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# CARES Act includes executive pay, worker protection, and governance provisions

Sweeping financial aid legislation to address the economic fallout of the COVID-19 pandemic — the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) — includes compensation limits for highly-paid employees at businesses that receive certain forms of federal assistance under the Act. Eligible businesses are also subject to workforce retention requirements, and restrictions on share buybacks and dividend payments.

## Federal loans and other assistance

Executive pay limits, workforce retention requirements, and restrictions on share buybacks and dividend payments apply to two forms of assistance under Title IV of the Act: loans/loan guarantees to eligible businesses (including air carriers, businesses critical to national security, and other US businesses) and payroll support for air carriers and their contractors.

### Loans and loan guarantees

The Act authorizes federal loans, guarantees and other investments to support “eligible businesses,” states and municipalities of up to \$500 billion as follows:

- Passenger and cargo air carriers (\$29 billion)
- Businesses critical to national security (\$17 billion)
- Other US businesses, states, and municipalities that haven’t received adequate economic relief under the Act (\$454 billion) — this aid will be provided through Federal Reserve programs

As part of the last category, Treasury will “endeavor to” implement a loan program for mid-sized businesses (including non-profits) with between 500 and 10,000 employees.

Assistance (generally in the form of “direct loans” or loan guarantees) is contingent on the businesses agreeing to certain compensation, worker protection, and/or governance conditions. These conditions can be waived by the Treasury Secretary (but only for businesses other than air carriers or businesses critical to national security) in certain situations.

### Payroll support

The Act provides up to \$32 billion in payments for payroll support (assistance with paying employee wages, salaries and benefits) as follows:

- Air carriers (\$29 billion)
- Air carrier contractors (\$3 billion)

Businesses receiving payroll support must agree to more stringent conditions than those required for loans, and assistance may be clawed back for failure to comply.

## Compensation limits

Eligible businesses that receive loans or loan guarantees must agree to compensation limits. Generally, the following limits apply from the date of the loan agreement until one year after the loan is repaid:

- Officers and employees whose calendar-year 2019 total compensation (salary, bonuses, stock awards, and other financial benefits) exceeded \$425,000 (other than current union employees) may not receive:
  - Total compensation that exceeds, during any 12 consecutive months, the total compensation the officer or employee received in 2019
  - Severance pay or other termination benefits that exceeds two times the maximum total compensation the officer or employee received in 2019
- Officers and employees whose calendar-year 2019 total compensation exceeded \$3,000,000 may not receive, during any 12 consecutive months, total compensation exceeding the sum of:
  - \$3,000,000 plus
  - 50% of the excess over \$3,000,000 of the total compensation received in 2019

**Example:** An employee whose 2019 total compensation was \$5,000,000 couldn't receive more than \$4,000,000 in total compensation during any consecutive 12 months of the covered period (\$3,000,000 + 50% of \$2,000,000).

For air carriers and contractors receiving payroll support, these pay restrictions begin March 24, 2020 and end March 24, 2022.

### The limits raise several questions, such as:

- How are stock awards valued? Implementing regulations could use the proxy statement's Summary Compensation Table definition, which is based on a stock award's accounting grant date value.
- Does "maximum" total compensation (used for severance) have the same meaning as total compensation?
- How are 2019 and post-2019 hires treated?
- How do the limits apply to pre-existing agreements?

Businesses receiving assistance will need to identify, and track the compensation of, employees who earned more than \$425,000 in calendar-year 2019.

## Workforce retention requirements

Air carriers and businesses critical to national security that receive assistance must maintain their employment levels as of March 24, 2020 until Sept. 30, 2020 to the extent practicable. At a minimum, they can't reduce employment levels by more than 10%.

For air carriers or contractors receiving payroll support, these requirements apply until Sept. 30, 2021, and such businesses must refrain from involuntary furloughs or reducing pay rates and benefits until Sept. 30, 2020.

### Mid-size businesses must certify they:

- Will retain at least 90% of their workforce at full pay and benefits until Sept. 30, 2020
- Intend to restore at least 90% of their Feb. 1, 2020 workforce levels within four months of the end of the health crisis
- Won't outsource or offshore jobs during the loan period plus two years
- Will remain neutral in union organizing efforts for the loan period and won't breach collective bargaining agreements for two years after repayment

## Share buybacks and dividends

Generally, businesses receiving assistance may not repurchase shares or pay dividends from the date of the loan agreement until one year after the loan is repaid. For mid-sized businesses, this restriction appears to end when the loan is repaid.

For air carriers and contractors receiving payroll support, these prohibitions apply until Sept. 30, 2021.

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