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

Office of the Chief Counsel

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

DEC -4 2013

Robert P. Silverberg
Silverberg, Goldman, & Bikoff, LLP
Georgetown Place, Suite 120
1101 30th Street, NW
Washington, DC 20007

Dear Mr. Silverberg:

This letter is in response to your request for a legal interpretation regarding 14 CFR § 91.501(b)(5). The FAA has responded to your previous legal interpretation concerning this issue. *See* Legal Interpretation to Robert P. Silverberg from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation, and Regulations (July 2, 2013) for a discussion on the issues previously raised. You submitted a follow up letter where you provided additional facts regarding this issue. This letter responds to those additional questions and facts.

Facts:

Your question concerns a company that is not engaged in air transportation, but uses a fleet of aircraft in furtherance of its business. In your previous request, you explained that the company is willing to allow individuals whose carriage is not within the scope of, or incidental to, the business of the company to occupy any unused seats on its aircraft. It does not charge such individuals for access to those seats but is "prepared to facilitate a donation by any non-business guest to one or more local charities." You then clarify that "the company will make known to the non-business guest that while they are under no obligation to make any charitable contribution in exchange for the transportation, if they choose to do so, that the company will see to it that any contribution will be forwarded to the named charity."

Additionally, in this follow-up request, you clarify that the company does not have any "affiliation" with the charities that guests may contribute to, but that in some cases it is possible that one or more of the officers, directors or employees of the company may, in their individual capacities, sit on a board of directors, volunteer his time with, or contribute money to the charity. Furthermore, you explain that the charities that will benefit from this program are all locally based organizations in the community in which one of the company's production centers is located and each charity's mission supports community services and facilities.

Question:

You ask whether this company would be deemed to be charging the non-business guest for transportation and therefore be engaged in transportation for compensation or hire by advising

the guests of the opportunity to make the charitable contribution and forwarding the individual's contribution to the designated charity.

Answer:

Based on the information that you have provided, the FAA cautions that encouraging or facilitating donations for transportation on the flights described may be considered the carriage of persons for compensation or hire, requiring the operator to hold a part 119 air carrier or commercial operator certificate to operate these flights under part 121 or 135 rules. Our analysis follows below.

Analysis:

In general, when a flight involves the carriage of persons or property for compensation or hire, the operator must hold a part 119 air carrier or commercial operator certificate and operate these flights under part 121 or 135 rules. *See* Legal Interpretation to Gregory S. Winton from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations (Feb. 14, 2013).[1]

The analysis here rests on whether "facilitat[ing] a donation by any non-business guest to one or more local charities" constitutes "compensation" for the flight. The FAA has continually maintained a long-standing policy that defines compensation in very broad terms. *See* Legal Interpretation to Alan M. Dias from Rebecca B. Macpherson, Assistant Chief Counsel for Regulations (Dec. 19, 2011). It does not require profit, a profit motive, or the actual payment of funds. Instead, compensation under the FAA's view is the receipt of *anything of value,* including valuable good will. *See* Legal Interpretation to Joseph A. Kirwan from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 27, 2005); *see also* Legal Interpretation to Michael Goldman from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (June 14, 2005).

Your letter acknowledges that officers, directors, or employees of the company may sit on the board of directors of the charity, volunteer time with the charity, or otherwise make contributions to the charity. Although you claim that the charitable donations are not a requirement to obtain transportation on the flight, encouraging and/or facilitating donations in exchange for transportation may result in the receipt of valuable good will, especially where officers or employees of your company are members of the board of directors of these charities. Therefore we caution that receipt of good will through facilitation of charitable donations in some circumstances may be construed as compensation, and thus would be in violation of part 91 operating rules.

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[1] Although 91.501(b)(5) allows for the limited reimbursement for the carriage of *guests* of a company, this only applies if said carriage is in the scope of, or incidental to, the business of that company. *See* Legal Interpretation to Mike Nichols from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Dec. 30, 2010). Your question involves individuals whose carriage is not within the scope of, or incidental to, the business of the company who occupy unused seats on its aircraft, therefore, the limited reimbursement exception provided by 91.501(b)(5) does not apply.

Finally, the FAA distinguishes the scenario you describe with flights that operate under the exception of 14 CFR 91.146 - Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event. The flights you describe concern transportation in furtherance of the company's business, and not for the purpose of a specific charitable, nonprofit, or community event. Should your company wish to conduct flights under 14 CFR 91.146, the flights would not be subject to the certification requirements of part 119 provided that the specific conditions and limitations of 14 CFR 91.146 are satisfied.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for
International Law, Legislation, and Regulations
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