



FEDERAL ELECTION COMMISSION
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MEMORANDUM

TO: The Commission

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SUBJECT: Draft Final Rule on Campaign Travel

AGENDA ITEM
For Meeting of: 12-14-07

SUBMITTED LATE

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

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

Attachment

Draft

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, ~~and 438(a)(8)~~, and 439a(c).

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

8 **§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).**

9 * * * * *

10 (e) The following are examples of political committees:

11 * * *

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

19 * * * * *

20 3. Section 100.93 is revised to read as follows:

21 **§ 100.93 Travel by aircraft~~plane~~ or other means of transportation.**

22 (a) Scope and definitions.

- 1 (1) This section applies to all campaign travelers who use non-commercial
2 travel
- 3 ~~(i) An airplane not licensed by the Federal Aviation Administration to~~
4 ~~operate for compensation or hire under 14 CFR parts 121, 129, or~~
5 ~~135;~~
- 6 ~~(ii) Other means of transportation not operated for commercial~~
7 ~~passenger service; or~~
- 8 ~~(iii) An airplane or other means of transportation operated by a Federal,~~
9 ~~State, or local government.~~
- 10 (2) Campaign travelers who use commercial travel, ~~an airplane that is licensed~~
11 ~~by the Federal Aviation Administration to operate for compensation or~~
12 ~~hire under 14 CFR parts 121, 129, or 135, or other means of transportation~~
13 ~~that is operated for commercial passenger service, 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 aAny 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~~plane~~ or other
2 conveyance, or a person who leases an aircraft~~plane~~ or other
3 conveyance from the owner or otherwise obtains a legal right to
4 the use of an aircraft~~plane~~ or other conveyance, and who uses the
5 aircraft~~plane~~ or other conveyance to provide transportation to a
6 campaign traveler. For a jointly owned or leased aircraft~~plane~~ or
7 other conveyance, the service provider is the person who makes
8 the aircraft~~plane~~ or other conveyance available to the campaign
9 traveler.
- 10 (iii) Unreimbursed value means the difference between the value of the
11 transportation service provided, as set forth in this section, and the
12 amount of payment for that transportation service by the political
13 committee or campaign traveler to the service provider within the
14 time limits set forth in this section.
- 15 (iv) Commercial travel means travel aboard:
- 16 (A) An aircraft operated by an air carrier or commercial
17 operator certificated by the Federal Aviation
18 Administration, provided that the flight is required to be
19 conducted under Federal Aviation Administration air
20 carrier safety rules, or, in the case of travel which is abroad,
21 by an air carrier or commercial operator certificated by an
22 appropriate foreign civil aviation authority, provided that

1 the flight is required to be conducted under air carrier
2 safety rules; or

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

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

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

11 (b) General rule.

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

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

21 (ii) Every campaign traveler for whom payment is not made under
22 paragraph (b)(1)(i) of this section pays the service provider for the
23 full value of the transportation provided to that campaign traveler

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

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

17 (3) When a candidate is accompanied by a member of the news media, or by
18 security personnel provided by any Federal or State government, the news
19 media or government security provider may reimburse the political
20 committee paying for the pro-rata share of the travel by the member of the
21 media or security personnel, or may pay the service provider directly for
22 that pro-rata share, up to the applicable amount set forth in paragraphs
23 (c)(1), (c)(3), (d), (e), or (g) of this section. A payment made directly to

1 the service provider may be subtracted from the amount for which the
2 political committee is otherwise responsible without any contribution
3 resulting. No contribution results from reimbursement by the media or a
4 government security provider to a political committee in accordance with
5 this paragraph.

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

- 11 (1) Travel by or on behalf of Senate, presidential, or vice-presidential
12 candidates. A Senate, presidential, or vice-presidential candidate traveling
13 on his own behalf, or any person traveling on behalf of such candidate, the
14 candidate's authorized committee, or the candidate's leadership PAC,
15 must pay the pro rata share per candidate campaign traveler of the normal
16 and usual charter fare or rental charge for travel on a comparable aircraft
17 of comparable size. The pro rata share shall be calculated by dividing the
18 normal and usual charter fare or rental charge by the number of campaign
19 travelers on the flight that are traveling on behalf of candidates, authorized
20 committees, or leadership PACs, including members of the news media
21 and security personnel traveling with a candidate. No portion of the
22 normal and usual charter fare or rental charge may be attributed to any

1 non-candidate campaign travelers or any other passengers, except as
2 permitted under paragraph (b)(3) of this section.

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

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

21 (d) Other means of transportation. If a campaign traveler uses any means of
22 transportation other than an aircraft, including an automobile, or train, or boat ~~helicopter~~
23 the campaign traveler, or the political committee on whose behalf the travel is conducted,

1 must pay the service provider within thirty (30) calendar days after the date of receipt of
2 the invoice for such travel, but not later than sixty (60) calendar days after the date the
3 travel began, at the normal and usual fare or rental charge for a comparable commercial
4 conveyance of comparable size, ~~of sufficient size to accommodate all campaign travelers,~~
5 ~~including members of the news media traveling with a candidate, and security personnel,~~
6 ~~if applicable~~ A comparable commercial conveyance is a conveyance of similar make and
7 model as the conveyance that actually makes the trip, with similar amenities as that
8 conveyance.

9 (e) Government conveyances.

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

15 (i) The pro rata share per candidate campaign traveler of the normal
16 and usual charter fare or rental charge for the flight on a
17 comparable aircraft of sufficient size to accommodate all campaign
18 travelers. The pro rata share shall be calculated by dividing the
19 normal and usual charter fare or rental charge by the number of
20 campaign travelers on the flight that are traveling on behalf of
21 candidates, authorized committees, or leadership PACs, including
22 members of the news media and security personnel traveling with a
23 candidate. No portion of the normal and usual charter fare or

1 rental charge may be attributed to any non-candidate campaign
2 travelers or any other passengers, except as permitted under
3 paragraph (b)(3) of this section. For purposes of this paragraph,
4 the comparable aircraft need not accommodate any government-
5 required personnel and equipment; or

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

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

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

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

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

- 1 (i) In the case of travel on an aircraft that is owned or leased under a
2 shared-ownership or other time-share arrangement, where the
3 travel does not exceed the candidate's or immediate family
4 member's proportional share of the ownership interest in the
5 aircraft, the hourly, mileage, or other applicable rate charged the
6 candidate, immediate family member, or other service provider for
7 the costs of the travel; or
- 8 (ii) In the case of travel on an aircraft that is owned or leased under a
9 shared-ownership or other time-share arrangement, where the
10 travel does exceed the candidate's or immediate family member's
11 proportional share of the ownership interest in the aircraft, the rate
12 specified in paragraph (c) of this section (House candidates are
13 prohibited from engaging in such travel); or
- 14 (iii) In the case of travel on an aircraft that is not owned or leased under
15 a shared-ownership or other time-share arrangement, the pro rata
16 share per campaign traveler of the costs associated with the trip.
17 Associated costs include, but are not limited to, the cost of fuel and
18 crew, and a proportionate share of maintenance costs.
- 19 (2) A candidate, or an immediate family member of the candidate, will be
20 considered to own or lease an aircraft under paragraph (g)(1) of this
21 section if the candidate or the immediate family member of the candidate
22 has an ownership interest in an entity that owns the aircraft, provided that
23 the entity is not a corporation with publicly traded shares.

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

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

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

15 ~~(h)~~(i) Reporting.

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

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

1 ~~(i)~~(j) Recordkeeping.

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

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

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

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

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

19 ~~(iii) The lowest unrestricted non-discounted airfare available in~~
20 ~~accordance with paragraphs (c), (e) and (f) of this section,~~
21 ~~including the airline offering that fare, flight number, travel~~
22 ~~service, if any, providing that fare, and the dates on which the rates~~
23 ~~are based.~~

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(iv) Where the travel is aboard an aircraft owned in part by the candidate or an immediate family member of the candidate, the ownership or lease agreement specifying the amount of use of the aircraft corresponding to the candidate's or an immediate family member's ownership interest in the aircraft, as required by paragraph (g)(1)(i) and (ii) and (g)(3) of this section, and the certifications required by paragraph (g)(3) of this section.

~~(3)~~(2) For travel by other conveyances, the political committee on whose behalf the travel is conducted shall maintain documentation of:

- (i) The service provider and the size, model and make of the conveyance used;
- (ii) An itinerary showing the departure and destination locations and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and
- (iii) The commercial fare or rental charge available in accordance with paragraphs (d) and (f) of this section for a comparable commercial conveyance. ~~of sufficient size to accommodate all campaign travelers including members of the news media traveling with a candidate, and security personnel, if applicable~~

1 **PART 113 – USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN**
2 **PURPOSES**

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

4 **PART 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN**
5 **ACCOUNTS**

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

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

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

9 **§ 113.5 Restrictions on use of campaign funds for flights on noncommercial aircraft**
10 **(2 USC 439a(c))**

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

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

16 (2) Noncommercial travel as provided in 11 CFR 100.93(a)(3)(v), and the pro
17 rata share per candidate campaign traveler of the normal and usual charter
18 fare or rental charge for travel on a comparable aircraft of comparable
19 size, as provided in 11 CFR 100.93(c), is paid by the candidate, the
20 authorized committee, or other political committee on whose behalf the
21 travel is conducted, to the owner, lessee, or other person who provides the
22 aircraft within seven calendar days after the date the flight began, except
23 as provided in 11 CFR 100.93(b)(3).

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

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

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

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

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

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

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

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

1

2 **PART 9004 – ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS;**

3 **USE OF PAYMENTS**

4

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

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

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

9 **§ 9004.7 Allocation of travel expenditures.**

10 * * * * *

11 (b) * * *

12 (5) (i) If any individual, including a candidate, uses a government
13 aircraft~~plane~~ for campaign-related travel, the candidate's
14 authorized committee shall pay the appropriate government entity
15 an amount equal to the applicable rate set forth in 11 CFR
16 100.93(e).

17 * * *

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

23 * * *

1 (v) For travel by ~~aircraftplane~~, the committee shall maintain
 2 documentation ~~of the lowest unrestricted nondiscounted airfare as~~
 3 required by 11 CFR 100.93~~(i)(1) or (2)~~ (i)(1) in addition to any
 4 other documentation required in this section. For travel by other
 5 conveyances, the committee shall maintain documentation of the
 6 commercial rental rate as required by 11 CFR 100.93~~(i)(3)~~ (i)(2) in
 7 addition to any other documentation required in this section.

8 * * * * *

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

15

16 **PART 9034 – ENTITLEMENTS**

17

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

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

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

22 **§ 9034.7 Allocation of travel expenditures.**

23 * * * * *

1 (b) * * *

2 (5) (i) If any individual, including a candidate, uses a government
3 ~~aircraft~~plane for campaign-related travel, the candidate's
4 authorized committee shall pay the appropriate government entity
5 an amount not less than the applicable rate set forth in 11 CFR
6 100.93(e).

7 * * *

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

13 * * *

14 (v) For travel by ~~aircraft~~plane, the committee shall maintain
15 documentation of the ~~lowest unrestricted nondiscounted airfare as~~
16 required by 11 CFR 100.93(i)(1) or (2)(j)(1) in addition to any
17 other documentation required in this section. For travel by other
18 conveyances, the committee shall maintain documentation of the
19 commercial rental rate as required by 11 CFR 100.93(i)(3)(j)(2) in
20 addition to any other documentation required in this section.

21 * * * * *

22 (8) Non-commercial ~~Travel on aircraft~~planes not licensed by the Federal
23 ~~Aviation Administration to operate for compensation or hire under 14~~

1 ~~CFR parts 121, 129, or 135, government conveyances, and travel on~~ other
2 means of transportation not operated for commercial passenger service is
3 governed by 11 CFR 100.93.

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Robert D. Lenhard
Chairman
Federal Election Commission

DATED: _____
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