

amenities as that airplane. For example, in Advisory Opinion 1984-48, the Commission interpreted a comparable airplane as being "of the same type (e.g., jet aircraft versus prop plane) and services offered (e.g., plane with dining service or lavatory versus one without)" as the plane actually used. The Commission further explained that when a candidate used a twin engine prop jet, a single engine, prop aircraft would not be a comparable aircraft. The term "comparable commercial airplane" is intended to require these distinctions as well as other differences such as when a plane is chartered with a crew or without, or with or without fuel.

4. Multi-Stop Travel

One commenter asked the Commission to address multi-stop travel. In response, the Commission is adding the following clarification to 11 CFR 100.93(c) in the final rule. For the purposes of § 100.93 only, the payment for campaign travel must be calculated for each leg of travel. For example: a candidate traveling entirely for the purposes of her own election (and not for a mixed-purpose trip addressed in 11 CFR 106.3) departs from a city in Maryland without any regularly scheduled commercial air service and flies to a city in Illinois that is also without any commercial airline service. After several hours at a campaign rally in the Illinois city, the candidate travels from Illinois to New York City for a campaign fundraising event before returning to Washington, DC. Because there is first class commercial airline service between New York City and Washington, DC, the proper payment for the entire trip would be the amount of the lowest unrestricted and non-discounted first-class airfare from one of the airports serving New York City to one of the airports serving Washington, DC, plus the equivalent charter rate for the flights from the city in Maryland to the city in Illinois, and from Illinois to New York City.

In addition, the Commission is adding language to paragraph (c) in the final rule to clarify payment for travel where several candidates and their entourages travel together aboard the same airplane not operated for commercial passenger service. In such cases, each campaign committee is expected to pay the same first-class rate for each of its campaign travelers or to pay its pro-rata share of the equivalent rate for chartering a comparable airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with its candidate, and security personnel, if applicable. One candidate's committee is not permitted

to pay more or less than the other campaign committees with respect to each traveler on the same flight because the value each campaign traveler derives from the provision of the travel service is identical. But for the provision of the private airplane, it would presumably have been necessary for each campaign traveler to pay for a first-class or coach ticket or arrange for a charter flight to reach the same location on the same date.

5. Advance Payment Not Required

The NPRM sought comment on whether campaign travelers should be required to pay the service provider in advance for the value of travel, as they were required to do under previous 11 CFR 114.9(e)(1). Alternatives A and B proposed eliminating the previous advance payment requirement in 11 CFR 114.9(e)(1). In its place, there would be a fixed period of seven calendar days for payment after travel has begun. Under Alternative C, the Commission would have continued to require advance payment for the use of all airplanes not normally used for commercial passenger service.

The Commission recognized 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 part 116. The Commission sought comments on the potential consequences of the rule as proposed, particularly with respect to the use of an airplane owned by a corporation or labor organization where payment does not occur in advance. Several commenters argued for the inclusion of the seven-day rule as a necessary accommodation to the unavoidable constraints of campaign scheduling and last-minute changes in travel plans. One commenter insisted that the advance-payment requirement in the previous rule should be retained, asserting a potential inconsistency with 11 CFR part 116 and arguing that it would be more difficult for the campaign traveler to calculate the necessary amounts as much as the seven days after the departure date.

The Commission disagrees with this latter commenter and is permitting the seven-day post-travel window for payment because of the unique nature of campaign travel cited by the other commenters. The Commission also notes that the previous rule at 11 CFR 114.9(e)(2) had permitted payment for travel other than by airplane within a "commercially reasonable time," thereby allowing for some post-travel

payments. Other provisions in 11 CFR 114.9 also contemplate after-the-fact reimbursement for certain goods or services provided by corporations. For example, certain uses of a corporation's or labor organization's facilities under section 114.9(a) through (d) are permissible if reimbursed within a commercially reasonable time.

New 11 CFR 100.93(c) does not require a campaign traveler to pay in advance of travel, but it does establish a strict deadline of payment within seven calendar days of the departure of the flight. For multi-stop travel over a period of more than one day, a campaign traveler may elect to pay for separate flights at different times by calculating the separate seven-day periods for each flight departing on a different day.

The seven-day airplane travel repayment period permitted in paragraph (c) of section 100.93 is shorter than the thirty/sixty day period used for other forms of transportation (see discussion of 11 CFR 100.93(d), below) because the political committee has complete control over the timing of the reimbursement as all the necessary passenger information and costs will be determinable at the time the airplane departs. Thus, it will be possible for the candidate's authorized committee, or another political committee, to calculate the proper reimbursement rate for airplane travel without a billing or invoice process to cause delay. In addition, each leg of travel by airplane is very unlikely to last more than one day and can usually be calculated separately, whereas the charter or rental rate for travel on a bus tour or by other means of travel may be based on the total miles traveled or otherwise calculable only at the completion of travel, which may not conclude until several days or weeks after it begins.

6. "Deadhead Miles" Not Considered Separately

The NPRM requested comment regarding how, if at all, to account for the expenses associated with the positioning of the airplane, known as "deadhead miles." Two commenters asserted that these costs are normally incorporated into the rates offered for commercial service, so there is no need for the Commission to address them separately. One of these commenters argued that those costs are beyond the control of the traveler. The Commission generally agrees with this reasoning and is not requiring any additional payment for these costs when campaign travelers use private airplanes. To promote uniformity between the treatment of publicly funded candidates and all