

contribution from a permissible source should be addressed in some other fashion.

D. Proposed 11 CFR 100.93(c) Travel by Airplane

When a candidate or other campaign passenger uses an airplane owned by a person who is not in the business of providing commercial air travel, the current rules set the rate of reimbursement at either the first-class airfare or the normal charter rate, depending on whether a destination city is served by regularly scheduled commercial air service. 11 CFR 114.9(e)(1). The charter rate, which is normally higher than first-class airfare to an airport in the same area, represents the actual cost that a campaign would incur, but for the use of the corporate or labor airplane, to reach a particular destination by air when that destination is not served by commercial air service. Nevertheless, the Commission recognizes that candidates who campaign in major metropolitan areas that have regularly scheduled airline service will generally be able to use a private plane and reimburse only the equivalent of a first-class airfare, whereas the candidates who campaign in more rural areas that have little, if any, commercial air service would be required to reimburse the equivalent charter rate. The Commission is concerned that the current reimbursement scheme might be unnecessarily complex and negatively affects campaigning in rural areas.

To address these concerns, the Commission seeks comments on three alternative reimbursement rules in proposed 11 CFR 100.93(c), as well as any other appropriate payment schemes. The Commission also seeks comments on whether and how it should further simplify the rules and address other inequities, if any, arising from the current application of 11 CFR 114.9(e) or the changes proposed for § 100.93.

In addition, the Commission notes that many charter services charge a traveler for "deadhead miles," those miles the airplane travels empty while returning to its home base after a one-way flight. In some cases, charter services also require compensation for positioning costs for airplanes based many miles from the pickup and drop-off points. The Commission therefore seeks comments on how, if at all, the three alternative payment schemes should account for these expenses associated with the positioning of the airplane or "deadhead miles." For example, when a candidate travels one-way from California to Virginia on a private airplane based in Nevada and

that airplane returns empty to Nevada, should that candidate's authorized committee be required to pay the expenses associated with the Nevada-to-California and Virginia-to-Nevada flights? If so, should each of these positioning or "deadhead" flights be determined in the same manner as described in the three alternative payment schemes below, or by using some other method?

1. Alternative A: Payment Based on First-Class Airfare

Alternative A would set the payment rate, for each individual traveling for campaign purposes, at the amount of the lowest non-discounted first-class airfare to the closest airport that has such service, regardless of whether the actual destination airport is served by regularly scheduled commercial air service. The proposed rule would focus on the closest destination airport, rather than the destination city, to avoid further confusion in light of the various geographic considerations discussed in Advisory Opinion ("AO") 1999-13.³ Because airfares may vary based on the date of travel, the rate used in calculating the payment amount would have to correspond to the date of actual travel. The Commission seeks comments on how precisely the base rate should correspond to the actual date of travel. For example, some airlines or charter companies may set a base rate for tickets purchased over a month in advance of the travel date that is different than the price of the same ticket when purchased on the date of travel. Should a campaign be permitted to use the normal advance ticket price when calculating the comparable base rate as required in proposed § 100.93, or should a campaign be required to calculate the comparable rate based on purchase on a fixed date or period, such as the actual date of travel or the lowest price within seven days of the travel date?

Alternative A would also allow an authorized committee to reimburse the provider of a private airplane at the coach rate to the destination airport where the same airport is served by regularly scheduled coach airline

service but not regularly scheduled first-class airline service. This distinction for coach service would accommodate industry trends and is based on the current rules governing presidential candidates' payments for the use of government aircraft. *See* 11 CFR 9004.7(b)(5)(i)(B) and 9034.7(b)(5)(i)(B). Please note, however, that if the actual destination is an airport that is not served by any regularly scheduled commercial air service, and the closest airport is served by regularly scheduled coach airline service but not regularly scheduled first-class airline service, the proposed reimbursement amount would still be the lowest non-discounted first-class airfare for the closest airport that is served by regularly scheduled first-class airline service and not the coach fare for the closest airport.

In addition, Alternative A would eliminate the advance payment requirement in 11 CFR 114.9(e)(1). Currently, because payment must be made prior to travel, the campaign must provide a check in advance to the corporation to cover a certain number of passengers. If last minute passengers are not paid for prior to boarding the airplane, the campaign has failed to comply with the requirements of current 11 CFR 114.9(e)(1), regardless of how promptly the campaign subsequently makes an after-the-fact reimbursement. However, where candidates use other means of transportation addressed in 11 CFR 109.2(e)(2), last minute passengers do not cause the same complications because the reimbursement may be made "within a commercially reasonable time," rather than in advance, so that the number of passengers is settled at the time the reimbursement is made.

Alternative A would address this disparate treatment by allowing a fixed period of seven calendar days for payment after travel has begun. This seven-day period would be shorter than the thirty-or-sixty day period used for other forms of transportation, *see* below, because under Alternative A the campaign would have complete control over the timing of the reimbursement as all the necessary passenger information and costs would be fixed at the time the airplane departs. Thus, it should be possible for the candidate's authorized committee to calculate the proper reimbursement rate without a billing or invoice process to cause delay.

The Commission recognizes that the removal of the advance payment rule could be perceived as a departure from the previous approach under which corporations are prohibited from extending credit outside the ordinary course of their business. *See* 11 CFR

³ In AO 1999-13, the Commission recognized that particular destination cities might be serviced by several airports in the surrounding region. In that advisory opinion, the Commission determined that an airport need not be within the corporate limits of a city in order for that city to be considered "served by regularly scheduled commercial air service." The Commission further agreed that it was reasonable for the requestor to determine whether a city is served by a particular airport through reference to published sources such as a FAA directory or a corporate directory regarded at the time as the charter industry's standard reference for airports.