

EMPLOYEE NOTICE OF PROHIBITED FINANCIAL INTERESTS

The Standards of Ethical Conduct for Employees of the Executive Branch of the government provide the criteria for measuring whether a financial interest conflicts with an employee's official duties. 5 CFR 2635. The Standards also allow each agency to supplement those criteria to address specific agency concerns over conflicting financial interests. The Federal Aviation, through the Department of Transportation, has supplemented the Standards by providing that FAA employees, their spouses, and dependents are prohibited from holding stock or any other securities interest in an "airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company." 5 CFR 6001.104(b). This prohibition applies to all FAA employees regardless of their position within the FAA.

The FAA's supplemental regulation has its roots in the adverse publicity that resulted from a GAO audit in 1975. That audit showed that a substantial percentage of the employees whose financial disclosure reports were reviewed held aviation stocks. Conscious of its responsibility to maintain public confidence in the integrity and impartiality of its employees, the FAA made a policy decision to prohibit all employees from holding stock or any other securities interest in these aviation-related entities.

On February 2, 2004, the Administrator published a list of the prohibited investments subject to Section 6001.104(b). Recently added to the list of companies treated as prohibited investments is the General Electric Company. The General Electric Company is one of the world's leading jet engine manufacturer and service provider. It is also a very prominent lessor of aircraft. With operations in more than 40 countries, the General Electric Company is a highly visible company in the aviation arena and is regularly included in published aviation industry stock performance lists. The Administrator's memorandum, read in conjunction with Section 6001.104(b), effectively prohibits all FAA employees from holding General Electric Company stock.

Employees have until August 2, 2004, to complete divestment of all stock or any other securities interest in the General Electric Company.

To see a copy of the Administrator's memorandum and the list of prohibited investments go to the Office of the Chief Counsel's webpage at <http://www.faa.gov/agc/AGC%20General%20Law%20Division.htm>

Certificate of Divestiture

Certain FAA employees may wish to submit a request for a Certificate of Divestiture with respect to the General Electric Company stock that they hold. The Director of the Office of Government Ethics may issue a Certificate of Divestiture for specific property, if the Director determines that divestiture of the property is necessary to comply with 18 USC 208 or any other Federal conflict of interest statute, regulation, rule, or Executive Order. A Certificate of Divestiture must be requested and obtained prior to divestment of

the prohibited financial interests. A Certificate of Divestiture cannot be issued for property that has already been sold.

What Is A Certificate of Divestiture; Eligible Person

A Certificate of Divestiture allows an eligible person to defer the payment of capital gains tax on property that is sold in order to comply with conflict of interest requirements. An eligible person is defined as:

- (1) Any officer or employee of the Executive Branch of the Federal Government, except a person who is a special Government employee as defined by law;
- (2) The spouse and any minor or dependent child of an individual referred to in paragraph (1) above whose ownership of property required to be divested is attributable to such person by 18 USC 208, or any other Federal conflict of interest statute, regulation, rule, or executive order; and
- (3) Any trustee holding property in trust required to be divested in which-
 - (i) An individual referred to in paragraph (1) has a beneficial interest in principal or income; or
 - (ii) A spouse or any minor or dependent child of an individual referred to in paragraph (2) has a beneficial interest in principal or income which is attributable to a person referred to in paragraph (1) by 18 USC 208, or any other Federal conflict of interest statute, regulation, rule, or executive order.

Cases In Which Certificates of Divestiture Will Not Be Issued

A Certificate of Divestiture will not be issued in any situation in which, in the opinion of the Director of the Office of Government Ethics, an unfair or unintended benefit would be conferred on an eligible person. For example:

- (1) **Loss Of Stock Value.** The Director will not issue a Certificate of Divestiture when the sale of the asset will not result in capital gains under the Internal Revenue Code. A Certificate of Divestiture cannot be used to defer the realization of depreciated stock value.
- (2) **Employee Benefit Plan.** The Director will not issue a Certificate of Divestiture if the property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan and can otherwise be rolled over into an eligible tax-deferred retirement plan with 60 days.
- (3) **Certain Property Received As Compensation for Services.** The Director will not issue a Certificate of Divestiture if the gain from such property would otherwise be treated as ordinary earned income.

(4) Nontimely Divestitures. The Director will not issue a Certificate of Divestiture if such request is received outside of the structured time agreement.

(5) Similar or Related Interests. The Director will not issue a Certificate of Divestiture unless all similar or related interests in property were also subject to a divestiture commitment.

(6) Property Acquired Under Improper Circumstances. The Director will not issue a Certificate of Divestiture if the property in question was acquired at a time when the holding of such property was prohibited by any law or regulation.

How to Obtain A Certificate of Divestiture

A determination to issue a Certificate of Divestiture may be made by the Director of the Office of Government Ethics only upon submission of full and complete documentation by the Designated Agency Ethics Official of the agency. Such documentation must include:

(1) A copy of a written request from the eligible person who is required to divest the property. The request should include-

(i) A commitment to complete the divestiture on or before August 2, 2004 and to reinvest the proceeds into permitted property pursuant to OGE regulations (e.g., any obligation of the United States, and any diversified investment fund).

(ii) A description and number of shares of the property that will be divested and actual value of the property at the time of the request. Include documentation of actual ownership.

(iii) Full and complete information concerning the facts and circumstances relating to the acquisition of the property;

(iv) If the property is jointly held (e.g., husband/spouse), all parties must sign the request.

(v) If the certificate of divestiture is being requested on behalf of an eligible person who is not the employee, the eligible person who owns the securities should make and sign the request. At the same time, the employee should submit a cover memo transmitting the request, as well as item (2) described below.

(2) Copy of latest financial disclosure report. (Note: If employee completed a 450A in 2003, then he/she should submit the 450A and the supporting 450 filed in 2002);

(i) If the employee is not required to file a financial disclosure report, he/ she should obtain and complete a 450 report for purposes of this process;

Requests for Certificates of Divestiture and supporting documentation should be mailed to:

Office of the Chief Counsel
Federal Aviation Administration
Suite 900E
800 Independence Ave., SW
Washington, DC 20591
Att: Lisa Baccus
Senior Attorney for Ethics, AGC-100

Deadline for Requesting Certificates of Divestiture: The request and supporting documents must be received by the Senior Attorney for Ethics NLT JUNE 28, 2004
[Note: Sample of Certificate of Divestiture Request Attached]

Waiver Consideration; Separate Request Required

Employees can request a waiver from the prohibition contained in 5 CFR 6001.104 based on a determination that the waiver would not be inconsistent with 5 CFR 2635 or otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which FAA programs are administered. A waiver under 5 CFR 6001.104(b) may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification.

Employees with questions regarding divestment, Certificates of Divestiture, or waiver requests should contact the Senior Attorney for Ethics at 202-385-8255.



James W. Whitlow
Deputy Chief Counsel, AGC-2
Deputy Ethics Official for the FAA

Issued: 5/26/04

Attachment: Sample Certificate of Divestiture Request

Attachment:
SAMPLE CERTIFICATE OF DIVESTITURE REQUEST

Subject: Request for Certificate of Divestiture
From: [Employee Name, Routing Symbol]
To: Lisa S. Baccus, Senior Attorney for Ethics, AGC-100

Please accept this as a request for a Certificate of Divestiture pursuant to OGE regulations at 5 CFR 2634.1002.

I am [My spouse is] an employee of the Federal Aviation Administration. In accordance with the FAA's recently published list of prohibited investments and DOT/FAA supplemental rule at 5 CFR 2635. 6001.104, I am required to divest my holdings in the General Electric Company. I [My spouse and I jointly] hold [amount] shares of General Electric Company stock, valued at [amount] as of [date]. Attachment1. The stock was purchased [inherited, transferred, etc.] by [employee, spouse, etc.] prior to the publication of the agency's list of prohibited investments.

I am [My spouse is] required to file a financial disclosure report, the latest copy is attached. Attachment2. [I am [My spouse is] not required to file a financial disclosure report, but I [he/she] have [has] done so for this purpose. Attachment2.] I have no liabilities, agreements, or arrangements, or outside positions with the General Electric Company. Also, I am not currently participating in any particular matter that could affect the General Electric Company. [Pursuant to 5 CFR 2640.201 or Section 2634.202, I am currently participating in a matter involving the General Electric Company.]

Subsequent to the receipt of the Certificate of Divestiture, I [we] agree to sell my [our] interests in the General Electric Company on or before August 2 and reinvest the proceeds into permitted property pursuant to the OGE regulations.

Thanks you for your assistance in this matter.

[Signature of Employee, Employee and Spouse (joint ownership), or other Eligible person]

Attachments