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# *Office of Inspector General*

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## **Liaison and Familiarization Training**

**Federal Aviation Administration**

**Report Number AV-1998-170**

**Date Issued: August 3, 1998**





# Memorandum

**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

Office of Inspector General

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Subject: **INFORMATION**: Liaison and Familiarization  
Training, AV-1998-170

Date: August 3, 1998

From: **Kenneth M. Mead** *K.M. Mead*  
Inspector General

Reply to  
Attn of:

To: Federal Aviation Administrator

In view of our obligations under the Inspector General Act, the purpose of this communication is to recommend the Federal Aviation Administration (FAA) take prompt action to correct a serious, continuing, and widespread lapse of ethics in the Liaison and Familiarization Training (FAM) program -- a program originally intended to provide training for air traffic controllers and others. These problems have been extensively documented; they also have been condoned for an extended period of time, if not tacitly endorsed, by senior management of the FAA. We have called this to the attention of the Administrator on several occasions, most recently in 1996, but meaningful action was not taken.

As the new FAA Administrator, there is an opportunity to take the steps necessary to restore integrity in this training program. In this regard, we note an important first step was taken on July 31, 1998, when the Department and the FAA filed its brief with the Federal Labor Relations Authority. This brief details reasons why the current FAM program is seriously flawed. The brief also identifies FAM features which, among other things, are inconsistent with governmentwide ethics prohibitions against using public office for private gain.

Most taxpayers use personal funds and assets to pay for the costs of transportation to and from vacation and personal leave destinations; they expect the same of Federal employees. However, as the FAM program is currently designed and administered, the FAA, in effect, accepts gifts of free travel from the airlines it is responsible for regulating. If this was done for the sole purpose of receiving training, it would not, in our view, be problematic. However, such gifts are all too frequently -- and knowingly -- used thousands of times each year primarily to facilitate transportation for personal vacations and personal travel, both internationally and domestically. In

fact, the Internal Revenue Service advised it considers travel under these circumstances as fringe benefit income, reportable as taxable income to the traveler. We know of no law or regulation authorizing FAA, or its employees, to accept tax-free gifts from regulated entities for personal use and vacation travel.

In connection with the current National Air Traffic Controllers' Association (NATCA) negotiations, FAA's labor negotiator, on behalf of the Administrator, declared the present structure of the FAM program to be contrary to various ethics rules and regulations. We concur with this declaration. However, no corrective actions have been taken to implement necessary controls in this program to eliminate the opportunities for abuse. This is so with respect to both the controllers and, just as importantly, FAA non-bargaining unit staff and managers who also use the FAM program. In our opinion, an announcement of the corrective actions FAA plans to take, and when FAA will take those actions, should be made promptly.

FAM, as originally conceived, has a legitimate and valuable objective of providing controllers the opportunity, by sitting in the cockpit, to gain first hand experience into the operational characteristics of various types of aircraft, interface with air traffic control, and gain insight into system performance. Controllers and flight crews could mutually benefit through discussions and observations of air traffic control services, communications, and in-flight problems. Unfortunately, FAM has evolved over a period of years from this laudable purpose to one where the "training" objective is often a pretense for controllers and other FAA personnel, including managers, to get free travel to resort, vacation, and personal leave destinations of their choice. FAM has become what is widely understood to be a popular "perk" for many FAA employees. In fact, the controllers' current collective bargaining agreement declares eight (8) free round-trip flights per year per controller to be an "entitlement." There are approximately 15,000 air traffic controllers employed by FAA.

We hasten to add, however, that not all controllers use the program for personal travel needs, and the abuses are not limited to just the controllers. We have been advised by FAA's ethics officer that approximately 4,500 other FAA workforce employees, including non-bargaining unit staff and many managers, are eligible to participate in FAM. There are insufficient controls in place to ensure that these individuals do not use it for vacation and personal leave travel.

As stated, we concur with that portion of FAA's June 5, 1998, agreement with the NATCA declaring the FAM program non-negotiable because the program violates governmentwide ethics rules. In our opinion, the program as currently managed is contrary to the Department's gift statute, 49 U.S.C. § 326. As such, the program is "inconsistent with...Federal law or...Government-wide rule or regulation." We believe FAA's position is weakened, however, by the fact that FAA has not taken

any action or established controls to prevent abuse of FAM by managers and other personnel to whom the labor agreement does not apply. NATCA may well argue that they are being singled out since FAA management continues to allow the FAM program to be available for its managers and non-bargaining unit personnel. We note also that the agreement with NATCA would continue in place the current practice of accepting free travel for personal use for an extended period of time, possibly years. To mitigate this vulnerability, FAA must act to establish appropriate controls and accountability for all of its employees.

Finally, we believe FAM, as currently designed and administered, runs the risk of eroding public confidence in FAA's adherence to Federal ethics standards and the Department's gift statute. Acceptance of donations of free travel from the airlines for other than the stated "training" purposes of the program, namely, to facilitate personal travel could lead some to perceive a conflict of interest exists. The current conduct of FAM also is inauspicious in light of the personnel reform authority given FAA by the Congress in 1995.

The FAM program can serve legitimate purposes in providing air traffic controllers and other FAA staff valuable training. To restore integrity to this program, however, the ethical problems of: (i) accepting a gift (free travel) for personal purposes from a prohibited source, namely, the regulated airlines; (ii) using public office for private gain; and (iii) creating the appearance of an impropriety by accepting the free travel must be addressed. This can be done by precluding FAM trips that:

1. Involve travel on leave days or days off;
2. Involve scheduled leave of days off between the outgoing flight and the return flight except when management makes an affirmative documented determination that such is for legitimate training purposes and will not create an appearance of impropriety; or
3. Involve foreign overseas travel for an employee in a facility that does not work oceanic airspace.

Furthermore, appropriate controls must require preapproval of FAM flights by supervisory personnel and only then when the supervisor determines that the specific flight meets official training needs of the FAA. Any exceptions to the above controls must be approved on a case-by-case basis by FAA's ethics officers.

A more detailed exposition of our views on why the FAM program needs restructuring is immediately attached. We have also attached documentation of abuses identified in the Inspector General's prior audit report which includes an

advisory from the Internal Revenue Service. We would appreciate receiving the FAA's response to our recommendations within 15 days of the date of this letter.

Attachments (2)

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cc: The Secretary  
The Deputy Secretary  
The General Counsel  
The Assistant Secretary for Administration

**OFFICE OF INSPECTOR GENERAL POSITION ON  
LIAISON AND FAMILIARIZATION TRAINING**

We concur with that portion of FAA's June 5, 1998, agreement with the National Air Traffic Controllers' Association (NATCA) declaring the Liaison and Familiarization (FAM) Program non-negotiable. FAA's position was appropriate given the origin, nature, and structure of the program and the pattern of abuses by FAA personnel since the mid-1980s. The abuses have been extensively documented in a series of audit reports, and constitute serious violations of government ethics standards involving the acceptance of gifts from prohibited sources. While the FAM program can provide valuable training to air traffic controllers, and other non-bargaining unit employees, in its current form, it suffers from a lack of appropriate controls and sufficient management scrutiny.

The FAM program has been included in collective bargaining agreements since 1973. Under these agreements, bargaining unit employees have been eligible for eight round-trip domestic flights per year. In 1974, the program was extended to include one round-trip international flight per year. This program is viewed by employees as an **"entitlement"** [emphasis added] benefit and the prior collective bargaining agreement (which expired in 1997) declares the program to be an **entitlement**.

As originally conceived, the FAM program was intended to provide controllers the opportunity, by sitting in the cockpit, to gain first hand experience into the operational characteristics of various types of aircraft and gain insight into system performance. In that way, controllers and flight crews could mutually benefit through discussions and observations of air traffic control services, communications, and in-flight problems.

Since at least the mid-1980s, the program has been plagued by a pattern of abuses documented, *infra*. These result from lack of effective management controls designed to ensure the program is used only for legitimate training needs. We found that supervisors and managers approved employee trips knowing that any "training" received was incidental to the ultimate purpose, namely, a vacation, family visits, and the like. Under these circumstances, the managers and senior officials who authorized the free travel subverted the purpose of the FAM program.

The current bargaining agreement proposal which continues the FAM program in its currently unstructured manner, permits FAA employees, with tacit approval by

supervisors and managers, to violate the spirit, if not the letter, of the gift statute,<sup>1</sup> Executive Orders,<sup>2</sup> and ethical standards applicable to all government employees.<sup>3</sup>

We recognize that FAA has now committed to pursue resolution through the Federal Labor Relations Authority (FLRA). Furthermore, FAA has opined that since it chose the FLRA route for resolution of this issue, it cannot, at this time, unilaterally implement the controls necessary to prevent the unethical and inappropriate use of the FAM program by its NATCA represented employees. Consequently, FAA is faced with a “Hobson’s Choice” wherein it could either cancel the program and violate the agreement with NATCA, or continue the program FAA itself has deemed unethical. Unfortunately, final resolution will take many months, if not years. In the meantime, the program remains without adequate controls and the types of abuses we found will continue.

We also are disturbed by the fact that other FAA employees, including those in senior management positions, not represented by NATCA, participate in the FAM program, but FAA has made no changes in the program as it applies to these employees. Consequently, non-bargaining unit staff and managers can use the program in the same manner and with the same ethical vulnerabilities as exists with the controllers. FAA should promptly implement controls to prevent the program abuses. Otherwise, FAA’s position before the FLRA is inconsistent and it appears that the controllers are inappropriately being singled out. Also, we see no legal basis for continuing in place for managers and non-bargaining unit employees program provisions that FAA itself has determined to be inconsistent with governmentwide rules of ethics and regulations.

### **HISTORY OF ABUSES REFLECT LACK OF MANAGEMENT OVERSIGHT AND CONTROLS**

During its history, the FAM program has suffered from widespread abuses. In our most recent report on FAM issued February 20, 1996, we reported that air traffic controllers and others participating in the FAM program decided where, when, and how often they wanted to fly. They frequently used their position to obtain free transportation for personal gain. Multiple trips were taken by employees to former duty stations in conjunction with leave, and trips were often taken to resort areas. FAA personnel and spouses traveled together for extended weekends. For example:

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<sup>1</sup> 5 U.S.C. § 7353.

<sup>2</sup> These executive orders provide that: “An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee’s agency, or whose interests may be substantially affected by the performance or nonperformance of the employee’s duties.”

<sup>3</sup> 5 C.F.R. Part 2635.

- one employee took 12 weekend trips in a 15-month period to visit his family in Tampa, Florida (pp.7 and 9);
- another took 10 weekend trips in a 9-month period to visit the city where he ultimately retired (p.8);
- another took 7 trips to Fort Myers or Tampa, Florida, and 2 trips to Las Vegas, Nevada, utilizing weekends and regular days off to travel (p.19);
- another utilized annual leave or regular days off to take 7 trips to Los Angeles, California, and 1 trip to Munich, Germany (p.19);
- another took 17 trips to travel to his military reserve duty stations (p.20);
- and 7 couples took 21 FAM flights for extended weekends and vacations (p.28).

As stated, under these circumstances, any “training” received during such trips was incidental to the real purpose and intent of the trip, namely, a vacation, family visits, commuting to work or home, traveling to military reserve duty, and the like. These abuses result from a lack of sufficient management controls and violate the intent, if not the spirit, of the gift statute, Executive Orders and governmentwide ethics rules.

### **FAA FAILED TO TAKE CORRECTIVE ACTIONS**

Despite our repeated documentation of abuse, management did not implement controls to ensure the FAM program would be utilized solely for official and legitimate government purposes necessary to address the ethical problems. Even though many supervisors were aware their employees were using FAM to arrange what amounted to free trips home, family visits, vacations, or weekend trips, they still gave their approval. The nature of the program changed from one of training to one of free travel benefits to which FAA employees were “entitled.”

### **ACCEPTANCE OF FREE TRAVEL FOR PERSONAL GAIN IS A VIOLATION OF LAW AND ETHICAL STANDARDS**

Since FAM flights have not been managed as legitimate training, and are treated as employee entitlements by the FAA, they constitute free travel benefits to employees when the travel is taken primarily for the purposes detailed above. As such, they violate the spirit and letter of governmentwide ethics rules in: (a) accepting gifts from a prohibited source, namely, accepting free travel for personal use from the

airlines they regulate; (b) using public office for private gain; and (c) creating an appearance of impropriety by such acceptance.

An employee's acceptance of free travel from a regulated air carrier under these circumstances constitute a gift from a prohibited source. Such acceptance violates 5 U.S.C. § 7353(a)(1), which provides that "...no employee... of the executive...branch shall solicit or accept anything of value from a person...conducting activities regulated by the individual's employing entity." Regulations implementing Executive Orders 12674 and 12731, the Standards of Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, provide that "an employee shall not, directly or indirectly accept a gift: (1) from a prohibited source; or (2) given because of the employee's official position," 5 C.F.R. § 2635.202.

A gift is defined as "...any...item having monetary value [and] includes services as well as...transportation," 5 C.F.R. § 2635.203(b)(8). Although the flights are furnished at no cost, the market value of the ticket or travel is the retail cost that a private passenger would pay for an equivalent trip. 5 C.F.R. § 2635.203(c). Further, those commercial air carriers providing the gift are prohibited sources, 5 C.F.R. § 2635.203(d)(3), since they are regulated by the FAA under its plenary authority over the safety of civil aviation, 49 U.S.C. §§ 44701 *et seq.*

Indeed, in an earlier case, the Federal Labor Relations Council, the Federal Labor Relations Authority's (FLRA) predecessor, FAA, Department of Transportation and PATCO, FLRC No. 77A-29, upheld disciplinary action against a controller who accepted a reduced air fare from a carrier regulated by FAA. The Authority found such acceptance a violation of an earlier version of the above quoted Executive Orders and regulations, finding the market value of the reduced fare constituted a prohibited gift.

Even if FAA's authority under 49 U.S.C. § 326 to "accept a gift of services in carrying out aviation duties and powers" is broadly construed, such exercise goes well beyond ethical bounds. While it could be argued the traveler whose free trip was approved is not directly in violation of the ethical standards, the same cannot be said for the supervisor or manager who approved acceptance of the gift, knowing the uses to which the gift would be put. Such travel provided by a non-federal source cannot be accepted if the authorized agency official determines that acceptance would cause a reasonable person with knowledge of all the facts to question the integrity of agency programs or operations. In other words, the agency official or officials who approve must insure that the acceptance of the gift is in all

respects legal and meets the ethics regulations promulgated pursuant to the Ethics in Government Act, Pub. L. No. 101-194.<sup>4</sup>

We further note the value of the flights received are a fringe benefit when the flights are not taken primarily for business purposes. Under these circumstances, the Internal Revenue Service advises the market or retail value should be included in the air traffic controller's gross income.

## **CONCLUSIONS**

We recognize that the FAM program can serve fundamental and legitimate purposes in providing air traffic controllers and non-bargaining unit employees valuable training experience and, if properly structured, would meet current gift acceptance authority. For the program to continue, however, the ethical problems of: (i) accepting a gift from a prohibited source, namely, accepting free travel for personal use from the regulated airlines; (ii) using public office for private gain; and (iii) creating the appearance of an impropriety by accepting the free travel must be eliminated. This can be done by precluding FAM trips that:

1. Involve travel on leave days or days off;
2. Involve scheduled leave of days off between the outgoing flight and the return flight except when management makes an affirmative documented determination that such is for legitimate training purposes and will not create an appearance of impropriety; or
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<sup>4</sup> See, e.g., 31 U.S.C. § 1353 and the implementing regulations at 41 C.F.R. Part 304-1; Sanjour v. EPA, 984 F.2d 434 (D.C. Cir. 1993).

**NOTE: The 1996 report on the FAM program will be available shortly.**