DEDICATED TO HELPING BUSINESS ACHIEVE ITS HIGHEST GOALS.

NBAA

BUSINESS AIRCRAFT USE POLICY GUIDE

BUSINESS AIRCRAFT USE POLICY GUIDE

July 1, 2016

Disclaimer: *This NBAA publication is intended to provide members with an introduction into relevant considerations for flight departments looking to create aircraft use policy. Readers are cautioned that this publication is not intended to provide more than an illustrative introduction to the subject matter, and since the materials are necessarily general in nature, they are no substitute for the advice of legal and tax advisors addressing specific situations at member companies. Additionally, this version of the publication is dated July 1, 2016, and does not incorporate any statutes, regulations or guidance released after that date.*

Introduction

Strong governance dictates that companies that utilize business aviation have a board-approved policy for the use of the aircraft. The policy should be written broadly enough to permit appropriate uses of the aircraft and include checks and balances to ensure there is no misuse or abuse of this business tool.

Key components of a Business Aircraft Use Policy typically include the following:

1. A statement containing the **Objectives of Business Aircraft Use Policy** underscores to board members and employees the importance of the policy while setting expectations that it be followed and introducing the criteria for the use of the aircraft.

2. The **Purpose of the Business Aircraft** should be documented. How does the aircraft support the mission and objectives of the business?

3. **Methods to Achieve Compliance** describes who is responsible for overseeing and enforcing the policy.

4. Who authorizes employee, customer or guest travel on the aircraft and the criteria for use of the aircraft should be contained in **Access to the Aircraft**.

5. Compliance with and recordkeeping for tax and other regulatory implications also may be addressed in the policy, particularly for **Special Uses** of the aircraft.

6. Prioritization of aircraft **Scheduling** and the use of supplemental lift, if any, when there are conflicts or if your company's airplane is not ideally suited for a particular flight should be included.

7. Some companies elect to charge-back divisions for use of the aircraft. Permissible or required **Charges** and limitations on such charges should be included.

8. Business continuity planning may require that companies adopt policy language limiting certain employees from traveling with one another. This should be addressed in a section on **Restrictions on Travel of Key Executives on the Same Aircraft**.

9. Certain employees may be under a **Security** plan and their use of the aircraft may be required under such a plan.

10. For safety of flight purposes, it must be made clear to all passengers, and endorsed by the board of directors, that the Pilot-in-Command of a flight has ultimate decision making authority that cannot be superseded by any passenger. This is addressed in the section on **Aircraft Operating Standards and Pilot Authority**.

11. The policy should contain an **Insurance** section which sets forth internal methods and requirements to ensure that appropriate insurance coverages are procured to support the aircraft use(s) contemplated by the policy and that all operations performed pursuant to the policy are conducted in a manner that complies with the terms and conditions of the company's insurance contracts.

12. **Additional Information** relevant to a particular company's business aircraft use also should be noted.

While a board-approved business aircraft use policy is intended to be a company-confidential internal document, it should be written with care to ensure it is harmonious with the image of the company. The purpose of the policy is to effect good governance; if the policy ever were to be disclosed publicly, it should support the company's brand, not detract from it.

Guidelines for Developing a Business Aircraft Use Policy

Well-managed flight departments will have documented procedures for aircraft safety, operations and administration, which will more fully articulate the company's processes related to these concepts. If there is a board-approved change to your aircraft use policy, it is important to coordinate with the flight department's policies and procedures to maintain consistency.

NBAA recognizes that business aircraft use policies will vary depending on a company's size, mission, business reasons for aircraft ownership and other factors. The following paragraphs describe the typical sections of a business aircraft use in detail, provide guidance for companies developing a new policy or revising an existing policy, and offer sample policy language (*in italics*) for illustration purposes.

1.OBJECTIVES OF BUSINESS AIRCRAFT USE POLICY / SCOPE OF THE POLICY

This section is used to detail the purpose and the breadth of the Business Aircraft Use Policy (the "Policy"). The objectives of the Policy will vary depending on the activities in which the aircraft will be involved, including aircraft charter operations or non-business use. The objectives section may specifically provide that the aircraft usage is required to comply with any applicable statutes and regulations. Additionally, there may be internal purposes for the Policy which may be outlined in the objectives section. The Policy can be used to ensure that the use of the aircraft is conducted in a controlled, efficient, cost-effective manner with sufficient oversight. The objectives section may also detail to which companies, individuals and subsidiaries the Policy applies.

> **Sample Policy Language**: *The objective of this policy is to provide the criteria and procedures to ensure efficiency and optimization of Company A's business aircraft use worldwide while meeting the applicable standards for safety and operations in a cost-effective manner. This policy is applicable to use of the aircraft by all Company A's affiliated entities.*

2. PURPOSE OF THE BUSINESS AIRCRAFT

Providing a statement of purpose for the aircraft use can prevent the aircraft from unintended and indiscriminate use. It can also ensure that all business aircraft use is conducted in a manner that falls within the aviation insurance coverages procured by the company. This section should give a brief description of the intended use of the aircraft but more detailed information and specific examples may be included if necessary. It is impossible to detail every use of the aircraft so it is important to provide a general statement of purpose. Some operating characteristics or operation limitations may also be listed, if the Policy is meant to apply to a specific aircraft. Also, if charter services are provided, the statement of purpose may provide additional information on those services.

> **Sample Policy Language**: *Company A owns, operates and maintains business aircraft to provide business and non-business air transportation services for its employees, employees of affiliated entities and guests such as customers and suppliers, and to transport company property. Business aviation is a safe, efficient, flexible business tool which increases productivity, increases face-to-face business contact and facilitates travel to locations with inadequate commercial service. In utilizing business aircraft, Company A promotes growth of profits and shareholder value, market share, asset efficiency, customer and employee satisfaction, and innovation.*

3. METHODS TO ACHIEVE COMPLIANCE

The methods used by different companies to ensure compliance with an aircraft use policy can vary greatly depending on which procedures would be beneficial to the particular company. The methods may be simple. For example, a specific employee may be directly responsible for overseeing the aircraft use and that individual implements the controls based on the Policy. Other companies may require more complicated methods that outline specific procedures for establishing policies detailing the restrictions on the aircraft use and procedures for the review of the aircraft use. The procedures also may vary depending on whether a material aspect of the aircraft use is affected or whether the expenses are incurred outside of the normal course of business. Finally, specific policies may also be laid out in the document.

> **Sample Policy Language**: *The CFO is responsible for monitoring and implementing this business aircraft use policy. The CFO shall develop and implement controls that provide for responsible use of the aircraft considering expense management and legitimate business purposes and retain appropriate records.*

4. ACCESS TO THE AIRCRAFT / ELIGIBLE USERS AND AUTHORIZATION / CRITERIA FOR USE

For the company and its users, access to the aircraft and the criteria for its use can vary greatly depending on the nature of the services that the aircraft provides. The Policy may lay out specific criteria for the aircraft use or the criteria may be at the behest of the senior management, board member or department that authorizes the trip. Examples of specific guidelines could be: a minimum number of passengers; a mandate from the Board of Directors; compliance with the company's insurance contracts as determined in advance by the company's Aviation Risk Manager; existence of passenger security issues; combination(s) of management-level personnel; specified number of passengers which provide clear economic justification; or any of the business uses listed in Section 4.A.

The Policy should state who within the organization has final approval authority for a trip request. The Policy should identify "authorized users;" provisions, if any, for additional passengers as appropriate; travel for others outside the scope of the business of the particular business unit/division; and guest travel. In all cases, they play an important management role ensuring each authorized trip is legitimate, sensible, and will benefit the company.

The Policy specifically should require that aircraft usage be in compliance with any applicable statutes and regulations. Any exceptions to the Policy, such as emergency or bereavement travel, should be included and whether such exceptions apply uniformly.

4.A. BUSINESS USE

Because the primary purpose of the aircraft is to support the mission of the company, the predominant use of on-demand aviation (whether on a company-owned aircraft or via supplemental lift, such as charter) shall be for business purposes. The following are examples of business purposes for choosing business aviation that may apply to your company's business aircraft utilization:

- **Competitive edge in serving customers**. A company with a business airplane can quickly reach customers if a product requires repairs or replacement, and/or transport customers to its facilities/offices.
- **Reach multiple destinations quickly and efficiently**. Companies needing to fly to several locations in a single day often rely on business aviation, because that type of mission could be difficult or impossible to complete on the airlines or by driving or taking a train.
- **Turn travel time into productive work time**. Business aviation is a productivity tool – when traveling aboard business aircraft, employees can meet, plan, and work en route, and also remain in communication with the home office. Business aviation also allows employees to discuss proprietary information in a secure environment, without fear of eavesdropping.
- **Ensure scheduling flexibility**. In today's business environment, companies need to move quickly and respond to changing demands and circumstances. Unfortunately, 20 percent of airline flights are delayed, three percent are canceled entirely and problems for travelers are compounded when connections between delayed and canceled flights are involved.
- **Move sensitive equipment**. Companies often need to quickly transport sensitive or critical equipment that won't fit in an airliner's overhead bin and can't be checked in at an airport or shipped as cargo. Business aviation is often the best solution for rapid transit of the equipment.
- **Transport teams of employees**. Companies often send teams of employees to a given destination because it is the most cost-effective means of transport. NBAA surveys have shown that more than 70 percent of passengers aboard business airplanes are non-executive employees.
- **Efficiently fly to and from locations with limited or no airline service**. Business aviation serves 5,000 communities versus the 500 airports served by the airlines. This means business aviation can allow companies to locate plants or facilities in small towns or rural communities with little or no airline service. In the last year, more than 100 cities across America saw a decline in scheduled commercial airline service and more than 30 communities lost airline service entirely, meaning that business aviation is often the only option for reaching those locations.

4.B. DOMESTIC USE

For the purposes of this section, domestic use may be considered as use only within the continental United States. Domestic use could also include travel beyond the continental U.S., such as travel between the continental U.S. and Alaska, Hawaii and the U.S. territories, and in that event, should be so stated. This may vary depending on the needs of the business, capabilities of the aircraft, training of crew and cost-benefit of overwater and/or long-range domestic operations.

Access for domestic flights can be determined in three ways: Who gets to use the aircraft; the purpose of a trip; and the relevant cost-benefit analysis.

4.C. INTERNATIONAL USE

For the purposes of this section, international use may be considered as any use outside of the continental United States depending on the covenants of the insurance coverage in place.

Policies for international use must be designed to meet the specific needs of the passengers and be adaptable to the specific countries and localities being visited as well as the potential threats to the aircraft, facilities, flight crews and passengers. The procedures must be methodically implemented and reviewed on a regular basis for deficiencies. Periodic examinations of the Policy must be made to meet the dynamic contingencies that arise while traveling internationally.

In addition to the domestic use guidance, examples of specific guidelines for international use could be: geographical limitations; maximum trip duration; a minimum or maximum number of passengers; potential passenger, crew, and aircraft security issues; lack of ground equipment used by commercial travel; and lack of navigational aids used in the particular area which can be substituted in the company aircraft. The Policy specifically should require aircraft usage be in compliance with any applicable statutes and regulations for all of the airspace and control requirements, as well as for each of the countries and principalities visited. Any exceptions to the Policy, such as emergency or bereavement travel, should be included in the Policy.

Access for international flights can be determined in four ways. First is who gets to use the aircraft. Second is purpose of the trip. Third is safety and security of the passengers, crew and the equipment. Fourth is the cost-benefit analysis.

> **Sample Policy Language**: *Each [division head] is responsible for authorizing on-demand travel on Company A's aircraft for employees within his/her division and/or guest (e.g., customer) travel. The [CEO] is responsible for authorizing travel on Company A's aircraft for [division head] trip requests. Each trip request will be reviewed for its essential business purpose and value to the company. Written approval by the [division head/CEO] shall be received prior to submitting the trip request to the [aircraft scheduler].*
>
> *For domestic operations, use of the aircraft may be authorized after: 1) providing the name of each passenger and his/her business purpose for travel; 2) identifying the business objective(s) that will be achieved through the use of the aircraft; 3) completing a cost-benefit analysis for the time and expense of this form of travel against alternative travel means; and (4) obtaining prior approval of the company's Aviation Risk Manager for the travel.* (Note: Depending on the size, scope, and resources of the company and its business aircraft use, it may not be practical for its Policy to require prior approval of the Aviation Risk Manager for each and every use of the aircraft. The Policy should be drafted in a way that is tailored to the practical needs and resources of the company so that the appropriate balance is struck between maximum possible risk management oversight and feasible operational flexibility.) *For international operations, the aircraft shall be used to the satisfaction of five main criteria – the four criteria for domestic travel, plus the trip must meet the overall security objectives for passengers, crew, and the equipment.*

5. SPECIAL USES

Political. Carriage of Elected Officials, if permitted, should be performed in accordance with applicable rules and regulations and should be vetted through qualified legal counsel. Carriage of elected officials, candidates for public office, government employees or their agents may require payment from, or on behalf of, the passenger prior to the flight. The required payment amounts may vary, and in some cases the proposed transportation of the individual may be prohibited under applicable election laws, ethics rules or FAA or DOT regulations. The applicable rules vary depending on factors such as the jurisdiction (e.g., Federal or state), the public office, whether the passenger is a candidate or is currently serving in public office and the purpose of the flight.

The vetting should be obtained from the company's qualified legal counsel prior to carrying any candidate for public office, elected official, government employee or any of their agents. Requests for clearance from the general counsel should include (a) the identity of the passenger, (b) the passenger's public office or government post, or the office for which the passenger is a candidate, (c) the amount (if any) that the passenger proposes to pay for the flight, and (d) the purpose for the flight.

The use of the business aircraft by public officials, including elected officials, those running for office, and those who could be deemed to be running for office, is governed by not only the Federal Election Campaign Act, the Honest Leadership and Open Government Act of 2007 and the Federal Aviation Administration, but also by the laws of the various individual states. The U.S. House of Representatives has significantly curtailed its members' use of business aircraft; therefore, if use by a candidate or official is allowed, the candidate or official is required to reimburse the operator for his or her use of the aircraft. When a state or local candidate or official travels on board an aircraft, the state or local election laws must be used to determine the amount to be reimbursed, if any. Such reimbursements must be made in advance in all Federal and in most state and local cases. Companies should have a Policy in place which sets specific triggers for notifications once a trip is requested so that the legal accounting, and other authorized persons can respond. The Policy should outline a procedure for determining the requirements for the particular candidates, communicate those requirements back to the official or candidate, gain necessary internal approvals for the trip and provide a reasonable timetable to receive said payment in advance. Therefore, it is paramount that the trip request is detailed enough to support such requirements to ensure all of the regulatory requirements of the FAA, DOT, FEC, SEC and state and local municipalities are met.

Note that additional restrictions apply for non-citizens of the United States and for foreign civil aircraft.

NBAA members can read more about the Carriage of Elected Officials and Candidates here.

> **Sample Policy Language**: *The carriage of elected officials and candidates has specific regulatory requirements which must be determined on a case-by-case basis. The [General Counsel] office shall be notified no later than [time period] in advance of the trip so that an investigation as to the regulatory requirements can be made and the reimbursement by the public official or candidate can be made, where applicable. The trip requires advance written approval by the [General Counsel]. Any Federal Excise Taxes due as a result of payments received will be remitted in accordance with IRS regulations.*

Personal. Some companies may permit or require that key employees use the business aircraft for all flights, including non-business flights. Examples include: for security reasons, in order to attract or retain top talent, or to maintain communications with key employees on non-business flights. The use of a company owned, leased or provided aircraft for other than business purposes may have tax implications for the employee and for the company, and may have to be reported to third parties, including various governmental agencies. It also may affect the availability of insurance coverage under the company's aviation insurance contracts, depending on the terms and conditions therein.

Some of the issues to consider are:

- The personal use of an airplane may trigger IRS fringe benefit rules for the passenger or their passenger's host. Governmental reporting (IRS and local and state government) is accomplished by including the flight's value as other income on the employee's end of year W-2 or included on the end of year 1099R or 1099Misc if the individual is not an employee. Imputing income may result in a partial or total depreciation deduction disallowance for the company if the flight provided is for personal entertainment, such as a vacation. Before a company allows an employee personal use of the business aircraft, the company should determine whether the employee's personal use will result in a deduction disallowance. If there is a deduction disallowance, the company must determine whether the disallowance is acceptable.

  Sample Policy Language: *Prior to each personal use flight, Company A shall determine whether the requested personal use will result in a deduction disallowance for Company A. If the flight results in a deduction disallowance, the flight must be approved by [Company A's governing body].*

- If the entity is a public company, the personal use of an airplane is treated as a perquisite under SEC Regulation S-K. The value of the flight is reported in the company's proxy statement and included with the disclosures of executive compensation. The aggregate incremental cost (AIC = full out of pocket cost to the company associated with the trip) is reported as "Other Income" when in the aggregate the trips total an amount of $10,000.

- If the passenger has paid for the flight (allowed under IRS rules, but limited by FAA rules to aircraft on a charter certificate, or operated under a time sharing agreement, or provided to a high-level employee or officials under FAR 91.501(b)(5))[1] excise taxes will be due. Note that for foreign civil aircraft, reimbursement opportunities are further restricted.

- If the company and the executive desire that personal travel be reimbursed in cash, the company must either use a time sharing agreement or rely on the FAA legal interpretation commonly known as the Schwab Reinterpretation.[2] If a time sharing agreement is used, the agreement must be in place before the travel occurs. A time sharing agreement is a wet lease (aircraft and crew) that must be filed with the FAA and carried on board the aircraft to comply with FAR 91.23 Truth in Leasing. The agreement may also need to be disclosed to the SEC if the company is a public company and the employee is deemed an insider. For good corporate governance, the agreement also should be approved by the company's board of directors. If the company can rely on the Schwab Reinterpretation, then prior to any flight for which such reimbursement will be applicable, the company should create a list of individuals who hold positions within the company that require them to routinely change their travel plans. The list should be updated frequently. The company's board of directors, or equivalent governing body, should be responsible for creating and updating the list of employees.

- Reimbursements made to the company under a time sharing agreement are limited under FAA regulations to those items listed in FAR 91.501(d). For insider employees, these cash reimbursements are disclosed annu-ally in the insider transaction section of the company's proxy statement. If the reimbursement is equal to or greater than the company's AIC, then no additional disclosure is required in the executive compensation section of the proxy statement. As discussed above, excise tax payments will need to be calculated and paid on the reimbursement. Read more about excise tax in the NBAA Federal Excise Taxes Guide.

NBAA has published a Personal Use of Employer-Provided Aircraft Handbook that explains the tax and regulatory issues in detail. This resource is available to NBAA Members here.

Sample Policy Language for using a Time Sharing Agreement: *In order to maintain an open line of communications, [position title] is authorized to use Company A's aircraft for non-business purposes. Such flights shall be conducted under a time sharing agreement in accordance with FAA regulations, with payment to Company A up to the maximum allowable reimbursement rate. The time sharing agreement shall be approved by the Board of Directors.*

Sample Policy Language for for using the Schwab Reinterpretation: *[Position title] is authorized to use Company A's aircraft for non-business purposes to enable Company A to maintain an open line of communications and adjust the [Position title's] personal travel plans*

[1] 14 C.F.R. § 91.501(b)(5) was expanded by FAA Legal Interpretation to Mr. Mike Nichols (Dec. 30, 2010).

[2] FAA Legal Interpretation to Mr. Mike Nichols (Dec. 30, 2010).

as needed. Such flights shall be conducted under the limitations set forth in FAR 91.501(b)(5), in accordance with FAA regulations. The [position title] shall reimburse Company A up to the maximum allowable reimbursement amount for each flight.

Humanitarian/Charitable Use. Flights for humanitarian or charitable purposes may be an important component of a business's social responsibility culture. However, purely humanitarian flights can result in unexpected Federal tax consequences. Requests for flights for humanitarian or charitable purposes should be identified to the [Aircraft Scheduler] as flights for charitable purposes. The [Aircraft Scheduler] will consult with the Tax Department regarding such flights.

NBAA members can read more about FAA and IRS considerations for making an aircraft available for charitable flights here.

Sample Policy Language: *Company A supports the mission of the Corporate Angel Network (CAN) and, at the request of CAN, may make available otherwise empty seat(s) on scheduled business flights. Other humanitarian missions that may be in the best interest of the company, the community, or the nation may be approved by the [CEO] on a case-by-case basis.*

6. SCHEDULING

All trip requests must be submitted to the [aircraft scheduler] for coordination. If the company's aircraft is unavailable, the [aircraft scheduler] will assist in obtaining supplement lift (e.g., a chartered aircraft) for the approved flight. A trip request shall contain ample information for the scheduler to determine the availability of the aircraft. All requests shall be submitted as far in advance as possible to ensure aircraft and crew availability for a flight. Typical information that must be provided in order to schedule the aircraft includes: dates desired; business purpose for the flight (for each passenger); detailed itinerary (requested arrival or departure times, travel locations); passenger manifest; and any special requirements for the flight. It is common for the [aircraft scheduler] also to arrange catering and ground transportation logistics to and from the airport, so those details should be provided as well. Companies should create a standard trip request form for authorized users to submit to the [aircraft scheduler].

There may be times when multiple trip requests are submitted for the same dates/times and the company's aircraft or crew is unavailable to facilitate the multiple flight requests. Or, perhaps the company's aircraft is not ideally suited for a particular flight request. If supplemental lift (e.g., third party charter) is not a viable option to accommodate the multiple flight requests, the Policy should include a prioritization process to determine which trip request(s) will be accommodated with the business airplane and which request(s) will be deferred or handled via alternative means. Typically, the trip request that will provide the greatest value to the company, based on the company's mission, goals and established priorities, will be honored.

Sample Policy Language: *As far in advance of a trip as possible, the authorized user shall submit a completed, signed trip request form to the [aircraft scheduler] who will determine if the aircraft, crew and other resources are available for the trip. If a trip request is not ideally suited for Company A's airplane, or if the trip request cannot be accommodated, the [aircraft scheduler] will assist in obtaining supplemental lift appropriate for the mission. The [division] will be responsible for all costs associated with the supplemental lift.*

In the event of multiple trip requests for the same aircraft, the [CFO] shall assist in the prioritization of the trip requests. First priority shall go to the flight request projected to provide the greatest return on the investment, in-line with the company's mission.

7. CHARGES

It is important to decide whether to allocate the cost of the company aircraft within the corporate structure. Aircraft costs may always be allocated within a single company. For example, if Company X owns and operates a corporate aircraft, the operating costs may be allocated between Company X's departments. 25% of the operating costs could be allocated to marketing, 25% to business development, etc. The FAA does not place limitations on intracompany allocations. However, if FAR Part 91 aircraft operating expenses are allocated between separate entities or individuals, then the allocations must comply with the Federal Aviation Regulation's limitations on reimbursement.

If the company uses chargebacks, the company should document the circumstances where a chargeback will occur and the rate of the chargeback (as allowed by regulation for intercompany charges and as determined by the company for intracompany charges). The chargeback's application and rate may directly affect the flight department's perceived value within the corporate structure.

Intracompany Cost Allocations. A variety of methods exist for intracompany cost allocations. Below are four examples of the most common chargeback methods:

- Central Allocation/Head Office Charge: Some corporations consolidate headquarter service costs, including the company aircraft, and divide those costs among all the operating divisions, regardless of whether a division uses the aircraft. A variety of formulas are used in this method (e.g., a percentage of net sales, the number of employees in the division compared to the total in the company, etc.).
- Direct Operating Costs Allocation: Aircraft operating costs are allocated between divisions on a flight-by-flight basis. The company absorbs the fixed costs as an

operating expense. If passengers from more than one division are on the same flight, the operating costs are allocated on a pro-rata basis

- Direct and Fixed Costs Allocation: Fixed costs may be higher than direct costs. Some companies use this method so that each division shares the total cost of operating the aircraft, including costs incurred when the aircraft is not flown.

- Flat Mileage Assessment: Finally, some companies use a flat mileage assessment of costs. The company calculates the total cost per mile of operating and maintaining the corporate aircraft. The chargeback rate is determined by multiplying the number of miles flown by a flat rate charge. A variation of this method is to charge-back an amount equal to a commercial airline fare between the departure location and destination. When commercial air service is not available for the proposed route, the company may use a third-party charter rate instead.

Note: These methods may only be used to allocate costs within a single entity. These methods cannot be used to allocate costs between entities or individuals because they do not meet Federal Aviation Regulation reimbursement limitations.

> **Sample Policy Language**: *Each employee shall provide in the trip request a budget code for his/her travel on board Company A's aircraft. The amount to be charged is the passenger's pro-rata share of the Direct Operating Costs (DOCs) for the flight. The items included in the DOCs shall be maintained by the [CFO and the Flight Department Manager]. The [aircraft coordinator] will provide the budget code and appropriate charges by cost center following each flight.*

Cost Allocations Between Entities. If FAR Part 91 aircraft operating expenses are allocated between separate entities or individuals, then the allocations must comply with the Federal Aviation Regulation's limitations on reimbursement. Most reimbursement limitations are set forth in FAR § 91.501. There are dozens of FAA legal interpretations that clarify and explain the intent of this regulation. In many situations, relying solely on the "plain English" meaning of the rule results in an incomplete or erroneous interpretation. Chargebacks may also trigger inadvertent state and Federal tax consequences. The company should consider consulting with qualified aviation regulatory and tax counsel before implementing a chargeback structure. More information about reimbursement under FAR Part 91 can be found here. Note that for foreign civil aircraft, reimbursement opportunities are further restricted by Part 375 of the DOT Regulations.

8. RESTRICTIONS ON TRAVEL OF KEY EXECUTIVES ON THE SAME AIRCRAFT

A company's business continuity plan may include restrictions on which positions within the company may travel together. This should be taken into consideration with respect to on-demand aviation as well as any ground transportation to/from the aircraft, and associated overnight accommodations.

This Policy language should derive from corporate philosophy, legal and risk management review, prudence and a careful assessment of the risks involved should an accident occur that could jeopardize the continuity of executive management. Because of the critical and sensitive nature of this Policy, it should be developed by senior management. Corporate risk and insurance specialists also should be consulted. Review potential on-demand aviation travelers and identify limitations on who may travel with whom. As always, this Policy must be balanced with the need of the employees to work/prepare for the upcoming business meeting.

> **Sample Policy Language**: *Company A's Chairman and the company CEO shall not travel in the same vehicles to attend a business meeting, because in the event of a delay, accident or incident, the loss to Company A would be too great. The use of supplemental on-demand lift may be utilized if both positions are required at such meeting. For added security during international travel, the individuals in these positions shall not overnight in the same hotel.*

9. SECURITY

A principal reason for using on-demand air transportation is to protect the well-being of individual travelers and to ensure that privileged information regarding corporate activities is not compromised. Therefore, information regarding travel plans, potential or actual, will be treated as corporate confidential information. Specific details of trips will be made known only to those requiring that information.

> **Sample Policy Language**: *The [aircraft scheduler] should be informed of any known security risks or issues regarding a planned flight as soon as possible. Requests for security personnel or security arrangements should be submitted to the [aircraft scheduler]. Any security risks or concerns that arise during a trip should be reported to the [aircraft scheduler].*

10. AIRCRAFT OPERATING STANDARDS AND PILOT AUTHORITY

A flight operations manual is an essential tool for all business aviation flight departments. The manual's principal function is to improve safety and efficiency by standardizing administrative and operational procedures and management philosophy. The established procedures shall ensure that the aircraft is operated efficiently and legally. The manual also serves as a communication tool that transmits the aviation department's goals, policies and procedures to the entire company.

Board-approved policies governing on-demand aviation should include a section requiring the development, implementation and ongoing use of a flight operations manual.

A properly executed manual serves as a contract between the company's CEO and the aviation department. It communicates expectations, limitations and objectives. Once it has the CEO's approval, the manual becomes a corporate directive that protects the aviation department from abuse and provides operational expectations and rules for the department to follow. Because the manual is used to establish Policy, it must be carefully crafted and reviewed at regular, scheduled intervals to ensure that it continues to meet corporate and departmental needs.

The manual must also clearly state that the Pilot-in-Command of a flight has the ultimate authority over the safe operation of that flight. This authority cannot be ceded to any other employee or passenger, regardless of title or position within the company, or its Board of Directors.

The Board's approval of the Policy and the CEO's endorsement of the flight operations manual contents indicate company approval and set the criteria for use and operation of the aircraft and department.

> **Sample Policy Language**: *Company A recognizes and acknowledges the professional judgment of the Pilot-in-Command (PIC) for each flight. The PIC of a flight has the ultimate authority over the safe operation of that flight. This authority cannot be ceded to any other employee or passenger, regardless of title or position within the company, or its Board of Directors. The PIC shall report to the [CEO] the name of any passenger who attempts to overrule the PIC's decision, and that person will be subject to disciplinary action, including, but not limited to, restrictions on his/her travel on board Company A's aircraft and could include termination of his/her employment.*

11. INSURANCE

It is important to note that aircraft insurance policies often contain terms and exclusions that restrict coverage in certain respects. Specifically, many policies limit coverage to certain approved aircraft uses, pilots, coverage territories and maximum passenger capacities. If a policyholder violates one of these terms and sustains a loss in the process, it is possible that it may vitiate its right to insurance coverage for the loss. For example, if a policyholder operates its aircraft for a business flight with a pilot that is not listed as being approved on its aircraft insurance policy, it may not be entitled to first party aircraft physical damage coverage or third party bodily injury liability coverage from the insurance policy if a loss ensues during the operation. Depending on the loss, this lack of insurance could have devastating financial effects on the policyholder's business.

Additionally, errors and misconceptions relative to certificates of insurance, which are documents issued by insurance carriers or brokers to parties verifying that they are insured for certain coverages under specific insurance policies, can also lead to negative outcomes relative to insurance coverage. For instance, if your company is involved in an aircraft lease agreement, it is likely that one party involved in the agreement (most often the lessee-operator) will need to add the other (most often the lessor-owner) as an additional insured on its aircraft insurance policy, and provide them with a corresponding certificate of insurance evidencing as much. However, errors are often made in the certificate issuance process. Many times, a certificate will mistakenly show the sole purpose aircraft ownership entity as the certificate holder, when the lessee-operator should really be the listed (if the ownership entity and operator entity are indeed distinct companies). Further, certificate holders can fall under the mistaken impression that the certificate grants them limitless rights to insurance, when the actual policies themselves can contain restrictions and exclusions to coverage that are not depicted on the face of the certificate. These types of inaccuracies and misunderstandings can lead to uninsured third party aircraft liability, as well as uninsured contractual liability, which again can have ruinous consequences for a business.

For this reason, it may be advisable for your company to consult with its aviation insurance procurement and/or management department, most often referred to as the Risk Management Department, in developing the Policy. That way, the Policy can be crafted in a way that is in-line with the insurance coverages that will be procured to stand behind it and your company can work to mitigate its uninsured risk in terms of its insurance selections.

Similarly, the Policy may also include requirements that some or even all trip plans must be forwarded to your company's Risk Management Department (or, if your company does not have a formally designated Risk Management Department, to the individual employee responsible for the procurement and management of aviation insurance at your company, e.g., the "Aviation Risk Manager") for advance review and/or approval. This can be accomplished by requiring the aircraft scheduler, applicable division head and/or employee(s) making the trip request to forward finalized flight information for the relevant trip to the Aviation Risk Manager once the corresponding trip request is approved. This finalized flight information should include a detailed itinerary (arrival and departure times, travel locations, etc.); a passenger manifest; the business purpose for the flight(s) (for each passenger); the names of all pilots and crewmembers assigned to the flight(s); and any special requirements for or information regarding the flight(s). Of course, whether the Policy requires prior Aviation Risk Manager approval for each and every trip, or just for certain selected trips, will depend on the size, scope and resources of the company and its business aircraft use. The Policy should be drafted in a way that strikes the appropriate balance between maximum possible risk management oversight and practicable flexibility. With that said, the sample policy language included below contemplates a Policy that requires prior approval of the Aviation Risk Manager for every trip, but, again, this can be adjusted per the particulars of the company.

Sample Policy Language: *Company A is committed to ensuring that all business aircraft use performed under the Policy is conducted in a manner that aligns with the aviation insurance that it has procured to support such travel. Thus, no trip may be conducted under the Policy without it first being reviewed and/or approved by the Company's [Aviation Risk Manager]. This review and/or approval process shall be accomplished via the procedure outlined below.*

Upon approving and confirming the flight details for each trip request, the [aircraft scheduler] shall immediately forward said flight details to the Company's [Aviation Risk Manager]. These flight details should include the following: a detailed itinerary (arrival and departure times, travel locations, etc.); a passenger manifest; the business purpose for the flight(s) (for each passenger); the names of all pilots and crewmembers assigned to the flight(s); and any special requirements for or information regarding the flight(s). The [Aviation Risk Manager] shall then promptly review and articulate approval or disapproval for the trip as far in advance of the trip as possible.

12. ADDITIONAL INFORMATION

Metrics & Record Retention. Effective performance metrics will help emphasize the importance of your company's business aviation operation, and how your aircraft contributes to your company's enterprise value. After satisfying FAA and tax requirements, each company's metrics will differ, depending on the mission and goals of the company and how the aircraft supports that mission. An individual or team within the company should be assigned responsibility for satisfying FAA and tax recordkeeping requirements and determining the appropriate performance metrics to track, record, and manage. Adjustments should be made as appropriate to maximize the efficiency of the business aircraft and its contribution to enterprise value.

Sample Policy Language: *Company A's [CFO] shall establish metrics to determine the effective utilization of business aviation and its contribution to the success of the company. This tracking system will include metrics related to efficiency and productivity of key employees when traveling and new markets/business generated as a result of sales team and customer travel on board Company A's aircraft. The [CFO] shall report and review these metrics quarterly with the [CEO] and [Flight Department Manager] and manage the measurements to ensure effective utilization of the business aircraft.*

Availing Aircraft to Third Party Charter. To off-set the costs of aircraft ownership and operations, or to allow greater flexibility in charging for flights on the business aircraft, some companies elect to place their aircraft on a charter certificate, or to obtain their own charter certificate (also referred to as a Part 135 certificate, as such flights are regulated under Part 135 of the Federal Aviation Regulations). There may be tax implications, insurance/risk management implications and, certainly, greater regulatory oversight of the business aircraft operations.

Sample Policy Language: *Company A has placed its aircraft [aircraft tail number] on [certificate holder's name]'s Part 135 air carrier certificate. The [aircraft scheduler] may release the aircraft to the charter operator for third party flights [72 hours] prior to a trip initiation, only if there are no pending trip requests for the airplane for Company A's business.*

Public Company Considerations. Public companies face disclosure and reporting required by the Securities & Exchange Commission (SEC), and Sarbanes-Oxley restrictions may apply to business aircraft utilization. As discussed above, certain relationships between the company and its key personnel and/or board members and perquisites, including personal use of the company's aircraft, may be subject to disclosure. Even if security considerations have led the company to mandate that certain employees use the business airplane for personal trips, the flights are reportable. To ensure proper compliance with SEC and Sarbanes-Oxley regulations and requirements, NBAA urges public companies to consult with qualified legal counsel.

Sample Policy Language: *As a publicly-listed corporation, Company A's [securities counsel] will develop, implement, and monitor a system to ensure compliance with SEC reporting requirements to disclose the time sharing agreements that are in place with the [CEO] and the [President]. The system will include procedures to disclose the Aggregate Incremental Cost (AIC) in excess of $10,000 for all flights conducted for a non-business purpose for other covered individuals.*

Foreign Civil Aircraft Considerations. Part 375 of the Department of Transportation (DOT) Regulations establishes restrictions on the operation of foreign civil aircraft, which includes not only the operation of foreign registered aircraft, but also U.S. registered aircraft that are owned, controlled or operated by non-U.S. citizens. A company may be considered a non-U.S. citizen if it is incorporated outside of the U.S., if its president is a non-U.S. citizen, if more than one-third of its managers or directors are non-U.S. citizens, or if more than twenty-five percent of its voting interest is controlled by non-U.S. citizens. In addition, the "actual control" of the company must be in the hands of U.S. citizens to avoid a classification as a non-U.S. citizen. Note that for foreign civil aircraft, because of the statutory prohibition on remuneration or hire for certain operations, reimbursement opportunities are strictly limited under Part 375 of the DOT Regulations. NBAA members can read more about DOT Part 375 here.

About NBAA

Founded in 1947 and based in Washington, DC, the National Business Aviation Association (NBAA) is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. Contact NBAA at (800) FYI-NBAA or info@nbaa.org. Not a member? Join today by visiting www.nbaa.org/join.

Acknowledgments

NBAA thanks the volunteers of NBAA's Regulatory Issues Advisory Group, who developed and reviewed this Association publication. Special appreciation is extended to the following principal authors, who volunteered their time and expertise on behalf of NBAA members:

- Joanne Barbera, Barbera & Watkins, LLC
- Kali Hague, Jackson & Wade, LLC
- Glenn Vallach, USAIG
- Jim Waldon, Paramount Law Group

Special appreciation is extended to Deborah Bew, Alan Goldstein, and John Hoover of the NBAA Tax Committee for their contribution to the previous edition of this publication. Special appreciation also is extended to John J. Sheehan, author of Business & Corporate Aviation Management, originally published by McGraw Hill in 2003, second edition 2013, for his work in business aviation management and governance and allowing us to use his words as a foundation for our work.