

Statement of Rep. Henry A. Waxman
Air Transportation Safety and System Stabilization Act
October 2, 2001

On September 21, the House passed H.R. 2926, legislation providing billions of dollars of financial relief to the airline industry from the September 11 terrorist attack. Unfortunately, H.R. 2926 was rushed through the legislative process without any independent assessment of the actual losses incurred by air carriers or consideration by the relevant committees. And it was considered on the House floor under a rule that prohibited any amendments and limited debate to one hour.

Although I support the well-meaning intentions that motivated H.R. 2926 and the paramount need to provide aid to the victims of the September 11 tragedies, I oppose this fundamentally flawed bill and want to take a few minutes to explain my reservations.

H.R. 2926 fails to address essential measures, such as airline security and assistance to displaced workers, but includes numerous provisions with cost ramifications that have not been considered carefully. While the bill provides specifically for \$15 billion in relief to the airlines, the final cost of the bill could easily be far higher. Further, the bill establishes a compensation scheme for victims that could commit federal taxpayers to pay more to the families of deceased Wall Street executives than to the families of the firefighters who lost their lives trying to rescue others. This may well be a policy choice that Congress would have ultimately made, but it is not a policy choice or precedent that Congress carefully considered or even debated.

No Provisions to Improve Airline Security

The most important element of an airline relief bill is improving airline security. Unless airline security is improved, any airline bailout may fail. No matter how many billions of taxpayer dollars are given to the airlines, no airline can stay afloat if Americans refrain from flying.

Unfortunately, the bill contains no funding for airline security measures. It also contains no provisions to enhance security, such as making airline security a federal responsibility. The legislation thus does little to assure Americans that flying will be safe again.

The rationale for failing to address airline security is that airline security should remain an airline responsibility and should not be “federalized.” But this is exactly the same reasoning that is responsible for our current, deeply flawed system of airline security. In past years, the airline industry has resisted implementing stringent security measures on the grounds that the costs are prohibitive. As recently as the week following the September 11 attacks, an Alaska Airlines executive testified that he believed Americans would be unwilling to pay a three-dollar surcharge on their airline tickets to fund security measures.

No Support for Displaced Workers

In the aftermath of the September 11 attacks, airlines reportedly have already laid off over 100,000 workers, and some airlines are refusing to honor the standard severance provisions of their labor contracts. H.R. 2926, however, provides no relief whatsoever for these workers and their families. It contains no funds for laid-off workers who now lack health insurance. It contains no assistance for job-training that would help these workers find new employment. And it contains no funds to help support laid-off workers and their families during the search for new employment.

At the same time that the legislation ignores the needs of laid-off workers, the bill protects airline executives who earn millions of dollars in compensation. The legislation provides that to qualify for loans, airlines must freeze current executive compensation at 2000 levels for two years and limit severance pay to twice that amount. This means that airline CEOs can continue to earn astronomical salaries and receive multi-million dollar severance packages.

Airlines do not have to limit executive salaries at all to qualify for the other benefits provided in the legislation, such as the \$5 billion in grants awarded by the bill, the limits on liability, and the potential federal payment of increased airline insurance premiums.

Excessive Relief for the Airline Industry

The airline industry deserves federal support after the September 11 attacks. But I am concerned that the level of relief in the bill may go beyond what is reasonable.

After the September 11 attacks, the Federal Aviation Administration grounded all airplanes for two days and gradually resumed service thereafter. This order caused a cash crunch for the airlines. They could take in no revenue during the shutdown, but remained responsible for many fixed costs. Airlines estimated that these losses amounted to \$330 million per day. The airlines' strongest case is for federal relief to compensate them for this loss. (It should be noted, however, that even without a federal order, the airlines -- which had the primary responsibility for safety -- would have likely halted flights until new safety procedures were in place.)

But the legislation provides many other forms of relief. The rationale for this additional relief is tenuous at best. There was no independent review of the need for these transfers of billions of dollars from federal taxpayers to the airlines.

\$5 Billion in Grants. Under the legislation, \$5 billion in grants are available to the airlines that can be used to offset any future losses between now and the end of the year that are attributable to the attack. Many other types of businesses will have downturns in revenues resulting from the attacks, but only the airline industry is likely to receive this special relief. Moreover, the bill provides minimal guidance on how the airlines are to calculate the losses. For example, the bill leaves open the possibility that an airline could choose to reduce its flights between now and the end of the year, lay off thousands of workers, but still obtain a substantial amount of the profit it would have realized had it flown a full

schedule.

\$10 Billion in Loan Guarantees. The bill also provides \$10 billion in federal loan guarantees. This measure was rushed through the legislative process without a reasoned examination of the need for this component in light of other relief provided by the package. Even the Administration initially opposed inclusion of this measure. In a September 20 hearing before the Senate Banking Committee - just one day before enactment of the bill -- Treasury Secretary Paul H. O'Neill testified that if Congress approved the Administration's \$5 billion grant proposal, "the idea of loan guarantees makes no sense."

Federal Payment of Insurance Premiums. The bill allows the government to pay increases on insurance premiums for the airline industry, as well as for any vendors, agents and subcontractors of airlines, from an existing federal airline insurance fund. The rationale for this provision is difficult to understand, particularly since other provisions in the bill limit airline liability for the September 11 attack and future terrorist attacks. But the costs are potentially enormous, as the provision covers not only airlines, but a broad range of related entities. The existing insurance fund contains only \$83 million, but it is likely that the costs of increased premiums would substantially exceed that amount. Thus, to cover this cost, the federal government would have to appropriate additional money for the insurance fund.

Further, making the federal government responsible for any premium increases provides a disincentive for the insurance industry and the airlines to negotiate low premium costs.

Problematic Victim Compensation Scheme

The legislation contains provisions to provide federal compensation to the victims of the September 11 attacks. I strongly support this humanitarian gesture, but I have questions about the details of the victim compensation scheme, and whether Congress has adequately considered the implications of this provision.

The bill provides that a Special Master should use a tort model to determine the extent of compensation to individuals, basing compensation in part on the "economic" losses suffered, which includes the "loss of earnings or other benefits related to employment" of the victim. This model makes sense when a defendant has been held responsible for a wrongful death. But when the compensation is being provided by the federal taxpayer, it may result in inequities.

As a government, we should not value the life of a Wall Street executive more than the life of a firefighter, secretary, or janitor. But under a strict application of the tort model, Wall Street executives with large incomes would have greater "economic" damages and hence would be entitled to larger federal payments than firefighters, secretaries, or janitors who also lost their lives.

The language in this area of the bill provides the Special Master with some discretion, and I

hope the Special Master will use this discretion to ensure that the victim compensation is administered fairly. But I regret that the haste in which this legislation was put together made refining the victims compensation provisions impossible.

There is a second important question that Congress didn't address: Should the compensation system in this bill be the model for future victims of terrorist acts or natural disasters? Past victims of terrorist attacks have not received the generous compensation amounts H.R. 2926 envisions. Apart from the obvious fairness question of how best to give victims and their families similar compensation, there are cost considerations that Congress did not evaluate if the model in H.R. 2926 is to be used in future cases.

In short, compensation to the victims of the September 11 tragedies is appropriate and important. H.R. 2926, however, fails to thoughtfully address:

- How to allocate compensation among victims killed or injured on September 11;
- Whether past victims of terrorist attacks should be similarly compensated;
- Whether the compensation system will be a model for future victims;
- The estimated aggregate cost of this compensation system;
- How federal compensation will be coordinated with other compensation that the victims and their families will receive from charitable funds and other sources.

Unknown and Potentially Significant Cost Ramifications

In addition to the problems described above, the legislation also has another provision that could end up costing the federal taxpayer billions of dollars. The bill allows the Secretary of Transportation to determine that an air carrier is not liable for claims regarding losses suffered by third parties above \$100 million in the aggregate arising from any terrorist acts that occur in the 180-day period following the enactment of the bill. Where the Secretary makes this certification, the government is responsible for liability above that amount. In the event of another airline-related tragedy or tragedies resulting from terrorist acts, this provision potentially could result in the expenditure of many billions of additional government funds.

Lack of Independent Review

The many substantive problems with the airline relief bill are the result of a defective process. Although the bill commits federal taxpayers to providing tens of billions of dollars in relief, there was no meaningful opportunity for review of the merits of the legislation by independent experts without a stake

in the outcome.

In particular, Congress erred by not adequately involving the General Accounting Office in review of this legislation. Nonpartisan and independent, GAO specializes in evaluating expenditures of federal programs. Yet Congress made no request for a formal GAO analysis before enacting the bill.

Conclusion

H.R. 2926 reflects a commendable and understandable response to a heart-breaking national tragedy. Unfortunately, the process used to draft the legislation prevented the careful review that is needed to ensure the bill is an effective and fair response to terrorist acts.

By omitting any provision dealing with airline security or compensation for displaced workers, this legislation unwisely focuses just on responding to the immediate needs of the major airlines. That need is unquestionably urgent, but addressing it without resolving other urgent problems is a mistake.

H.R. 2926 received so little scrutiny that it's impossible to assess how much the bill will cost federal taxpayers. At a minimum, this legislation will obligate the federal government to provide \$15 billion in financial assistance, but the actual costs could be far higher. And if this bill becomes a model for other affected industries or future victims of terrorist attacks, the total costs could multiply rapidly.

In the aftermath of the September 11 attacks, our nation has learned to put a premium on the value of shared sacrifice.

Shared sacrifice was embodied by the firefighters who charged into the World Trade Center to rescue people they never met and who died in the effort. Shared sacrifice, we're told, is over 100,000 workers losing their jobs in the airline industry, and many being denied promised severance benefits. And shared sacrifice will be exemplified in the commitment of the men and women in our armed services who are being sent into battle.

But under H.R. 2926, we have found there are limits to shared sacrifice. This bill asks for no sacrifices from those who earn millions in the airline industry. To the contrary, it allows airline executives to continue to earn millions of dollars in salary and compensation, while at the same time imposing no new security responsibilities on the airlines and providing no relief to laid-off workers.

That is inexcusable.

Congress and the Bush Administration are going to have to respond to unexpected demands and urgent needs in the coming months. It is essential that our legislative responses be thoughtful, carefully responsive to actual problems, and effective.

Given the haste in which it was considered, H.R. 2926 likely fails these tests. We can do better in future challenges, and we owe it to our nation to do better.