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ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

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April 10, 2019

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Theodore E. Deutch, Chairman
Kenny Marchant, Ranking Member

SUBJECT: Non-Commercial Aircraft Travel

The Committee has received numerous inquiries regarding travel on non-commercial aircraft. The Committee, by this memorandum, reminds Members and staff of the House rules and Committee guidance regarding the acceptance and use of non-commercial or private aircraft travel.

A Member may accept travel on non-commercial aircraft by paying or reimbursing the donor for such travel pursuant to House Rule 23, clause 15 or as a gift if permissible under House Rule 25, the House gift rule. The Honest Leadership and Open Government Act of 2007 (HLOGA),¹ however, places significant restrictions on the ability of candidates for the U.S. House of Representatives, and people who travel on behalf of those candidates, to accept travel on non-commercial aircraft. Therefore, the circumstances under which Members and staff are permitted to accept a flight on a non-commercial aircraft are very fact specific, and you are encouraged to contact the Committee to discuss your particular circumstance.

REIMBURSEMENT FOR NON-COMMERCIAL TRAVEL

House Rule 23, clause 15, governs the payment for use of non-commercial aircraft by House Members. Members are prohibited from using personal, official, and campaign funds for a flight on a non-commercial aircraft unless one of the rule's exceptions applies. A Member may use personal, official, or campaign funds to pay for or reimburse the cost of a flight on a non-commercial aircraft when the flight is provided under one of the following circumstances:

- 1) the aircraft is operated by an air carrier or commercial operator with a proper license from a government (*e.g.*, travel on a commercial or chartered airline);²

¹ Pub. L. 110-81 (2007).

² House Rule 23, cl. 15(b)(1).

- 2) the flight is offered to the Member, in the Member's personal capacity, by a personal friend or another Member;³
- 3) the aircraft is operated by the federal, state, or local government;⁴
- 4) the aircraft is owned or leased by a Member or a family member⁵ of a Member (including an aircraft owned by an entity that is not a public corporation in which the Member or the family member has an ownership interest, provided that the Member does not use the aircraft any more than the Member or family member's proportionate share of ownership allows);⁶ or
- 5) the owner or operator of the aircraft is paid a pro rata share of the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size as determined by dividing such cost by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.⁷ For example, if a non-commercial aircraft flight cost \$25,000 and only one Member is on the flight, the Member's pro rata share of the flight is \$25,000, regardless of the number of non-congressional participants.

Although this rule allows a Member to reimburse for travel on non-commercial aircraft, if the Member would like to use official or campaign funds for that travel, the Member should consult the Committee on House Administration or the Federal Election Commission (FEC), as discussed below.

Use of Official Resources for Non-Commercial Aircraft Travel. The rules and regulations governing official travel paid for with funds from the Members' Representational Allowance, or with committee funds, are established by the Committee on House Administration. Members wishing to use official funds for non-commercial travel should consult the Committee on House Administration at (202) 225-2061 (majority) or (202) 225-8281 (minority).

Use of Campaign funds for Non-Commercial Aircraft Travel. There are certain activities that Members may, at their discretion, designate as either official or political. When Members designate an activity as political, they may not use campaign funds to pay for travel on a non-commercial aircraft. HLOGA generally prohibits candidates for the House from using campaign funds to pay for campaign-related travel on non-commercial aircraft.⁸ Therefore, Members generally may not use campaign funds to pay for travel on a non-commercial aircraft if the travel is for campaign

³ *Id.* at (b)(3).

⁴ *Id.* at (b)(4).

⁵ "Family member" for purposes of this rule is defined as the Member's spouse, parents, children, siblings, and parents-in-law. House Rule 23, cl. 15(d)(2).

⁶ House Rule 23, cl. 15(b)(2).

⁷ *Id.* at (b)(5).

⁸ 52 U.S.C. § 30114(c).

purposes.⁹ However, Members may use campaign funds for officially-connected travel in connection with their duties as officeholders.¹⁰

Please contact the congressional liaisons at the FEC at (202) 694-1006 for further guidance on campaign-related travel.¹¹

NON-COMMERCIAL AIRCRAFT TRAVEL WITHOUT REIMBURSEMENT

Members, officers, and employees of the House are prohibited from knowingly accepting any gifts, except as specifically provided in the House gift rule.¹² The term “gift,” as used in the gift rule, means “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value,” and includes gifts of transportation.¹³ There are limited circumstances under which a Member or staff may be permitted to accept travel on a non-commercial aircraft as a gift; that is, without having to reimburse the donor the cost of the travel.

Acceptance of Travel Paid for by Federal, State, or Local Governments. Members, officers, and employees may accept a flight on a non-commercial aircraft that is paid for by a federal, state, or local governmental entity.¹⁴

Acceptance of Travel Provided by a Relative. Members, officers, and employees are permitted to accept gifts from relatives.¹⁵

Acceptance of Travel Provided on the Basis of Personal Friendship. Members, officers, and employees may be offered a flight on an aircraft that is personally-owned by an individual whom the official knows. If the requirements of the personal friendship provision of the gift rule are satisfied, the offer of a flight to the Member, officer, or staff person may be accepted as a gift. Several points to bear in mind regarding this type of travel are as follows:

- As a general matter, the personal friendship provision can apply only if the aircraft is owned by the individual, and cannot apply to a flight on an aircraft owned by a corporation or other entity, where the individual does not have access to the aircraft for personal purposes.
- When the value of a gift proposed to be accepted under the personal friendship provision exceeds \$250, written approval of the Committee on Ethics is required before the gift can be

⁹ Candidates for the House of Representatives may use their campaign funds to pay for travel on private aircraft owned by the candidate or the candidate’s immediate family members. *See id.* at (c)(3). Please note this is a very narrow exception and you are encouraged to contact the FEC for further guidance.

¹⁰ House Rule 23, cl. 15.

¹¹ HLOGA provisions govern travel for federal candidates. If a Member, officer, or employee is running for state-elected office, that Member, officer, or employee should contact the state’s election authority to determine whether state campaign funds may be used for travel on non-commercial aircraft.

¹² House Rule 25, cl. 5.

¹³ House Rule 25, cl. 5(a)(2)(A).

¹⁴ House Rule 25, cl. 5(a)(3)(O).

¹⁵ House Rule 25, cl. 5(a)(3)(C). Candidates for the House, traveling as candidates, may only accept travel on non-commercial aircraft if that aircraft is owned by the candidate or the candidate’s immediate family, including a spouse, parents, children, siblings, and parents-in-law. 52 U.S.C. § 30114(c)(3)(B).

accepted. Practically any flight on a non-commercial aircraft will exceed \$250 in value and hence will require Committee approval.¹⁶

- A flight may not be accepted on the basis of personal friendship when the primary purpose of the trip is either to conduct House business or engage in campaign activity.

Acceptance of Travel Provided by Another Member or Employee. Members, officers, or employees may accept a flight on a non-commercial aircraft from another Member, officer, or employee of the U.S. House of Representatives or U.S. Senate that is not related to travel for, or on behalf of, a candidate for the House. However, federal law prohibits a federal employee from giving gifts to a superior and superiors may not accept gift from their employees.¹⁷ The Committee, however, has given permission for subordinates to give gifts to superiors, when such gifts are given voluntarily on special occasions where gifts are traditionally given, such as marriage, retirement, birth of a child, birthdays, anniversaries, or holidays.¹⁸

Acceptance of Travel from Point A to Point A. Members, officers, or employees may accept a flight on a non-commercial aircraft if the travel is from Point A to Point A. The Committee has determined that travel from Point A to Point A, without stops, does not have monetary value. This limited exception only applies to travel for an official purpose that departs and returns to the same location, without any intermediary stops.

Acceptance of Travel Resulting From Outside Business, Employment, or Other Activities. While participating in travel resulting from outside business, employment, or other activities, Members, officers, and employees may accept a flight on a non-commercial aircraft provided by the business or other entity, if two conditions are satisfied: (1) the non-commercial aircraft was not provided or enhanced because of the individual's official position, and (2) such travel is customarily provided to others in similar circumstances.

Acceptance of Travel for Campaign Activity. House candidates and those traveling on behalf of a House candidate are generally prohibited from flying on private aircraft, whether reimbursed or not.¹⁹ Members, officers, and employees who are not acting in their capacities as candidates for the House, or in support of a House candidate, may accept travel on a non-commercial aircraft if offered by a political organization in connection with a fundraiser or campaign event

¹⁶ The value of a flight on a non-commercial aircraft is to be determined as follows. *When the travel is via a previously or regularly-scheduled flight by the owner or operator of the aircraft*, and the airports between which the Member or staff person is flying have regularly-scheduled air service (regardless of whether such service is direct), the value of the use of the aircraft is the cost of a *first-class ticket* from the airport of departure to the airport of destination. If only the coach rates are provided between those points, the value is the coach rate. If more than one first-class rate is available, the lowest fare may be used. However, no discount fares may be used for valuation purposes.

When the flight is scheduled specifically for Member or staff person use, or when either the airport of origin or destination does not have regularly-scheduled air service, the value of the use of the aircraft is the full cost of *chartering* the same or similar aircraft for that flight, divided by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.

¹⁷ 5 U.S.C. § 7351.

¹⁸ House Rule 25, cl. 5(a)(3)(F).

¹⁹ See 52 U.S.C. §30114(c); 11 C.F.R. § 100.93.

sponsored by that political organization.²⁰ The question of travel on non-commercial aircraft for a campaign purpose is very fact specific and you are highly encouraged to consult with the Committee and the FEC before accepting travel.²¹

Acceptance of Travel Paid for by a Foreign Government. A flight on a non-commercial aircraft that is paid for by a foreign government may be accepted, provided that the flight complies with the requirements of either the Foreign Gifts of Decorations Act (FGDA) or the Mutual Educational and Cultural Exchange Act (MECEA). The requirements of those statutes, including that travel paid for under the FGDA must take place totally outside the United States and be related to an official purpose, must be met for the travel to be permissible.

Privately-Sponsored Travel. Members, officers, and employees participating in privately-sponsored, officially-connected travel may not accept travel on a non-commercial, private, or chartered flight unless exceptional circumstances are demonstrated in writing by the private sponsor. All privately-sponsored, officially-connected travel is governed by the Committee's Travel Regulations.²²

Acceptance of Travel under Committee's Waiver Authority. In special circumstances, a Member, officer, or employee may ask the Committee to exercise its waiver authority to allow travel on private aircraft.²³ The Member, officer, or employee must seek and receive permission before traveling on the private aircraft.²⁴

FINANCIAL DISCLOSURE REQUIREMENTS

Members, officers, and certain staff²⁵ are required to file an annual financial disclosure (FD) statement.²⁶ Financial disclosure filers must report the value of all gifts received in the calendar year worth a total of more than \$390 from a single source on Schedule G ("Gifts") on the FD statement, including Member-to-Member gifts. Gifts worth less than \$156 need not be counted toward the \$390 amount that triggers the disclosure requirement.²⁷ In addition, financial disclosure filers are required to report travel expenses more than \$390 on Schedule H ("Travel Payments and Reimbursements"), including MECEA travel and travel paid for by political organizations that do not file reports with the

²⁰ House Rule 25, cl. 5(a)(G)(iii). Although allowed by the gift rule, HLOGA prohibits Members, officers, and employees from accepting travel on a non-commercial aircraft paid for by a House candidate's principal campaign committee or leadership PAC. *See* 11 C.F.R. § 100.93.

²¹ *See supra* note 11.

²² *See* Comm. on Ethics, *Travel Guidelines and Regulations* § 305.1 (Dec. 27, 2012).

²³ House Rule 23, cl. 15(c).

²⁴ *Id.*

²⁵ 5 U.S.C. app. § 102(a)(2)(B). House staff may be subject to financial disclosure filing requirements for a number of reasons, including 1) they are paid at or above the annual senior staff rate (\$127,914 for 2019, subject to change in future calendar years) for 60 days or more during the calendar year, even if on a temporary basis; 2) they are designated as a "principal assistant" for financial disclosure filing purposes by their employing Member; and 3) they are a shared employee of three or more offices, regardless of their rate of pay. Please contact the Committee if you have further questions about financial disclosure.

²⁶ *See* 5 U.S.C. app. § 102(a)(2)(A).

²⁷ FD Statement reporting thresholds for gifts and travel are based on the valuation of "minimal value" under FGDA and are subject to change every three years. *Id.* at (a)(2). The next re-calculation will be in 2020.

FEC.²⁸ Finally, gifts from relatives and expenses properly reported to the FEC do not need to be reported on annual FD statements.

Members, officers, and employees are encouraged to contact the Committee to seek assistance on properly reporting non-commercial aircraft travel on the annual FD statement.

FREQUENTLY ASKED QUESTIONS

Question 1. The governor would like to fly the state’s congressional delegation to the state to view an area impacted by a natural disaster. The governor would provide transportation on a state-owned plane for the Members. May the Members accept that travel?

Answer. Yes, Members may accept travel on a non-commercial aircraft owned by a federal, state, or local government. Financial disclosure filers are not required to report on their FD statements travel provided by a federal, state, or local government.

Question 2. Congressman Albert owns a private plane and would like to invite other Members or staff to fly on that plane in order to attend an official meeting. May the invited Members or staff accept the gift of flight on the private aircraft?

Answer. Yes, Members and staff may accept gifts from other Members, including travel on non-commercial aircraft owned by the other Member for official purposes. Financial disclosure filers are not required to report on their FD statements travel provided by another Member or staff for official business.

Question 3. What if the travel is for personal purposes?

Answer. Yes, Members and staff may also accept gifts from other Members for purely personal purposes, including travel on non-commercial aircraft. Financial disclosure filers must report gifts they receive from non-relatives with a value of more than \$390 on their annual FD statements, including Member-to-Member, Member-to-staff, and staff-to-staff gifts.

Question 4. A personal friend of Congresswoman Patel owns a private plane and asks Congresswoman Patel to accompany her on vacation. The travel will occur between two airports that have regularly-scheduled commercial service. May Congresswoman Patel accept the flight on the private aircraft to go on vacation with her personal friend?

Answer. Yes, if the Ethics Committee approves, Members and staff may accept gifts on the basis of personal friendship. Because the travel will occur between two airports with regularly-scheduled air service, the value of that flight will be the cost of the first-class ticket between those two airports. If the value of that first-class ticket is more than \$250, the Member must receive written

²⁸ FGDA travel expenses must be disclosed within 30 days after leaving the host country. Copies of the FGDA disclosure form are available on the Committee’s website, <https://ethics.house.gov>. FGDA travel is not disclosed on Schedule H (“Travel Payments and Reimbursements”) of the annual FD Statement.

permission from the Ethics Committee. If the value of the first-class ticket exceeds the reporting threshold of \$390, Congresswoman Patel will need to report that value as a gift on Schedule G (“Gifts”) of her annual FD Statement.

Question 5. A personal friend of Congressman Myers owns a private plane and asks Congressman Myers to accompany him on vacation. Although Congressman Myers could get to the general location of the vacation on regularly-scheduled air service, the particular airport where the Congressman’s friend will depart does not have regularly-scheduled air service to the destination airport, even through connecting flights. May Congressman Myers accept the flight on the private aircraft to go on vacation with his personal friend?

Answer. Yes, if the Ethics Committee approves the request. Unlike the example above, the value of this flight will be the full cost of chartering the same or similar aircraft for the flight. This is because the two airports do not have regularly-scheduled air service. If the full cost of chartering the same or similar aircraft exceeds the reporting threshold of \$390, Congressman Myers will need to report that value on Schedule G (“Gifts”) of his annual FD Statement.

Practically speaking, most flights on non-commercial aircraft will be valued above \$250. Therefore, please contact the Ethics Committee as soon as you receive the invitation to ensure you receive timely guidance from the Committee.

Question 6. Congresswoman Colvin owns a private plane and offers it to Senator Dale to go on vacation, as long as Senator Dale pays for the costs associated with the flight. May Senator Dale pay for that flight?

Answer. If Senator Dale would like to accept Congressman Colvin’s offer, Senator Dale should contact the Senate Ethics Committee for further guidance. Conversely, if a Member would like to accept travel on a Senator’s private plane, please contact the Committee for further guidance.

Question 7. Congressman Ellie’s father owns a private plane and offers the use of that plane for commuting back and forth to the district. May Congressman Ellie accept the flights on that private aircraft?

Answer. Yes, Members, and staff, may accept gifts from their relatives. Gifts from relatives do not need to be reported on annual FD Statements.

Question 8. Congresswoman Johns is invited to an aircraft test facility in her district. The test facility offers to let Congresswoman Johns ride in the cockpit during a test flight, which will take off and return to the same location. May she accept travel on the private aircraft during the test flight?

Answer. Yes, Members, officers, and employees may accept travel that is Point A to Point A. Because the test flight will take off and land in the same location, the Committee does not consider the travel to have any value. Therefore, participating in the test flight does not implicate the gift rule.

Question 9. Congresswoman Anthony is traveling to a fundraiser for her re-election campaign. May she accept travel on a private aircraft owned by one of her supporters?

Answer. No, generally candidates for the House may not accept travel on private aircraft for campaign purposes. Please contact the FEC congressional liaisons for additional information concerning travel on private aircraft for campaign-related purposes.

Question 10. A natural disaster ravaged Congressman Bradford's district. Due to the extent of the damage, commercial and chartered flights are not available. Congressman Bradford is invited to travel on a private aircraft, for free, to survey the damaged areas of his district. After consultation with the Ethics Committee, it does not appear that any exception to the House gift rule would apply. What may Congressman Bradford do?

Answer. Congressman Bradford may write in to the Ethics Committee and request a waiver. Both House Rule 23, clause 15(c) and House Rule 25, clause 5(a)(3)(T) allow the Ethics Committee to grant a waiver to these rules in unusual circumstances. The Committee will make every attempt to review these requests timely.

If you have any questions regarding this guidance, please feel free to contact the Ethics Committee's Office of Advice and Education at (202) 225-7103.

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