

New Campaign Travel Rules: Your Corporate Jet Might Not Be Off Limits After All

January 2010

When Congress passed the Honest Leadership and Open Government Act (HLOGA) in 2007, a new era for campaign travel was ushered in, or so we thought. Members of the House could no longer travel on private corporate jets for campaign purposes, and Senate campaigns were subject to the charter rate. Well, that was then, and this is now. As of this week, new Federal Election Commission (FEC) travel regulations promulgated as a result of HLOGA have gone into effect and, as it turns out, that travel prohibition was not as wide ranging as first thought. Instead, the FEC took a careful look at the language of the HLOGA travel provisions and determined that House members could travel on corporate jets in some circumstances and that the charter rate did not always apply to travel by Senate candidates. So what exactly are the new campaign travel rules?

- House candidates and their leadership PACs are prohibited from using non-commercial aircraft on behalf of any House candidate, authorized committee of a House candidate or leadership PAC of a House candidate. As a result, a House candidate may not travel on behalf of his or her own campaign or leadership PAC or on behalf of the campaign or leadership PAC of another House candidate and use a non-commercial aircraft.
- But, according to the FEC, the "prohibition does not apply, however, when travel would be considered an expenditure by someone other than the House candidate, House candidate's authorized committee or House candidate's leadership PAC. For example, travel by a House candidate on behalf of a Senate or presidential candidate, or a political party committee, would be permissible so long as the political party

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committee or candidate on whose behalf the travel occurs reimburses the service provider at the applicable rate under 11 CFR 100.93(c)(1) or (3)." 74 Fed. Reg. 63951, 63956 (December 7, 2009).

- Thus, if a House Member is traveling on behalf of a party committee, these new rules would allow the member to travel on non-commercial aircraft and the party committee would be responsible for reimbursing the provider of the aircraft at the appropriate rate identified in the regulations. (First class, coach or charter, depending on the situation.) This method would not allow a mixed-purpose trip, however, meaning the House Member may not be traveling on behalf of his or her own campaign or leadership PAC or the campaign or leadership PAC of another House candidate and also be flying on behalf of the party committee and use non-commercial aircraft. The trip must be dedicated only to a party committee or on behalf of a Senate or presidential candidate or their leadership PACs, or on behalf of other political action committees. No House campaign or House leadership PAC activity may be involved.
- Senators have never been subjected to the same campaign travel prohibitions. Rather, HLOGA instituted charter rates for Senate travel. The new FEC rules explain how this works. Specifically, 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 travelers for each candidate.
- Moreover, the old first-class, charter-rate and coach-class rules have not been thrown out altogether. Instead, if a Senator or Member is traveling on behalf of a political party committee, separate segregated fund, nonconnected political committee or a leadership PAC other than a leadership PAC of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, then the old reimbursement regime still applies.
- There is an exemption for travel by government conveyance or the candidate's privately owned aircraft when flying on his or her own behalf.

What does this all mean? It means that those organizations with corporate jets need to create a spread sheet so you know: 1) whether the individual may fly on your plane, in the first instance, and 2) if he or she can fly on the plane how much you need to charge him or her. This is all dependent on the purpose and the ultimate beneficiary of the travel. Note that the rules above pertain only to political travel. The House and Senate gift rules cover other types of travel by incumbent Members and Senators. And remember, we always recommend advance payment regardless of who the traveler is so as to avoid a corporate contribution even though the rules might be slightly more flexible.