



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

February 3, 1998

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

Dear Ms. Knapp:

The Office of Government Ethics (OGE) has completed an ethics program review of the headquarters' operation of the Federal Aviation Administration (FAA),<sup>1</sup> which is part of the Department of Transportation (DOT). The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the program's effectiveness, measured largely by its compliance with applicable laws and regulations. To achieve our objective, we examined the following program elements: the administration of the ethics program, the public and confidential financial disclosure systems, ethics education and training, counseling and advice services, the acceptance of gifts of travel payments from non-Federal sources, and FAA's ethics officials' relationship with DOT's Office of the Inspector General (OIG) and FAA's Office of Civil Aviation Security Operations' (OCASO) Investigations Division. Our review was conducted in November and December 1997. An exit meeting, which you attended, was held on January 8, 1998. This report summarizes our findings, conclusions, and recommendations.

FAA's ethics program needs to be improved. While we found that FAA ethics officials are adequately providing employees ethics training and advice, they are poorly administering FAA's financial disclosure systems. Immediate corrective actions are needed to bring the financial disclosure systems into conformance with our laws and regulations. Corrective actions include: (1) reviewing the large backlog of public and confidential financial disclosure reports, (2) ensuring that all employees who were required to file confidential reports in 1996 and 1997 have done so, (3) developing a reliable tracking system--which probably should be automated--to account for the collection and review of all required confidential reports,<sup>2</sup> and (4) developing a method to collect confidential reports within 30 days of when employees assume covered positions.

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<sup>1</sup>This review did not assess any aspect of FAA's regional or field office ethics program.

<sup>2</sup>A data base tracking system would also be a useful tool for tracking employees' receipt of annual ethics training.

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To a limited extent, we believe that some of the financial disclosure systems' deficiencies could be corrected by issuing and following FAA's draft Order, entitled Ethical Conduct and Financial Disclosure Program. These new procedures, however, are not a panacea to solving the current poor condition of the financial disclosure systems.

We note that ethics officials had begun to review the backlog of public and confidential reports by the time of our January exit meeting. As you know, however, much work remains. We strongly advise that you keep abreast of FAA's progress in fully accomplishing all of our recommendations.

FAA's program staffing situation is troublesome. Though our follow-up reviews on the recommendations resulting from our 1994 FAA ethics program review suggested that adequate staffing resources had been dedicated to administer FAA's ethics program, it appears that the program has experienced some staffing problems over the past two years. We encourage you and managers in FAA's Office of the Chief Counsel to thoroughly examine the ethics program staffing situation and determine how best to ensure that appropriate staff is assigned to the program at all times.

STAFF RESPONSIBLE FOR ADMINISTERING  
FAA'S ETHICS PROGRAM HAS VARIED

The level of staff responsible for administering FAA's ethics program has varied over the past two years and has included staff changes and work assignment adjustments. To some extent, these changes and adjustments may have contributed to ethics officials' inability to accomplish all program requirements. As staff changes were occurring and work assignments were made, it appears that managers within the Office of the Chief Counsel did not adequately consider the possible negative effects on (nor did they monitor) the functioning of FAA's ethics program as a whole. In addition, since overall ethics program management oversight by your Office is limited, you were unable to detect or possibly prevent the program's deterioration.

You, as DOT's Designated Agency Ethics Official, and your immediate staff provide overall direction to ethics officials throughout DOT. For the approximately 47,000 FAA employees who are located in headquarters in Washington, DC and in region and field offices around the country, officials within the Office of the Chief Counsel are responsible for administering the agency's ethics program. The newly appointed FAA Deputy Chief Counsel, Mr. James Whitlow--who assumed his position in approximately June 1997--serves as FAA's Deputy Ethics Official. Day-to-day program management responsibility, however, rests with the Associate Counsel for Ethics, Mr. John Walsh, who has been involved in the ethics program at FAA for many years. Currently, in addition to

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Mr. Walsh, the full-time ethics staff in headquarters consists of Ms. Lisa Baccus, who is also an attorney, and Mr. Michael Triplett, who is an administrative support staff person.

Ms. Baccus has been a member of the ethics staff for about two years, but has only been marginally involved in "routine" ethics program functions since her appointment. Shortly after joining the staff, she was assigned to work almost exclusively on an ethics-related matter concerning former FAA employees who received voluntary separation buy-outs. Mr. Walsh has also been working on this matter, but to a lesser extent. Mr. Triplett, a recent hire, came on board in the August 1997 time frame, which was several months after the unexpected retirement of his predecessor in April.

In addition to administering the headquarters ethics program, both Mr. Walsh and Ms. Baccus also assist assistant chief counsels, who are in FAA regional offices. Assistant chief counsels serve as Designated Ethics Counselors for their respective employees.

#### MANY IMPROVEMENTS REQUIRED FOR FAA'S PUBLIC AND CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEMS

We found three serious financial disclosure system deficiencies that should be immediately corrected.

- Approximately 190 public reports that were filed in 1997 have not been reviewed.<sup>3</sup> Also, approximately 3,500 confidential reports that were filed in 1996 and 1997 have not been reviewed.
- Since there are no accurate up-to-date lists of employees required to file confidential reports (or any other reliable tracking system in place), ethics officials cannot ensure that all employees who should have filed in 1996 and 1997 have done so.
- Ethics officials have not developed a method to ensure that confidential reports are filed within 30 days of when employees assume covered positions.<sup>4</sup>

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<sup>3</sup>We note, however, that nine FAA public reports that were submitted directly to your Office in 1997 were reviewed timely. This included two reports that were subsequently forwarded to OGE in accordance with 5 C.F.R. § 2634.602(c)(vi).

<sup>4</sup>We also identified this deficiency in our July 1994 report. Though our follow-up review in March 1996 indicated that this problem had been corrected, we do not believe that any changes have actually taken place. The existing confidential system written

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In addition to these three deficiencies, we also found other elements of the financial disclosure systems that require correcting or strengthening. First, though basic written procedures exist that document how the financial systems are to be administered, we found that these procedures are not being followed and, consequently, are not serving as a useful management tool. Ethics officials have recently drafted new procedures--FAA draft Order 3750.xx (Ethical Conduct and Financial Disclosure Program). Not only are these new procedures more in line with the requirements of the Ethics Act, but they clearly address and assign program responsibilities. With some relatively minor clarifications and additions, we believe that this Order, when adopted, will assist ethics officials in getting the ethics program back on track. Second, ethics officials could not account for two 1997 public reports which we found to be missing based on our examination of the public reports collected in 1997 versus the list of employees required to file. Ethics officials need to determine the status of these reports and take appropriate corrective action if they determine that employees did not file as required.

#### Background On The Unreviewed Public And Confidential Reports

At the start of our examination of financial disclosure reports it was evident that FAA ethics officials had not reviewed the public reports filed in 1997 and the confidential reports filed in both 1996 and 1997. The lack of review was primarily attributed to officials working on more pressing ethics-related business in both 1996 and 1997. In addition, they stated that the unexpected retirement of the ethics program's administrative support staff person in 1997 greatly affected the ongoing financial disclosure process.

You were first informed of the backlog of unreviewed reports on December 8, 1997 when we advised Mr. Walsh to contact your Office. At the same time, he informed Mr. Whitlow and the Chief Counsel of the backlog. Since that time, but prior to our exit meeting, you and Mr. Whitlow agreed on a corrective action plan whereby all public reports will be reviewed, and most will be certified, by January 31, 1998. This includes accounting for the two missing public reports. You also agreed that all confidential reports will be reviewed, and that most will be certified, by

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procedures briefly state that new entrant reports should be collected within 30 days of employees assuming covered positions, but we did not find evidence that reports are actually being collected. Within the backlog of unreviewed reports, ethics officials were unable to offer any examples of employees who filed new entrant reports within 30 days of assuming covered positions.

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March 31, 1998.<sup>5</sup> In addition, by the end of March, ethics officials will be able to ensure that all employees who were required to file confidential reports in either 1996 or 1997 have done so. This includes developing a reliable list of filers.

As discussed, taking into account the large number of employees and reports requiring tracking, we highly encourage ethics officials to consider implementing a data base system to assist them. During our review we suggested that they consider borrowing the "tracking technology" in use at another agency. We also provided the name of a person to contact who we believe would be helpful.<sup>6</sup> In addition, we believe that ultimately the same data base could be especially helpful to ethics officials for tracking employees' receipt of annual ethics training.

#### BASIC EDUCATION AND TRAINING REQUIREMENTS ARE MET

Both the initial ethics orientation and annual ethics training requirements are being met, but only limited monitoring of employees' receipt of annual ethics training is performed. Also, unfortunately, ethics officials do not offer employees any other useful education-type materials during the year. We suggested that on an occasional basis ethics officials provide ethics-related information in FAA's newsletter or post information via electronic mail. We also discussed working towards developing a DOT or FAA ethics home page so that employees can easily obtain ethics information. For now, ethics officials may want to consider publicizing OGE's Web site at <http://www.usoge.gov> for employee use. We promote these types of methods as excellent ways of keeping employees aware of ethics rules and regulations.

Initial ethics orientation is accomplished with the assistance of supervisors, who ensure that a copy of the standards of conduct is provided to new employees. In addition, supervisors provide information about contacting ethics officials.

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<sup>5</sup>At our exit meeting, FAA officials provided an update on their progress to date. They reported that approximately 100 public reports have been initially reviewed and, of those, 75 have been forwarded to Mr. Whitlow for certification. Of the 100 reports, about 25 filers will be contacted for follow-up questions. Approximately 90 public reports remain to be initially reviewed. They also indicated that confidential reports were now in order and that approximately 100 of the 3,500 were reviewed and certified.

<sup>6</sup>Also at our exit meeting, FAA officials indicated that preliminary contact was made.

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As documented in FAA's 1997 annual training plan, ethics officials planned on providing in-person training for headquarters' employees, including showing OGE's videotape entitled "Ethics Inquiry" and allowing time for responding to employee questions. According to ethics officials, by early December they counted approximately 1,000 employees who had attended one of the offered training sessions. Since then, reminder notices have been sent to all supervisors--who are responsible for ensuring that required employees attend annual training. Since they rely on supervisors, ethics officials do not currently on an individual basis track employees' attendance at a training session or receive feedback from supervisors ensuring receipt of training. We discussed with ethics officials our belief that complete reliance on supervisors--most of whom must also receive training--without a formalized feedback system is not adequate to ensure that training requirements are being met. They need to either establish a formal system of feedback from supervisors or track employees' receipt of annual ethics training on an individual basis.

For 1998, ethics officials are hoping to provide computer-based training for some employees. Currently, they are in the early stages of working with a contractor and they believe that this training will be available for at least some employees in 1998. Plans call for providing in-person training to public filers.

#### COUNSELING AND ADVICE PROGRAM APPEARS TO BE SUCCESSFUL

Ethics officials indicated that they provide a large amount of counseling and advice to FAA employees orally. In addition, a significant amount of advice is written. Notwithstanding staffing limitations over the past two years, Mr. Walsh stated that he believes that advice services have been noteworthy. However, he also noted that there has only been time to respond to individual questions, rather than being able to issue proactive or prophylactic advice agencywide.

Our review of files covering the 1996 and 1997 time frame showed that the advice provided by ethics officials to employees was accurate, comprehensive, and timely. Advice provided covered a broad spectrum of issues, including the acceptance of gifts, fund-raising, the resolution of actual or apparent conflicts of interest, travel, outside activities, seeking employment, and post employment. We were impressed with the efforts taken by ethics officials to distribute ethics-related opinions to all Designated Ethics Counsels to keep them informed.

FAA employees often use FAA's electronic mail system to raise questions and obtain ethics-related advice. For the most part, ethics officials respond to employees via electronic mail, except

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when they determine that more formal memorandums and letters of advice are needed. Ethics officials noted that an added benefit of using electronic mail is that it allows for easy coordination among themselves when responding to questions.

#### GIFTS OF TRAVEL PAYMENTS ARE PROPERLY REVIEWED

With concurrence from ethics officials, FAA regularly accepts payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under the authority of the General Services Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353. We reviewed the gifts of travel offered and approved by ethics officials during 1997 and found that thorough conflicts of interest analyses were performed and that acceptances were appropriately approved.

#### WORKING RELATIONSHIP WITH THE OIG AND THE OCASO INVESTIGATIONS DIVISION

Ethics and OCASO Investigations Division officials stated that an effective working relationship and good communication exist between the respective offices concerning discussing and working on matters involving violations of the standards of conduct or the criminal conflict of interest statutes. In addition, as necessary, the OIG and ethics officials work on and coordinate ethics-related matters.

As you know, an audit concerning voluntary separation buy outs given to former FAA employees was conducted by the OIG in 1995. Subsequent follow-up investigations resulted in referring a large number of cases--involving violations of accepting voluntary separation incentive payments--to a U.S. Attorney's Office for prosecution. According to the Assistant Inspector General for Investigations, further investigations may lead to developing additional post-employment violations. We reminded him that the Director of OGE is to be concurrently notified of conflict of interest referrals to the Department of Justice and provided copies of the referral documents, pursuant to 5 C.F.R. § 2638.603(b). In the recent past, there have not been any referrals involving FAA employees concerning conflict of interest violations.

#### CONCLUSIONS AND RECOMMENDATIONS

FAA's ethics program needs improvement. Priority should be placed on maintaining strong financial disclosure systems balanced with keeping employees aware of the requirements for ethical conduct. Based on your comments at our exit meeting, we believe

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that you will provide the appropriate amount of oversight to ensure that our recommendations are carried out.

We recommend the following.

1. Provide adequate ethics staffing to ensure that all ethics program elements can be accomplished.
2. Eliminate the backlog of unreviewed public reports from 1997.
3. Eliminate the backlog of unreviewed confidential reports from 1996 and 1997.
4. Determine the status of the two missing public reports from 1997 and take appropriate corrective action, if required.
5. Develop an accurate up-to-date list of employees required to file confidential reports and ensure that all employees who should have filed in 1996 and 1997 have done so.
6. Consider implementing a computer data base system to track both the filing of financial disclosure reports and employees' receipt of annual ethics training.
7. Develop a method to ensure that employees who enter covered positions file confidential reports within 30 days.
8. Finalize and issue draft FAA Order 3750.xx.

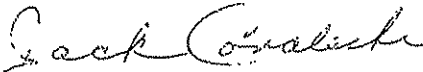
In closing, I would like to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions FAA has taken or plans to take concerning the recommendations in our report. A follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics 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 ethics officials implement actions to correct these deficiencies in a timely manner. A copy of this report is



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being sent to the FAA Administrator, Mr. Whitlow, the Inspector General, and the Manager, OCASO Investigations Division. Please contact Ilene Cranisky at 202-208-8000, extension 1218, if we may be of further assistance.

Sincerely,



Jack Covalesski  
Senior Associate Director  
Office of Agency Programs

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