



# Memorandum

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation  
Office of Inspector General

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Subject: **ACTION**: Management Advisory on Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries Date: January 31, 2014

From: Louis King  Assistant Inspector General for Financial and Information Technology Audits Reply to Attn. of: JA-20

To: Federal Aviation Administrator

The Department of Transportation (DOT) Office of Inspector General (OIG) is providing this advisory to inform you of issues related to our audit<sup>1</sup> report of June 2013 on the Federal Aviation Administration's (FAA) Civil Aviation Registry. In that audit, we reported that approximately 5,600 of the registrations for aircraft owned under trusts for non-U.S. citizens lacked key information, such as the identity of trustors and beneficiaries. Without this information, we could not complete our work in this area at that time. Because of the significance of the matter, we contacted the five trustees with most registrations to obtain the information needed to complete this work. As a result, we have identified additional concerns regarding the lack of information in the Registry pertaining to aircraft owned under trusts for non-U.S. citizens, and FAA's compliance with registration requirements. FAA uses the Registry to process and maintain ownership registrations on 350,000<sup>2</sup> private and commercial aircraft. According to its regulations, aircraft cannot receive FAA's certification for safe operation and approval for flight without maintaining a valid registration in the Civil Aviation Registry.<sup>3</sup>

FAA regulations permit trustees and non-U.S. citizens to register their aircraft by setting up trusts. To do this, an aircraft owner (or trustor or grantor) creates an agreement to transfer the aircraft's title to a trustee that is a U.S. citizen. The

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<sup>1</sup> FAA's *Civil Aviation Registry Lacks Information Needed for Aviation Safety and Security Measures*, OIG Report Number FI-2013-101, June 27, 2013. OIG reports are available on our Web site at: <http://www.oig.dot.gov/>.

<sup>2</sup> The number of U.S. civil aircraft registered as of August 2012.

<sup>3</sup> FAA must ensure that an aircraft presented for airworthiness certification is properly registered (49 U.S.C. § 44704(c) and 14 CFR § 21.173).

trustee—who may be an individual or an organization—registers the aircraft under his, her, or its name. The agreements we reviewed, however, provide little substantive information identifying the trustor, beneficiary, or person(s) who can use the aircraft. The trustor and the beneficiary are frequently the same person. As we reported in June 2013, Registry records on an estimated 5,600<sup>4</sup> aircraft owned under trusts for non-U.S. citizens lacked important information, such as the identity of the trustors and beneficiaries. Because of the significance of this finding, we noted in our report that we were conducting additional work to assess the relationships between the trustees and the anonymous beneficiaries.

We have determined that FAA does not have the information it needs on numerous aircraft owned under non-U.S. citizen trusts, or that this information may not be readily available. We also determined that FAA does not always comply with its requirements for registering aircraft owned under these arrangements. In addition to FAA's lack of information, some of the trustees we contacted could not or would not provide the information on the aircraft they own. Without collecting and maintaining complete and accurate aircraft data, FAA increases the risk of not meeting its aviation safety mission. For example, FAA has experienced problems in providing information on these aircraft to foreign authorities upon request, as required by the Convention on International Aviation when U.S. registered aircraft are involved in accidents or incidents in foreign countries. If FAA takes appropriate actions to address the recommendations in our recent audit of the Civil Aviation Registry, it should be able to correct these deficiencies. Details of our additional work are included below.

## **FAA DOES NOT HAVE IMPORTANT INFORMATION ON TRUSTS REGISTERING AIRCRAFT FOR NON-CITIZENS**

As we reported in June 2013, FAA does not have important safety information on trusts used to register aircraft on behalf of foreign owners. FAA's policy and regulations do not require trustees to identify the trustors, beneficiaries, or operators as a condition of aircraft registration.<sup>5</sup> FAA recently updated its policy to require trustees to produce this information, but only within 48 hours of an FAA request.<sup>6</sup> This lack of information on non-U.S. citizen aircraft owners—information that domestic owners, not registering under trusts, are required to provide as a condition of registration—prevents FAA and other Registry users from: (1) knowing who controls or uses these aircraft; (2) determining the locations of non-U.S. citizens who benefit from these registrations; and (3) assessing the propriety of the registrations. We found several cases in which

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<sup>4</sup> Our 5,600 estimate has a precision of +/-1,027 at the 90-percent confidence level.

<sup>5</sup> The regulations do require trustees to submit copies of documents to the Registry if the trustee and trustor have executed them.

<sup>6</sup> 78 Fed. Reg. 36412 (2013).

aircraft were operating or registered under questionable and possibly illegal circumstances and FAA did not have sufficient information to conduct its safety oversight. For example:

- In January 2012, an FAA inspector was asked to look into a complaint that a Boeing 737 aircraft—registered on behalf of a foreign trustor—was operated contrary to current U.S. regulations and possibly for illegal revenue. The inspector contacted the trustor, but the trustor had leased the aircraft to a rental service that based the aircraft in the United Arab Emirates. The trustor was unable to provide the inspector with any information about who was flying the aircraft.
- In October 2006, a large U.S. bank became trustee of an aircraft on FAA’s Registry under a trust on behalf of a trustor that was a Lebanese politician. To comply with Federal regulations on financial institutions, the bank had to obtain more information on the aircraft’s owner. The trustee discovered that the trustor was backed by a well known U.S. Government-designated terrorist organization. The trustee resigned, and the trust was dissolved. As a result, the aircraft’s registration was cancelled.<sup>7</sup>
- The President of a foreign oil corporation previously owned an aircraft registered under a trust and sold a large percentage of his organization in March 2010 to a company owned by the Government of China. In March 2011, the Newsmax internet media outlet reported<sup>8</sup> that the aircraft approached Tripoli International Airport with no landing permit just hours before the United Nations Security Council met to approve a “no-fly zone” over Libya.

FAA’s new policy that requires trustees to provide the identities and locations of trustors within 48 hours of FAA’s request does not adequately address this issue. For example, we found that the five trustees<sup>9</sup> we contacted could not or would not always make this information available and often not as rapidly as required. We selected a random sample of 77 out of 5,379 aircraft registered to the 5 trustees with most registrations. We found 47 of them had aircraft registered on behalf of non-U.S. citizens. Based on this finding, we estimate that these five trustees have 3,283 aircraft registered on behalf of non-U.S. citizens.<sup>10</sup> We requested information from the trustees on the identities and locations of foreign owners and found that the trustees were unable to provide this information for 35 of the 47 owners, or 74 percent. Furthermore, one of the trustees required that we first

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<sup>7</sup> The trustee requested FAA immediately cancel the U.S. registration and exported the aircraft to the Isle of Man.

<sup>8</sup> Newsmax, “Wells Fargo Jet Makes Mystery Flight to Libya,” Mar. 22, 2011, <http://www.newsmax.com/kentimmerman/wells-fargo-moammar-gadhafi/2011/03/22/id/390349>.

<sup>9</sup> We selected these 5 out of 3,587 trustees because they had the most registrations.

<sup>10</sup> Our estimate of 3,283 has a precision of +/-491 or +/-9.1 percentage points at the 90-percent confidence level.

issue a subpoena for the information. Additionally trustees that did give us information took nearly 2 months to do so. Based on this sample, we estimate that these 5 trustees would not be able to provide this information for 2,445 out of 3,283 registrations.<sup>11</sup>

## **FAA REGISTERS AIRCRAFT THAT DO NOT MEET ITS REQUIREMENTS**

FAA does not always enforce its requirements when registering aircraft. FAA's regulations<sup>12</sup> require non-U.S. citizens to have no more than 25 percent of the power to influence, limit, direct, or remove U.S.-citizen trustees from the trusts, and consequently from control over the aircraft. However, in our sample of 47 aircraft registered on behalf of non-U.S. citizens from the 5 major trustees, all of them (100 percent) were registered under trusts that allow the trustors to remove the trustee. As a result, we estimate 3,283 trusts exceed the limitation on foreign control specified in FAA's regulations.<sup>13</sup> Further, 46 out of 47 trusts did not sufficiently specify the causes for trustee removal or address FAA's concerns in this regard. Based on our sample, we estimate that 3,213<sup>14</sup> out of 3,283 registrations do not comply with FAA's regulations or policy on removing U.S. citizen trustees, making it difficult for FAA to determine who controls the aircraft.

FAA policy<sup>15</sup> also requires Registry personnel to determine whether trusts involving non-citizen beneficiaries are governed by U.S. law and to reject those governed by foreign laws as not eligible for U.S. registration.<sup>16</sup> We selected a random sample of 68 out of 10,292 aircraft trust registrations and found 10 registered to trusts governed by foreign law. Based on our finding, we estimate that the Registry contains 1,514<sup>17</sup> aircraft owned under trusts that are governed by foreign laws. For example, we found aircraft registered to trusts governed by the laws of the Cayman Islands. In July 2008, the Government Accountability Office reported that because U.S. regulators have limited means of collecting information regarding Cayman Island entities, persons intent on breaking U.S. law may use such trusts to obscure their activities.<sup>18</sup> Trusts governed by foreign laws may also limit the trustee's ability to comply with FAA requirements.

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<sup>11</sup> Our estimate of 2,445 has a precision of +/-345 or +/-10.5 percentage points at the 90-percent confidence level.

<sup>12</sup> 14 C.F.R. § 47.7(c)(2)(iii) and (3).

<sup>13</sup> Our estimate of 3,283 has a precision of -161 or -4.9 percentage points at the 90-percent confidence level.

<sup>14</sup> Our estimate of 3,213 has a precision of -113/+70 or -3.5/+2.1 percentage points at the 90-percent confidence level.

<sup>15</sup> FAA Policy AFS-751, Information Bulletin 10-03, March 16, 2010.

<sup>16</sup> FAA's policy further states that the trustee of a trust governed by foreign laws may be subject to a court or other foreign entity with greater than 25 percent power to limit the exercise of his or her authority as trustee.

<sup>17</sup> Our estimate of 1,514 has a precision of +/-7.1 percentage points at the 90-percent confidence level.

<sup>18</sup> Government Accountability Office, *Business and Tax Advantages Attract U.S. Persons and Enforcement Challenges Exist*, GAO-08-778, July 24, 2008.

Regulations for registration of aircraft on FAA's Registry also require that applications be accepted only when received from individual U.S. citizens, partnerships of U.S. citizens, or corporations or associations subject to limitations on foreign control.<sup>19</sup> However, we found that an export credit agency wholly owned by a foreign government entered into a Delaware Statutory Trust<sup>20</sup> agreement with a trustee employed by a U.S. bank. After reviewing the trust agreement, FAA's Aeronautical Center Counsel opined that the trust should be treated as an "association" for aircraft registration. As a result, the aircraft was registered to the trust, not the U.S. citizen trustee. It is unclear why FAA concluded that statutory trusts can be treated as associations rather than traditional trusts. FAA's Registry personnel we spoke to were unclear how such registrations complied with the citizenship requirements.

In each of these instances, FAA Registry personnel were unaware of these matters because FAA does not have quality control procedures that call for regular reassessments to identify and remove such registrations. The lack of the procedures increase the risk that foreign entities that do not meet FAA requirements will have excessive control over registered aircraft. In addition, the lack of these procedures in conjunction with the insufficient policy to address the identification of trustors, beneficiaries, and operators have created a loophole that limits FAA's ability to perform its safety oversight and allows situations, such as those described above, to exist and remain undetected.

Thank you for your attention to these important issues. If you have any questions regarding this advisory, please contact me at (202) 366-1407, or Joann Adam, Program Director, at (202) 366-1488.

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cc: Chief Information Officer, DOT  
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<sup>19</sup> 14 C.F.R. § 47.2.

<sup>20</sup> A statutory trust established under the Statutory Trust Act of Delaware, 12 Del. C. § 3801, *et seq.*