MEMORANDUM

TO: The Commission
FROM: Thomasenia P. Duncan
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SUBJECT: Draft Final Rule on Campaign Travel

December 12, 2007

Attached is a draft Final Rule implementing the new campaign travel provisions of section 601 of Public Law 110-81, the “Honest Leadership and Open Government Act of 2007.” The Explanation and Justification for this rule will be considered separately by the Commission at a later date.

We request that this draft be placed on the agenda for December 14, 2007.

Attachment
Draft

For the reasons set out in the preamble, the Federal Election Commission is
amending subchapters A, E, and F of chapter 1 of title 11 of the Code of Federal
Regulations as follows:

PART 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8), and 439a(c).

2. Section 100.5 is amended by adding a new subparagraph (e)(6) to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

* * * *

(e) The following are examples of political committees:

* * *

(6) Leadership PAC. Leadership PAC means a political committee that is
directly or indirectly established, financed, maintained or controlled by a
candidate for Federal office or an individual holding Federal office but
which is not an authorized committee of the candidate or individual and
which is not affiliated with an authorized committee of the candidate or
individual, except that leadership PAC does not include a political
committee of a political party.

* * * *

3. Section 100.93 is revised to read as follows:

§ 100.93 Travel by aircraftplane or other means of transportation.

(a) Scope and definitions.
(1) This section applies to all campaign travelers who use non-commercial travel.

   (i) An airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135;

   (ii) Other means of transportation not operated for commercial passenger service; or

   (iii) An airplane or other means of transportation operated by a Federal, State, or local government.

(2) Campaign travelers who use commercial travel, an airplane that is licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, or other means of transportation that is operated for commercial passenger service, such as a commercial airline flight, charter flight, taxi, or an automobile provided by a rental company, are governed by 11 CFR 100.52(a) and (d), not this section.

(3) For the purposes of this section:

   (i) Campaign traveler means

      (A) Any candidate traveling in connection with an election for Federal office or any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee; or

      (B) Any member of the news media traveling with a candidate.
(ii) **Service provider** means the owner of an **aircraft** or other conveyance, or a person who leases an **aircraft** or other conveyance from the owner or otherwise obtains a legal right to the use of an **aircraft** or other conveyance, and who uses the **aircraft** or other conveyance to provide transportation to a campaign traveler. For a jointly owned or leased **aircraft** or other conveyance, the service provider is the person who makes the **aircraft** or other conveyance available to the campaign traveler.

(iii) **Unreimbursed value** means the difference between the value of the transportation service provided, as set forth in this section, and the amount of payment for that transportation service by the political committee or campaign traveler to the service provider within the time limits set forth in this section.

(iv) **Commercial travel** means travel aboard:

(A) An aircraft operated by an **air carrier** or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under Federal Aviation Administration air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority, provided that
the flight is required to be conducted under air carrier safety rules; or

(B) Other means of transportation operated for commercial passenger service

(v) Non-commercial travel means travel aboard any conveyance that is not commercial travel, as defined in paragraph (a)(3)(iv) of this section.

(vi) Comparable aircraft means an aircraft of similar make and model as the aircraft that actually makes the trip, with similar amenities as that aircraft.

(b) General rule.

(1) No contribution is made by a service provider to a candidate or political committee if:

(i) Every candidate’s authorized committee, leadership PAC, or other political committee on behalf of which the travel is conducted pays the service provider, within the required time, for the full value of the transportation, as determined in accordance with paragraphs (c), (d), (e) or (g) of this section, provided to all campaign travelers who are traveling on behalf of that candidate or political committee; or

(ii) Every campaign traveler for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of the transportation provided to that campaign traveler.
as determined in accordance with paragraphs (c), (d), (e) or (g) of this section. See 11 CFR 100.79 and 100.139 for treatment of certain unreimbursed transportation expenses incurred by individuals traveling on behalf of candidates, authorized committees, and political committees of political parties, and (iii) Every member of the news media traveling with a candidate for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of his or her transportation as determined in accordance with paragraphs (d) or (e)(2) of this section.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler, as determined in accordance with paragraphs (c), (d) or (e) of this section, is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled.

(3) When a candidate is accompanied by a member of the news media, or by security personnel provided by any Federal or State government, the news media or government security provider may reimburse the political committee paying for the pro-rata share of the travel by the member of the media or security personnel, or may pay the service provider directly for that pro-rata share, up to the applicable amount set forth in paragraphs (c)(1), (c)(3), (d), (e), or (g) of this section. A payment made directly to
the service provider may be subtracted from the amount for which the
political committee is otherwise responsible without any contribution
resulting. No contribution results from reimbursement by the media or a
government security provider to a political committee in accordance with
this paragraph.

(c) Travel by on aircraftplane. When a campaign traveler uses aircraft for non-
commercial travel, other than a government aircraft described in paragraph (c) of this
section or a candidate or family owned aircraft described in paragraph (g) of this section,
reimbursement must be provided no later than seven (7) calendar days after the date the
flight began at one of the following rates to avoid the receipt of an in-kind contribution:

(1) Travel by or on behalf of Senate, presidential, or vice-presidential
candidates. A Senate, presidential, or vice-presidential candidate traveling
on his own behalf, or any person traveling on behalf of such candidate, the
candidate’s authorized committee, or the candidate’s leadership PAC,
must pay the pro rata share per candidate campaign traveler of the normal
and usual charter fare or rental charge for travel on a comparable aircraft
of comparable size. The pro rata share shall be calculated by dividing the
normal and usual charter fare or rental charge by the number of campaign
travelers on the flight that are traveling on behalf of candidates, authorized
committees, or leadership PACs, including members of the news media
and security personnel traveling with a candidate. No portion of the
normal and usual charter fare or rental charge may be attributed to any
non-candidate campaign travelers or any other passengers, except as
permitted under paragraph (b)(3) of this section.

(2) House candidates. Except as otherwise provided in paragraphs (e) and (g)
of this section, a campaign traveler who is a candidate for election for the
office of Representative in, or Delegate or Resident Commissioner to, the
Congress, or a person traveling on behalf of any such candidate or any
authorized committee or leadership PAC of such candidate, is prohibited
from non-commercial travel on behalf of any such candidate or any
authorized committee or leadership PAC of such candidate.

(3) Other campaign travelers. When a candidate’s authorized committee or
Leadership PAC pays for a flight pursuant to paragraph (c)(1) of this
section, no payment is required from other campaign travelers on that
flight. Otherwise, a campaign traveler not covered by paragraphs (c)(1) or
(c)(2) of this section, or the political committee on whose behalf the travel
is conducted, must pay the service provider, no later than seven (7)
calendar days after the date the flight began, the pro rata share per
campaign traveler of the normal and usual charter fare or rental charge for
travel on a comparable aircraft of comparable size. The pro rata share
shall be calculated by dividing the normal and usual charter fare or rental
charge by the number of campaign travelers on the flight.

(d) Other means of transportation. If a campaign traveler uses any means of
transportation other than an aircraft, including an automobile, or train, or boat/helicopter
the campaign traveler, or the political committee on whose behalf the travel is conducted,
must pay the service provider within thirty (30) calendar days after the date of receipt of
the invoice for such travel, but not later than sixty (60) calendar days after the date the
tavel began, at the normal and usual fare or rental charge for a comparable commercial
conveyance of comparable size, of sufficient size to accommodate all campaign travelers,
including members of the news media traveling with a candidate, and security personnel,
if applicable. A comparable commercial conveyance is a conveyance of similar make and
model as the conveyance that actually makes the trip, with similar amenities as that
conveyance.

(c) Government conveyances.

(1) If a campaign traveler uses an aircraft that is provided by the Federal
government, or by a State or local government, the campaign traveler, or
the political committee on whose behalf the travel is conducted, must pay
the governmental entity, within the time specified by that government
entity, either:

(i) The pro rata share per candidate campaign traveler of the normal
and usual charter fare or rental charge for the flight on a
comparable aircraft of sufficient size to accommodate all campaign
travelers. The pro rata share shall be calculated by dividing the
normal and usual charter fare or rental charge by the number of
campaign travelers on the flight that are traveling on behalf of
candidates, authorized committees, or leadership PACs, including
members of the news media and security personnel traveling with a
candidate. No portion of the normal and usual charter fare or
rental charge may be attributed to any non-candidate campaign
travelers or any other passengers, except as permitted under
paragraph (b)(3) of this section. For purposes of this paragraph,
the comparable aircraft need not accommodate any government-
required personnel and equipment; or

(ii) The private traveler reimbursement rate, as specified by the
governmental entity providing the aircraft, per campaign traveler.

(2) If a campaign traveler uses a conveyance, other than an aircraft, plane, that
is provided by the Federal government, or by a State or local government,
the campaign traveler, or the political committee on whose behalf the
travel is conducted, must pay the government entity in accordance with
paragraph (d) of this section.

(f) Date and public availability of payment rate. For purposes of paragraphs (c), (d),
(e), and (g) of this section, the payment rate must be the rate available to the general
public for the dates traveled or within seven (7) calendar days thereof. The payment rate
must be determined by the time the payment is due under paragraph (c), (d), (e) or (g) of
this section.

(g) Aircraft owned or leased by a candidate or a candidate’s immediate family
member.

(1) For non-commercial travel by a candidate, or a person traveling on behalf
of a candidate, on an aircraft owned or leased by that candidate or an
immediate family member of that candidate, the candidate’s authorized
committee must pay:
(i) In the case of travel on an aircraft that is owned or leased under a
shared-ownership or other time-share arrangement, where the
travel does not exceed the candidate's or immediate family
member's proportional share of the ownership interest in the
aircraft, the hourly, mileage, or other applicable rate charged the
candidate, immediate family member, or other service provider for
the costs of the travel; or

(ii) In the case of travel on an aircraft that is owned or leased under a
shared-ownership or other time-share arrangement, where the
tavel does exceed the candidate's or immediate family member's
proportional share of the ownership interest in the aircraft, the rate
specified in paragraph (c) of this section (House candidates are
prohibited from engaging in such travel); or

(iii) In the case of travel on an aircraft that is not owned or leased under
a shared-ownership or other time-share arrangement, the pro rata
share per campaign traveler of the costs associated with the trip.
Associated costs include, but are not limited to, the cost of fuel and
crew, and a proportionate share of maintenance costs.

(2) A candidate, or an immediate family member of the candidate, will be
considered to own or lease an aircraft under paragraph (g)(1) of this
section if the candidate or the immediate family member of the candidate
has an ownership interest in an entity that owns the aircraft, provided that
the entity is not a corporation with publicly traded shares.
(3) A proportional share of the ownership interest in an aircraft means the amount of use to which the candidate or immediate family member is entitled under an ownership or lease agreement. Prior to each flight, the candidate’s committee must obtain a certification from the service provider that the candidate’s planned use of the aircraft will not exceed the candidate’s or immediate family member’s proportional share of use under the ownership or lease agreement. See paragraph (j) of this section for related recordkeeping requirements.

(4) For the purposes of this section, an “immediate family member” of a candidate is the father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law of the candidate.

(e)(h) Preemption. In all respects, State and local laws are preempted with respect to travel in connection with a Federal election to the extent they purport to supplant the rates or timing requirements of 11 CFR 100.93.

(h)(i) Reporting.

(1) In accordance with 11 CFR 104.13, a political committee on whose behalf the unreimbursed travel is conducted must report the receipt of an in-kind contribution and the making of an expenditure under paragraph (b)(2) of this section.

(2) When reporting a disbursement for travel services in accordance with this section, a political committee on whose behalf the travel is conducted must report the actual dates of travel for which the disbursement is made in the "purpose of disbursement" field.
(i)(j) Recordkeeping.

(1) For travel by airplane between cities served by regularly scheduled first-class or coach commercial airline service, or for travel to or from a military base on a government airplane,

(1) For non-commercial travel on aircraft, the candidate or political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model, make and tail number (or other unique identifier for military aircraft) of the aircraft used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The rate for the comparable charter aircraft available in accordance with paragraphs (c), (e) and (f) of this section, including the airline, charter or air taxi operator, and travel service, if any, offering that fare to the public, and the dates on which the rates are based.

(iii) The lowest unrestricted non-discounted airfare available in accordance with paragraphs (c), (e) and (f) of this section, including the airline offering that fare, flight number, travel service, if any, providing that fare, and the dates on which the rates are based.
(iv) Where the travel is aboard an aircraft owned in part by the candidate or an immediate family member of the candidate, the ownership or lease agreement specifying the amount of use of the aircraft corresponding to the candidate's or an immediate family member's ownership interest in the aircraft, as required by paragraph (g)(1)(i) and (ii) and (g)(3) of this section, and the certifications required by paragraph (g)(3) of this section.

(2) For travel by other conveyances, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model and make of the conveyance used;

(ii) An itinerary showing the departure and destination locations and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The commercial fare or rental charge available in accordance with paragraphs (d) and (f) of this section for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers including members of the news media traveling with a candidate, and security personnel, if applicable.
PART 113 – USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN PURPOSES

4. The title of Part 113 is amended to read as follows:

PART 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

5. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

6. Part 113 is amended by adding a new section 113.5 to read as follows:

§ 113.5 Restrictions on use of campaign funds for flights on noncommercial aircraft

(a) Presidential, vice-presidential and Senate candidates. Notwithstanding any other provision of the Act or Commission regulations, a presidential, vice-presidential, or Senate candidate, and any authorized committee or leadership PAC of such candidate, shall not make any expenditure for travel on an aircraft unless the flight is

(1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv); or

(2) Noncommercial travel as provided in 11 CFR 100.93(a)(3)(v), and the pro rata share per candidate campaign traveler of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size, as provided in 11 CFR 100.93(c), is paid by the candidate, the authorized committee, or other political committee on whose behalf the travel is conducted, to the owner, lessee, or other person who provides the aircraft within seven calendar days after the date the flight began, except as provided in 11 CFR 100.93(b)(3).
(b) House candidates. Notwithstanding any other provision of the Act or Commission
regulations, a candidate for the office of Representative in, or Delegate or Resident
Commissioner to, the Congress, and any authorized committee or leadership PAC of such
candidate, shall not make any expenditures, or receive any in-kind contribution, for travel
on an aircraft unless the flight is

(1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv); or

(2) Provided by the Federal government or by a State or local government.

(c) Exception for aircraft owned or leased by candidates and immediate family members
of candidates.

(1) Paragraphs (a) and (b) of this section do not apply to flights on aircraft
owned or leased by the candidate, or by an immediate family member of
the candidate, provided that the candidate does not use the aircraft more
than the candidate’s or immediate family member’s proportional share of
ownership, as defined by 11 CFR 100.93(g)(3), allows.

(2) A candidate, or an immediate family member of the candidate, will be
considered to own or lease an aircraft under the conditions described in 11
CFR 100.93(g)(2).

(3) An “immediate family member” is defined in 11 CFR 100.93(g)(4).

(d) In-kind contribution. Except as provided in 11 CFR 100.79, the unreimbursed value
of transportation provided to any campaign traveler is an in-kind contribution from the
service provider to the candidate or political committee on whose behalf, or with whom,
the campaign traveler traveled. Such contributions are subject to the reporting
requirements, limitations and prohibitions of the Act.
PART 9004 – ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS;

USE OF PAYMENTS

7. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

8. Section 9004.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9004.7 Allocation of travel expenditures.

* * * *

(b) * * *

(5) (i) If any individual, including a candidate, uses a government aircraft to campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the applicable rate set forth in 11 CFR 100.93(e).

* * *

(iii) If any individual, including a candidate, uses a government conveyance, other than an aircraft, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

* * *
(v) For travel by aircraft, the committee shall maintain documentation of the lowest unrestricted non-discounted airfare as required by 11 CFR 100.93(i)(1) or (2) (i)(1) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3)(i)(2) in addition to any other documentation required in this section.

* * * * *

(8) Non-commercial travel, as defined in 11 CFR 100.93(a)(3)(v), on aircraft not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, government conveyances, and travel on other means of transportation not operated for commercial passenger service, is governed by 11 CFR 100.93.

PART 9034 – ENTITLEMENTS

9. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

10. Section 9034.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9034.7 Allocation of travel expenditures.

* * * * *
If any individual, including a candidate, uses a government aircraft for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(e).

If any individual, including a candidate, uses a government conveyance, other than an aircraft, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

For travel by aircraft, the committee shall maintain documentation of the lowest unrestricted non-discounted airfare as required by 11 CFR 100.93(i)(1) or (2)(i)(1) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3)(i)(2) in addition to any other documentation required in this section.

Non-commercial Travel on aircraft not licensed by the Federal Aviation Administration to operate for compensation or hire under 14
CFR parts 121, 129, or 135, government conveyances, and travel on other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

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Robert D. Lenhard
Chairman
Federal Election Commission

DATED: ________________
BILLING CODE: 6715-01-P