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Subject Comment on Notice of Proposed Rulemaking (Document ID:  
FEC-2007-0054-0001)

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Oct. 30, 2007

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Re: Comment on Notice of Proposed Rulemaking (Document ID: FEC-2007-0054-0001)

Sections IV(B)(1) - (4) of the Notice of Proposed Rulemaking provide several proposals for implementing 2 U.S.C. 439a(c)(1)(B), which requires candidates for President, Vice-President, and U.S. senate to pay their “pro rata share of the fair market value” of non-commercial flights aboard aircraft. The pro rata share is “determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on the flight.” 2 U.S.C. 439a(c)(1)(B). The Commission seeks comments on the proposed approaches.

In Section IV(B), the Commission proposes to read “candidates” as “candidates represented” when calculating “pro rata share.” The Commission should adopt this proposal. A strict reading of the text would effectively prohibit expenditures on flights for authorized committees, unless at least one candidate were on the flight (because dividing the fair market value of the flight by zero yields an infinitely large number). This seems inconsistent with the notion that a “pro rata share ” would be a portion of the fair market value.

The Section IV(B) proposal is preferable the “Per Represented Committee Alternative” because “candidates represented” is closer to the original text than “commission.”

The Section IV(B) proposal is preferable the “Per Passenger Alternative” for two reasons. First, the section IV(B) proposal is more consistent with the text of the statute. The statute refers to the “charter fare or rental charge for a comparable plane of comparable size,” without any mention of proportioning. 2 U.S.C. 439a(c)(1)(B). Second, the “Per Passenger Alternative” might create opportunities for abuse if additional passengers were added to the flight for the purpose of reducing the pro rata share owed by the candidate. If the Commission were to adopt the “Per Passenger Alternative,” it should consider requiring candidates to show that the remaining passengers were charged for their pro rata share of the cost and that the owner/lessee/provider had collected or intended to collect that amount from the remaining passengers.

The Section IV(B) proposal should be adopted in favor of the “Comparable Aircraft Alternative” for the two reasons discussed in the previous paragraph.