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11/13/2007 04:46 PM

To <travel07@fec.gov>

cc "Lu, Chris (Obama)" <Chris_Lu@obama.senate.gov>

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Subject Comments on Notice 2007-20

Attached please find comments of the following United States Senators:

Senator Russell D. Feingold
U.S. Senate
Washington, DC 20510

Senator Barack Obama
U.S. Senate
Washington, DC 20510

The email addresses of the members are used by constituents and are not a reliable way to contact them in time-sensitive situations. Questions regarding these comments should be addressed to me. Thank you.

Bob Schiff
Chief Counsel to Sen. Feingold
202-224-8059



Feingold-Obama Travel Comments.pdf

United States Senate

WASHINGTON, DC 20510

November 13, 2007

By Electronic Mail

Ms. Amy L. Rothstein
Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Notice 2007-20: Candidate Travel

Dear Ms. Rothstein:

We appreciate the opportunity to comment on the Commission's Notice of Proposed Rulemaking 2007-20, published at 72 Fed. Reg. 59953 (October 23, 2007) ("NPRM"), which proposes changes to the Commission's regulations on the rates and timing of payment for non-commercial travel on aircraft, and a proposed definition of "Leadership PAC," in light of new statutory provisions contained in the Honest Leadership and Open Government Act of 2007 ("HLOGA"). We were leading supporters of that legislation and early sponsors of efforts to change how the election law and ethics rules deal with non-commercial travel on aircraft. We therefore have a particular interest in ensuring that regulations adopted by the Commission accurately construe and implement it.

Our comments concern only those regulations that deal with travel on non-commercial aircraft by Senate and presidential candidates, where reimbursement is required.

I. Legislative History

Our work on what is often referred to as the "corporate jet" issue dates to the introduction by Sen. Feingold of an ethics and lobbying reform bill in 2005. *See* S. 1398, 109th Congress. Section 302 of that bill required reimbursement at the full charter rate for any personal, official, or campaign use of a corporate jet. As Congress considered lobbying reform in 2006 after the Jack Abramoff scandal

broke, we advocated for the inclusion of a provision addressing the use of corporate jets. Along with other Senators, we prepared an amendment to S. 2349, the bill that was on the Senate floor in the spring of 2006, but its proponents were prevented from offering it. *See* Cong. Rec. at S 2500 (Mar. 29, 2006) (statement of Sen. McCain). S. 2349 passed the Senate without a provision on the use of corporate jets, but never became law.

In January 2007, in anticipation of the Senate again taking up the issue, we introduced a comprehensive a lobbying and ethics reform bill. *See* S. 230, 110th Congress. Section 105(e) of that bill concerned the use of corporate jets. It became the basis of an amendment offered on the Senate floor by the Senate Majority Leader Reid, which added a corporate jet provision to the bill that the Senate ultimately passed. *See* S. Amdt. 4, Cong. Rec. at S490 (Jan. 12, 2007). The final bill that was signed into law by President Bush on September 14, 2007 divided the corporate jet provisions into two sections, Section 544(c), which amended the Senate Rules, and Section 601, which amended the Federal Election Campaign Act.

The unmistakable purpose of these provisions, as shown by numerous statements from Senators throughout consideration of ethics and lobbying reform, was to require Senators to reimburse the owner of a corporate jet at the full charter rate, rather than just the first class rate for similar travel, as permitted by the pre-existing Senate rules and FEC regulations. *See, e.g.*, Cong. Rec. at S2435 (Mar. 28, 2006) (statement of Sen. Obama); Cong. Rec. at S2500 (Mar. 29, 2006) (statement of Sen. McCain); Cong. Rec. at S186 (Jan. 4, 2007) (statement of Sen. Reid); Cong. Rec. at S263 (Jan. 9, 2007) (statement of Sen. Obama); Cong. Rec. at S267 (Jan. 9, 2007) (statement of Sen. Feingold); Cong. Rec. at S320 (Jan. 10, 2007) (statement of Sen. Lieberman); Cong. Rec. at S548 (Jan. 16, 2007) (statement of Sen. Reid); Cong. Rec. at S739 (Jan. 18, 2007) (statement of Sen. Reid); Cong. Rec. at S1185 (Jan. 25, 2007) (statement of Sen. Levin); S8400 (June 26, 2007) (statement of Sen. Reid); Cong. Rec. at S10692 (Aug. 2, 2007) (statement of Sen. Feinstein); Cong. Rec. at S10694 (Aug. 2, 2007) (statement of Sen. Feingold); Cong. Rec. at S10703 (Aug. 2, 2007) (statement of Sen. Levin); Cong. Rec. at S10713 (Aug. 8, 2007) (statement of Sen. Feinstein).

Therefore, any regulation adopted by the FEC must, first and foremost, eliminate the corporate subsidy for campaign travel. It must further ensure that no new loophole or opportunity for evasion be allowed to develop.

II. Proposed Regulations Concerning Reimbursement for Travel On Non-Commercial Aircraft

We commend the effort in the NPRM to analyze all possible scenarios in which the new statutory provision should be applied. The vast majority of flights on corporate jets will probably involve a single candidate and people traveling on the candidate's behalf. In such a case, that candidate's authorized committee must reimburse the entire charter rate for the flight, regardless of whether representatives of other non-candidate committees are present on the flight. Any other rule would allow evasion of the clear intent of Congress by allowing a corporate jet's owner or the candidate to invite people to fly with the candidate in order to reduce the amount that the candidate must reimburse the owner for the flight.

The same principle must guide the Commission in the rare cases where multiple candidates accept a flight on the same corporate jet. In such cases, the statutory language in 2 U.S.C. § 439a(c)(1) makes clear that the full charter rate can be divided between the candidates, but no non-candidate committees can be permitted to share in the cost of the flight for purposes of determining the appropriate reimbursement for the candidates. We have no objection to other travelers continuing to provide separate reimbursement to the owners of aircraft under the Commission's current rules in order to avoid inappropriate in-kind contributions.

Revisions to the Senate Ethics rules contained in HLOGA provide for the calculation of the appropriate reimbursement for official travel on corporate jets using the pro-rata share of all Members, officers, or employees of Congress on the flight. *See* Pub. L. No. 110-81, section 544(c)(1)(C)(i); Senate Rule XXXV 1(C). This allows for an equitable distribution of the full charter rate among different offices, based on the number of travelers each office has on the flight. We believe the Commission in its discretion should interpret the term "candidates" in § 439a(c)(1)(B) to mean "candidates or those traveling on behalf of the candidates." This would permit authorized candidate committees to divide reimbursement in an equitable manner as well, so that if one candidate is accompanied by several campaign staff but another candidate on the same flight is traveling alone, the authorized committee of the first candidate will bear a proportionally greater share of the cost of the flight.

This interpretation is supported by the fact that, as the NPRM correctly determines, an authorized committee must pay the charter rate for a flight taken by a person traveling on behalf of a candidate, even if candidate him or herself is not on board. Under no circumstances, however, should the total reimbursement from authorized committees of Senate candidates be less than the full charter rate.

It goes without saying, then, that the “per represented committee” and “per passenger” alternatives discussed in the NPRM are not acceptable. They contradict both the statutory language, which allows for the division of the costs only between candidates, and also the clear legislative intent to require the full charter rate to be paid by Senate candidates and their authorized committees.

Similarly, the “comparable aircraft” alternative finds no support in the language of the statute or its legislative history. Such a rule would allow corporations to provide a spacious jet with numerous amenities at a fraction of the cost of chartering such an aircraft. Congress wanted to end the appearance of impropriety that accompanies the use of corporate jets by candidates. The “comparable aircraft” alternative raises the same concerns about corporate subsidization of campaign travel as did the old “first class rate” approach to fair market value.

III. Conclusion

In recent years, travel by Members of Congress on corporate jets contributed greatly to public concern about inappropriate access and influence of lobbyists on the legislative process. Congress responded to that concern by enacting HLOGA, the first significant amendments to the ethics and lobbying rules in over a decade. The Commission has done an admirable job in the NPRM in thoroughly considering the implications of HLOGA’s corporate jet provisions. We urge the adoption of a final rule that reflects the principles set forth above, so that the intent of Congress in passing this important law is carried out. Thank you for your consideration of our views.

Sincerely,

Senator Russell D. Feingold
Senator Barack Obama