal Reserve System program or facility established under Section 4003(b)(4).⁵

Answer: First, repair stations that accept a loan or loan guarantee pursuant to Section 4003(b)(1) would likely be unable to receive additional funding under Section 4003(b)(4), which establishes mechanisms to

³ Section 4003(c)(2)(G).

⁴ Section 4114(a) (“To be eligible for financial assistance under this subtitle, an air carrier or contractor shall enter into an agreement with the Secretary, or otherwise certify . . . that the air carrier or contractor shall— (1) refrain from conducting involuntary furloughs or reducing pay rates and benefits until September 30, 2020”).

⁵ Section 4003(b)(4) states: “Not more than the sum of \$454,000,000,000 and any amounts available under paragraphs (1), (2), and (3) that are not used as provided under those paragraphs shall be available to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities . . .”



support lending to “eligible businesses.” An eligible business is defined in Section 4002(1) of the CARES Act as:

- (A) an air carrier; or
- (B) a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act.

A repair station that receives a Section 4003(b)(1) loan or loan guarantee would likely be deemed to have “received adequate economic relief in the form of loans or loan guarantees” and would therefore not be an “eligible business” for Section 4003(b)(4) funding.

This question presented, however, is more difficult with respect to air carriers. On their face, Section 4003(b)(1) and (b)(2) appear to limit the financial assistance available under all of Title IV, Subsection A to “not more than \$25 billion” for passenger air carriers and “not more than \$4 billion” for cargo carriers. One may presume that if the drafters of these provisions sought to enable air carriers to acquire additional financial assistance under Section 4003(b)(4), they would not have used such restrictive language and would have instead opted for a phrase like “at least \$25 billion.”

On the other hand, Section 4003(b)(4) states that the financial assistance it provides for is available to “eligible businesses,” which, as defined in Section 4002(1), includes air carriers regardless of whether or not the air carrier has received “economic relief in the form of loans or loan guarantees provided under [the CARES] Act.” Therefore, based on this statutory interpretation, it could be argued that acceptance of a loan or loan guarantee under Section 4003(b)(1) or (b)(2) by an air carrier would not extinguish its ability to receive additional funding under Section 4003(b)(4).

Finally, there is no provision in Title IV, Subtitle A that prevents air carriers and repair stations from receiving financial assistance in other titles of the CARES Act.