Insight

Evaluating CARES Assistance to the Airlines – As Enacted

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Executive Summary

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides $32 billion in grants and $29 billion in credit assistance to the airline industry, as well as relief from excise taxation related to commercial air travel.
- Among other restrictions, recipients of aid must refrain from issuing dividends, stock buy-backs, furloughs, or salary reductions, and executives are subject to compensation limits.
- The Act allows the federal government to take equity positions in recipient firms to compensate for taxpayer risk.

Introduction

Early on the morning of March 26, the Senate passed a revised "phase 3" of the legislative response to the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Among other provisions, the Act provides $32 billion in grants to the passenger and cargo airline industry to preserve employment. The CARES Act also provides $29 billion – $25 billion for commercial airlines, $4 billion for cargo lines – available for loans and loan guarantees to these same firms. The Act attaches some strings to these public funds that vary depending on whether the assistance is in the form of grants or loans, but in general participating firms are precluded from engaging in stock buy-backs or issuing dividends and must maintain payrolls. Firms must also comply with certain restrictions on employee compensation. To provide compensation for taxpayer assistance to private industries, the Treasury may take equity positions in participating firms. The last time Congress provided taxpayer assistance to the airline industry was in the wake of 9/11. The approach taken by Congress in CARES mirrors some of the approaches taken in 2001, but diverges in other key areas.

CARES Act

On September 22nd, 2001, President Bush signed H.R. 2926 (the Air Transportation Safety and System Stabilization Act, or ATSSSA) into law to provide federal assistance to U.S. airline carriers in the wake of the 2001 terrorist attacks. The ATSSSA included $7 billion in grants, credit assistance, and oversight. The financial assistance was pared with limitations on employee compensation. The CARES Act follows a somewhat similar architecture though to a somewhat greater scale. The Act provides grants and credit assistance, with significant restrictions on firm financial activity and employee compensation. Similar to the ATSSSA, CARES provides for taxpayer compensation in the form of equity stakes in participating companies. Oversight and administration are somewhat different. Where ATSSSA established a board to oversee credit awards, CARES Act assistance is largely administered by the Treasury – with both internal and congressional oversight.

Grants

The CARES Act includes a significant package of financial assistance for the airlines. The Act provides up to $25 billion in grants to passenger airlines, $4 billion for cargo airlines, and $3 billion for aviation contractors. The Act requires that these funds are to be used for the exclusive purpose of maintaining employee payrolls and are disbursed in amounts equal to the payrolls of receiving firms over the period from April 1 through September 30 of 2019.

Any firm receiving grants must not conduct involuntary furloughs or reductions in pay rates and benefits until September 30, 2020, and must refrain from issuing a dividend or engaging in stock buy-backs until September 30, 2021. Additionally, the Treasury cannot condition financial assistance to induce airlines to renegotiate collective bargaining agreements. Employees of firms reeving grants are subject to caps on compensation. Under the CARES Act, salaries above $425,000 are frozen for two years. Officers or employees making over $3 million last year would also be prohibited from earning more than $3 million plus 50 percent of the amount their compensation last year exceeded $3 million. Severance payments would similarly be restricted to no more than twice the employee's compensation in 2019.

The CARES Act also suspends the collection of aviation-related excise taxes for the remainder of the year. The Joint Committee on Taxation estimates this provision will cost $4 billion.

Credit Assistance

Separately, the CARES Act provides credit assistance to commercial and cargo airlines. The Act authorizes the Secretary of the Treasury to provide $25 billion in loans or loan guarantees to commercial airlines and $4 billion to cargo airlines. Recipients of credit assistance under this provision are subject to similar restrictions as those that apply to grant recipients. The terms (including rates) of these loans are at the Secretary's discretion, provided that the Secretary determines that the recipient is otherwise unable to access credit, the obligation is "prudently incurred," and the loan is secured. Firms receiving credit assistance must not participate in stock buy-backs or issue dividends for the duration of the loan. Borrowers must also maintain employment levels and may not reduce payroll to less than 90 percent of firm employment as of March 24.

Taxpayer Protection

The CARES Act provides that the Secretary of the Treasury may enter into agreements with grantees to receive compensation in the form of warrants, stock, or other instruments to compensate for taxpayer risk. For recipients of credit assistance, the Act *requires* that the Secretary receive equity compensation. Note that after 9/11, airlines receive grants and credit assistance. The U.S. taxpayer ultimately made money on the $1.626 billion in credit assistance received by the airlines.

Oversight

The CARES Act does *not* establish an oversight board in the same vein as was done with ATSSSA, but rather devolves the administration of the program to the Treasury. Ongoing oversight of the program would be exercised by a new Special Inspector General for Pandemic Recovery at the Treasury. Separately, the Act establishes a Congressional Oversight Commission, composed of five members appointed by congressional leaders.

Conclusion

The United States is facing a public health crisis that demands an unprecedented public health response. The

CARES Act provides emergency assistance to vital elements of the economy. The Act mirrors past experience in part but is more restrictive on firm operations during the period of assistance. Conversely, the administration is less formal, with the Treasury Department largely administering the program.