

Sea Change for Congressional Use of Private Aircraft: We Are All in Coach Now!!

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With the passage of the Honest Leadership and Open Government Act of 2007 (HLOGA) in September, Congress instituted many lobbying and ethics changes. Not least among them were changes to whether and how Members of Congress and Congressional staff and campaigns may use private aircraft for various types of trips.

In short, Congress enacted outright prohibitions on private aircraft use in certain circumstances, additional limitations in other circumstances, and higher (meaning charter) reimbursement rates in still other situations, depending on the identity of the traveler and the nature of the trip. The various rules are summarized below.

House: No Plane for You!

HLOGA first and foremost prohibits House candidates and leadership PACs from using private aircraft for campaign travel. There is one exception, which is for an aircraft owned or leased by a candidate or his or her immediate family. This rule became effective on September 14, 2007. The FEC is currently undertaking a rulemaking to establish the scope and details of this particular statutory requirement. The rulemaking can be found at http://www.fec.gov/pdf/nprm/cand_travel_hloga/notice_2007-20.pdf. Comments in this rulemaking are due November 13, 2007.

Through rule changes adopted earlier this year, the House also bans the use by Members and staffers of private aircraft for personal and official purposes. Furthermore, the House Committee on Standards of Official Conduct has interpreted the new rules to prohibit Members and staffers from using private aircraft for officially connected travel such as fact-finding trips (which themselves have been severely

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curtailed). The Committee has indicated that it may allow the use of private aircraft in exceptional circumstances. See http://www.house.gov/ethics/Travel_Guidelines.pdf.

Senate and Presidential Candidates: Not First Class All the Way!

Congress did not ban travel on private aircraft by Senatorial and Presidential campaigns. Instead, HLOGA disposes of the previous first-class/charter rate calculation and mandates that the campaigns pay the owner of the aircraft the normal and usual charter rate for a comparable plane of comparable size. If more than one candidate is using the aircraft at the same time, then each campaign pays the cost divided by the number of candidates. The payments must be made to the aircraft's owner or lessee within a commercially reasonable time. This rule became effective on September 14, 2007. It, too, is the subject of the current FEC rulemaking mentioned above.

Senate Personal Travel: Fun in the Sun, Charter-Rate Style!

The Senate, through HLOGA, amended its rules to establish a charter-rate-based reimbursement scheme for the use of private aircraft for personal travel by Senators and staff. The new rule became effective immediately and replaced the old valuation system that often used the first-class airfare as the reimbursement rate.

The reimbursement rate now for private travel by Senators and Senate staff is determined by dividing the normal and usual charter fare for a comparable aircraft of comparable size by the number of Members, officers, or Congressional employees on the flight. The new reimbursement rate does not apply to aircraft owned by Members of Congress or their immediate families.

The Senate Ethics Committee should issue its travel guidance this month.

Senate Officially Connected Travel: Under Construction

As noted above, the Senate Ethics Committee is set to issue its travel guidance, this month. When issued, this guidance should include a discussion of the use of private aircraft for officially-connected travel. From HLOGA, it appears that the free use of such aircraft is prohibited, although the Senate may allow the use of such aircraft if the charter rate is paid.