

and onto the normal use of the airplane. The proposed rules would therefore apply not only to airplanes owned by corporations or labor organizations, but also to airplanes owned by any "person," as defined at 11 CFR 100.10, as well as airplanes owned by the Federal government or a State or local government.

An alternative approach, which is not incorporated into the proposed rules, would be to focus the distinction on whether the service provider is a "commercial vendor," as defined in 11 CFR 116.1(c), with respect to the transportation services. This approach would continue to require an examination of the ownership structure of service provider. Relying on the term "commercial vendor" could also lead to a different result in certain circumstances. For example, Commercial Airline A owns a specially configured jet that is reserved for its corporate executives and offers the use of that jet to Candidate B. Under the "commercial vendor" alternative, Commercial Airline A would likely qualify as a "commercial vendor" of transportation services, meaning that 11 CFR 100.52(d), rather than 11 CFR 100.93, would govern the reimbursement requirements for Candidate B's travel on the jet. This result would require Candidate B to calculate the "usual and normal rate" for the use of the jet under 11 CFR 100.52(d)(2), which could be difficult to ascertain because passengers on the jet are not normally charged any fee. However, under the proposed "not normally operated for commercial passenger service" approach, Candidate B's use of the jet would be governed by proposed § 100.93, not § 100.52, and the proper reimbursement could be calculated by referring to first-class or charter rates to that destination.

The Commission seeks comments on broadening the coverage of these travel rules from corporations and labor organizations to any "person" or government, as well as the proposed shift in focus from the ownership of the airplane to the normal use of the airplane.

The scope of proposed § 100.93, however, would be limited to non-commercial means of transportation. A campaign traveler using a commercial airline or other means of commercial transportation would continue to be subject to the more general definition in 11 CFR 100.52, which categorizes "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services" as an "in-kind contribution." 11 CFR 100.52(d). Thus,

a candidate or other campaign traveler receives an in-kind contribution when he or she is provided commercial transportation without charge or at a charge that is less than the usual and normal charge for that transportation. Proposed § 100.93(a) would include a cross-reference to 11 CFR 100.52(a) and (d) to affirm the continued application of these rules to providers of commercial transportation.

## 2. Proposed Paragraph (a)(2) Definitions

Proposed paragraph (a)(2) would define several terms used in new § 100.93. The term "campaign traveler" would be defined to provide a succinct term covering the candidate, candidate's agent, or other individual traveling on behalf of a candidate or a candidate's authorized committee. "Service provider" would describe the person or entity providing the transportation to the campaign traveler. Given the complex ownership and leasing arrangements often associated with airplanes and other means of transportation, a "service provider" may be either the owner of the conveyance or a different person who is leasing the conveyance from the owner and making it available for the campaign traveler's use.

Under proposed paragraph (a)(2), the term "unreimbursed value" would be defined as the portion of the value provided to the campaign traveler, calculated according to the rules in this section, that is not reimbursed by the candidate's authorized committee. A late payment would not qualify as a reimbursement under this section, which means that the value of the service provided would be an in-kind contribution to the candidate. By contrast, a service provider would not make an in-kind contribution if the candidate's authorized committee provides payment within the time specified in this proposed section. The Commission seeks comments on each of these definitions.

### C. 11 CFR 100.93(b) General Rule

Proposed § 100.93(b) would set forth the general rule for when travel by private means of transportation would not constitute a contribution to a candidate or authorized committee, as well as when and to what extent such travel is an in-kind contribution. Under proposed paragraph (b)(1), a candidate's authorized committee would not receive or accept a contribution if the authorized committee pays the service provider the full value of the transportation within the specified time, as determined in this proposed section. This proposed paragraph would

generally require that the candidate's authorized committee, rather than the campaign traveler, pay the service provider to avoid receiving or accepting a contribution. The campaign traveler could pay the service provider directly for his or her own travel rather than having the campaign committee do so. Such payment would constitute an in-kind contribution by the campaign traveler to the candidate, unless it qualifies for the transportation expense exception set forth in 11 CFR 100.79.

In light of the fact that the current rules at 11 CFR 114.9(e) are limited to airplanes owned by corporations or labor organizations, payment is required because the unpaid use of the airplanes would constitute a contribution in violation of 2 U.S.C. 441b. In contrast, individuals, partnerships, and certain other persons are permitted to make in-kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, a campaign traveler may use an airplane provided by someone permitted to make an in-kind contribution, and this use would be an in-kind contribution. Proposed 100.93(b)(2) would recognize this possibility by describing when a service provider would be making an in-kind contribution. For an in-kind contribution to be permissible, however, the candidate's authorized committee must comply with the payment conditions in proposed 11 CFR 100.93. If these conditions are not met, then the provision of the airplane would be prohibited if the service provider is a corporation or labor organization, or if the value of the service would, when added to other contributions to the same candidate by the service provider, exceed that service provider's contribution limit. See proposed 11 CFR 100.93(b)(2). The value of the in-kind contribution would be determined in the same manner as the amount of the reimbursement would normally be determined under proposed paragraphs (c), (d) or (e) of new section 100.93.

The Commission recognizes that this approach could, in some cases, require the same type of ownership analysis that otherwise would be avoided by the proposed rules. This analysis, however, would no longer be a necessary step in every circumstance because it would be employed only where the airplane's provider elects not to seek full or partial reimbursement from the candidate's authorized committee, or when the committee fails to reimburse the service provider. The Commission seeks comments on whether reimbursement should always be required, regardless of the ownership of the airplane, or whether the possibility of an in-kind