



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

Office of Inspector General
Washington, DC 20590

May 19, 2006

Mr. John S. Carr
President
National Air Traffic Controllers Association
1325 Massachusetts Avenue, NW
Washington, DC 20005

Dear Mr. Carr:

This responds to your letter of February 10, 2006, in which you requested that our office conduct an investigation to determine whether the Federal Aviation Administration's (FAA's) communications to Congress and the media concerning legislation introduced by Senator Barak Obama violated the Anti-Lobbying Act and provisions contained in the Fiscal Year 2006 Appropriations Act.¹ Your letter asserts that FAA officials violated the Anti-Lobbying and Appropriations Acts by attempting to gain "grassroots" opposition to the legislation by sending documents to Congressional offices, posting documents on FAA's website, and persuading newspaper editorial boards to write articles opposing the legislation.

In brief and as more fully explained below, we did not find any evidence constituting, in our view, potential violation of the above-referenced laws. Accordingly, we found no basis for referral of this matter to the Department of Justice (DOJ), nor do we believe it warrants further review by the Department of Transportation's (DOT's) Office of General Counsel; however, we are providing a copy of this response to the General Counsel.

Methodology

We reviewed the information and documents you provided us and spoke with you and NATCA's General Counsel. We also interviewed FAA officials and employees involved in the agency's communications to Congress and the media concerning Senator Obama's legislation, and we examined FAA documents and electronic records. Further, we researched and analyzed the applicable laws: 18 U.S.C. § 1913 and Public Law 109-115, § 821.

¹ FY 06 Treasury, Transportation, Housing and Urban Development Appropriations Act, Public Law 109-115, § 821.

Findings

FAA Communications to Members of Congress Concerning Senator Obama's Legislation

We found that FAA distributed five documents relating the agency's position on Senator Obama's legislation to Members of Congress of both parties:

1. Administrator Marion Blakey's January 13, 2006, letter to Senator Obama;
2. "FAA's Response to Senator Obama's Legislation," a reformatted version of Administrator Blakey's January 13 letter;
3. "Federal Aviation Administration/National Air Traffic Controllers Association Contract Negotiations and FAA Call for Mediation, January 13, 2006," which was identical to document 2 except for the title;
4. "FAA Response to Senator Obama's Legislation: Changing the Rules, Hurting the FAA, and Taking Authority from Congress," which was (and is currently) also posted on FAA's employee website;² and
5. "FAA/Air Traffic Controller Negotiations—Key Points."

We determined that one or more of the above five documents were distributed to each Member of the House of Representatives and at least 95 Senators. We found that FAA officials, in anticipation of the introduction of Senator Obama's legislation on January 26, 2006, and the "NATCA in Washington 2006" week of January 29, distributed the majority of these documents between January 18 and January 25 via fax, email, and/or hand delivery.

During the distribution of the above documents to Members of Congress, FAA officials halted distribution of one document—"FAA /Air Traffic Controller Negotiations—Key Points." FAA officials involved in the distribution told us they did not think it appropriate to send this document because it asked Congress not to hold hearings on the proposed legislation. FAA officials brought this to the attention of the Chief Counsel, whose advice was to stop sending the document. Some Representatives were sent this document before the decision was made to halt its distribution. Contrary to concerns, we found no evidence to indicate that this or any other document was distributed by FAA based on the party affiliation of the recipient Members.

² FAA's employee website is a "public-facing" website anyone may access via common internet search engines, or indirectly through FAA's main website.

Most importantly, we found no evidence of any FAA attempt to carry out a prohibited “grassroots” campaign, i.e., that the FAA officials and employees involved in communications with Congressional offices about Senator Obama’s legislation asked industry representatives, members of the media, or the general public to contact Members of Congress about the legislation.

FAA Communications to the Media Concerning Senator Obama’s Legislation

Based on our interviews, we found that the Assistant Administrator for Communications and his staff were the FAA officials responsible for communicating with the media specifically about Senator Obama’s legislation. The Assistant Administrator stated that he spoke to various media representatives, including the Wall Street Journal editorial board, in response to inquiries about FAA’s position on the legislation. He spoke on behalf of FAA Administrator Blakey and outlined to media members the reasons why she did not support the legislation. These reasons were consistent with those outlined in the documents FAA distributed to Members of Congress and the document posted by the Assistant Administrator for Communications on FAA’s employee website.

We found no evidence that the Assistant Administrator for Communications or his staff asked media members, industry officials, or the general public to contact Members of Congress about the legislation.

No Evidence FAA Violated the Anti-Lobbying Act or Appropriations Act

DOJ has consistently interpreted the Anti-Lobbying Act as applying to and prohibiting “grassroots” lobbying by federal employees intended to encourage third parties, members of special interest groups, or the general public to contact Members of Congress in support of or opposition to legislation. (*See, e.g.*, U.S. Department of Justice Office of Legal Counsel Opinion, “Guidance on 18 U.S.C. § 1913,” April 14, 1995.)

The Anti-Lobbying Act does not prevent federal employees, while acting in an official capacity, from communicating with Members of Congress to provide information or to solicit support from Members for the Administration’s position on matters pending before Congress, regardless of whether the contact is invited or specific legislation is pending. Thus, in our view, FAA officials did not violate the Anti-Lobbying Act by sending documents to Members of Congress relating the agency’s reasons for opposing Senator Obama’s legislation.

Under the DOJ opinion cited above, an employee also does not violate the Anti-Lobbying Act by providing information to the public to explain Administration policies and positions, including those concerning pending legislation. However, according to the DOJ opinion, when providing oral or written information to the public about Administration positions in support of or opposition to legislation, an employee “may not

engage in substantial ‘grassroots’ lobbying campaigns . . . expressly asking recipients to contact Members of Congress[.]”

We found no evidence indicating FAA officials gave members of the public, media representatives, or FAA employees any guidance, instruction, or suggestion to contact Members of Congress about Senator Obama’s legislation. To address your particular concern, we did not find that the document posted on FAA’s employee website, though accessible by the public, asked anyone to contact Members of Congress. Based on the interviews we conducted and our review of relevant electronic records, as well as our examination of the document posted on FAA’s employee website, we have concluded that FAA officials engaged in permissible information-sharing, not prohibited “grassroots” lobbying.

Conclusion

In sum, based on our interviews of FAA officials and employees, and review of FAA documents and electronic records, we did not find any evidence constituting, in our view, potential violation of the Anti-Lobbying Act or the DOT Appropriations Act by FAA officials or employees concerning Senator Obama’s legislation. Accordingly, we found no basis for referral of this matter to DOJ, nor do we believe it warrants further review by DOT’s Office of General Counsel. We anticipate no further action in this matter.

We appreciate the opportunity to review this issue. If I can answer any questions or be of further assistance, please feel free to contact me at 202-366-1959, or Charles H. Lee, Jr., Assistant Inspector General for Investigations, at 202-366-1967.

Sincerely,



Todd J. Zinser
Acting Inspector General

cc: Jeffrey A. Rosen, DOT General Counsel
Marion C. Blakey, FAA Administrator