



FEDERAL ELECTION COMMISSION  
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MEMORANDUM

**AGENDA ITEM**  
For Meeting of: 11-19-09

**TO:** The Commission

**FROM:** Thomasenia P. Duncan *JPD*  
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**SUBJECT:** Alternative Draft Final Rules and Explanation and Justification on  
Campaign Travel

**SUBMITTED LATE**

Attached is an alternative draft Final Rules and Explanation and Justification implementing the campaign travel provisions of section 601 of Public Law 110-81, the "Honest Leadership and Open Government Act of 2007."

We have been asked to place this draft on the agenda for November 19, 2009.

Attachment

**FEDERAL ELECTION COMMISSION**

**11 CFR Parts 100, 113, 9004, 9034**

**[Notice 2009 - XXXXX]**

**Campaign Travel**

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is promulgating new and revised rules implementing the provision of the Honest Leadership and Open Government Act governing non-commercial campaign travel on aircraft. These changes restrict, and in some situations prohibit, Federal candidates and certain political committees from expending campaign funds for non-commercial air travel. The rules apply to all Federal candidates, including publicly funded presidential candidates, and other individuals traveling on behalf of candidates, political party committees, and other political committees, where the travel is in connection with Federal elections. Further information is provided in the supplementary information that follows.

**DATES:** The effective date for the revisions to 11 CFR parts 100, 113 and 9034 is [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Further action on revisions to 11 CFR part 9004, including the publication of a document in the Federal Register announcing an effective date,

1 will be taken after these regulations have been before Congress for  
2 30 legislative days pursuant to 26 U.S.C. 9009(c).

3 **FOR FURTHER**  
4 **INFORMATION**  
5 **CONTACT:**

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6 Blume, Attorney, or Ms. Joanna S. Waldstreicher, Attorney, 999 E  
7 Street N.W., Washington, DC 20463, (202) 694-1650 or (800)  
8 424-9530.

9 **SUPPLEMENTARY**

10 **INFORMATION:** The Commission is promulgating several changes to its rules in  
11 order to implement section 601 of Pub. L. No. 110-81, 121 Stat. 735, the “Honest  
12 Leadership and Open Government Act of 2007” (“HLOGA”). This provision of HLOGA  
13 became effective upon enactment on September 14, 2007. HLOGA amended the Federal  
14 Election Campaign Act of 1971, as amended (2 U.S.C. 431 et seq.) (“the Act”) by  
15 restricting, and in some cases prohibiting, the expenditure of campaign funds by  
16 candidates for Federal office for non-commercial travel aboard aircraft. See 2 U.S.C.  
17 439a(c).

18 The Commission is implementing this provision of HLOGA by adding new  
19 section 113.5 to 11 CFR Part 113, which governs the expenditure of campaign funds by  
20 candidates for Federal office and their authorized political committees. In addition, the  
21 Commission is promulgating revisions to 11 CFR 100.93, which establishes an exception  
22 to the definition of “contribution” for non-commercial travel aboard aircraft by, or on  
23 behalf of, Federal candidates and political committees, if the candidates and political  
24 committees reimburse the service providers at specified rates. The revisions to 11 CFR  
25 100.93 apply to campaign travel by, or on behalf of, candidates for Federal office or

1 leadership PACs of House candidates. As discussed below, the rules leave in place the  
2 required reimbursement rate structure imposed under the Commission’s 2003 rules for  
3 travel by persons on behalf of other political committees, such as the staff of a political  
4 party committee, a nonconnected political committee, or a leadership PAC of a Senate or  
5 Presidential candidate. The revisions to 11 CFR 100.93 are also incorporated by  
6 reference into the Commission’s rules governing travel by publicly funded presidential  
7 candidates. The changes in these final rules, however, do not substantively alter the  
8 Commission’s treatment of travel by means of transportation other than aircraft, or of  
9 travel aboard commercial airliners or charter flights.

10

11 The Notice of Proposed Rulemaking (“NPRM”) on which these final rules are  
12 based was published in the Federal Register on October 23, 2007. 72 FR 59953 (October  
13 23, 2007). The comment period closed on November 13, 2007. The Commission  
14 received eight comments from eleven commenters.<sup>1</sup> The comments are available at  
15 [http://www.fec.gov/law/law\\_rulemakings.shtml#travel07](http://www.fec.gov/law/law_rulemakings.shtml#travel07). Because no commenters  
16 requested the opportunity to testify, the Commission did not hold a hearing on this  
17 rulemaking.

18 Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional  
19 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules  
20 to the Speaker of the House of Representatives and the President of the Senate, and  
21 publish them in the Federal Register at least thirty calendar days before they take effect.  
22 In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the

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<sup>1</sup> These comments included a written comment from the Internal Revenue Service stating that it did not find any conflict between its regulations and the Commission’s proposed rules.

1 Commission to carry out the provisions of the Presidential Election Campaign Fund Act  
2 be transmitted to the Speaker of the House of Representatives and the President of the  
3 Senate thirty legislative days before they are finally promulgated. The final rules that  
4 follow were transmitted to Congress on \_\_\_\_\_.

5

## 6 **Explanation and Justification**

### 7 **I. Background**

#### 8 **A. Statutory and Regulatory Framework**

9 The Act defines a “contribution” to include “any gift, subscription, loan, advance,  
10 or deposit of money or anything of value made by any person for the purpose of  
11 influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i); see also 11 CFR  
12 100.52(a). The phrase “anything of value” encompasses “the provision of any goods or  
13 services without charge or at a charge that is less than the normal and usual charge for  
14 such goods or services.” 11 CFR 100.52(d)(1). When goods or services are provided at  
15 less than the usual and normal charge, “the amount of the in-kind contribution is the  
16 difference between the usual and normal charge for the goods or services at the time of  
17 the contribution and the amount charged the political committee.” Id.

18 As a result, candidates who travel aboard a commercial airliner or other  
19 conveyance for which a fee is normally charged must pay the usual and normal charge  
20 for that service to avoid receiving an in-kind contribution from the person providing the  
21 travel service. Such in-kind contributions would be prohibited if provided by certain  
22 entities, including corporations, labor organizations, Federal contractors, and foreign  
23 nationals. See 2 U.S.C. 441b, 441c, and 441e; 11 CFR 110.20, 114.2(b), and 115.2. If

1 the in-kind contributions are from permissible sources, they nevertheless would be  
2 subject to the contribution limits of the Act and Commission regulations. See 2 U.S.C.  
3 441a through 441k; 11 CFR Parts 110, 114, and 115.

4 1. Promulgation of 11 CFR 100.93 in 2003 – Payment for non-commercial travel

5 The usual and normal charge for travel aboard a commercial aircraft is the  
6 publicly available price for a ticket, and the usual and normal charge for a chartered  
7 aircraft is the publicly available charter or lease rate. The usual and normal charge for  
8 travel aboard a non-commercial flight, however, may not be as apparent. For example,  
9 there is generally not a ticket price for a seat aboard a non-commercial aircraft that may  
10 be operated primarily for the travel of the owner and invited guests. Because candidates  
11 for Federal office traveled on these privately operated aircraft, the Commission’s  
12 regulations provided specific guidance about the rate of reimbursement that candidates  
13 and others had to pay to avoid receiving an excessive or a prohibited in-kind contribution  
14 for travel aboard such aircraft.

15 On December 15, 2003, the Commission promulgated final rules adding 11 CFR  
16 100.93. See Final Rules and Explanation and Justification for Travel on Behalf of  
17 Candidates and Political Committees, 68 FR 69,583 (Dec. 15, 2003) (“2003 travel rules”  
18 or “2003 E&J”). The 2003 travel rules established an exception from the definition of  
19 “contribution” for payments at specified rates for non-commercial travel in connection  
20 with a Federal election. Under the 2003 travel rules, the payment required for non-  
21 commercial air travel varied among the first-class, coach, or charter rate, depending on  
22 whether the travel occurred between cities served by regularly scheduled commercial

1 airline service, and whether that service was available at a first-class or coach rate. See  
2 former 11 CFR 100.93(a)(3)(i) and (c).

3 2. Revisions in 2003 to 11 CFR 9004.7 and 9034.7 – Travel by presidential and  
4 vice-presidential candidates accepting public funds

5 Candidates in the presidential primary elections may qualify to receive partial  
6 public funding in the form of matching payments from the Federal government.

7 Additionally, presidential general election candidates may qualify to receive outright  
8 grants of public funds. In both cases, the presidential candidates must agree, among other  
9 things, to use the public funds they receive solely for “qualified campaign expenses” and  
10 not to exceed specified expenditure limits. 2 U.S.C. 441a(b)(1)(A) and (B); 26 U.S.C.  
11 9003(b) and (c), 9033(b).

12 As part of the 2003 travel rules, the Commission promulgated separate regulations  
13 at 11 CFR 9004.7(b)(5)(i) and (v) and (b)(8), and 9034.7(b)(5)(i) and (v) and (b)(8),  
14 setting forth the appropriate reimbursement rates that publicly funded candidates must  
15 use for campaign-related travel on non-commercial transportation. While 11 CFR 100.93  
16 treats the underpayment for travel as an in-kind contribution, 11 CFR 9004.7 and 9034.7  
17 address the extent to which payments for campaign-related travel constitute “qualified  
18 campaign expenses.” The 2003 travel rules revised the rates and recordkeeping  
19 requirements for presidential and vice-presidential candidates accepting public funds to  
20 conform them to the new rates in 11 CFR 100.93.

21

1     **II.     Revisions to 2 U.S.C. 439a – Use of Campaign Funds**

2             HLOGA amended the Act to prohibit House candidates, their authorized  
3 committees, and their leadership PACs<sup>2</sup> from making any expenditure<sup>3</sup> for non-  
4 commercial travel on aircraft, with an exception for travel on government-operated  
5 aircraft and aircraft owned or leased by a candidate or an immediate family member of  
6 the candidate. See 2 U.S.C. 439a(c)(2) and (3). HLOGA also specified new  
7 reimbursement rates that presidential, vice-presidential, and Senate candidates must pay  
8 for non-commercial campaign travel on aircraft. See 2 U.S.C. 439a(c)(1). The  
9 reimbursement rates for these types of travel differ from those contained in the  
10 Commission’s 2003 travel rules, which addressed non-commercial travel on aircraft by  
11 all political committees, including political party committees, separate segregated funds,  
12 nonconnected political committees, and other political committees. HLOGA did not,  
13 however, affect campaign travel on commercial flights, which all candidates must still  
14 reimburse at the “usual and normal charge.” See 11 CFR 100.52(a) and (d) and 11 CFR  
15 100.93(a)(2).  
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<sup>2</sup> The NPRM proposed a definition of “leadership PAC” to implement section 204(a) of HLOGA (2 U.S.C. 434(i)(8)(B)). The Commission subsequently adopted a definition of “leadership PAC” at 11 CFR 100.5(e)(6) as part of a separate rulemaking governing the reporting of contributions bundled by lobbyists, registrants and the PACs of lobbyists and registrants. *See* Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants, 74 Fed. Reg. 7285, 7286 (Feb. 17, 2009). This definition became effective on March 19, 2009. Accordingly, the definition of “leadership PAC” is not addressed in these final rules.

<sup>3</sup> An “expenditure” includes any payment “made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. 431(9)(A)(i).

1 **III. Revisions to 11 CFR 100.93 – Travel By Aircraft or Other Means of**  
2 **Transportation**

3 The Commission is amending 11 CFR 100.93 to implement HLOGA’s provisions  
4 requiring candidates and certain political committees to pay for non-commercial air travel  
5 at a specified rate to avoid the receipt of an excessive or a prohibited in-kind  
6 contribution.<sup>4</sup>

7 The Commission is otherwise retaining 11 CFR 100.93 intact, except as identified  
8 below. The explanations for the purpose and provisions of 11 CFR 100.93 were set out  
9 in the 2003 E&J and continue to apply unless addressed in the following discussion. In  
10 the NPRM, the Commission sought comments on the overall structure of 11 CFR 100.93.  
11 None of the commenters called for a change in the structure or general function of the  
12 section.

13 **A. 100.93(a) – Scope and Definitions**

14 The Commission is changing the scope and definitions in 11 CFR 100.93(a) as  
15 noted below. First, for internal consistency, the Commission is replacing all references to  
16 “airplanes” in 11 CFR 100.93 with the term “aircraft.” HLOGA uses the term “aircraft,”  
17 which the Federal Aviation Authority (FAA) defines as “a device that is used or intended

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<sup>4</sup> The intent of section 601 of HLOGA was frequently characterized by its sponsors as an effort to end subsidization of air travel provided by corporations and others to candidates, and thereby reduce the potential for corruption or the appearance thereof. See, e.g., 153 Cong. Rec. S263 (daily ed. Jan. 1, 2007) (statement of Sen. Obama)(“It would be one thing if Congressmen and Senators paid the full rate for these flights, but we don’t”); 153 Cong. Rec. S267 (daily ed. Jan. 9, 2007) (statement of Sen. Feingold)(“Any legislation on corporate jets must include campaign trips as well as official travel because one thing is for certain – the lobbyist for the company that provides the jet is likely to be on the flight, whether it is taking you to see a factory back home or a fundraiser for your campaign.”); 153 Cong. Rec. S320 (daily ed. Jan. 10, 2007) (statement of Sen. Lieberman)(“When a Member of Congress or a candidate for Federal office uses a private plane, the ethics rules, as well as the Federal Election Commission rules, require payment to the owner of the plane equivalent to a first-class commercial ticket... The Reid amendment would eliminate that loophole...”); 153 Cong. Rec. S10692 (daily ed. Aug. 2, 2007) (statement of then Sen. Obama).

1 to be used for flight in the air.” 14 CFR 1.1. The term “aircraft” includes helicopters,  
2 which the Commission’s 2003 travel rules had grouped with buses and conveyances other  
3 than airplanes. See former 11 CFR 100.93(a)(3)(ii) (definition of “service provider”  
4 focuses on “person who makes the airplane or other conveyance available”), former 11  
5 CFR 100.93(c) (“travel by airplane”) and 11 CFR 100.93(d) (“other means of  
6 transportation” includes “any other means of transportation” and specifically lists  
7 helicopters). The primary impact of these changes is that travel aboard a helicopter now  
8 would be reimbursed at the rate required in 11 CFR 100.93(c) (aircraft), rather than (d)  
9 (other conveyances), which was the case under the 2003 travel rules, as discussed below.

10 1. 11 CFR 100.93(a)(1) and (2) – Scope of 11 CFR 100.93

11 The rule at 11 CFR 100.93 is intended to establish reimbursement rates for “non-  
12 commercial travel” in the absence of a usual and normal charge. 11 CFR 100.93(a)(1).  
13 When a usual and normal charge is readily ascertainable, such as a specified fee by route,  
14 mileage, or date and time of use, the travel is generally considered “commercial travel”  
15 and the usual and normal charge must be paid to avoid receiving an in-kind contribution.  
16 See 11 CFR 100.93(a)(2) and 11 CFR 100.52(d)(1).

17 The Commission’s 2003 travel rules distinguished between commercial and non-  
18 commercial air travel based on the certification system of the Federal Aviation  
19 Administration (FAA). Specifically, the Commission’s 2003 travel rules applied to all  
20 airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR  
21 parts 121, 129, or 135. See former 11 CFR 100.93(a)(1)(i).

22 HLOGA accomplishes the same result without explicit reference to specific FAA  
23 regulatory provisions. In order to simplify and align the Commission’s regulations with

1 HLOGA, the Commission is replacing its reliance on specific FAA regulatory provisions  
2 with the new terms “commercial travel” and “non-commercial travel,” which are defined  
3 in new 11 CFR 100.93(a)(3)(iv) and (v) and explained below. None of the commenters  
4 opposed this change.

5 2. 11 CFR 100.93(a)(3)(i) – Definition of “campaign traveler”

6 The Commission also is making a change to the definition of “campaign traveler”  
7 in 11 CFR 100.93(a)(3) to clarify that the term encompasses not only persons traveling  
8 on behalf of a candidate, but also candidates who travel on behalf of their own  
9 campaigns. In the NPRM, the Commission proposed amending the definition of  
10 “campaign traveler” to include “[a]ny candidate for Federal office,” as well as “any  
11 individual traveling in connection with an election for Federal office on behalf of a  
12 candidate or political committee” and “[a]ny member of the news media traveling with a  
13 candidate.” See proposed 11 CFR 100.93(a)(3)(i). The Commission received one  
14 comment in support of the proposed change, and no comments in opposition.

15 The Commission is adopting the proposed change along with one further revision  
16 to clarify that a candidate is a “campaign traveler” only when “traveling in connection  
17 with an election for Federal office.” The term “campaign traveler” in revised 11 CFR  
18 100.93 does not include Members of Congress when they engage in official travel, or  
19 candidates when they engage in personal travel or any other travel that is not in  
20 connection with an election for Federal office. Security personnel, including  
21 government-provided security personnel (such as the Secret Service), shall be treated as  
22 campaign travelers when traveling in connection with a Federal election on behalf of a  
23 candidate or a political committee. However, government-provided security personnel

1 are not included when determining a “comparable aircraft of sufficient size to  
2 accommodate all campaign travelers” under 11 CFR 100.93(e)(1)(i), as discussed below.

3 3. 11 CFR 100.93(a)(3)(iv) and (v) – Definitions of “commercial travel” and  
4 “non-commercial travel”

5 The definition of “commercial travel” in new 11 CFR 100.93(a)(3)(iv)(A)  
6 corresponds to the new statutory language of HLOGA: travel aboard an aircraft  
7 “operated by an air carrier or commercial operator certificated by the Federal Aviation  
8 Administration and the flight is required to be conducted under air carrier safety rules, or,  
9 in the case of travel which is abroad, by an air carrier or commercial operator certificated  
10 by an appropriate foreign civil aviation authority and the flight is required to be  
11 conducted under air carrier safety rules.”<sup>5</sup> 2 U.S.C. 439a(c)(1) and (2). The definition of  
12 “non-commercial travel” in 11 CFR 100.93(a)(3)(v) encompasses all air travel not  
13 included in the definition of “commercial travel.” These definitions are unchanged from  
14 the NPRM.

15 One comment addressed these definitions, supporting both. The Commission did  
16 not receive any comments identifying a difference between the universe of aircraft  
17 encompassed by the new term “non-commercial travel” and the aircraft included in  
18 former 11 CFR 100.93(c) (“an airplane not licensed by the Federal Aviation  
19 Administration to operate for compensation or hire under 14 CFR parts 121, 129, or  
20 135”).

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<sup>5</sup> Both “air carrier” and “commercial operator” are terms of art defined in FAA regulations. See 14 CFR 1.1. An “air carrier” is “a person who undertakes directly by lease or other arrangement to engage in air transportation.” A “commercial operator” is “a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property other than as an air carrier or foreign air carrier or under part 375.” The Federal Aviation Administration’s (“FAA”) air carrier safety rules are contained in 14 CFR parts 121 (large airplanes) and 135 (smaller airplanes and other aircraft).

1           The Commission is defining “commercial travel” with respect to conveyances  
2 other than aircraft as “other means of transportation operated for commercial passenger  
3 service.” 11 CFR 100.93(a)(3)(iv)(B). This definition is unchanged from the proposed  
4 rule. The Commission did not receive any comments on this proposed definition.

5           The Commission also did not receive any comments on whether the definitions of  
6 “commercial travel” and “non-commercial travel” should specifically address the  
7 treatment of aircraft operated under complex multiple ownership or leasing arrangements,  
8 such as arrangements in which some of the owners of an aircraft are commercial  
9 operators certificated by the FAA but others are not. The Commission has decided not to  
10 address this issue in the final rule’s definitions because the Commission expects that the  
11 structure of the final rule will eliminate any potential for confusion arising from complex  
12 ownership arrangements. The final rule focuses on the operator of the aircraft at the time  
13 of a given flight and whether that particular flight is subject to the applicable FAA safety  
14 standards, rather than the owners, service providers, or prior uses of the aircraft as in  
15 former 11 CFR 100.93. Multiple ownership arrangements for aircraft owned or leased by  
16 a candidate or a candidate’s immediate family member through a multiple-ownership  
17 arrangement are addressed in 11 CFR 100.93(g), discussed below.

#### 18           4. 11 CFR 100.93(a)(3)(vi) – Definition of “comparable aircraft”

19           HLOGA Section 601(a) requires reimbursement of fair market value for flights  
20 described within that section based on the charter rate for a “comparable plane of  
21 comparable size” to the one actually flown. 2 U.S.C. 439a(c)(1)(B). The Commission  
22 interprets the term “comparable plane of comparable size” to mean an aircraft with  
23 similar physical dimensions to the aircraft actually flown and that is able to carry a

1 similar number of passengers. The Commission recognizes, however, that there is no  
2 “comparable plane” for a helicopter and is, instead, construing the statute to require a  
3 comparison of similar types of aircraft (i.e., compare a helicopter to a helicopter).  
4 Accordingly, the Commission has defined the term “comparable aircraft” in new 11 CFR  
5 100.93(a)(3)(vi) as “an aircraft of similar make and model as the aircraft that actually  
6 makes the trip, with similar amenities as that aircraft.” See new 11 CFR 100.93(a)(3)(vi).

7 This interpretation is consistent with the Commission’s interpretation of a  
8 similar term, “comparable commercial airplane,” in its 2003 travel rules, as explained in  
9 the 2003 E&J. See 2003 E&J at 69588-589. The definition is also consistent with  
10 advisory opinions issued prior to the 2003 travel rules. For example, in Advisory  
11 Opinion 1984-48 (Hunt), when applying the then-operative term of a “comparable  
12 commercial conveyance” to an airplane, the Commission interpreted a “comparable”  
13 airplane as being of the same “type (e.g., jet aircraft versus prop plane) and services  
14 offered (e.g., plane with dining service or lavatory versus one without)” as the plane  
15 actually used. Therefore, if a candidate used a twin engine prop jet, a single engine prop  
16 aircraft would not be a comparable aircraft. The new term “comparable aircraft” is  
17 intended to require consideration of these distinctions as well as other differences, such as  
18 whether a plane is chartered with or without a crew, or with or without fuel.

19 B. 11 CFR 100.93(b) – Reimbursement of Service Provider Required to Avoid the  
20 Receipt of a Contribution

21 Paragraphs (b)(1) and (b)(2) of section 100.93 require a campaign traveler, or the  
22 political committee on whose behalf the travel occurred, to reimburse the provider of the

1 aircraft or other conveyance at the applicable rate specified in 11 CFR 100.93(c), (d), (e),  
2 or (g) to avoid receipt of an excessive or prohibited in-kind contribution.

3 As explained further below, travel on non-commercial aircraft by candidates for  
4 election for the office of Representative in, or Delegate or Resident Commissioner to, the  
5 Congress (“House candidates”), or a person traveling on behalf of any such candidate or  
6 any authorized committee or leadership PAC of such candidate, is generally prohibited  
7 (see 11 CFR 100.93(c)(2)) and cannot be accepted as an in-kind contribution or be  
8 reimbursed from campaign funds (see 11 CFR 113.5).

9 The Commission is also renumbering former paragraph (b)(1)(iii) as paragraph  
10 (b)(3) and revising it to permit members of the news media and government-provided  
11 security personnel traveling with a candidate to reimburse the political committee or to  
12 pay the service provider directly for their pro rata share of the travel. Ultimately it is the  
13 candidate committee’s exclusive responsibility to ensure that the service provider is  
14 reimbursed for the value of the transportation provided to all persons traveling with the  
15 candidate; however, allowing members of the news media to reimburse the political  
16 committee or to pay the service provider directly is consistent with former 11 CFR  
17 100.93 and takes into account the variety of billing practices that have been used by  
18 members of the media to pay for their travel. See 2003 E&J at 69586. See also 11 CFR  
19 9004.6 and 9034.6.<sup>6</sup>

20 Like members of the news media, a Federal or State government provider of  
21 security personnel traveling with a candidate, such as the Secret Service and national  
22 security staff, also may reimburse the political committee paying for the security

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<sup>6</sup> To the extent that any portion of 11 CFR 9004.6 or 9034.6 is inconsistent with 11 CFR 100.93, section 100.93 governs.

1 personnel's portion of the travel expenses. See, e.g., Advisory Opinion 1992-38  
2 (Clinton/Gore) (loan proposal premised on the obligation of the Secret Service to provide  
3 reimbursement); see also 11 CFR 9004.6 and 9034.6. Under the revised rule, the  
4 government security provider therefore may pay the service provider directly or  
5 reimburse the political committee paying for the travel. In either case, members of the  
6 news media or the government provider of security must not pay more than their pro rata  
7 share of the travel costs, as determined in accordance with 11 CFR 100.93(c), (d), (e), or  
8 (g).

9           There is no indication that Congress was concerned about news media or  
10 government-provided security personnel paying for their own travel when traveling with  
11 Federal candidates or officeholders. Unlike when a corporation or political committee  
12 provides free or reduced travel services to a candidate, the reimbursement by news media  
13 or government-provided security personnel for their own travel does not implicate the  
14 goals of the Act in deterring corruption or the appearance of corruption. Moreover, a  
15 candidate may have little or no control over whether to be accompanied by government-  
16 provided security personnel. Finally, although several commenters urged the  
17 Commission to prohibit political committees from paying any portion of the cost of a  
18 Federal candidate's flight, none of the commenters indicated that payments by the news  
19 media or government entities would pose the same dangers of corruption or the  
20 appearance of corruption, or that the news media and government security providers  
21 should be prohibited from paying for their own travel, particularly when paying the same  
22 rate as others on the aircraft. Although the rule proposed in the NPRM would have  
23 prohibited any form of payment by the news media, the Commission sees no compelling

1 reason to deviate from its longstanding policy of permitting the news media and  
2 government-provided security personnel to pay for their pro rata share of the fair market  
3 value of the travel.

4 C. 11 CFR 100.93(c)(1) – Non-Commercial Air Travel by or on Behalf of  
5 Candidates for President, Vice-President, and U.S. Senate

6 HLOGA requires candidates for President, Vice President, and the U.S. Senate to  
7 pay their “pro rata share of the fair market value” of non-commercial flights aboard  
8 aircraft. The pro rata share is “determined by dividing the fair market value of the  
9 normal and usual charter fare or rental charge for a comparable plane of comparable size  
10 by the number of candidates on the flight.” 2 U.S.C. 439a(c)(1)(B) (emphasis added).

11 Accordingly, new 11 CFR 100.93(c)(1) requires that the entire charter rate for a  
12 comparable aircraft of comparable size be divided among the candidates aboard the  
13 flight, or their representatives, as proposed in the NPRM.

14 All of the commenters who addressed this topic supported the requirement  
15 that presidential, vice-presidential, and Senate candidates pay the entire charter  
16 cost, rather than allowing other political committees or non-campaign travelers to  
17 pay for their own portion of the flight.

18 The final rule differs from the proposed rule only in that under the final  
19 rule the cost of the flight is split among candidates based on the number of  
20 campaign travelers flying on behalf of each candidate, rather than split evenly  
21 among the candidates as proposed in the NPRM. 72 FR at 59956. The new rule  
22 therefore provides a more accurate reflection of the proportion of the benefit  
23 derived from the flight by each candidate, while still requiring presidential, vice-

1 presidential, and Senate candidates to pay the entire charter cost. For example, if  
2 Senate Candidate A is traveling with two campaign staffers, and Senate Candidate  
3 B is also traveling on the aircraft, and each candidate is traveling on behalf of his  
4 or her own campaign, then Candidate A would pay three-fourths of the charter  
5 fare and Candidate B would pay one-fourth.

6 This result is also consistent with the comment submitted by two of the  
7 sponsors of HLOGA, Senators Feingold and Obama, who suggested that the cost  
8 of the flight be split among candidates in proportion to the benefit derived by each  
9 campaign. The Senators stated that this approach would be consistent with the  
10 payment for air travel required under the Senate Ethics Rules. See Standing Rules  
11 of the Senate, Rule XXXV, Paragraph 1(c)(1)(C)(i).

12 Under new 11 CFR 100.93(c)(1), the “pro rata share” is calculated based on the  
13 number of candidates represented on a flight, regardless of whether the individual  
14 candidate is present on the flight. This provision is consistent with HLOGA, which limits  
15 expenditures for non-commercial air travel by presidential, vice-presidential, and Senate  
16 candidates, and their authorized committees. A candidate is represented on a flight if a  
17 person is traveling on behalf of that candidate or the candidate’s authorized committee.  
18 See 11 CFR 100.93(c)(1). Thus, for example, if Senate Candidate A travels with the  
19 campaign manager of Senate Candidate B, but Candidate B does not travel, then the two  
20 Senate candidates must nonetheless each pay half of the charter rate. Candidate B’s  
21 committee receives the same benefit from the travel by its staff as if Candidate B had  
22 taken the flight. This result is the same as proposed in the NPRM, which was supported  
23 by all of the commenters addressing this aspect of the proposed rule.

1 Under new 11 CFR 100.93(c)(1), when a presidential, vice-presidential, or Senate  
2 candidate, or a representative of the candidate, is traveling on behalf of another political  
3 committee (such as a political party committee or Senate leadership PAC), rather than on  
4 behalf of the candidate's own authorized committee, the reimbursement for that travel is  
5 the responsibility of the political committee on whose behalf the travel occurs. If the  
6 political committee is other than an authorized committee or House candidate's  
7 leadership PAC, then the appropriate reimbursement rate for that political committee is  
8 set forth in new 11 CFR 100.93(c)(3), discussed below. In such cases, the presidential,  
9 vice-presidential, or Senate candidate, or candidate's representative, is treated the same as  
10 any other person traveling on behalf of the political committee.<sup>7</sup>

11 The reimbursement rates for travel aboard government-operated aircraft or  
12 aircraft owned by a candidate or a member of a candidate's immediate family, are treated  
13 separately in paragraphs (e) and (g) of 11 CFR 100.93, as discussed below. See  
14 subsections H and I.

## 15 2. Alternatives not adopted

16 In the NPRM, the Commission sought comment on three alternative  
17 methodologies for calculating the appropriate reimbursement rate for travel by  
18 presidential, vice-presidential, or Senate candidates and their representatives.

19 First, the NPRM included several variations of a "per committee" alternative that  
20 would have required reimbursement based on the number of represented committees of

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<sup>7</sup> One commenter asked the Commission to address a hypothetical scenario in which the chairman of a political party committee and a Senate candidate both travel aboard a non-commercial aircraft to a political party committee fundraiser. In response to this request, the Commission notes that because the candidate would be traveling on behalf of the political party committee, that individual's status as a candidate would be irrelevant. Therefore, the political party committee would pay for the candidate's portion of the travel. See 11 CFR 100.93(c)(3).

1 any type, rather than the number of represented candidates or candidate committees.

2 Second, a “per passenger” alternative would have required candidates to reimburse the  
3 service provider for only that portion of the normal and usual charter rate which reflected  
4 the number of candidate representatives as a percentage of all passengers on the aircraft.

5 Third, a “comparable aircraft” alternative would have followed the approach in the  
6 Commission’s 2003 travel rules by permitting reimbursement at the normal and usual  
7 charter rate or rental charge for an aircraft of sufficient size to carry all of the campaign  
8 travelers on the flight. See former 11 CFR 100.93(c)(3) (requiring reimbursement of “the  
9 normal and usual charter fare or rental charge for a comparable commercial airplane of  
10 sufficient size to accommodate all campaign travelers”).

11 The Commission has decided not to adopt any of the alternative methodologies  
12 proposed in the NPRM. The Commission believes that the methodology in the final rule  
13 described above is most consistent with the language of HLOGA. Moreover, the  
14 Commission believes that the proposed alternative methodologies might have lent  
15 themselves to manipulation, with the result that corporations, political committees, and  
16 others could provide a benefit to the candidate or political committee on whose behalf the  
17 travel was undertaken by allowing the candidate or political committee to pay less than  
18 its pro rata share of the charter rate. Most of the commenters agreed that the proposed  
19 alternative methodologies were inconsistent with the intent of HLOGA.

20 One commenter proposed an alternative based on the “comparable aircraft”  
21 alternative proposed in the NPRM. This alternative would have followed the approach in  
22 the Commission’s 2003 travel rules by permitting reimbursement at the normal and usual  
23 charter rate or rental charge for an aircraft of sufficient size to carry all of the campaign

1 travelers on the flight. See former 11 CFR 100.93(c)(3). The Commission is not  
2 adopting this commenter’s version of the “comparable aircraft” alternative because it  
3 would allow for the potential reduction of costs by using smaller aircraft for comparison  
4 purposes rather than the aircraft actually flown. Moreover, the additional separate  
5 calculation of the fair market value of the flight actually taken would add unnecessary  
6 complexity to compliance with, and enforcement of, the rules.

7 3. Travel on behalf of leadership PACs of Senate, presidential, and vice-  
8 presidential candidates

9 HLOGA prohibits non-commercial air travel on behalf of leadership PACs of  
10 House candidates, but it does not prohibit such travel on behalf of leadership PACs of  
11 Senate, presidential, or vice-presidential candidates. Nor does HLOGA specify the rate  
12 at which the Senate, presidential, or vice-presidential candidates’ leadership PACs must  
13 reimburse a service provider to avoid a contribution, as it does for those candidates and  
14 their authorized committees. For the reasons set forth below in section IV.E.1, the  
15 Commission is applying the reimbursement rates in 11 CFR 100.93(c)(3)(i)-(iii) to travel  
16 on behalf of the leadership PAC of any Senate, presidential, or vice-presidential  
17 candidate to make the new rules consistent with the Commission’s prior travel  
18 regulations. These rates were set forth in the Commission’s 2003 travel rules: first-class,  
19 coach, or charter rates, depending on whether the origin and destination cities are served  
20 by regularly scheduled commercial airline service.

21

1 D. 11 CFR 100.93(c)(2) – Non-Commercial Air Travel by or on Behalf of  
2 Candidates for the House of Representatives

3 New 2 U.S.C. 439a(c)(2) states that “in the case of a candidate for election for the  
4 office of Representative in, or Delegate or Resident Commissioner to, the Congress, an  
5 authorized committee and a leadership PAC of the candidate may not make any  
6 expenditure” for non-commercial air travel, with exceptions for travel on government-  
7 operated airplanes and aircraft owned by the candidate or members of the candidate’s  
8 immediate family. Both exceptions are discussed below. The effect of this provision is  
9 generally to prohibit travel by House candidates on non-commercial aircraft.

10 In the NPRM, the Commission proposed a general rule that would prohibit non-  
11 commercial air travel by House candidates and sought comment on whether House  
12 candidates should nonetheless be permitted to travel on non-commercial aircraft on  
13 behalf of their own campaigns, if the cost of the travel is provided by a permissible  
14 source, by treating the travel as a permissible in-kind contribution. One group of  
15 commenters addressed this question and urged the Commission to prohibit non-  
16 commercial air travel by House candidates as proposed in the NPRM and not allow such  
17 travel if it was provided by a permissible source as a permissible in-kind contribution.

18 The Commission agrees with the commenters, and is adopting the rule as  
19 proposed in the NPRM. See 11 CFR 100.93(c)(2). Outside of the exceptions for travel  
20 on government-operated and candidate-owned aircraft, there is no discussion in the  
21 legislative history of this provision to indicate that Congress contemplated allowing non-  
22 commercial air travel by House candidates. Instead, statements by sponsors of the new  
23 law referred to a “ban” on House travel. See, e.g., 153 Cong. Rec. S10713 (daily ed.

1 Aug. 2, 2007) (statement of HLOGA sponsors offered by Sen. Feinstein). In addition,  
2 the statute itself does not include any reimbursement rate for non-commercial travel by  
3 House candidates whereas Congress did specify a rate for Senate and presidential  
4 candidates.

5 New 11 CFR 100.93(c)(2) prohibits House candidates, and individuals traveling  
6 on behalf of House candidates, their authorized committees or leadership PACs, from  
7 engaging in non-commercial campaign travel on aircraft. This prohibition cannot be  
8 avoided by payments to the service provider, even by payments from the personal funds  
9 of a House candidate.<sup>8</sup>

10 The prohibition does not apply, however, when the travel would be considered an  
11 expenditure by someone other than the House candidate, House candidate's authorized  
12 committee, or House candidate's leadership PAC. For example, travel by a House  
13 candidate on behalf of a Senate or presidential candidate, or a political party committee,  
14 would be permissible so long as the political party committee or candidate on whose  
15 behalf the travel occurs reimburses the service provider at the applicable rate under  
16 11 CFR 100.93(c)(1) or (3).

17 E. 11 CFR 100.93(c)(3) – Non-Commercial Air Travel by Campaign Travelers Not  
18 Traveling On Behalf of Federal Candidates And Their Representatives

19 In the NPRM, the Commission proposed two alternatives with respect to non-  
20 commercial air travel by individuals traveling on behalf of political party committees and  
21 other political committees that are not candidates' authorized committees or House

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<sup>8</sup> Although the general rule in 11 CFR 100.93(b)(2) states that no contribution results where a campaign traveler pays the service provider the required rate in accordance with 11 CFR 100.93(c), there is no rate applicable to House candidates in 11 CFR 100.93(c). Thus, 11 CFR 100.93(b)(2) does not permit House candidates to travel on non-commercial aircraft by paying the service provider.

1 candidates' leadership PACs. The first alternative would have applied the charter rate  
2 applicable to travel on behalf of Senate or presidential candidates unless one or more  
3 candidates or candidate representatives are also aboard the flight (in which case the  
4 candidates would already be paying the entire applicable charter rate to the service  
5 provider). The second alternative would have retained the rates in the 2003 travel rules,  
6 which permitted reimbursement at the first-class or coach rate by campaign travelers  
7 other than candidates. For the reasons explained below, the Commission is adopting the  
8 second alternative and requiring campaign travelers who are not traveling on behalf of  
9 candidates to continue to pay the rates in the 2003 travel rules. See 11 CFR 100.93(c)(3).

10 1. Campaign travelers who are not traveling with or on behalf of candidates

11 The Commission is not changing its current reimbursement rate structure for  
12 campaign travelers who are traveling on behalf of political party committees, SSFs,  
13 nonconnected committees, and certain leadership PACs. Thus, 11 CFR 100.93(c)(1)(i)-  
14 (iii) preserves the three reimbursement rates for non-commercial air travel in previous 11  
15 CFR 100.93(c)(1) through (3) – first class, coach, or charter – with the applicable rate  
16 depending on whether the travel is between two cities with regularly scheduled first-class  
17 or coach commercial airline service.

18 In 2003, the Commission extended its previous travel regulations to cover all  
19 travel in connection with a Federal election, stating, “[b]y establishing a single rate for  
20 travel reimbursement, the new rules will promote greater uniformity among all  
21 individuals traveling in connection with a Federal election on behalf of a political  
22 committee.” 2003 E&J at 69,585. The Commission promulgated rules that applied to

1 candidates and those traveling on behalf of candidates or their authorized committees,  
2 and extended those rules to other campaign travelers.

3 HLOGA, on the other hand, explicitly addresses the reimbursement rate only for  
4 campaign travelers who are candidates or are traveling on behalf of authorized  
5 committees or House candidate leadership PACs. Section 439a(c)(1) applies by its own  
6 terms to a candidate (other than a House candidate) or any authorized committee of such  
7 a candidate. Section 439a(c)(2) applies by its own terms to House candidates, their  
8 authorized committees, and their leadership PACs.

9 Several commenters argued that HLOGA's silence with respect to coverage of all  
10 political actors amounts to implicit approval of the Commission's 2003 travel rule, which  
11 permitted all campaign travelers, candidate and non-candidate alike, to pay for travel at  
12 either the first class, coach, or charter rate, depending on whether the origin and  
13 destination cities are served by regularly scheduled commercial airline service. One  
14 commenter argued that to expand the charter rate requirement beyond HLOGA's express  
15 language would be tantamount to assuming a legislative role in an area in which  
16 Members of Congress operate on a day-in-day-out basis. Two additional commenters  
17 noted that HLOGA's silence with respect to these other types of political committees  
18 constitutes a form of "legislative acquiescence" to the Commission's 2003 regulations.  
19 No commenters embraced the proposal included in the NPRM to extend the charter rate  
20 requirement to all Federal political committees.

21 The Commission disagrees with the argument that by enacting HLOGA, Congress  
22 set forth the required reimbursement rate for all campaign travelers. HLOGA's  
23 supporters spoke most explicitly to the provision's coverage in terms of its impact on

1 Member and lawmaker travel.<sup>9</sup> Thus, together with HLOGA’s Section 601, Congress  
2 clearly determined the “normal and usual charge” for non-commercial travel on aircraft  
3 by and on behalf of candidates and their authorized committees without disturbing the  
4 Commission’s approach that is currently in 11 CFR 100.93(c)(3). This provision requires  
5 non-candidate campaign travelers to pay the first class, coach, or charter rate, depending  
6 on whether the origin and destination cities are served by regularly scheduled commercial  
7 airline service. Each political committee on whose behalf a campaign traveler is flying is  
8 responsible for paying the required reimbursement rate. For example, if three  
9 representatives of PAC P accompany a representative of Party Committee C, and the  
10 travel is to or from a city not served by regularly scheduled commercial airline service,  
11 the cost of the charter would be divided by the number of campaign travelers (four).  
12 PAC P would pay three-fourths of the charter cost while Party Committee C would pay  
13 one-fourth of the charter cost.

#### 14 2. Candidates traveling with non-candidate campaign travelers

15 When a Federal candidate (other than a House candidate), or person traveling on  
16 behalf of a candidate or candidate’s authorized committee, shares a non-commercial

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<sup>9</sup> See, e.g., 152 Cong. Rec. S2435 (daily ed. March 28, 2006) (statement of Sen. Obama)(speaking in terms of a company providing a jet “to a lawmaker”); 152 Cong. Rec. S2500 (daily ed. March 29, 2006) (statement of Sen. McCain)(discussing public perception that “flights unduly influence Members of Congress and serve as a way for lobbyists to curry favor with legislators”); 153 Cong. Rec. S186 (daily ed. Jan. 4, 2007) (statement of Sen. McCain)(focusing on “the ability of a Member to travel on a corporate jet”); 153 Cong. Rec. S548-49 (daily ed. Jan. 16, 2007) (statement of Sen. Reid)(describing his own solicitation and acceptance of private travel); 153 Cong. Rec. S1185 (daily ed. Jan. 25, 2007) (statement of Sen. Levin)(“The new rules will ensure that Members travelling on corporate jets would have to reimburse at the charter rate...”); 153 Cong. Rec. S8400 (daily ed. June 26, 2007) (statement of Sen. Reid)(“It requires Senators to pay fair market value prices for charter flights, which put an end to the abuses of corporate travel.”); 153 Cong. Rec. S10694 (daily ed. Aug. 2, 2007) (statement of Sen. Feingold)(speaking to “a requirement that Senators pay the full charter rate on corporate jets for personal, official or campaign purposes...”); 153 Cong. Rec. S10703 (daily ed. Aug. 2, 2007) (statement of Sen. Levin)(“The new rules will ensure that Members travelling on corporate jets would have to pay for them at the charter rate...”); 153 Cong. Rec. S10715 (daily ed. Aug. 2, 2007) (statement of Sen. Reid)(the law “requires Senators to pay fair market prices for charter flights, putting an end to abuses of corporate travel.”).

1 flight with one or more campaign travelers who are not traveling on behalf of a candidate  
2 or candidate's committee, the candidate must pay the cost of the entire charter fare for a  
3 comparable aircraft of comparable size pursuant to 11 CFR 100.93(c)(1). Except as  
4 permitted under 11 CFR 100.93(b)(3), campaign travelers who are not traveling on behalf  
5 of a candidate, candidate's authorized committee, or House candidate leadership PAC,  
6 and other passengers cannot relieve the candidate's payment obligation.

7 For example, Senate Candidate A, Senate Candidate B, and Candidate B's  
8 campaign manager travel on a plane on behalf of their respective campaigns, along with  
9 PAC Representative P traveling on behalf of the PAC. The pro rata share of the fair  
10 market value of the flight is determined by dividing the normal and usual charter rate for  
11 the plane by three because there are three individuals who are candidates or traveling on  
12 behalf of candidates (Candidate A, Candidate B, and Candidate B's campaign manager).  
13 New 11 CFR 100.93(c)(1) bases the rate calculation on the proportional share of travelers  
14 attributable to each Senate candidate, so Candidate A pays one-third of the charter rate  
15 and Candidate B pays two-thirds.<sup>10</sup>

16 The PAC need not reimburse the service provider for PAC representative P's  
17 travel because the service provider will be compensated at the full charter rate for the  
18 flight by the two candidates. Moreover, no in-kind contribution from the service provider  
19 to the PAC will result because the payments by Candidate A and Candidate B will fully  
20 compensate the service provider for the value of PAC representative P's travel. The

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<sup>10</sup> One commenter posed a hypothetical situation in which the chairman of a political party committee, who is also a Senate candidate, takes non-commercial air travel to serve as the keynote speaker at a fundraiser to benefit a joint fundraising committee between the political party committee and his own campaign for the U.S. Senate. Because the joint fundraising committee is treated as an authorized committee of the Senate candidate, see 11 CFR 102.17(a)(1)(i), the Senate candidate's principal campaign committee (another authorized committee) must pay for the travel.

1 authorized committee of each candidate must report its payment to the service provider as  
2 an expenditure and need not report any portion of its payments to the service provider as  
3 an in-kind contribution to the PAC.<sup>11</sup>

4 F. Additional Revisions to 11 CFR 100.93(c)

5 1. Presidential and vice-presidential candidates

6 The Commission continues to treat travel by publicly financed presidential and  
7 vice-presidential candidates the same as travel by presidential and vice-presidential  
8 candidates who do not receive public funds. Therefore, 11 CFR 100.93(c)(1) applies to  
9 presidential and vice-presidential candidates who do not receive public funds, while  
10 11 CFR 9004.7 and 9034.7, discussed below, continue to incorporate the 11 CFR 100.93  
11 rates by reference for candidates who accept public funds. One important distinction,  
12 however, is that a presidential candidate accepting public funds for the general election is  
13 prohibited from receiving any in-kind contribution from any person, including an in-kind  
14 contribution of non-commercial air travel. The Commission did not receive any  
15 comments on this aspect of the rules.

16 2. Commercially reasonable time frame

17 HLOGA requires candidates for President, Vice-President, and the U.S. Senate to  
18 pay their pro rata share of non-commercial travel on aircraft “within a commercially  
19 reasonable time frame after the date on which the flight is taken.” 2 U.S.C.  
20 439a(c)(1)(B). The Commission implements this requirement by specifying in

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<sup>11</sup> One commenter posed a hypothetical scenario in which the chairman of a political party committee and a Senate candidate both travel aboard a non-commercial aircraft. Assuming that the Senate candidate is traveling on behalf of his own campaign, his authorized committee would be responsible for the full cost of the charter fare. See 11 CFR 100.93(c)(3). The commenter suggested that such travel be recorded as an in-kind transfer from the Senate candidate to the political party committee, but the new rules do not require the candidate or political party committee to record any such in-kind transfer.

1 11 CFR 100.93(c) that the “commercially reasonable time frame” for payment is within  
2 seven days after the first day of the flight. This time frame applies to all payments  
3 required under new 11 CFR 100.93(c).

4 The seven-day time frame was established in the 2003 travel rules, and nothing in  
5 the record of this rulemaking suggests that a longer or shorter period is warranted. Nor  
6 has the Commission’s experience in administering and enforcing the 2003 travel rule  
7 indicated any reason to adjust the time frame. The Commission received only one  
8 comment addressing this time frame, and that comment supported the seven-day time  
9 frame.

10 G. 11 CFR 100.93(d) – Other means of transportation

11 For other means of transportation, such as limousines and all other automobiles,  
12 trains, and buses, a political committee must pay the service provider an amount equal to  
13 the normal and usual fare or rental charge for a comparable commercial conveyance of  
14 sufficient size to accommodate all campaign travelers, including members of the news  
15 media traveling with a candidate, and security personnel, if applicable. 11 CFR  
16 100.93(d). This provision is identical to the 2003 travel rule and to the rule proposed in  
17 the NPRM. HLOGA does not address travel on any conveyances other than aircraft, and  
18 the Commission’s experience administering the 2003 rule for travel on conveyances other  
19 than aircraft does not indicate that a change to the rule regarding travel on conveyances  
20 other than aircraft is warranted.

21 The Commission did not receive any comments on proposed 11 CFR 100.93(d).

1 H. 11 CFR 100.93(e) – Government conveyances

2           The Commission’s 2003 travel rules at 11 CFR 100.93(e) required reimbursement  
3 for travel aboard airplanes provided by the Federal government, or by any State or local  
4 government entity, at the same rate as travel aboard other airplanes. Non-commercial  
5 campaign travel aboard government conveyances other than aircraft was reimbursed  
6 under former 11 CFR 100.93(e)(2) at the same rate as travel aboard the equivalent means  
7 of transportation not provided by a government entity. HLOGA generally prohibits  
8 House candidates from using campaign funds for non-commercial travel, except for  
9 travel aboard an aircraft “operated by an entity of the Federal government or the  
10 government of any State.”<sup>12</sup> 2 U.S.C. 439a(c)(2)(B).

11           As noted above, under the Commission’s 2003 rules the required reimbursement  
12 rate for travel on government airplanes was the first-class, coach, or charter rate,  
13 depending on whether the travel occurred between cities served by regularly scheduled  
14 commercial airline service, and whether that service was available at a first-class or coach  
15 rate. For travel to or from a military airbase or other location not accessible to the  
16 general public, reimbursement was required based on the lowest unrestricted and non-  
17 discounted first-class airfare to or from the city with regularly scheduled first-class  
18 commercial airline service that is geographically closest to the military airbase or other  
19 location actually used. Section 601 of HLOGA thus provides an exception to the  
20 prohibition on House candidates and their authorized committees and leadership PACs

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<sup>12</sup> HLOGA similarly amends the Standing Rules of the Senate regarding travel to require Senators to pay the *pro rata* share of the fair market value of a flight for non-commercial travel, except for travel aboard “an aircraft owned or leased by a governmental entity.” *See* Public Law 110-81, Sec. 544(c)(1), amending Paragraph 1(c)(1) of rule XXXV of the Standing Rules of the Senate. In order to avoid a regulatory gap with respect to travel on aircraft operated by local governments, new 11 CFR 100.93(e) applies to campaign travel on aircraft operated by local government entities in addition to Federal and State government, as proposed in the NPRM. The Commission did not receive any comments on this provision.

1 from making expenditures for travel on non-commercial aircraft, but does not specify any  
2 particular rate of reimbursement for travel aboard government-operated aircraft.

3 The NPRM proposed a set of two different rates in 11 CFR 100.93(e)(1) that  
4 candidates could choose from for reimbursement for government-operated aircraft. The  
5 first rate, proposed in 11 CFR 100.93(e)(1)(i), requires reimbursement of the appropriate  
6 government entity at the pro rata share per represented candidate of the normal and usual  
7 charter fare or rental charge for the flight on a comparable aircraft of sufficient size to  
8 accommodate all of the campaign travelers (the “per candidate campaign traveler”  
9 reimbursement rate). The second rate, proposed in 11 CFR 100.93(e)(1)(ii), requires  
10 reimbursement at the private traveler reimbursement rate per campaign traveler, as  
11 specified by the government entity operating the aircraft (the “private traveler”  
12 reimbursement rate). The NPRM did not propose any substantive changes to 11 CFR  
13 100.93(e)(2), which governs travel on government conveyances other than aircraft.

14 The Commission did not receive any comments on proposed 11 CFR 100.93(e).

15 Except as discussed below, new 11 CFR 100.93(e) is the same as proposed in the  
16 NPRM. Accordingly, a candidate campaign traveler, or the authorized committee or  
17 House leadership PAC on whose behalf the travel is conducted, must reimburse a  
18 government entity for travel on any government-operated aircraft at either of the two  
19 rates set out in new 11 CFR 100.93(e)(1)(i) and (ii).

20 1. 11 CFR 100.93(e)(1)(i) – “Per candidate campaign traveler” reimbursement  
21 rate

22 Under the revised rules, the applicable charter rate is for a comparable aircraft of  
23 sufficient size to accommodate all of the campaign travelers. Unlike 11 CFR

1 100.93(c)(1), which requires the charter rate to be based on a comparable aircraft of  
2 comparable size, the comparable aircraft used for the basis of the charter rate in 11 CFR  
3 100.93(e)(1)(i) need not be the same size as the government-operated aircraft actually  
4 used. Similarly, the comparable government aircraft need not be capable of  
5 accommodating the non-campaign passengers and equipment aboard the government-  
6 operated aircraft.

7 Members of the media traveling with a candidate, and security personnel not  
8 provided by a government entity, must be included in the number of campaign travelers  
9 for the purposes of identifying a comparable aircraft of sufficient size to accommodate all  
10 of the campaign travelers. A comparable aircraft, however, need not be able to  
11 accommodate government-required personnel (e.g., Secret Service or National Security  
12 Agency officers provided to protect the candidate) or government-required equipment  
13 (e.g., bulky security or communications devices provided for the national security or  
14 communications needs of the candidate).<sup>13</sup> For example, a significant portion of Air  
15 Force One may be occupied by personnel and equipment mandated by national security  
16 requirements and other needs associated with the office of the President, not the  
17 campaign.

18 Government-required security personnel are not included in the number of  
19 campaign travelers for the purposes of identifying a comparable aircraft. The purpose for  
20 this exclusion is to avoid penalizing candidates who are required to travel with  
21 government security personnel by obliging them to pay the charter rate for a larger

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<sup>13</sup> The term “government-required personnel” encompasses individuals assigned to accompany a campaign traveler for reasons of national security or other official purposes as required by law or government policy. It does not encompass a Federal officeholder’s staff or other individuals who are “required” by the officeholder solely by virtue of their staff positions.

1 aircraft than would otherwise be needed to transport such candidates and their campaign  
2 travelers. All security personnel, including government-provided security personnel, are  
3 included, however, in determining the number of campaign travelers for purposes of  
4 calculating each candidate's pro rata share. This is consistent with the parallel provision  
5 concerning travel on private aircraft (11 CFR 100.93(c)(1)), and with the provision  
6 concerning travel on government-operated aircraft that is reimbursed at the "private  
7 traveler" reimbursement rate (11 CFR 100.93(e)(1)(ii); see discussion below). A  
8 candidate's authorized committee must thus reimburse the service provider for the same  
9 number of campaign travelers regardless of whether the travel occurs on a private or  
10 government-operated aircraft, and regardless of whether the candidate is reimbursing at  
11 the "per candidate campaign traveler" reimbursement rate or at the "private traveler"  
12 reimbursement rate. The general rule regarding reimbursement to a candidate committee  
13 by members of the news media and government-provided security personnel (11 CFR  
14 100.93(b)(3)) applies to both private and government-operated aircraft.

15 For example, if eleven passengers (Presidential Candidate A and two campaign  
16 staffers traveling on behalf of Presidential Candidate A, Senate Candidate B traveling on  
17 behalf of her own campaign, PAC representative P, four members of the news media  
18 traveling with Presidential Candidate A, and two members of the Secret Service required  
19 to travel with Candidate A), travel on a twelve-seat government aircraft, reimbursement  
20 would be required at the normal and usual charter rate for a comparable aircraft of  
21 sufficient size to accommodate nine passengers. The two Secret Service agents need not  
22 be counted when determining the size of a comparable aircraft because they would be  
23 "government-required personnel." Given that no portion of the normal and usual charter

1 fare or rental charge may be attributed to any non-candidate campaign traveler or any  
2 other passenger, the charter fare would be divided by ten (the number of candidates, their  
3 campaign staffers, members of the media, and security personnel traveling with the  
4 candidates). PAC representative P would not be required to reimburse the government  
5 entity for his or her travel and is not permitted to assume any of the payment otherwise  
6 required from the candidates.

7 Thus, Presidential Candidate A would pay nine-tenths of the full charter rate for  
8 the comparable nine-seat aircraft, and Senate Candidate B would pay one-tenth of the  
9 charter cost. The four media representatives or their employers may reimburse  
10 Presidential Candidate A for up to four-tenths of the cost of the nine-seat charter aircraft,  
11 or pay the government that amount directly, pursuant to 11 CFR 100.93(b)(3).<sup>14</sup>  
12 Likewise, the Secret Service may reimburse Candidate A up to two-tenths of the cost for  
13 the two Secret Service representatives, or it may pay that amount directly to the  
14 government entity providing the aircraft.

15 2. 11 CFR 100.93(e)(1)(ii) –“Private traveler” reimbursement rate

16 The second rate of reimbursement, the “private traveler” reimbursement rate,  
17 requires payment of the rate specified by the Federal, State, or local government agency  
18 or other government entity operating the aircraft. If the government entity has  
19 established a schedule of rates based on the type of traveler, and the schedule includes a

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<sup>14</sup> The Commission is aware that the White House Travel Office has agreements with the White House Correspondents Association regarding travel arrangements for members of the media, and these rules are not intended to alter those agreements.

1 rate for private travel on its aircraft by members of the public, then the campaign traveler  
2 choosing this option must reimburse the government at that rate.<sup>15</sup>

3 For example, if the same eleven travelers (Presidential Candidate A and two  
4 campaign staffers traveling on behalf of Presidential Candidate A, Senate Candidate B  
5 traveling on behalf of her own campaign, PAC representative P, four members of the  
6 media traveling with Presidential Candidate A, and two Secret Service agent required to  
7 travel with Presidential Candidate A) travel aboard an aircraft operated by a State  
8 government, either candidate could choose to pay the “private traveler” reimbursement  
9 rate if such a rate is specified by that State government instead of the charter rate for a  
10 comparable aircraft of sufficient size to accommodate the campaign travelers. If the State  
11 government normally charges \$100 per person per hour for use of the aircraft by State or  
12 federal agencies and \$200 per person per hour for private travel by authorized state  
13 employees and members of the public, then each candidate choosing this rate would pay  
14 for the campaign travelers traveling on behalf of that candidate at the \$200 per person per  
15 hour rate. Presidential Candidate A is responsible for the cost of the travel of the two  
16 Secret Service agents under 11 CFR 100.93(e)(1)(ii).<sup>16</sup> Presidential Candidate A’s  
17 payment for nine campaign travelers is a total of \$1,800 per hour, although the four  
18 media representatives could reimburse Presidential Candidate A up to a total of \$800 per  
19 hour to cover the cost of their travel and the two Secret Service agents could reimburse  
20 Presidential Candidate A up to a total of \$400 per hour for their travel. Candidate B’s

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<sup>15</sup> The Department of Defense, for example, publishes a list of hourly reimbursement rates for both fixed-wing aircraft and helicopters and includes an “All Other User” rate, which is the private traveler rate for those aircraft. See Fiscal Year 2010 Reimbursement Rates, available at [http://www.defenselink.mil/comptroller/rates/fy2010/2010\\_f.pdf](http://www.defenselink.mil/comptroller/rates/fy2010/2010_f.pdf) and [http://www.defenselink.mil/comptroller/rates/fy2010/2010\\_h.pdf](http://www.defenselink.mil/comptroller/rates/fy2010/2010_h.pdf).

<sup>16</sup> Because Candidate A is responsible for the cost of the Secret Service travelers, the Secret Service may reimburse Candidate A for the cost of their travel under 11 CFR 100.93(b).

1 cost is \$200 per hour to cover the candidate's own travel. PAC representative P must pay  
2 for his or her own travel at \$200 per hour.<sup>17</sup>

3 If, however, the government entity's private traveler reimbursement rate is based  
4 on an hourly rate for the entire aircraft, then the candidate choosing this rate would  
5 calculate the amount that he or she must reimburse by determining what his or her share  
6 of the entire hourly rate split between the two candidates and the PAC is, in proportion to  
7 the number of campaign travelers traveling on behalf of each political committee,  
8 including the media representatives traveling with a candidate, and security personnel.  
9 There are a total of eleven campaign travelers on the flight (Presidential Candidate A,  
10 two campaign staffers traveling on behalf of Presidential Candidate A, Senate Candidate  
11 B, four members of the media traveling with Presidential Candidate A, and two Secret  
12 Service agent required to travel with Presidential Candidate A, PAC Representative P), so  
13 Presidential Candidate A must pay nine-elevenths of the hourly rate, for which the media  
14 could reimburse the candidate up to four-elevenths of the charter rate and the Secret  
15 Service could reimburse the candidate up to two-elevenths of the charter rate; Candidate  
16 B must pay one-eleventh; and PAC Representative P must pay one-eleventh.

17 The Commission did not receive any comments on this aspect of the proposed  
18 rule. The rule is unchanged from that proposed in the NPRM. See 11 CFR  
19 100.93(e)(1)(ii).

### 20 3. Travel on Air Force One or Two

21 The Commission sought, but did not receive, comments on whether it should  
22 promulgate final rules specifically to address travel on Air Force One and Two.<sup>18</sup> The

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<sup>17</sup> Pursuant to 11 CFR 100.93(a)(3)(i)(A) any individual traveling in connection with an election for federal office on behalf of a political committee is a "campaign traveler."

1 Commission is not promulgating a separate rule for travel on these aircraft because the  
2 application of either of the rates in 11 CFR 100.93(e)(1) is sufficient to address travel on  
3 Air Force One and Two. Specifically, reimbursement for travel on Air Force One or Two  
4 using the “per candidate campaign traveler” rate (11 CFR 100.93(e)(1)(i)) already  
5 provides that the charter rate be based on an aircraft of “sufficient size to accommodate  
6 campaign travelers,” excluding all government-required personnel and equipment.  
7 Travel aboard Air Force One or Two therefore would simply be a specific application of  
8 the more general rule applicable for travel on all government-operated aircraft.

#### 9 4. Non-candidate campaign travelers

10 The Commission sought, but did not receive, comments on the extent to which  
11 campaign travelers fly on government-operated aircraft when not traveling with, or on  
12 behalf of, a candidate or candidate’s committee. For example, a representative of a  
13 political party committee might travel in connection with a Federal election on a  
14 government-operated aircraft on which a Federal candidate is not also present. In the  
15 absence of a record indicating that this travel is frequent enough to justify a separate  
16 provision in the rule, or that a special rule is needed, the final rules do not treat this  
17 potentially hypothetical situation differently from other travel by non-candidate campaign  
18 travelers on non-commercial aircraft. Thus, new 11 CFR 100.93(e)(2) is the same as the  
19 2003 rule for travel on a government aircraft. That is, if the non-candidate campaign  
20 traveler travels to a military base or other location not accessible to the general public, the

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<sup>18</sup> Air Force One is a designation assigned to any airplane that is providing transportation to the President of the United States. Air Force Two is the designation assigned to any airplane that is providing transportation to the Vice President of the United States. Marine One is the designation used for any Marine helicopter that is providing transportation to the President. Because “aircraft” includes airplanes and helicopters, this discussion is equally applicable to Marine One.

1 travel must be reimbursed at the lowest unrestricted and non-discounted first-class airfare  
2 to or from the city with regularly scheduled first-class commercial airline service that is  
3 geographically closest to the military airbase or other location actually used. Otherwise,  
4 the campaign traveler must reimburse the government in accordance with 11 CFR  
5 100.93(c)(3).

6 5. Time period for reimbursement of travel on government conveyances

7 New 11 CFR 100.93(e) provides that payment must be made within the time  
8 period specified by the government entity providing the aircraft or other conveyance.  
9 This policy defers to a government entity’s management of its own aircraft and avoids  
10 potential conflicts with that entity’s own regulations. The NPRM did not propose a  
11 specific time period for reimbursement for travel on government-operated aircraft under  
12 either of the alternative rates, and the Commission did not receive any comments on an  
13 appropriate period. The government entity’s accountability for the use of its aircraft  
14 serves as a check on potential abuses in payment delays by campaign travelers.

15 I. Proposed 11 CFR 100.93(g) – Exception for Aircraft Owned by Federal  
16 Candidates and their Immediate Family Members

17 HLOGA’s amendments to 2 U.S.C. 439a contain an exception from the payment  
18 and reimbursement requirements for travel aboard aircraft that are “owned or leased” by  
19 a candidate or a candidate’s immediate family member (hereinafter “candidate owned”),  
20 including an aircraft owned or leased by any entity in which the candidate or a member of  
21 the candidate’s immediate family “has an ownership interest,” provided that (1) the entity  
22 is not a “public corporation” and (2) the use of the aircraft is not “more than the  
23 candidate’s or immediate family member’s proportionate share of ownership allows.”

1 2 U.S.C. 439a(c)(3)(A). In the NPRM the Commission proposed a rule, new 11 CFR  
2 100.93(g), in which the exception would apply to all of the restrictions on expenditures  
3 for air travel in new 2 U.S.C. 439a(c). See discussion of new 11 CFR 113.5. The  
4 Commission requested comments on this proposed exception, new 11 CFR 100.93(g), but  
5 received none.

6 While the exception relieves the restrictions on expenditures, it still requires a  
7 candidate to reimburse the service providers (candidates, members of their immediate  
8 family, or entities in which either owns an interest) if the candidate seeks to avoid  
9 receiving an in-kind contribution from the service provider for the candidate's use of the  
10 aircraft. See 11 CFR 100.93. New section 100.93(g) sets out the appropriate  
11 reimbursement rates. Even though candidates for Federal office may make unlimited  
12 contributions to their own campaigns, those contributions must be reported by their  
13 authorized committees.<sup>19</sup> 11 CFR 110.10; Advisory Opinions 1991-09 (Hoagland),  
14 1990-09 (Mueller), 1985-33 (Collins), 1984-60 (Mulloy). Contributions by all other  
15 persons, including immediate family members, are subject to the applicable amount  
16 limits and source prohibitions. 11 CFR 110.1 et seq.

17 The NPRM proposed three alternative reimbursement rates as follows:

18 The first alternative would have required reimbursement for aircraft owned by  
19 candidates and their immediate family members at the rates set forth in the Commission's  
20 2003 travel rules: first-class, coach, or charter rates, depending on whether the origin and  
21 destination cities are served by regularly scheduled commercial airline service.

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<sup>19</sup> There is one exception to this general rule: a \$50,000 limit applies to publicly-funded presidential candidates in the primary and the general election. See 11 CFR 9003.2(c), 9033.2(b)(2), and 9035.2(a)(1).

1           The second alternative would have required reimbursement for the “incremental  
2 cost” of operating the aircraft, meaning the actual cost of fuel and any incremental costs  
3 such as landing fees but excluding depreciation.

4           The third alternative would have been based on the “actual cost” of operating the  
5 aircraft, such as the hourly, mileage, or other applicable rate charged the candidate,  
6 corporation, or immediate family member for the costs of the travel. For example, if a  
7 candidate traveled on an aircraft leased by an immediate family member at a cost of  
8 \$1,000 per hour, the appropriate reimbursement rate to that family member would have  
9 been \$1,000 per hour.

10           New 11 CFR 100.93(g) combines several aspects of these alternatives. The  
11 Commission is also re-organizing the rule in recognition that an increasing number of  
12 aircraft are operated through shared-ownership arrangements, while other aircraft may be  
13 owned solely by the candidate or the candidate’s immediate family members. In  
14 addition, the new rules reflect the statutory limitation in 2 U.S.C. 439a(c)(3)(A) that in  
15 situations where the aircraft is owned through a shared-ownership arrangement, the  
16 candidate’s use of the aircraft must not exceed the proportional ownership interest  
17 attributable to the candidate or the candidate’s immediate family member.

18           The new rule provides three alternative rates to address three different scenarios:  
19 (1) a shared-ownership arrangement where the candidate uses the aircraft within the  
20 limits of the relevant ownership interest; (2) a shared-ownership arrangement where the  
21 candidate uses the aircraft in excess of the limits of the relevant ownership interest; or (3)  
22 the aircraft is wholly owned by a candidate or a candidate’s immediate family members.

1           Because the exception in 2 U.S.C. 439a(c)(3) for travel on aircraft owned by  
2 candidates or members of their immediate family permits otherwise restricted or  
3 prohibited expenditures by candidates and their committees, the exception is limited only  
4 to travel by candidates or persons traveling on behalf of candidates, their authorized  
5 committees, and House candidate leadership PACs. Similarly, the exception applies only  
6 to travel by a candidate on an aircraft owned or leased by that candidate or that  
7 candidate's immediate family member. The exception does not extend, however, to  
8 travel by other candidates who are traveling on behalf of their own campaigns, or for  
9 individuals traveling on behalf of other political committees. These latter campaign  
10 travelers must reimburse the candidate or other owner of the aircraft according to the  
11 rates set forth in 11 CFR 100.93(c).

12           For example, if Senate Candidate A is traveling on behalf of his or her own  
13 campaign with Candidate B on behalf of his or her own campaign on an aircraft owned  
14 by Candidate B, then Candidate A must pay half of the cost of the normal and usual  
15 charter rate for a comparable aircraft of comparable size. Candidate B must pay for (or  
16 treat as a personal contribution) the candidate's own portion of the flight pursuant to the  
17 applicable rate in 11 CFR 100.93(g). Similarly, if Party Committee Official C travels  
18 with Candidate B on behalf of the party committee on an aircraft owned by Candidate B,  
19 the party committee must pay half of the cost of the normal and usual charter rate for a  
20 comparable aircraft of comparable size. The 11 CFR 100.93(c)(3) payment exception for  
21 travel with a candidate would not apply to travel on a candidate-owned aircraft because  
22 the candidate is not paying a charter rate for the entire aircraft in accordance with 11 CFR  
23 100.93(c)(1).

1           1. 11 CFR 100.93(g)(1)(i) – Use within the limits of a shared-ownership  
2           arrangement

3           The exception in 11 CFR 100.93(g) applies to an aircraft owned or leased by any  
4           entity in which the candidate or a member of the candidate’s immediate family “has an  
5           ownership interest,” so long as that entity is not a corporation with publicly traded shares.  
6           The rates in 11 CFR 100.93(g) therefore apply to a wide variety of shared-ownership  
7           arrangements, including time-sharing arrangements and certain lease arrangements, and  
8           regardless of whether the ownership is made available to the candidate through a  
9           commercial operator certificated by the FAA.

10           When a candidate or a candidate’s immediate family member owns or leases an  
11           aircraft through any form of shared-ownership or lease agreement, 11 CFR  
12           100.93(g)(1)(i) requires the candidate’s committee to reimburse the candidate,  
13           candidate’s immediate family member, or the administrator of the aircraft (e.g., NetJets)  
14           – or treat as a personal contribution from the candidate, where the candidate is the owner  
15           or lessee – for the hourly, mileage, or other applicable rate charged to the candidate,  
16           immediate family member, or corporation or other entity through which the aircraft is  
17           ultimately available to the candidate, for the costs of the travel. This reimbursement rate  
18           applies only to the extent that the candidate’s use of the aircraft does not exceed the  
19           proportional share of the ownership interest in the aircraft held by the candidate or  
20           candidate’s immediate family member, as defined in 11 CFR 100.93(g)(3).<sup>20</sup> Because a  
21           candidate would receive an in-kind contribution to the extent that the candidate is  
22           provided with something of value at less than the normal and usual cost, the ownership or

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<sup>20</sup> This reimbursement rate does not apply to the candidate’s use of the aircraft that exceeds the proportional share of the ownership interest as defined in 11 CFR 100.93(g)(3).

1 lease agreement cannot provide a disproportionate benefit to the candidate. Thus, the  
2 amount of use to which the candidate or the candidate’s immediate family member is  
3 entitled under an ownership or lease agreement must be similar to the amount of use to  
4 which other similarly situated owners are entitled. For example, if a candidate is one of  
5 four owners who each own 25 percent of an aircraft in a shared-ownership arrangement,  
6 the ownership agreement cannot allow the candidate to use the aircraft free of charge or  
7 at a reduced rate forty percent of the time while each other owner has access to the  
8 aircraft for only twenty percent of the time.

9 2. 11 CFR 100.93(g)(1)(ii) – Use in excess of the limits of a shared ownership  
10 arrangement

11 In some shared-ownership agreements, an ownership interest entitles each  
12 “owner” to a specified amount of use of one or more aircraft. In this case, if a  
13 candidate’s flight exceeds his or her proportional ownership interest in the aircraft, or that  
14 of the candidate’s immediate family member, that flight falls outside of 11 CFR  
15 100.93(g). See new 11 CFR 100.93(g)(1)(ii). Only a flight that exceeds the use  
16 permitted under the ownership agreement, however, would be excluded from the  
17 exception in 11 CFR 100.93(g). For example, if a candidate’s spouse owns an interest in  
18 an aircraft through a time-share arrangement that entitles the spouse to ten hours of flight  
19 time per month, and the candidate uses the aircraft for three separate five-hour flights in a  
20 single month, the rate provided in 11 CFR 100.93(g)(1)(i) applies to the first 10 hours but  
21 does not apply to the last five hour flight. For the purposes of this example, the spouse’s  
22 ten hours of flight time per month must not have been otherwise used by the spouse or  
23 another person. If the spouse or another person does make use of the aircraft for any part

1 of the ten allotted hours, the candidate's use of the aircraft would be combined with the  
2 other uses for purposes of calculating the ten hour limit. For the last five hour flight, a  
3 Senate, presidential, or vice-presidential candidate must provide reimbursement at the  
4 rate established by 11 CFR 100.93(c)(1), in accordance with 11 CFR 100.93(g)(1)(ii).  
5 Excessive use by a House candidate, on the other hand, would be subject to the general  
6 prohibition on non-commercial air travel by House candidates. See 11 CFR 100.93(c)(2).

7 3. 11 CFR 100.93(g)(1)(iii) – Wholly owned aircraft

8 When the entire aircraft is owned by a candidate as an individual, or by the  
9 candidate's immediate family members as individuals, the candidate's authorized  
10 committee need reimburse (or report as an in-kind contribution, to the extent permissible)  
11 only the pro rata share per campaign traveler of the costs associated with the trip.<sup>21</sup> 11  
12 CFR 100.93(g)(1)(iii). These associated costs include, but are not limited to, the cost of  
13 fuel and crew, and a proportionate share of annual and recurring maintenance costs. Id.  
14 For example, because aircraft must periodically undergo regularly scheduled maintenance  
15 in order to comply with applicable safety laws, the candidate's committee must pay its  
16 proportionate share of these regular costs. The candidate's committee need not pay,  
17 however, for general depreciation in the value of the aircraft. Similarly, reimbursement  
18 for piloting and crew expense is not required when the candidate or candidate's  
19 immediate family member pilots the aircraft and serves as the crew. On the other hand, if

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<sup>21</sup> As discussed above, with the exception of publicly-funded Presidential candidates, candidates are permitted to make unlimited contributions to their own campaigns. Contributions by all other persons, including immediate family members, are subject to the applicable amount limits and source prohibitions. An aircraft owned entirely by a family-held corporation would be treated as an aircraft accessed through a multiple ownership arrangement under 11 CFR 100.93(g)(1)(i) or (ii), rather than (iii).

1 a pilot or crew is employed for the flight, the cost of their services must be included in  
2 the reimbursement rate.

3 4. 11 CFR 100.93(g)(2) and (3) - Ownership interest and proportional share of an  
4 ownership interest

5 HLOGA does not define the term “ownership interest.” The Commission  
6 interprets the term “ownership interest” to include fractional ownership, voting or equity  
7 interest, or use arrangements, as well as “time-sharing” arrangements in which the  
8 candidate or an immediate family member pays a fee for a specified amount of travel on  
9 the aircraft.

10 Similarly, HLOGA does not define the term “public corporation.” The  
11 Commission interprets the term “public corporation” as applying to any corporation with  
12 publicly traded shares. See 11 CFR 100.93(g)(2). Because HLOGA explicitly extends  
13 the exception contained in 2 U.S.C. 439a(c)(3)(A) to “aircraft owned by an entity that is  
14 not a public corporation,” aircraft owned by privately held corporations without publicly  
15 traded shares, partnerships without publicly traded equity interests, limited liability  
16 companies without publicly traded shares, and all other entities without publicly traded  
17 shares or equity interests would fall within 11 CFR 100.93(g), so long as a candidate or a  
18 member of the candidate’s immediate family owns an equity interest or voting interest in  
19 that entity.

20 The HLOGA exception applies so long as a candidate’s use of the aircraft is not  
21 “more than the candidate’s or immediate family member’s proportionate share of  
22 ownership allows.” 2 U.S.C. 439(c)(3)(A). However, the statute does not specify the  
23 exact nature of the relationship between ownership shares and use of the aircraft.

1 New 11 CFR 100.93(g)(3) defines a “proportional share of the ownership  
2 interest” as “the amount of use to which a candidate or immediate family member is  
3 entitled under an ownership or lease agreement.” Rather than account for all of the  
4 potential ownership structures of an entity that may own or lease an aircraft, new 11 CFR  
5 100.93(g)(3) establishes one general condition for the exception to apply: unless the  
6 aircraft is owned entirely by the candidate or the candidate’s immediate family members,  
7 the amount of use of the aircraft to which each ownership share is entitled must be  
8 specified in writing prior to the candidate’s use of the airplane. The Commission does  
9 not intend to delve into the various ownership structures, so long as the ownership or  
10 lease agreement does not provide a benefit to the candidate that is disproportionately  
11 greater than the benefit provided to others with similar ownership interests in the aircraft.

12 In order to ensure that the candidate’s use of the aircraft remains within the  
13 parameters of use specified in the agreement, the candidate’s committee must, prior to  
14 each flight, obtain certification from the individual or entity making the aircraft available  
15 that the candidate’s planned use, in combination with the other uses of the aircraft by the  
16 person or persons with the ownership interest in the aircraft, will not exceed the amount  
17 of use permitted under the ownership or lease agreement. If any part of a flight does  
18 exceed the use permitted under the ownership interest, then payment for the entire flight  
19 must be made under 11 CFR 100.93(c), not 11 CFR 100.93(g). For example, if a  
20 candidate plans a five-hour flight and the candidate’s spouse is entitled to use an aircraft  
21 for ten hours per month through the spouse’s position with a partnership that participates  
22 in a time-share agreement, the candidate must not make use of the aircraft until it obtains  
23 certification from the spouse, the partnership, or time-share provider that the candidate’s

1 planned five-hour flight will not cause the spouse to exceed the spouse's ten-hour limit.  
2 If the spouse has already used the aircraft for six hours that month, the candidate's  
3 planned use would cause the spouse to exceed the ten-hour limit and the entire five-hour  
4 flight would fall under 11 CFR 100.93(c), not 11 CFR 100.93(g). See 11 CFR  
5 100.93(g)(1)(ii).

6 Some ownership agreements, however, may include specific fees for any use of  
7 an aircraft above or beyond the normal amount of permitted use under the agreement.  
8 For example, an ownership agreement might provide that one annual ownership share  
9 entitles that owner to use an aircraft for twenty hours per month without additional  
10 charge, and up to an additional one hundred hours per month at an additional charge of  
11 \$1,000 per hour. In such cases, the hourly fee for the additional hundred hours would be  
12 included within the "proportional share" of that ownership interest. A candidate with  
13 such an ownership interest could therefore use the aircraft for up to one hundred and  
14 twenty hours in a month and reimburse the entity operating the aircraft at the rate in 11  
15 CFR 100.93(g)(1)(i). The candidate would be required to pay the operator for one-  
16 twelfth of the ownership share (the cost of one month of the annual ownership share) to  
17 cover the first twenty hours, plus \$1,000 for each of the additional hundred hours  
18 (\$100,000).

#### 19 5. Specific time period for repayment

20 The NPRM inquired whether the Commission should require the candidate's  
21 committee to make the payment required by 11 CFR 100.93(g) within a specific time  
22 period, such as no later than seven days from the first day of travel, which would be  
23 consistent with payment for travel on other aircraft under 11 CFR 100.93(c). The

1 Commission did not receive any comments on this issue. The Commission is not  
2 specifying a time period for repayment in the rule itself in expectation that, in shared-  
3 ownership or lease arrangements, the candidate will make the repayment in accordance  
4 with the normal business practices of the entity administering the shared-ownership or  
5 lease agreements. If not, that entity will be deemed to have made a loan to the  
6 candidate's committee that would, if not repaid within the required commercially  
7 reasonable period, become an in-kind contribution to the candidate's authorized  
8 committee, subject to the limits, prohibitions, and reporting requirements of the Act.

9 J. 11 CFR 100.93(i) – Reporting Requirements

10 The Commission is relocating the reporting requirements of 11 CFR 100.93 from  
11 paragraph (h) to paragraph (i), as proposed in the NPRM, but is not making any  
12 substantive revisions to those requirements. The Commission did not receive any  
13 comments on the reporting requirements.

14 K. 11 CFR 100.93(j) – Recordkeeping Requirements

15 Consistent with the changes to the reimbursement rates required for candidates,  
16 authorized committees of candidates, and leadership PACs of House candidates, the  
17 Commission is updating the recordkeeping requirements for non-commercial travel at 11  
18 CFR 100.93(i), which are being relocated to new 11 CFR 100.93(j).

19 First, the revised recordkeeping requirements maintain the basic elements of the  
20 Commission's 2003 travel rules. Depending on the eligible reimbursement rate, see new  
21 11 CFR 100.93(c), (e), and (g), political committees are required to maintain the  
22 appropriate records for non-commercial travel under this section. What records are  
23 necessary depends on whether a campaign traveler may pay first-class or a coach rate for

1 a flight, or is required to reimburse at the charter rate or one of the rates applicable for  
2 use of government conveyances.

3 Second, the Commission is requiring candidate committees to obtain and keep  
4 copies of any shared-ownership or lease agreements, as well as the pre-flight  
5 certifications of compliance with those agreements, that the candidate's committee must  
6 obtain to comply with the requirements of 11 CFR 100.93(g)(1)(i) and (g)(3). These  
7 records are necessary to determine whether a candidate's use of the aircraft would cause  
8 the person with the ownership interest in the aircraft (the candidate or the candidate's  
9 immediate family member) to exceed the amount of use of the aircraft included in that  
10 ownership interest.

11 The Commission also sought comment on the appropriate duration of this record  
12 retention requirement, but did not receive any comments. Thus, the general record  
13 retention period of three years applies to these documents. See 11 CFR 104.14(b)(3). All  
14 other applicable recordkeeping requirements remain in effect with respect to these  
15 documents. See, e.g., 11 CFR 104.14(b).

16

17 **IV. Restrictions on use of campaign funds for flights on noncommercial aircraft**  
18 **(2 U.S.C. 439a(c)) - 11 CFR 113.5**

19 In addition to amending the travel reimbursement regulations at 11 CFR 100.93,  
20 the Commission is adding new 11 CFR 113.5 to implement the limit on expenditures for  
21 non-commercial air travel established by HLOGA. The Commission is promulgating  
22 new 11 CFR 113.5 to provide guidance regarding the making of expenditures, which is  
23 parallel to the guidance provided in 11 CFR 100.93 regarding contributions. The final

1 rule is identical to proposed 11 CFR 113.5. In the NPRM, the Commission requested  
2 comments as to whether a new rule (11 CFR 113.5) is necessary to implement new  
3 2 U.S.C. 439a(c) in light of the proposed revisions to 11 CFR 100.93, but did not receive  
4 any comments addressing the question.

5 A. New 11 CFR 113.5(a) – Presidential, Vice-Presidential and Senate Candidates

6 New 11 CFR 113.5(a)(1) implements the general prohibition in new 2 U.S.C.  
7 439a(c) on the expenditure of funds by candidates for President, Vice-President or the  
8 Senate and their authorized committees for aircraft flights, with the two exceptions  
9 provided in HLOGA (in addition to the special provisions for travel on government-  
10 operated aircraft and candidate-owned aircraft). The first exception is for air travel on  
11 “commercial” flights. See 11 CFR 113.5(a)(1). The second exception is for air travel on  
12 “non-commercial” flights if either the candidate, the authorized committee, or another  
13 political committee, reimburses the provider of the aircraft for the candidate’s pro rata  
14 share per candidate campaign traveler of the normal and usual charter fare or rental  
15 charge for travel on a comparable aircraft of comparable size within seven days of when  
16 the flight began. See 11 CFR 113.5(a)(2). New 11 CFR 113.5(a)(1) and (2) provide  
17 cross-references to definitions of the terms “commercial travel” and “non-commercial  
18 travel” in 11 CFR 100.93(a)(3)(iv) and (v). The “candidate’s pro rata share per candidate  
19 campaign traveler of the normal and usual charter fare” is calculated in the same manner  
20 as in 11 CFR 100.93(c)(1). A candidate’s committee will not be considered to have made  
21 an expenditure when members of the media and government-provided security personnel  
22 pay the service provider directly for their portion of the travel as permitted under 11 CFR  
23 100.93(b)(3). Travel on aircraft provided by a Federal, State or local government entity

1 is addressed in new 11 CFR 113.5(a)(3), consistent with new 11 CFR 100.93(e)(1)  
2 (government conveyances). Travel on candidate-owned aircraft is addressed below.

3 The Commission received no comments specifically addressing new 11 CFR  
4 113.5(a).

5 B. New 11 CFR 113.5(b) – House Candidates

6 As noted above, HLOGA prohibits House candidates and their authorized  
7 committees and leadership PACs from spending campaign funds on private, non-  
8 commercial air travel. 2 U.S.C. 439a(c)(2). Instead, House candidates must spend  
9 campaign funds on air travel only for commercial air travel, or for travel on aircraft  
10 owned by the candidate or the candidate’s immediate family member, or for flights  
11 operated by the Federal government or a State or local government. Because House  
12 candidates, their authorized committees, and their leadership PACs are prohibited from  
13 spending campaign funds on non-commercial travel, other than travel permitted under  
14 11 CFR 100.93(e) (government conveyances) or 11 CFR 100.93(g) (aircraft owned or  
15 leased by a candidate or a candidate’s immediate family member), the new rule at 11  
16 CFR 113.5(b) also prohibits House candidates from accepting in-kind contributions in the  
17 form of non-commercial air travel. In the NPRM, the Commission requested comment  
18 and received one comment, which expressed support. Accordingly, the Commission is  
19 implementing this proposal in new 11 CFR 113.5(b)(1) and (2). Paragraph (b)(1)  
20 contains the same “commercial exception” as is set forth in 11 CFR 113.5(a)(2),  
21 discussed above. Travel on government-provided aircraft is reflected in paragraph (b)(2).  
22 Travel on candidate-owned aircraft is addressed below.

1 C. New 11 CFR 113.5(c) – Exception for Aircraft Owned or Leased by Candidates  
2 and Immediate Family Members of Candidates

3 As noted above, the restrictions on expenditures in HLOGA do not apply to travel  
4 aboard aircraft that are owned or leased by a candidate or the candidate’s immediate  
5 family members, including aircraft owned or leased by any entity in which the candidate  
6 or a member of the candidate’s immediate family “has an ownership interest,” provided  
7 that the entity is not a “public corporation,” and the use of the aircraft is not “more than  
8 the candidate’s or immediate family member’s proportionate share of ownership allows.”  
9 2 U.S.C. 439a(c)(3)(A).

10 New 11 CFR 113.5(c)(1) implements this statutory provision and cross-references  
11 the definition of “proportional share of ownership” in 11 CFR 100.93(g)(3). New  
12 11 CFR 113.5(c)(2) states that candidates and immediate family members will be  
13 considered to own or lease aircraft under the conditions described in 11 CFR  
14 100.93(g)(2), namely, when there is an ownership interest in an entity (other than a public  
15 corporation) that owns the aircraft. New 11 CFR 113.5(c)(3) cross-references the  
16 definition of “immediate family member” in 11 CFR 100.93(g)(4). The Commission  
17 received no comments specifically addressing 11 CFR 113.5(c) as proposed in the  
18 NPRM.

19 D. New 11 CFR 113.5(d) – In-kind Contribution

20 New 11 CFR 113.5(d) states that the unreimbursed value of transportation  
21 provided to any campaign traveler (as defined in 11 CFR 100.93(a)(3)(i)), is an in-kind  
22 contribution from the service provider to the candidate or political committee on whose  
23 behalf, or with whom, the campaign traveler traveled, and that such contributions are

1 subject to the limits, prohibitions, and reporting requirements of the Act. As noted above,  
2 House candidates are generally prohibited from receiving such contributions. The  
3 Commission received no comments specifically addressing 11 CFR 113.5(d) as proposed  
4 in the NPRM and is adopting the rule proposed in the NPRM.

5 E. Change of Title for 11 CFR Part 113

6 Along with adding new 11 CFR 113.5, which implements new 2 U.S.C. 439a(c),  
7 the Commission is changing the title of Part 113. The former title, “Use of Campaign  
8 Accounts for Non-Campaign Purposes,” does not encompass new section 113.5, which  
9 governs use of campaign funds for campaign travel. The new title for Part 113 is  
10 “Permitted and Prohibited Uses of Campaign Accounts.” The Commission received no  
11 comments addressing this change and is adopting the rule proposed in the NPRM.

12

13 **V. Publicly-Financed Presidential and Vice-Presidential Candidates - 11 CFR**  
14 **9004.7 and 9034.7**

15 Although HLOGA does not amend either the Presidential Election Campaign  
16 Fund Act (Fund Act) (26 U.S.C. 9001 et seq.) or the Presidential Primary Matching  
17 Payment Account Act (Matching Payment Act) (26 U.S.C. 9031 et seq.), the Commission  
18 proposed in the NPRM to make certain amendments to its regulations implementing these  
19 laws to conform them to the changes it proposed to 11 CFR 100.93. The Commission  
20 received no comments regarding these proposals and is implementing them without  
21 change from the NPRM.

22 Sections 9004.7 and 9034.7 are substantively identically worded regulations  
23 promulgated under the authority of the Fund Act and the Matching Payment Act,

1 respectively, and cross-reference 11 CFR 100.93. Both regulations prescribe the  
2 procedures that publicly funded primary and general election presidential campaigns  
3 must follow in attributing their travel expenses to campaign-related and to non-campaign-  
4 related activities. The Commission is making the following technical amendments to  
5 these regulations.

6 A. Aircraft

7 Revised 11 CFR 9004.7(b)(5)(i), (iii), and (v), and 11 CFR 9004.7(b)(8) replace  
8 the word “airplane” with the word “aircraft.” These changes conform the regulations to  
9 the terminology in HLOGA, as well as revised 11 CFR 100.93 and new 11 CFR 113.5.

10 B. Recordkeeping Requirements

11 Former 11 CFR 9004.7(b)(5)(v) and 11 CFR 9034.7(b)(5)(v) required the  
12 authorized committees of presidential and vice-presidential candidates to maintain  
13 documentation of the lowest unrestricted non-discounted airfare as required in former  
14 11 CFR 100.93(i)(1) or (2). Former sections 100.93(i)(1) and (2) contained  
15 recordkeeping requirements relating to rates of reimbursement prescribed in former  
16 11 CFR 100.93(c) and (e). Revised 11 CFR 100.93, however, replaces the old  
17 reimbursement rate for non-commercial air travel by presidential and vice-presidential  
18 candidates with a rate based on the “pro rata share per candidate campaign traveler” of  
19 the normal and usual charter fare or rental charge for travel on a comparable aircraft of  
20 comparable size, and sets out the corresponding recordkeeping requirements in 11 CFR  
21 100.93(j)(1). The Commission is therefore revising 11 CFR 9004.7(b)(5)(v) and 11 CFR  
22 9034.7(b)(5)(v) to conform them to the new recordkeeping requirements in amended

1 11 CFR 100.93(j)(1). The Commission is also amending the final sentence in sections  
2 9004.7(b)(5)(v) and 9034.7(b)(5)(v), which address recordkeeping requirements for  
3 travel on other conveyances to reflect that the recordkeeping requirements for other  
4 conveyances are now addressed in 11 CFR 100.93(j)(2).

5 C. 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8) – Conforming changes in  
6 terminology

7 The Commission is revising 11 CFR 9004.7(b)(8) and 9034.7(b)(8) to conform  
8 the terminology to that used in new 2 U.S.C. 439a(c) and in revised 11 CFR 100.93.  
9 Former sections 9004.7(b)(8) and 9034.7(b)(8) used the same terminology as former  
10 section 100.93 in describing aircraft that are “licensed for compensation or hire” under  
11 various FAA certification authorities. Revised 11 CFR 100.93 defines the term “non-  
12 commercial travel,” and uses the term “aircraft” instead of “airplane.” Accordingly,  
13 revised 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8) state that travel on non-  
14 commercial aircraft is governed by 11 CFR 100.93 and that the term “non-commercial  
15 travel” is defined in accordance with 11 CFR 100.93(a)(3)(v).

16

17 **Certification of No Effect Pursuant to 5 U.S.C. § 605(b)**

18 **[Regulatory Flexibility Act]**

19 The Commission certifies that the attached rules will not have a significant  
20 economic impact on a substantial number of small entities. The basis for this  
21 certification is that few, if any, small entities are affected by these final rules, which  
22 impose obligations only on Federal candidates, their campaign committees, other  
23 individuals traveling in connection with Federal elections, and the political committees

1 on whose behalf this travel is conducted. Federal candidates, their campaign committees,  
2 and most political party committees and other political committees entitled to rely on  
3 these rules are not small entities. These rules generally clarify or supplement existing  
4 rules and are largely intended to implement a statutory directive and simplify the process  
5 of determining reimbursement rates. The rules do not impose compliance costs on any  
6 service providers (as defined in the rules) that are small entities so as to cause a  
7 significant economic impact. With respect to the determination of the amount of  
8 reimbursement for travel, the new rules merely reflect an extension of existing similar  
9 rules. To the extent that operators of air-taxi services or on-demand air charter services  
10 are small entities indirectly impacted by these rules, any economic effects would result  
11 from the travel choices of individual candidates or other travelers rather than Commission  
12 requirements and, in any event, are likely to be less than \$100,000,000 per year.

13

14

1 **List of Subjects**

2 11 CFR Part 100

3 Elections.

4 11 CFR Part 113

5 Campaign funds, and political candidates.

6 11 CFR Part 9004

7 Campaign funds.

8 11 CFR Part 9034

9 Campaign funds, reporting and recordkeeping requirements.

10

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

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

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

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

7 \* \* \* \* \*

8 2. Section 100.93 is revised to read as follows:

9 **§ 100.93 Travel by aircraft or other means of transportation.**

10 (a) Scope and definitions.

11 (1) This section applies to all campaign travelers who use non-commercial  
12 travel.

13 (2) Campaign travelers who use commercial travel, such as a commercial  
14 airline flight, charter flight, taxi, or an automobile provided by a rental  
15 company, are governed by 11 CFR 100.52(a) and (d), not this section.

16 (3) For the purposes of this section:

17 (i) Campaign traveler means

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

22 (B) Any member of the news media traveling with a candidate.

- 1 (ii) Service provider means the owner of an aircraft or other  
2 conveyance, or a person who leases an aircraft or other conveyance  
3 from the owner or otherwise obtains a legal right to the use of an  
4 aircraft or other conveyance, and who uses the aircraft or other  
5 conveyance to provide transportation to a campaign traveler. For a  
6 jointly owned or leased aircraft or other conveyance, the service  
7 provider is the person who makes the aircraft or other conveyance  
8 available to the campaign traveler.
- 9 (iii) Unreimbursed value means the difference between the value of the  
10 transportation service provided, as set forth in this section, and the  
11 amount of payment for that transportation service by the political  
12 committee or campaign traveler to the service provider within the  
13 time limits set forth in this section.
- 14 (iv) Commercial travel means travel aboard:
- 15 (A) An aircraft operated by an air carrier or commercial  
16 operator certificated by the Federal Aviation  
17 Administration, provided that the flight is required to be  
18 conducted under Federal Aviation Administration air  
19 carrier safety rules, or, in the case of travel which is abroad,  
20 by an air carrier or commercial operator certificated by an  
21 appropriate foreign civil aviation authority, provided that  
22 the flight is required to be conducted under air carrier  
23 safety rules; or

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

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

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

9 (b) General rule.

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

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

19 (ii) Every campaign traveler for whom payment is not made under  
20 paragraph (b)(1)(i) of this section pays the service provider for the  
21 full value of the transportation provided to that campaign traveler  
22 as determined in accordance with paragraphs (c), (d), (e) or (g) of  
23 this section. See 11 CFR 100.79 and 100.139 for treatment of

1                   certain unreimbursed transportation expenses incurred by  
2                   individuals traveling on behalf of candidates, authorized  
3                   committees, and political committees of political parties.

- 4           (2)    Except as provided in 11 CFR 100.79, the unreimbursed value of  
5           transportation provided to any campaign traveler, as determined in  
6           accordance with paragraphs (c), (d) or (e) of this section, is an in-kind  
7           contribution from the service provider to the candidate or political  
8           committee on whose behalf, or with whom, the campaign traveler  
9           traveled. Contributions are subject to the reporting requirements,  
10          limitations and prohibitions of the Act.
- 11          (3)    When a candidate is accompanied by a member of the news media, or by  
12          security personnel provided by any Federal or State government, the news  
13          media or government security provider may reimburse the political  
14          committee paying for the pro-rata share of the travel by the member of the  
15          media or security personnel, or may pay the service provider directly for  
16          that pro-rata share, up to the applicable amount set forth in paragraphs  
17          (c)(1), (c)(3), (d), (e), or (g) of this section. A payment made directly to  
18          the service provider may be subtracted from the amount for which the  
19          political committee is otherwise responsible without any contribution  
20          resulting. No contribution results from reimbursement by the media or a  
21          government security provider to a political committee in accordance with  
22          this paragraph.

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

6 (1) Travel by or on behalf of Senate, presidential, or vice-presidential  
7 candidates. A Senate, presidential, or vice-presidential candidate traveling  
8 on his own behalf, or any person traveling on behalf of such candidate or  
9 the candidate's authorized committee must pay the pro rata share per  
10 campaign traveler of the normal and usual charter fare or rental charge for  
11 travel on a comparable aircraft of comparable size. The pro rata share  
12 shall be calculated by dividing the normal and usual charter fare or rental  
13 charge by the number of campaign travelers on the flight that are traveling  
14 on behalf of such candidates or their authorized committees, including  
15 members of the news media, and security personnel traveling with a  
16 candidate. No portion of the normal and usual charter fare or rental charge  
17 may be attributed to any campaign travelers that are not traveling on  
18 behalf of such candidates or their authorized committees, or any other  
19 passengers, except as permitted under paragraph (b)(3) of this section.

20 (2) Travel by or on behalf of House candidates and their leadership PACs.  
21 Except as otherwise provided in paragraphs (e) and (g) of this section, a  
22 campaign traveler who is a candidate for election for the office of  
23 Representative in, or Delegate or Resident Commissioner to, the Congress,

1 or a person traveling on behalf of any such candidate or any authorized  
2 committee or leadership PAC of such candidate, is prohibited from non-  
3 commercial travel on behalf of any such candidate or any authorized  
4 committee or leadership PAC of such candidate.

5 (3) Other campaign travelers. When a candidate's authorized committee pays  
6 for a flight pursuant to paragraph (c)(1) of this section, no payment is  
7 required from other campaign travelers on that flight. Otherwise, a  
8 campaign traveler not covered by paragraphs (c)(1) or (c)(2) of this  
9 section, including persons traveling on behalf of a political party  
10 committee, separate segregated fund, nonconnected political committee, or  
11 a leadership PAC other than a leadership PAC of a candidate for election  
12 for the office of Representative in, or Delegate or Resident Commissioner  
13 to, the Congress, must pay the service provider no less than the following  
14 for each leg of the trip:

- 15 (i) In the case of travel between cities served by regularly scheduled  
16 first-class commercial airline service, the lowest unrestricted and  
17 non-discounted first-class airfare;
- 18 (ii) In the case of travel between a city served by regularly scheduled  
19 coach commercial airline service, but not regularly scheduled first-  
20 class commercial airline service, and a city served by regularly  
21 scheduled coach commercial airline service (with or without first-  
22 class commercial airline service), the lowest unrestricted and non-  
23 discounted coach airfare; or

1           (iii) In the case of travel to or from a city not served by regularly  
2           scheduled commercial airline service, the normal and usual charter  
3           fare or rental charge for a comparable commercial aircraft of  
4           sufficient size to accommodate all campaign travelers, and  
5           security personnel, if applicable.

6 (d) Other means of transportation. If a campaign traveler uses any means of  
7           transportation other than an aircraft, including an automobile, or train, or boat the  
8           campaign traveler, or the political committee on whose behalf the travel is conducted,  
9           must pay the service provider within thirty (30) calendar days after the date of receipt  
10          of the invoice for such travel, but not later than sixty (60) calendar days after the date  
11          the travel began, at the normal and usual fare or rental charge for a comparable  
12          commercial conveyance of sufficient size to accommodate all campaign travelers,  
13          including members of the news media traveling with a candidate, and security  
14          personnel, if applicable.

15 (e) Government conveyances.

16          (1) Travel by or on behalf of candidates, their authorized committees, or  
17          House candidate Leadership PACs. If a campaign traveler traveling on  
18          behalf of a candidate, an authorized committee, or the leadership PAC of a  
19          House candidate uses an aircraft that is provided by the Federal  
20          government, or by a State or local government, the campaign traveler, or  
21          the political committee on whose behalf the travel is conducted, must pay  
22          the government entity, within the time specified by that government entity,  
23          either:

- 1 (i) The pro rata share per campaign traveler of the normal and usual  
2 charter fare or rental charge for the flight on a comparable aircraft  
3 of sufficient size to accommodate all campaign travelers. The pro  
4 rata share shall be calculated by dividing the normal and usual  
5 charter fare or rental charge by the number of campaign travelers  
6 on the flight that are traveling on behalf of candidates, authorized  
7 committees, or House candidate leadership PACs, including  
8 members of the news media, and security personnel, if applicable.  
9 No portion of the normal and usual charter fare or rental charge  
10 may be attributed to any other campaign travelers or any other  
11 passengers, except as permitted under paragraph (b)(3) of this  
12 section. For purposes of this paragraph, the comparable aircraft  
13 need not accommodate any government-required personnel and  
14 equipment; or
- 15 (ii) The private traveler reimbursement rate, as specified by the  
16 governmental entity providing the aircraft, per campaign traveler.
- 17 (2) Other campaign travelers. When a candidate's authorized committee, or a  
18 House candidate's leadership PAC pays for a flight pursuant to paragraph  
19 (e)(1) of this section, no payment is required from any other campaign  
20 travelers on that flight. Otherwise, a campaign traveler not covered by  
21 paragraph (e)(1) of this section, including persons traveling on behalf of a  
22 political party committee, separate segregated fund, nonconnected  
23 political committee, or a leadership PAC other than a leadership PAC of a

1 candidate for the office of Representative in, or Delegate or Resident  
2 Commissioner to, the Congress, must pay the government entity, within  
3 the time specified by that government entity, either:

4 (i) For travel to or from a military airbase or other location not  
5 accessible to the general public, the lowest unrestricted and non-  
6 discounted first-class airfare to or from the city with regularly  
7 scheduled first-class commercial airline service that is  
8 geographically closest to the military airbase or other location  
9 actually used; or

10 (ii) For all other travel, in accordance with paragraph (c)(3) of this  
11 section.

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

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

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

2 (1) For non-commercial travel by a candidate, or a person traveling on behalf  
3 of a candidate, on an aircraft owned or leased by that candidate or an  
4 immediate family member of that candidate, the candidate's authorized  
5 committee must pay:

6 (i) In the case of travel on an aircraft that is owned or leased under a  
7 shared-ownership or other time-share arrangement, where the  
8 travel does not exceed the candidate's or immediate family  
9 member's proportional share of the ownership interest in the  
10 aircraft, the hourly, mileage, or other applicable rate charged the  
11 candidate, immediate family member, or other service provider for  
12 the costs of the travel; or

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

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

1           (2)    A candidate, or an immediate family member of the candidate, will be  
2                    considered to own or lease an aircraft under paragraph (g)(1) of this  
3                    section if the candidate or the immediate family member of the candidate  
4                    has an ownership interest in an entity that owns the aircraft, provided that  
5                    the entity is not a corporation with publicly traded shares.

6           (3)    A proportional share of the ownership interest in an aircraft means the  
7                    amount of use to which the candidate or immediate family member is  
8                    entitled under an ownership or lease agreement. Prior to each flight, the  
9                    candidate’s committee must obtain a certification from the service  
10                  provider that the candidate’s planned use of the aircraft will not exceed the  
11                  candidate’s or immediate family member’s proportional share of use under  
12                  the ownership or lease agreement. See paragraph (j) of this section for  
13                  related recordkeeping requirements.

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

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

20   (i) Reporting.

21          (1)    In accordance with 11 CFR 104.13, a political committee on whose behalf  
22                  the unreimbursed travel is conducted must report the receipt of an in-kind

1 contribution and the making of an expenditure under paragraph (b)(2) of  
2 this section.

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

7 (j) Recordkeeping.

8 (1) For travel on non-commercial aircraft conducted under paragraphs (c)(1),  
9 (c)(3)(iii), (e)(1), or (g) of this section, the political committee on whose  
10 behalf the travel is conducted shall maintain documentation of:

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

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

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

- 1 (B) The private traveler reimbursement rate available in  
2 accordance with paragraph (e)(1)(ii) of this section, and the dates  
3 on which the rate is based.
- 4 (iv) Where the travel is aboard an aircraft owned in part by the  
5 candidate or an immediate family member of the candidate, the  
6 ownership or lease agreement specifying the amount of use of the  
7 aircraft corresponding to the candidate's or an immediate family  
8 member's ownership interest in the aircraft, as required by  
9 paragraph (g)(1)(i) and (ii) and (g)(3) of this section, and the  
10 certification required by paragraph (g)(3) of this section.
- 11 (2) For travel on non-commercial aircraft conducted under paragraph (c)(3)(i),  
12 (c)(3)(ii), or (e)(2)(i) of this section, the political committee on whose  
13 behalf the travel is conducted shall maintain documentation of:
- 14 (i) The service provider and the size, model, make and tail number (or  
15 other unique identifier for military aircraft) of the aircraft used;
- 16 (ii) An itinerary showing the departure and arrival cities and the  
17 date(s) of departure and arrival, a list of all passengers on such trip,  
18 along with a designation of which passengers are and which are  
19 not campaign travelers; and
- 20 (iii) The lowest unrestricted non-discounted airfare available in  
21 accordance with paragraphs (c)(3), (e)(2)(i), and (f) of this section,  
22 including the airline offering that fare, flight number, travel

1 service, if any, providing that fare, and the dates on which the rates  
2 are based.

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

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

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

11 (iii) The commercial fare or rental charge available in accordance with  
12 paragraphs (d) and (f) of this section for a comparable commercial  
13 conveyance of sufficient size to accommodate all campaign  
14 travelers including members of the news media traveling with a  
15 candidate, and security personnel, if applicable.

16 **PART 113 – USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN**  
17 **PURPOSES**

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

19 **PART 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN**  
20 **ACCOUNTS**

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

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

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

1    **§ 113.5 Restrictions on use of campaign funds for flights on noncommercial aircraft**  
2    **(2 USC 439a(c)).**

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

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

8           (2)    Noncommercial travel as provided in 11 CFR 100.93(a)(3)(v), and the pro  
9                    rata share per campaign traveler of the normal and usual charter fare or  
10                   rental charge for travel on a comparable aircraft of comparable size, as  
11                   provided in 11 CFR 100.93(c), is paid by the candidate, the authorized  
12                   committee, or other political committee on whose behalf the travel is  
13                   conducted, to the owner, lessee, or other person who provides the aircraft  
14                   within seven calendar days after the date the flight began, except as  
15                   provided in 11 CFR 100.93(b)(3); or

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

17   (b) House candidates and their leadership PACs. Notwithstanding any other provision of  
18   the Act or Commission regulations, a candidate for the office of Representative in, or  
19   Delegate or Resident Commissioner to, the Congress, and any authorized committee or  
20   leadership PAC of such candidate, shall not make any expenditures, or receive any in-  
21   kind contribution, for travel on an aircraft unless the flight is

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

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

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

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

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

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

12 (d) In-kind contribution. Except as provided in 11 CFR 100.79, the unreimbursed value  
13 of transportation provided to any campaign traveler is an in-kind contribution from the  
14 service provider to the candidate or political committee on whose behalf, or with whom,  
15 the campaign traveler traveled. Such contributions are subject to the reporting  
16 requirements, limitations and prohibitions of the Act.

17  
18 **PART 9004 – ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS;**  
19 **USE OF PAYMENTS**

20  
21 6. The authority citation for part 9004 continues to read as follows:

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

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

3 **§ 9004.7 Allocation of travel expenditures.**

4 \* \* \* \* \*

5 (b) \* \* \*

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

10 \* \* \*

11       (iii) If any individual, including a candidate, uses a government  
12 conveyance, other than an aircraft, for campaign-related travel, the  
13 candidate's authorized committee shall pay the appropriate  
14 government entity an amount equal to the amount required under  
15 11 CFR 100.93(d).

16 \* \* \*

17       (v) For travel by aircraft, the committee shall maintain documentation  
18 as required by 11 CFR 100.93(j)(1) in addition to any other  
19 documentation required in this section. For travel by other  
20 conveyances, the committee shall maintain documentation of the  
21 commercial rental rate as required by 11 CFR 100.93(j)(3) in  
22 addition to any other documentation required in this section.

23 \* \* \* \* \*

1 (8) Non-commercial travel, as defined in 11 CFR 100.93(a)(3)(v), on aircraft,  
2 and travel on other means of transportation not operated for commercial  
3 passenger service, is governed by 11 CFR 100.93.  
4

5 **PART 9034 – ENTITLEMENTS**

6  
7 8. The authority citation for part 9034 continues to read as follows:

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

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

11 **§ 9034.7 Allocation of travel expenditures.**

12 \* \* \* \* \*

13 (b) \* \* \*

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

18 \* \* \*

19 (iii) If any individual, including a candidate, uses a government  
20 conveyance, other than an aircraft, for campaign-related travel, the  
21 candidate's authorized committee shall pay the appropriate  
22 government entity an amount equal to the amount required under  
23 11 CFR 100.93(d).

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(v) For travel by aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(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(j)(3) in addition to any other documentation required in this section.

\* \* \* \* \*

(8) Non-commercial travel on aircraft, and travel on other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

On behalf of the Commission,

\_\_\_\_\_  
Steven T. Walther  
Chairman  
Federal Election Commission

DATED: \_\_\_\_\_  
BILLING CODE: 6715-01-P