

**FOLLOW-UP AUDIT REPORT ON FAA'S
MANAGEMENT OF AND CONTROLS
OVER MEMORANDUMS OF
UNDERSTANDING**

*Federal Aviation Administration
Report Number: AV-2006-074
Date Issued: September 28, 2006*



Memorandum

**U.S. Department of
Transportation**

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Follow-up Audit Report on
FAA's Management of and Controls Over
Memorandums of Understanding
Report No. AV-2006-074

Date: September 28, 2006

From: David A. Dobbs 
Assistant Inspector General
for Aviation and Special Program Audits

Reply to
Attn. of: JA-10

To: Assistant Administrator
for Financial Services/CFO

The House Appropriations Subcommittee on Transportation, Treasury, and Housing and Urban Development, in making appropriations for the Department of Transportation for fiscal year (FY) 2006, directed the Office of Inspector General to provide a follow-up to its September 2003 report on the Federal Aviation Administration's (FAA) management of and controls over Memorandums of Understanding (MOUs). This is our follow-up report. We began this review in August 2005 but suspended it in October 2005 to devote resources to our review of internal controls associated with disaster relief after Hurricane Katrina. This review was re-opened in May 2006.

We found that policies and procedures established by FAA have been effective in improving the Agency's management of and controls over the MOU process. Accordingly, we are not making any recommendations in this report. We briefed FAA officials from the Office of Labor Management Relations on the results of our audit on September 13, 2006, and have incorporated their comments as appropriate. Based on the results of our review, no additional actions are required by FAA.

Our objective was to determine whether FAA's newly established internal policies and procedures have been effective in improving the Agency's management of and controls over MOUs. This review was conducted between August 2005 and September 2006 and included visits to FAA's Headquarters, two Air Traffic Organization (ATO) Service Areas, one ATO Technical Service Area, and six terminal and en route air traffic control facilities.

Exhibit A contains details on the scope and methodology we used in conducting this review. Exhibit B lists the facilities we visited.

BACKGROUND

In 1998, under the authority of personnel reform, FAA and the National Air Traffic Controllers Association (NATCA) union entered into a 5-year national collective bargaining agreement (CBA). The comprehensive agreement addressed many significant issues that were previously non-negotiable, including pay and benefits for controllers. Article 7 of the agreement allowed FAA managers and NATCA representatives to enter into written agreements or MOUs outside the national agreement. MOUs can be negotiated at the national, regional, or local level and are binding on both the Agency and the union. FAA uses the terms MOU and MOA (Memorandums of Agreement) interchangeably.

In our September 2003 report,¹ we found that FAA's processes for negotiating, approving, and implementing MOUs outside the national collective bargaining agreement with NATCA were inadequate. For example, at the time of our review, FAA had:

- no system to track MOUs;
- broad authority among managers to negotiate MOUs and commit the Agency;
- no requirement to include labor relations specialists in negotiations over MOUs;
- no standard guidance on how to negotiate, implement, or sign MOUs; and
- no requirement to estimate potential cost impacts before signing an MOU.

Because of the significant control weaknesses and budgetary impact, we briefed the FAA Administrator on our concerns in January 2003, 2 months after initiating the review. As a result of our meeting, in June of 2003, the Agency issued FAA Order 3710.18, "Internal Coordination Requirements for Negotiating Term and Mid-Term Agreements (Including Memoranda of Understanding and Memoranda of Agreement) with FAA Unions." This Order established key management controls to help better manage the MOU process. Specifically, the Order requires

¹ OIG Report No. AV-2003-059, "FAA's Management of and Control Over Memorandums of Understanding," September 12, 2003. OIG reports can be found on our website: www.oig.dot.gov.

FAA managers to coordinate all negotiated labor agreements with the FAA's Office of Labor and Employee Relations, thus shifting responsibility for determining which issues are actually negotiable back to labor experts.

The Order also established other key provisions to mitigate the likelihood of FAA signing and implementing MOUs that are not cost-effective, necessary, or in the best interest of the Government. Those provisions included:

- requiring MOUs to contain mandatory information such as the union covered by the agreement and an expiration date or expiration condition;
- requiring MOUs to be reviewed and approved on behalf of the Administrator;
- requiring MOUs to be accompanied by a budget analysis; and
- requiring MOUs to be forwarded to Labor Relations for inclusion in a national database.

RESULTS IN BRIEF

We found that the policies and procedures, established by FAA in June 2003, have provided the Agency with substantially improved controls over its MOU process. For example, overall the number of MOUs signed since the implementation of FAA Order 3710.18 (in June 2003) has substantially decreased. Agency-wide a total of 415 new MOUs were signed in FY 2003, but only 52 new MOUs were signed in FY 2005.

Our tests on MOUs also showed that provisions of FAA Order 3710.18 were being complied with. For example, at the 9 locations we visited, we performed limited tests on the 13 MOUs at those locations and found that 9 of the MOUs (1) contained expiration dates, (2) identified the specific bargaining unit involved in the agreement, (3) were reviewed and approved on behalf of the Administrator, and (4) were accompanied by a budget analysis. While four of the MOUs did not have an expiration date or a budget analysis, those agreements covered issues that were primarily administrative in nature, such as procedures for assigning and tracking overtime shifts, and had no potential financial impact on the Agency.

We also tested the MOU national database maintained by Labor Relations and found that MOUs signed after the implementation of FAA Order 3710.18 were included in the database.

During our review, FAA began implementing a new CBA with NATCA, which included changes to the ATO's policies governing negotiating, approving, and implementing MOUs. Article 7 of the agreement lays out the circumstances when, and on what topics, MOUs would be permissible and restricts all bargaining to the national level except for a limited number of issues of local interest specifically cited in the contract, such as vacation bidding procedures.

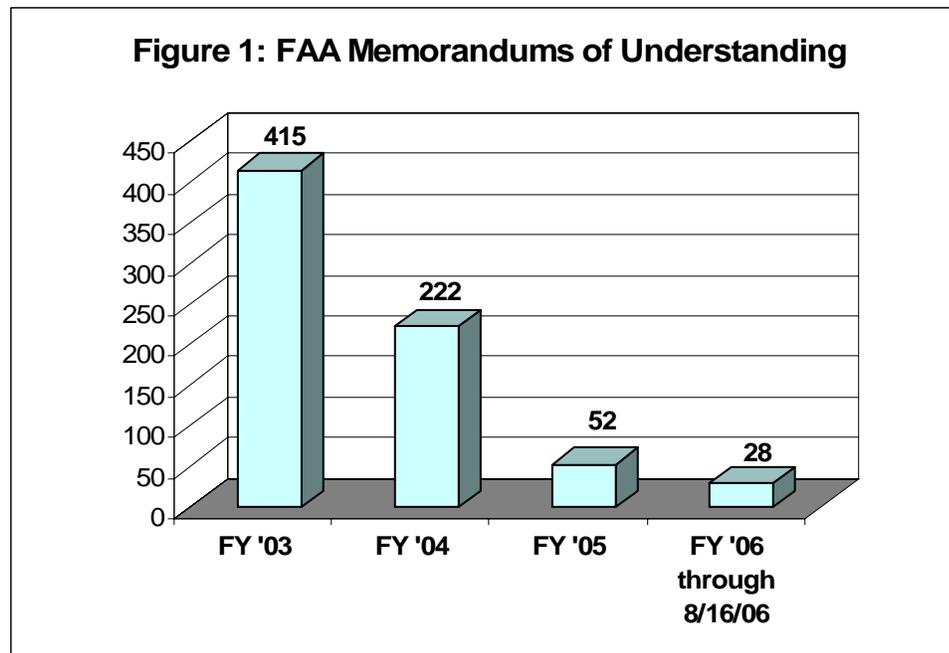
According to the Deputy Director of Labor Relations, the new CBA is designed to minimize the issues that require additional negotiation outside of the contract. Items specifically covered in the contract, such as credit hours, are considered complete and therefore not subject to additional negotiation at the regional or local level. FAA intends to have the new CBA completely implemented by the end of September 2006.

In our opinion, implementation of Article 7 of the new CBA should significantly bolster the Agency's controls over MOUs in conjunction with the policies and procedures already established by FAA Order 3710.18. Accordingly, we are making no recommendations regarding FAA's policies and procedures over MOUs at this time.

OBSERVATIONS

FAA Has Made Significant Progress in Improving Controls Over Memorandums of Understanding

We found that the policies and procedures established by FAA have provided the Agency with much needed controls over its MOU process. FAA Order 3710.18 is being followed, and the controls established by it are effective. For example, as shown in Figure 1, the number of new MOUs signed Agency-wide since the implementation of Order 3710.18 (June 2003) went from a high of 415 in FY 2003 to 52 in FY 2005. In fact, as of August 16, 2006, only 28 new Agency-wide MOUs have been signed in FY 2006.



We visited 9 FAA facilities and found that before implementation of FAA Order 3710.18, those facilities had signed 85 MOUs. However, since the Order's implementation, those same 9 facilities had only 13 new MOUs. We tested those MOUs to determine if they complied with the terms of FAA Order 3710.18. Specifically, we determined if the MOUs identified the union covered by the agreement as well as an expiration date or expiration condition, if the MOUs had been reviewed and approved on behalf of the FAA Administrator, and if the MOUs had been submitted with a budget analysis. All of those are key provisions established in FAA Order 3710.18.

We found that the majority of the MOUs in our sample complied with the controls established by FAA Order 3710.18. For example, 9 of the 13 MOUs (69 percent) that we reviewed complied with the requirements set forth in the Order. While 4 of the 13 MOUs (31 percent) did not have a completed budget analysis or expiration date or condition, those agreements were primarily administrative in nature (e.g., covering workforce assignments) and had no potential financial impact on the Agency.

We also tested whether the national database included all MOUs. We requested copies of all MOUs pertaining to the nine facilities that we reviewed to determine if the MOUs could be located in the national database. We found that MOUs signed after implementation of FAA Order 3710.18 were included in the database. However when it came to legacy MOUs (MOUs signed prior to the implementation of FAA Order 3710.18), we found minor deviations such as double counted MOUs and older MOUs that were missing. For example, a search

of the database revealed that one facility had a total of nine MOUs. However, we determined that those nine MOUs actually represented three MOUs that had been input into the database three times.

Revisions to Article 7 (Mid-Term Bargaining) Should Further Strengthen Controls Over MOUs

During our review, FAA and NATCA entered into negotiations for a new CBA, which included bargaining over the FAA's policies governing negotiating, approving, and implementing MOUs. On April 5, 2006, however, FAA declared that the negotiations had reached an impasse and submitted all unresolved articles to Congress for a 60-day review, as required by the 1996 personnel reform legislation.

In June 2006, after the 60-day review period expired, the FAA Administrator notified NATCA of FAA's intention to immediately implement its proposed terms and conditions for all unresolved articles, as well as the articles that the Agency and union had already tentatively agreed upon.

Included in this group of articles is a revised version of Article 7—Mid-Term Bargaining. The implementation of the revised version of Article 7 should further strengthen FAA's controls over MOUs. For example, the revised Article lays out the circumstances when, and on what topics, MOUs would be permissible and restricts all bargaining, except where specifically authorized, to the national level. Revised Article 7 also renders legacy MOUs no longer binding on the Agency or the union, thus voiding legacy MOUs that may have had an adverse affect on FAA.

According to FAA's Deputy Director of Labor Management Relations, FAA intends to implement the new CBA by the end of September 2006. Until then, all legacy MOUs are still in effect. Once the new CBA is implemented, only six legacy MOUs will still be valid. Those MOUs deal with smoking, training, asbestos release, sexual orientation discrimination, Equal Employment Opportunity mediation, and FAA's Advanced Technologies Oceanic Procedures program.

He informed us that the new CBA is designed to minimize the issues that require additional negotiation outside of the contract because items specifically covered in the contract, such as credit hours, are considered complete and not subject to additional negotiation at the regional or local level.

CONCLUSIONS

In our opinion, implementation of Article 7 of the new CBA should significantly bolster the Agency's controls over MOUs in conjunction with the policies and procedures already established by FAA Order 3710.18. Accordingly, we are making no recommendations regarding FAA's policies and procedures over MOUs at this time.

ACTIONS REQUIRED

No additional actions are required.

We appreciate the courtesy extended to our staff during the audit. If you have any questions or need further information, please contact me at (202) 366-0500 or Dan Raville, Program Director, at (202) 366-1405.

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cc: FAA Deputy Administrator
ATO Chief Operating Officer
FAA Chief of Staff
Anthony Williams, ABU-100
Martin Gertel, M-1

EXHIBIT A. SCOPE AND METHODOLOGY

This performance audit was conducted in accordance with Generally Accepted Government Auditing Standards prescribed by the Comptroller General of the United States and included such tests as we considered necessary to provide reasonable assurance of detecting abuse or illegal acts. We conducted this review between August 2005 and September 2006 using the following methodology.

During the audit, we reviewed FAA policies and practices governing negotiating, approving, and implementing MOUs outside the national CBA with NATCA at the Headquarters, service area, and facility level of the ATO. Additionally, we reviewed management controls at the service area and local levels to determine if they were sufficient to ensure that MOUs complied with the controls established in FAA Order 3710.18.

To determine if MOUs signed after implementation of FAA Order 3710.18 complied with the requirements of the Order, we judgmentally selected and reviewed MOUs from nine FAA facilities. These nine FAA facilities were selected because of the number and types of MOUs identified during the previous audit. We proceeded to perform a search (by facility) of the FAA Memorandum of Agreement National Database for each of the nine facilities visited. From that search, we determined that 13 MOUs were signed after implementation of FAA Order 3710.18. We then performed compliance reviews on each of the 13 MOUs.

To determine the accuracy and completeness of the national MOU database, we asked each of the nine facilities visited to provide the audit team with copies of all facility MOUs. The team then compared the MOUs provided by the facilities to the MOUs listed for each facility on the National MOU database.

We also reviewed policies and procedures negotiated during the ongoing discussions between FAA and NATCA over a new collective bargaining agreement. Finally, we interviewed FAA management to obtain their opinions on the effectiveness of MOU policies.

EXHIBIT B. FACILITIES VISITED

- Eastern En Route and Oceanic Service Area Directorate – Atlanta, GA
- Eastern Technical Operations Directorate – Atlanta, GA
- Atlanta Air Route Traffic Control Center (ARTCC)
- Washington ARTCC
- Atlanta Terminal Radar Approach Control (TRACON)
- Potomac TRACON
- Atlanta Hartsfield Air Traffic Control Tower (ATCT)
- Washington Reagan National ATCT
- Atlanta System Management Office
- Atlanta Flight Standards Division Office
- Delta Certificate Management Field Office