U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUN 12 2009

Ms. Shelley W. Austin
Baker Botts LLP
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, TX 78701-4078

Dear Ms. Austin:

This letter is in response to your February 5, 2009 request for a legal interpretation relating to time sharing agreements under 14 C.F.R. § 91.501(b)(6). Your request seeks clarification of the FAA's legal interpretation issued to Jeffrey M. Bauer on July 24, 2008 regarding operational control of aircraft operated pursuant to a time sharing agreement. Specifically, you write to confirm that a company that provides its aircraft and flight crew to another person under a time sharing agreement may retain operational control of the aircraft.

Operational control with respect to a flight is defined as "the exercise of authority over initiating, conducting or terminating a flight." 14 C.F.R. § 1.1. A person has operational control over a flight "if that person exercises complete control over the phases of aircraft operation requiring aviation expertise." *See* Legal Interpretation to Mr. Star, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (Aug. 2, 1993).

Section 91.501(b)(6) permits operations under part 91 for the carriage of company officials, employees, and guests of a company on an airplane operated under a time sharing agreement. Section 91.501(c)(1) defines "time sharing agreements" as "an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than" costs listed under § 91.501(d)(1)-(10).

When an aircraft is operated under a time sharing agreement, the FAA presumes that operational control remains with the person that furnishes the aircraft and flight crew to the other party. *See* Legal Interpretation to Allentown GADO, from Martin J. White, Regional Counsel (Apr. 10, 1975) ("Under a time-sharing agreement, the owner/operator supplies the crew and is in operational control of the aircraft."). As explained in the preambles of the proposed and final rules that implemented time-sharing agreements, this presumption arises because, similar to a wet lease, under a time sharing agreement the aircraft owner/lessor furnishes the aircraft with flight crew to the lessee. *See* Large and Turbine Powered Multiengine Airplanes, 37 Fed. Reg. 14758, 14760 (Jul. 25, 1972) ("When the lessor furnishes both the aircraft and flight crew, there is a presumption that the operational control and safety responsibility for the aircraft remains in the hands of the lessor during the lease

agreement . . . ."); Large and Turbine Powered Multiengine Airplanes, Proposed General Operating Rules, 36 Fed. Reg. 19507, 19509 (Oct. 7, 1971) ("[I]t is the policy of the FAA in such wet lease arrangements to consider the lessor of the aircraft as the operator of the aircraft within the meaning of the regulations."); *see also* Legal Interpretation to David S. Harmon, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Dec. 13, 1990) (stating that leasing the aircraft with flight crew is a basic part of a time sharing agreement).

Therefore, you are correct that the July 24, 2008 Bauer interpretation allows a company that is providing an aircraft and flight crew under a time sharing agreement to retain operational control of flights conducted pursuant to that agreement. *Cf.* Legal Interpretation to Winstead PC, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Jun. 12, 2009) (noting that in a time sharing agreement between a corporation and an individual, if "it is not clear that the [parties] are truly 'separate and unrelated,' the FAA may determine" that the individual, the corporation, or both are responsible for the operation of the aircraft).

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division and Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200