

alternative transportation when their aircraft becomes unavailable and they are forced to charter different aircraft in order to fulfill their transportation commitments. Presumably, the commenter is concerned that in such instances the service provider would be the owner of the substitute aircraft. A different commenter recommended that the Commission address similar situations in which the owner or lessor of an airplane makes the airplane available to a major client, independent contractor, or other person outside the corporation or labor organization. This commenter urged that in such situations the service provider should be the "person who has been given the right to use the aircraft," rather than the owner or lessor. Likewise, one commenter suggested that the Commission specifically address situations where multiple persons or entities share access to an airplane, such as through a joint ownership or time-sharing agreement. This commenter stated that in such instances the service provider should be the person who makes the airplane available to the candidate.

The final rules at 11 CFR 100.93(a)(3)(ii) clarify that the "service provider" is the person making the airplane or other conveyance available to the campaign traveler or otherwise providing the transportation to the campaign traveler. Thus, a service provider may be the owner, a person leasing the airplane or other conveyance from the owner, or another person with a legal right to offer the use of the airplane or other conveyance to the campaign traveler.

(iii) Paragraph (a)(3)(iii)—
Unreimbursed value.

The proposed rules at paragraph (a)(2) sought to define the term "unreimbursed value" 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. The proposed definition specified that a late payment would not qualify as a reimbursement under this section, meaning 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 paragraphs (c) or (d).

One commenter argued that the rule would unfairly penalize "absentminded campaign schedulers or late reimbursers" by treating late payments as contributions, suggesting that the rule as proposed in the NPRM would remove

the incentive for *sua sponte* payments outside the permitted time frames. The timing requirements in 11 CFR 100.93 are integral components of the regulatory scheme. The definition of "unreimbursed value" in the final rule, which is located in paragraph (a)(3)(iii), is therefore substantially the same as proposed in the NPRM. The Commission does not agree that the definition of "unreimbursed value" will discourage *sua sponte* payments after the deadlines because it does not believe those acting in good faith would be deterred from taking corrective, mitigating actions.

C. 11 CFR 100.93(b) General Rule

Section 100.93(b) sets forth the general rule for when the providing of travel does not constitute a contribution to a candidate or political committee, as well as when and to what extent the unreimbursed value of such travel is an in-kind contribution. Under paragraph (b)(1), as proposed in the NPRM, 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. One commenter stated that the proposed rule was "sound and consistent" with the Act and Commission's treatment of in-kind contributions.

The Commission is implementing the final rule as proposed in the NPRM, with additional clarifications described below and the conforming changes needed to account for payment by members of the news media and for persons traveling on behalf of political party committees and other political committees. Paragraph (b)(1) sets out the rule for most campaign travelers, generally requiring that the candidate's authorized committee, in order to avoid receiving or accepting a contribution, pay the service provider for campaign travelers traveling on behalf of that candidate. Likewise, other political committees (*i.e.*, other than authorized committees) must pay the service provider for other campaign travelers who are traveling on behalf of such committees. For example, if a Federal candidate attending a fundraiser for her own campaign flies on the same private airplane with a government official traveling to appear on behalf of a non-connected political committee in connection with a Federal election, the candidate's authorized committee would pay for the candidate's travel and the non-connected political committee would pay for the government official's travel.

While the authorized committee or other political committee will generally make the reimbursement payment, paragraph (b)(1)(ii) permits a campaign traveler to pay the service provider directly for his or her own travel. However, such payment constitutes an in-kind contribution by the campaign traveler to the candidate or political committee to the extent that it does not qualify for the transportation expense exception set forth in 11 CFR 100.79.⁴ In the example above, an individual working for a Federal candidate could choose to pay up to \$1,000 from her own pocket for campaign travel without the payment constituting an in-kind contribution, assuming that she had not already made other payments for travel with respect to that election.

Paragraph (b)(1)(iii) similarly specifies that a member of the news media traveling with a candidate may choose to reimburse the service provider directly at the rate not less than the amount set forth in paragraphs (c) or (d) of section 100.93. If a member of the news media elects to have the candidate's authorized committee pay for the media's travel rather than paying the service provider directly, he or she may do so and the candidate's authorized committee is permitted to seek reimbursement from the media. Ultimately it is the candidate's responsibility to ensure that the service provider is reimbursed for the value of the transportation provided to all persons traveling with the candidate.

In light of the fact that the previous rules at 11 CFR 114.9(e) were limited to airplanes owned by corporations or labor organizations, payment was required because the unpaid use of such airplanes is a contribution in violation of 2 U.S.C. 441b. In contrast, the new rule also encompasses airplanes owned or leased by individuals, partnerships, and certain other persons who are permitted to make in-kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, under the new rules, a candidate or political committee may elect to receive an in-kind contribution from the service provider rather than reimbursing that

⁴ 11 CFR 100.79(a) permits an individual traveling on behalf of any candidate or political party committee to incur up to \$1,000 in transportation expenses with respect to a single election, and up to \$2,000 on behalf of all political committees of each political party within a calendar year, without reimbursement and without making a contribution to a candidate or political party committee. Under 11 CFR 100.79(b), volunteers may use personal funds for usual and normal subsistence expenses incidental to volunteer activity. A substantively identical exception to the definition of "expenditure" is provided at 11 CFR 100.139.