



United States
Office of Government Ethics
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Washington, DC 20005-3917

February 28, 2003

Rosalind A. Knapp
Deputy General Counsel and
Designated Agency Ethics Official
Department of Transportation
400 Seventh Street SW.
Room 10428
Washington, DC 20590

Dear Ms. Knapp:

The Office of Government Ethics (OGE) has completed its review of the ethics program of the Department of Transportation's (DOT) Federal Aviation Administration (FAA). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act).

HIGHLIGHTS

The FAA ethics program is managed by knowledgeable and enthusiastic ethics officials and there appears to be some improvement in the program since we last reviewed it in 1997. Following that review, FAA eliminated the backlog of thousands of unreviewed financial disclosure reports. However, problems persist in the program, primarily with the financial disclosure systems. Moreover, last year FAA found approximately 1000 employees who had not been filing public financial disclosure reports who should have been required to file.

PROGRAM ADMINISTRATION

Pursuant to 5 C.F.R. § 2635.102(b), the Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation (the supplemental standards) (5 C.F.R. part 6001), and FAA Order 3750.7 (the Order), the Designated Agency Ethics Official (DAEO) has designated the FAA Chief Counsel as a Deputy Ethics Official (DEO) charged with coordinating and managing the ethics program at FAA.¹ The DEO has further delegated these duties to the Deputy Chief Counsel and to the Associate Chief Counsel for

¹ The Order also describes the procedures for administering the financial disclosure systems.

Ethics (ACCE), who has been designated by the DEO as a Deputy Ethics Counselor (DEC). As the DEC, the ACCE carries out the day-to-day ethics functions at FAA headquarters. The ACCE is assisted in the daily management of the FAA headquarters ethics program by a Senior Attorney for Ethics (SAE) and a Program Analyst (PA). In addition, an Assistant Chief Counsel in each region has been designated the DEC for the region. Ethics Program Coordinators (EPC) in various organizations serve as liaison officers to ethics officials in administering the ethics program. Finally, the ACCE is responsible for ensuring that DECs, EPCs, and any other FAA employees serving in ethics-related capacities are appropriately trained.

SUPPLEMENTAL STANDARDS

Section 6001.104(b) of the supplemental standards prohibits an FAA employee, or spouse or minor child of an employee, from holding stock or having any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company. However, at § 6001.104(c) there is an exception to the prohibition for interests in certain publicly traded or available investment funds and at § 6001.104(d) there is a provision for a waiver of the prohibition under certain conditions. The supplemental standards do not have an outside employment/activities prior approval requirement.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

The only problem we found with the public financial disclosure system was that 14 reports required to be filed in 2002 had still not been filed. Among the public reports required to be filed were approximately 1000 from employees who had not previously been filing reports but who should have been required to file. All reports filed, including some that were filed late, were reviewed timely and thoroughly and, in fact, FAA ethics officials have exceeded minimal requirements through their use of divestiture and cautionary letters to address problems identified on the reports. Nevertheless, missing or late public (as well as confidential) reports impedes an agency's ability to provide timely and specific conflict of interest advice and, ultimately, its ability to prevent ethics violations. Finally, FAA has only one Presidentially-appointed, Senate-confirmed employee (PAS), the Administrator,² whose public report was filed and reviewed timely and a copy transmitted to OGE timely.

²Currently, the Deputy Administrator is not a PAS employee.

As for the approximately 1000 employees who previously had not been filing public reports, most had been filing confidential financial disclosure reports and all, based on their salaries, should have been filing public reports. Most of these employees are in air traffic controller positions. Because they were in pay bands, FAA did not find out automatically that they had reached or exceeded the salary at which they should have been filing public financial disclosure reports. Most of these additional public filers submitted their new entrant reports as part of the 2002 annual filing cycle.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

We also found some problems with the confidential financial disclosure system. Many confidential reports were filed late, especially by new entrant filers, based on our examination of a sample of 103 of 2052 reports required to be filed in 2001. Moreover, we noted in regard to a number of OGE Optional Form 450-As that the "Position/Title" entered was different from the "Position/Title" entered on the previously-filed OGE Form 450. As 5 C.F.R. § 2634.905(d) allows filers to submit the optional form if they can certify to not having changed jobs since filing their previous report, it was unclear whether these OGE Optional Form 450-As had been filed properly.

All 103 reports were reviewed timely. They also appeared to be reviewed thoroughly based on the many reports resulting in letters directing divestiture and cautionary letters.

EDUCATION AND TRAINING

Initial ethics orientation exceeds the requirements in subpart G of 5 C.F.R. part 2638, while annual ethics training has been conducted in accordance with subpart G. However, FAA tracks attendance at neither initial ethics orientation nor annual ethics training sessions. OGE strongly suggests that the FAA establish tracking systems for initial ethics orientation and annual ethics training.

Initial ethics orientation is managed generally by supervisors, who provide new employees with the required one hour to review the Order and its attachments, which include a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), a copy of the supplemental standards, and the names and contact information for the Deputy Chief Counsel and the ACCE. Additionally, during new employee orientation conducted by the Office of Human Resources (OHR), employees watch a CD-ROM which was made by ethics officials in collaboration with OHR a few years ago. The SAE claimed initial ethics orientation was being provided to all new FAA employees. DOT ethics officials provide initial

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ethics orientation for DOT PAS employees, including the FAA Administrator.

The ACCE and the SAE claimed that all 12,059 FAA employees in covered positions received annual ethics training in 2001. At the 2002 annual ethics training sessions held during September 16-20, 801 of the approximately 1000 new public filers were trained via teleconferencing. Seven more teleconferencing sessions were scheduled for October. The ACCE stated that the 2002 training heavily emphasized gifts, conflicts of interest, the basic obligations of a Federal employee, and FAA's policies on the use of e-mail and the Internet. Employees in the field were told to contact their Regional Counsel with any questions or concerns, but were also provided with contact information for the Deputy Chief Counsel, the ACCE, and the SAE.

COUNSELING AND ADVICE

FAA has a counseling and advice program for agency employees, wherein records are kept, when appropriate, that appears to meet the requirements at 5 C.F.R. § 2638.203(b)(7) and (8). The ACCE estimated he answered approximately 500 queries and the SAE approximately 1000 queries from January 2001 to the time of our review. The most common topics were the widely attended gatherings exception to the gift prohibition at 5 C.F.R. § 2635.204(g) of the Standards, the post-employment restrictions, and outside employment. According to the ACCE, approximately half of the counseling and advice is rendered orally and half is rendered in writing. Notwithstanding the apparent paucity of written counseling and advice for 2002, the ACCE advised us that much of it was erased when the Office of the Chief Counsel switched to Lotus Notes in the early part of 2002. We examined a sample of the written counseling and advice, which we found to be responsive to employees' needs in terms of being complete, accurate, and timely.

Although ethics officials provide post-employment counseling and advice, they do so only in response to requests from employees. The ACCE advised us that he is working with OHR to have the Office of the Chief Counsel included in the "check-out" process for departing employees to enable ethics officials to better provide post-employment counseling and advice to employees.

FEDERAL ADVISORY COMMITTEES/COUNCILS

The ethics program for advisory committee/council members appeared to meet all requirements except for the late filing of some of the public financial disclosure reports. FAA has one advisory council, the Federal Aviation Advisory Council (the Council), whose five-member subcommittee, the Air Traffic Services Subcommittee (ATSS), has members who are considered employees.

According to the Air Traffic Management System Performance Improvement Act of 1996, under which the Council was established, ATSS members are to be treated as public filers without regard to whether they work in excess of 60 days in a calendar year as otherwise required by § 101(d) of the Ethics Act. Accordingly, all ATSS members file public reports even though they may not work in excess of 60 days. Also, certain ethics restrictions are levied on ATSS members, including not allowing them to own stock in or bonds of an aviation or aeronautical enterprise (unless the financial interest is in a "diversified mutual fund" or exempted by 18 U.S.C. § 208). Other members of the Council are considered representatives of industry except for two members appointed by the Secretaries of Transportation and Defense.

We examined the most recent public reports filed by the five ATSS members, consisting of three new entrant and two annual reports. The reports did not indicate the date received by FAA; accordingly, using the dates signed by the filers, we found that the three new entrant reports were filed timely and the two annual reports were filed late.³ The reports were reviewed timely, based on the dates the filers signed the reports, and were reviewed thoroughly. The new entrant filers received initial ethics orientation and the annual filers received annual ethics training, as required. The two members of the Council appointed by the Secretaries of Transportation and Defense, the Deputy Secretary of Transportation and the Department of Defense Liaison for Civil Aviation, are public filers whose service on the Council is considered when their reports are reviewed.

In addition to the Council, FAA has seven advisory committees, each chartered under an FAA order.⁴ Based on an examination of the pertinent orders, all of which contained current charters, and discussions with ethics officials, we were satisfied with FAA's determination that all FAA advisory committee members are representatives of private industry or state or local governments. Making the proper determination as to whether members are representatives or special Government employees (SGE) is vital as SGEs, not representatives, are subject to financial disclosure, the

³One annual filer dated his report August 19, 2002 and the other annual filer dated her report September 3, 2002.

⁴The advisory committees consist of Air Traffic Procedures Advisory Committee, the Research, Engineering, and Development Advisory Committee, the Aviation Security Advisory Committee, the Aviation Rulemaking Advisory Committee, the Commercial Space Transportation Advisory Committee, and the Aging Transport Systems Rulemaking Advisory Committee. The seventh, RTCA, Inc., is utilized as an advisory committee.

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standards of conduct, and all or some of the provisions in four criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, and 208).

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

Travel payments accepted by agency employees on behalf of FAA had been properly approved in accordance with 31 U.S.C. § 1353 and the implementing regulation at 41 C.F.R. part 304-1 (although underlying records for a few acceptances were missing). However, at the time of our fieldwork FAA had not forwarded to DOT FAA's most recent report of such travel payments of more than \$250 per event, nor had it included all payments in an earlier report to DOT, for compilation in DOT's semiannual reports to OGE required by 41 C.F.R. § 304-1.9.

DOT's semiannual report submitted to OGE for the period April 1, 2001 - September 30, 2001 revealed 28 acceptances of travel reimbursements by FAA employees. The underlying records for four acceptances were missing, while we were provided underlying records for another four acceptances during this period that had not been reported to OGE. However, we found that all of the acceptances for which there were records had been properly approved, including having been analyzed for conflicts of interest in accordance with 41 C.F.R. § 304-1.5. Finally, FAA had not forwarded to DOT its report of payments for compilation by DOT in its semiannual report to OGE for the period October 1, 2001 - March 31, 2002. FAA ethics officials advised us that the failure to forward the report to DOT was due to staffing problems and that the report would be forwarded as soon as possible.

OTHER MATTERS

Neither the ACCE, an FAA Office of Internal Security (OIS) representative, nor a DOT Office of the Inspector General (OIG) special agent was aware of any referrals for prosecution to the Department of Justice, since January 2001 to the time of our review, of any alleged violations of the criminal conflict of interest statutes by FAA employees. Accordingly, we were unable to assess current compliance with the requirement at 5 C.F.R. § 2638.603 for agencies to notify OGE of such referrals. FAA ethics officials appear to be complying with 5 C.F.R. § 2638.203(b)(12), which requires the DAEO to ensure that the services of the agency's OIG, or organization performing similar functions, are utilized when appropriate, including the referral of matters to and the acceptance of matters from the OIG or other organization. According to the ACCE, all matters requiring investigation, including alleged violations of the criminal conflict of interest statutes, are referred to OIS. He has also made a few referrals to OIS concerning non-criminal, ethics-related

matters. The OIS representative advised us that only alleged criminal violations are referred for investigation to OIG.

The ACCE advised us that he generally follows up on referrals to OIS to determine whether FAA management takes disciplinary action, although he has frequently been dissatisfied with the action taken or that action has not been taken. He generally does not follow up on referrals to OIG although, on occasion, OIG has contacted him regarding referred matters.

CONCLUSIONS AND RECOMMENDATIONS

The FAA has all the elements of an effective ethics program managed by knowledgeable and enthusiastic ethics officials. The strong points in the program include the counseling and advice program and the use of cautionary letters in the financial disclosure program. Accordingly, there appears to be some improvement in the program since we last reviewed it in 1997. Following that review, FAA eliminated the backlog of thousands of unreviewed financial disclosure reports. However, problems persist in the program, primarily with the financial disclosure systems. Moreover, last year FAA found approximately 1000 employees who had not been filing public financial disclosure reports who should have been doing so. During our discussions with the ethics officials we learned that they believe additional staffing would help the program. Further, our review revealed evidence of the need for additional resources in the program.

We should note that based on discussions with FAA ethics officials, subsequent to completion of the formal field work, progress had been made in the financial disclosure programs. They advised that a majority of the 90 outstanding confidential disclosure reports had been cleared and that only 2 of the 14 missing public disclosure reports were still pending.

Accordingly, we recommend that you ensure that FAA:

1. Has public filers whose reports were delinquent in 2002 file their reports as required and, pursuant to amended 5 C.F.R. § 2634.704 (67 Fed. Reg. 49857 (Aug. 1, 2002)), assesses the \$200 late filing fee or, as appropriate, waives the fee.
2. Establishes procedures for the timely filing of new entrant confidential reports.
3. Has confidential filers submit their OGE Optional Form 450-As in accordance with 5 C.F.R. § 2634.905(d), especially the requirement for the form to be submitted only if the filer has not changed jobs.

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4. Submits to DOT timely and complete reports of travel payments of more than \$250 per event under 31 U.S.C. § 1353 for compilation in DOT's semiannual reports to OGE.

In closing, I wish to thank the FAA ethics officials for their efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take on each of the recommendations of our report. A brief follow-up review will be scheduled six months from the date of this report. In view of the corrective action authority vested in the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that the FAA implement actions to correct these deficiencies in a timely manner. We are sending a copy of this report to the FAA DCC and the DOT IG. If you have any questions please contact Charles R. Kraus at 202-208-8000, extension 1154.

Sincerely,



Jack Covalesski
Deputy Director
Office of Agency Programs

Report Number 03-009