U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

DEC 19 2011

Alan M. Dias, Executive Director
Angel Flight West
3161 Donald Douglas Loop South
Santa Monica, CA 90405

Dear Mr. Dias:

This letter responds to your request for a legal interpretation dated August 10, 2011. In your letter, you requested clarification of the application of 14 C.F.R. § 61.113 to reimbursement of fuel and related operating expenses incurred in conducting free air transportation flights in response to non-emergency medical and other compelling human needs. Specifically, you present two scenarios for such reimbursement: (1) raising charitable donations to pre-pay an FBO for a portion of the fuel used by a private pilot in conducting these flights; and (2) forming a 501(c)(3) charitable organization for the sole purpose of raising money to pay all operating expenses incurred in conducting these flights.

Section 61.113(a) states, subject to explicit exceptions, no person who holds a private pilot certificate may act as pilot in command (PIC) of an aircraft that is carrying passengers or property for compensation or hire, nor may that person for compensation or hire, act as PIC of an aircraft. Section 61.113(c) provides one exception to that general rule by stating, in relevant part, a private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers.

As the FAA has previously stated, the sole purpose of the humanitarian flights described in your letter is providing transportation to the sick or injured passenger. *See* Legal Interpretation to Peter Bunce (Nov. 19, 2008). In such cases, the FAA has permitted these flights to be conducted under part 91 provided the pilot receives no compensation for the flight. *Id.*; *see generally* Legal Interpretation to John W. Harrington (Oct. 23, 1997) ("[I]t has been the FAA's long-standing policy to define compensation in very broad terms" including any reimbursement of expenses and "the building up of flight time . . . if the pilot does not have to pay the costs of operating the aircraft."). Reimbursement for any operating expenses constitutes compensation, and the FAA considers such a flight a commercial operation requiring a part 119 certificate. Bunce Interpretation; *see also* Legal Interpretation to Joseph A. Kirwin (May 27, 2005); Legal Interpretation to Thomas H. Chero (Dec. 26,

1985) (interpreting 14 C.F.R. § 61.118, the predecessor to § 61.113). When money is exchanged for transportation, the public expects, and the FAA demands, a higher level of safety for the flying public. Bunce Interpretation. Accordingly, the flights described in your letter, which are not conducted under a part 119 certificate and for which the private pilot receives some compensation, would not be permissible under § 61.113.

The FAA previously has considered and granted petitions for exemption from § 61.113 that allow reimbursement of expenses for humanitarian flights subject to additional safety conditions and limitations. The FAA may consider a petition for exemption for the humanitarian flights and reimbursement methods described in your letter. The procedures for submitting a petition for exemption are included in 14 C.F.R. part 11.

This response was prepared by Robert Hawks, an Attorney in the Regulations Division of the Office of Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service. We hope this response has been helpful to you. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200