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

Office of the Chief Counsel

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

Memorandum

Date: September 30, 2024

To: Lawrence Fields, Executive Director, Flight Standards Service, AFX-1

From: Laura Megan-Posch, Assistant Chief Counsel for Regulations, AGC-200

Cc: Lynsey Scott, Acting Supervisory Attorney, AGC-240

Subject: Clarifying the Fiust Legal Interpretation (January 11, 2016)

LAURA JANE MEGAN-POSCH Digitally signed by LAURA JANE MEGAN-POSCH Date: 2024.09.30 13:28:33 -04'00'

This memorandum clarifies the Fiust Legal Interpretation (January 11, 2016). The Office of the Chief Counsel has determined this legal interpretation requires clarification inasmuch as subsequent rulemaking creates an exception to the regulation at issue in the legal interpretation. Specifically, the Fiust Legal Interpretation broadly concludes that a pilot cannot credit pilot-in-command (PIC) time in an AV-8B Harrier towards the aeronautical experience requirement for an airline transport pilot (ATP) certificate with an airplane category rating. *See* 14 CFR § 61.159. However, the legal interpretation does not account for subsequent regulatory amendments that allow a military pilot to credit flight time in powered-lift (e.g., AV-8B Harrier) towards the aeronautical experience requirement to obtain an airplane category rating for an ATP certificate. While the legal interpretation remains accurate, we note that this legal interpretation may be misleading if applied more broadly to excepted activities.

The AV-8B Harrier is a military aircraft with vertical takeoff and landing capabilities, classified as a powered-lift even though it is mostly flown in horizonal flight like an airplane. The legal interpretation correctly notes that the regulations do not generally permit the crediting of PIC time in a powered-lift towards the aeronautical experience to obtain an airplane category rating for an ATP certificate. However, the FAA subsequently issued a final rule creating § 61.159(a)(5)(ii), which established an exception allowing military pilots to credit 250 hours of flight time in a powered-lift, when operated in horizontal flight, towards the flight time requirement. *Recognition of Pilot in Command Experience in the Military and Air Carrier Operations*, 87 FR 57578 (Sept. 21, 2022).[1] This rulemaking should be taken into consideration when applying the Fiust Legal Interpretation to a flight time credit situation involving military pilots of powered-lift.

If you require further assistance, please contact my staff.

[1] This memorandum should not be construed to cast doubt on the general rule that flight time in a powered-lift cannot be credited to the airplane flight time requirement in § 61.159(a) absent a specific exception.