



OFFICE OF
**INSPECTOR
GENERAL**
UNITED STATES POSTAL SERVICE

**National Railroad Passenger
Corporation (Amtrak) Office of
Inspector General Operational
Independence**

Audit Report

October 28, 2011



OFFICE OF
**INSPECTOR
GENERAL**
UNITED STATES POSTAL SERVICE

HIGHLIGHTS

October 28, 2011

National Railroad Passenger Corporation (Amtrak) Office of Inspector General Operational Independence

Report Number FF-AR-12-001

IMPACT ON:

National Railroad Passenger Corporation (Amtrak or Corporation) and the Amtrak Office of Inspector General (OIG).

WHY THE OIG DID THE AUDIT:

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) requested the U.S. Postal Service OIG to conduct a review of the operational independence of the Amtrak OIG.

WHAT THE OIG FOUND:

The Amtrak OIG and the Corporation have made operational independence a high priority by undertaking organizational changes and pursuing independence initiatives. The OIG and the Corporation have resolved 11 of 15 previously identified issues, including many critical matters. Discussions are ongoing to resolve the remaining issues. In addition, the structure and management of the hotline has resulted in sensitive issues regarding fraud, waste, and abuse not being appropriately referred to the OIG for investigation. Finally, the Corporation was not referring potentially fraudulent employee injury claims to the OIG. Questions remain regarding the operational independence of the Amtrak OIG until these issues are addressed.

WHAT THE OIG RECOMMENDED:

We recommended Amtrak report progress made in resolving the issues discussed in this report; establish a single hotline managed by the Amtrak OIG; reinforce the Amtrak OIG's responsibility for addressing fraud, waste, and abuse issues; develop a plan for the Amtrak OIG to investigate potentially fraudulent employee injury claims; and, in the interim, establish a process to refer potentially fraudulent injury claims to the Amtrak OIG.

WHAT MANAGEMENT SAID:

Amtrak management agreed with the findings and recommendations. Management agreed to report on their progress in addressing independence items and develop plans and processes to refer potentially fraudulent employee injury claims to the OIG. Further the OIG will maintain the single fraud, waste, and abuse hotline; however, management stated the necessity for a Corporation complaint line for employment, safety, and ethics matters.

AUDITORS' COMMENTS:

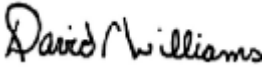
We consider Amtrak's comments responsive to the recommendations and management's corrective actions should resolve the issues identified in the report.

[Link to review the entire report](#)



October 28, 2011

MEMORANDUM FOR: THOMAS C. CARPER
CHAIRMAN, NATIONAL RAILROAD PASSENGER
CORPORATION BOARD OF DIRECTORS

FROM: 
David C. Williams
Inspector General

SUBJECT: Audit Report – National Railroad Passenger
Corporation (Amtrak) Office of Inspector General
Operational Independence
(Report Number FF-AR-12-001)

This report presents the results of our audit of the operational independence of the National Railroad Passenger Corporation (Amtrak) Office of Inspector General (Project Number 11BR005FF000).

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, please contact Tammy L. Whitcomb, assistant inspector general for audit, or me at 703-248-2100.

Attachments

cc: The Honorable Ray LaHood
Joseph H. Boardman
Theodore (Ted) Alves
Phyllis K. Fong

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Introduction

This report presents the results of our audit of the operational independence of the National Railroad Passenger Corporation (Amtrak or Corporation) Office of Inspector General (OIG) (Project Number 11BR005FF000). Our objective was to evaluate the current operational independence of the Amtrak OIG. See [Appendix A](#) for additional information about this audit.

The Consolidated Appropriations Act of 2010¹ included two provisions to assure Congress the Amtrak OIG is operating independently from the Corporation. The first provision required an Inspector General (IG) to determine whether the Corporation and the Amtrak OIG have agreed on a set of policies and procedures for interacting with each other that are consistent with the letter and spirit of the Inspector General Act of 1978 (IG Act), as amended. On March 17, 2010, the Farm Credit Administration (FCA) IG issued a report concluding that the Corporation and the Amtrak IG agreed to a set of policies and procedures for interacting with each other that is consistent with the letter and the spirit of the IG Act. The second provision required that 1 year after such determination was made, the Council of Inspectors General on Integrity and Efficiency (CIGIE) appoint an IG to evaluate the current operational independence of the Amtrak OIG. The CIGIE appointed the U.S. Postal Service OIG to review the current operational independence of the Amtrak OIG.

Conclusion

The Amtrak OIG and the Corporation have made operational independence of the OIG a high priority by undertaking significant organizational changes and pursuing independence initiatives between the Corporation and the OIG. The OIG and the Corporation implemented 11 out of 15 initiatives to remediate identified independence issues, including establishing OIG independent personnel authority and improving communications with the Corporation. However, the Corporation and the OIG have not fully implemented all of the planned independence initiatives. For example, the OIG is still working with the Corporation on issues related to the Corporation's settlement of matters which impact investigations and potential prosecution.

Additionally, the structure and management of the hotline has resulted in sensitive issues regarding fraud, waste, and abuse not being appropriately referred to the OIG for investigation. When we started our review, the primary Amtrak hotline was managed by the Corporation, and the Corporation referred certain allegations to the OIG for review. When we found cases and allegations that had not been properly referred, changes were made so that all allegations coming into this hotline were also sent to the OIG. However, this did not address needed anonymity or potential reprisal concerns that could result from allegations going to the Corporation.

¹ Public Law 111-366, enacted December 16, 2009.

Questions remain regarding operational independence of the Amtrak OIG until the Corporation and the OIG complete all initiatives to address operational independence and the OIG takes over management of the hotline.

Pursuit of Operational Independence

In November 2009, the Amtrak board appointed the current IG who worked with the Corporation to change the Amtrak policies and practices that were not consistent with the IG Act. On March 4, 2010, Corporation management and the IG agreed on a new relationship policy. The policy aligns with the IG Act and establishes the responsibility and authority of the Amtrak OIG and the general principles for ensuring a productive relationship between the OIG and the Corporation; and summarizes the Amtrak OIG processes for conducting audits, evaluations, and investigations.

The IG has since realigned the audit and investigative components, emphasizing compliance with federal auditing and law enforcement standards. He also addressed significant deficiencies identified by consultants hired to evaluate the audit, evaluation and inspection, and investigative components within the Amtrak OIG. However, many of these actions were recently implemented or are still ongoing. For example:

- Amtrak OIG management stated they evaluated all open audits and investigations and closed 20 audits and 275 investigations. We discussed these closures with Amtrak OIG auditors and investigators and found that none were based on outside influence or considerations of the Corporation. Audits were closed because they were limited-scope audits and not conducted in accordance with auditing standards. Investigations were closed because they sat dormant for years or addressed administrative matters more appropriately handled by Corporation management. The new assistant inspectors general (AIG) for Audit and Investigation both stressed the importance of conducting higher level audits and investigations with more meaningful impact. During our audit, the Amtrak OIG had 22 ongoing audits and 91 investigations which should conform with the new policies and, after completion, be evaluated for compliance with the new policies.
- In November 2010, the Amtrak OIG established an internal team to identify and resolve independence issues. The team has identified 15 action items to complete, some of which require joint actions by the OIG and the Corporation, and four of these action items remain open. Many critical items have been resolved by the Corporation and OIG or are discussed in this report. One of the items that remain open is the development of a Memorandum of Understanding (MOU) to address issues related to the Corporation's settlement of matters which impact investigations and potential prosecution.

The Corporation and the OIG have made significant progress in addressing independence issues and should continue their pursuit of operational independence. Until all independence concerns are resolved, the OIG and the Corporation's Board of

Directors should report progress on these issues to Congress. (See [Appendix B](#) for further information on the Amtrak OIG's progress toward operational independence.)

Allegations Made to the Corporation's Ethics and Compliance Hotline

In April 2007, the Corporation established a vendor maintained toll-free hotline to ensure compliance with certain provisions of the SOX Act of 2002.² The same hotline was used for reporting allegations of waste, fraud, and abuse in violation of the American Recovery and Reinvestment Act (ARRA);³ and retaliation, harassment, and intimidation in violation of the Federal Rail Safety Act.⁴ In addition to the Corporation's hotline, the Amtrak OIG has maintained a separate hotline since at least 1991 for reporting all fraud, waste, and abuse. However, employees of the Corporation used the Corporation's hotline to report various types of allegations they should have reported to the OIG. Table 1 identifies the number of allegations received by the Corporation and OIG Hotlines.

Table 1 – Corporation and Amtrak OIG Hotline Allegations

Fiscal Year	Corporation's Ethics and Compliance Hotline	Amtrak OIG Hotline
2010	303	239
2009	336	97
2008	105 ⁵	28

Source: Amtrak OIG *Semiannual Reports to Congress* and Corporation Hotline Database.

We reviewed 924⁶ allegations made to the Corporation's Ethics and Compliance hotline from January 2008 through May 2011. Because the Corporation, rather than the OIG, administered this hotline, the Corporation often did not refer allegations to the OIG for review when it should have. According to OIG records, the Corporation referred 23 allegations from the hotline and, according to the Corporation's records, they referred 38 out of the 924. We identified 42 allegations related to fraud, waste, and abuse the OIG did not receive for review to determine whether an investigation was warranted. These allegations should have been reviewed for investigation. In 37 of the 42 cases, the Corporation's Office of General Counsel (OGC) referred the allegations to the Amtrak Police Department (APD) or other internal managers. In two cases, the OGC

² Congress enacted Sarbanes-Oxley (SOX) to protect shareholders and the public from financial irregularities and fraudulent practices in publicly traded companies.

³ The Corporation received \$1.3 billion in ARRA funding for use on a variety of projects to improve infrastructure and railway transit.

⁴ The Federal Rail Safety Act of 1970 (Public Law 91-458) authorized the states to work with the Federal Railroad Administration to enforce federal railroad safety regulations.

⁵ Does not contain allegations from first quarter, fiscal year (FY) 2008.

⁶ In addition to the 744 allegations in Table 1, we reviewed 180 from October 1, 2010, through June 8, 2011.

responded to the allegation directly and, in three cases, the OGC suggested the complainant contact the Department of Labor (DOL). Table 2 shows the types of allegations we believe the OIG should have reviewed for investigation.

Table 2 – Investigations Not Referred to the Amtrak OIG

Number of Allegations	Type of Allegation	Referred to
18	Executive or Employee Misconduct	APD – 11 Internal Management – 4 OGC – 2 Referred complainant to DOL – 1
11	Contract or Other Fraud	APD – 9 Internal Management – 1 Referred complainant to DOL – 1
5	Discrimination	Internal Management – 3 APD – 2
8	Other	Internal Management – 5 APD – 2 Referred complainant to DOL – 1
42	Total	APD – 24 Internal Management – 13 OGC – 2 Referred complainant to DOL – 3

Source: Based on U.S. Postal Service OIG review of allegations from the Corporation's Ethics and Compliance Hotline.

The Amtrak OIG did not investigate allegations from the Corporation's hotline because the Corporation was not referring all of the allegations to the Amtrak OIG for investigation. Some of the allegations not referred were sensitive internal executive misconduct allegations, in which operational independence in the investigation is critical. Twenty-two of the 24 allegations referred to the APD were allegations made against APD personnel, including nine against senior level executives and managers. According to the Corporation's OGC, the Corporation typically referred allegations against APD employees to the APD, not to the Amtrak OIG. The IG Act requires the IG to prevent and detect fraud in the Corporation's programs and operations. Further, the Corporation's policy requires employees to report suspected violations of law or corporate policy that could result in fraud or abuse to the Amtrak OIG.

In February 2010, the Amtrak OIG recognized they should receive certain types of allegations made to the Corporation's hotline and worked with the Corporation to receive the hotline allegations simultaneously. However, the Amtrak OIG elected to exclude allegations from categories they thought were related to management functions, including employee and customer relations and discrimination. The Amtrak OIG did not realize these five categories included 61 percent of the allegations. During our review of allegations reported to the Corporation's hotline since February 2010, 14 of the 42 allegations not referred to the OIG were in the categories excluded by the

Amtrak OIG. We believe these should have been considered for investigation. Upon our bringing this to Amtrak OIG management's attention, they immediately requested, and began receiving, all allegations made to the Corporation's hotline. The Amtrak OIG reviews allegations to identify where a criminal investigation is warranted and notifies the Corporation within 48 hours of those they intend to pursue.

In September 2010, the Corporation's president and chief executive officer (CEO) issued a letter to all employees stating that the OIG serves as an independent and objective unit, playing an important role in preventing and rooting out fraud, waste, mismanagement, and abuse in Amtrak programs and operations. However, we believe the existence of two separate hotlines – the OIG and the Corporation's Ethics and Compliance hotlines – may have caused some confusion as to where to report such allegations, as we found 7 of the 42 allegations not referred were identified after the letter was issued in September 2010.

Consequently, we believe there should be only one hotline and the Amtrak OIG should manage it. During this review, the Corporation and Amtrak OIG changed the hotline process so they both simultaneously receive all allegations sent to the Corporation's Ethics and Compliance hotline. However, this process does not assure needed employee anonymity or provide the OIG with the opportunity to investigate serious matters without potential Corporation involvement. With one hotline, the Amtrak OIG would be responsible for determining the appropriate action to take on hotline allegations, such as initiating an investigation or audit or forwarding the allegation to the Corporation for management action. We benchmarked with 46 other OIGs and determined that 28 (61 percent) maintained a single hotline for themselves and their host agencies.⁷ Having one OIG-managed hotline prevents employee confusion about where they should report issues, including fraud, waste, and abuse; and contributes toward the Amtrak OIG's operational independence.

Investigations of Potentially Fraudulent Employee Injury Claims

The Corporation settled 1,569 employee injury claims for \$120.7 million from January 2008 through May 2011. Although the Corporation's OGC hired private investigators, to control the costs of on-duty injuries at Amtrak (costing \$16.2 million between January 2008 and May 2011), none of these claims were referred to the OIG to be investigated for fraud. This extensive effort is designed to assist in determining the facts surrounding employee injury claims; however, in doing so, the investigators are very likely to uncover indications of fraud.

Our review of injury claims identified potentially fraudulent cases. For example, information on file for one case indicated one employee injured his hand when he was

⁷ We identified 18 other federal agencies, departments, and designated federal entities that maintained multiple hotlines, including one within the OIG. For example, the Department of Defense OIG has a hotline, as well as the military service audit agencies (for example, the Army Audit Agency). Some of the services have multiple hotlines, say for base commanders. Other agencies have bureaus who maintain multiple hotlines, some of which may get allegations related to fraud, waste, and abuse.

bitten by an insect and was unable to work due to the injury. The private investigator surveillance showed the employee was able to work a side business which required significant amounts of manual labor. We also identified employees who submitted multiple claims and received settlements from the Corporation. Both of these examples included fraud indicators; however, the Corporation did not refer any of these cases to the Amtrak OIG for investigation.

The IG Act requires the IG to prevent and detect fraud in the Corporation's programs and operations. Further, the Corporation's policy requires employees to report suspected violations of law or corporate policy to the Amtrak OIG. The Corporation's OGC did not refer potentially fraudulent employee injury cases to the Amtrak OIG because their Claims staff did not have criteria available to evaluate claims for fraud or abuse. They evaluate cases from the perspective of limiting the liability to the company, not for violations of criminal statutes.

To give perspective, the Postal Service OIG assigned special agents to investigate similar employee injury claims that indicate fraud. These employee injury claims investigations have resulted in cost savings or avoidances, arrests, and administrative personnel actions, including removals, suspensions, and letters of warning.

Amtrak's employee injury claims database used to track open cases did not have a mechanism in place to classify suspected fraudulent cases for referral to the Amtrak OIG. As a result, fraudulent employee injury claims are not investigated and referred for legal or administrative action.

During our review, the Amtrak OIG agreed there was a need to investigate potentially fraudulent employee injury claims and planned on pursuing investigations of such claims. The Amtrak OIG and the Corporation met to discuss working together to identify potentially fraudulent employee injury claims. The OIG and Corporation should continue working together and develop a plan for the OIG to evaluate and investigate potentially fraudulent employee injury claims. OIG involvement in investigating potentially fraudulent claims should contribute to reduced program costs and help deter injury claim crimes.

Recommendations

We recommend the chairman, National Railroad Passenger Corporation Board of Directors:

1. Request the National Railroad Passenger Corporation (Amtrak) Inspector General to report in the *Semiannual Report to Congress* any progress made in completing actions to address all open independence items with Amtrak and recommendations in this report, and comment on the Inspector General's report in the Chairman's transmittal letter.

2. Combine the National Railroad Passenger Corporation's Ethics and Compliance hotline with the National Railroad Passenger Corporation (Amtrak) Office of Inspector General (OIG) hotline into a single hotline managed by the Amtrak OIG. Further, the Corporation and the Amtrak OIG should jointly develop policy and procedures that allow the Amtrak OIG to review all hotline allegations first and determine whether to investigate further or refer to the Corporation for administrative action, as appropriate.
3. Reinforce policy requiring all employees to report suspected violations of fraud, waste, and abuse to the National Railroad Passenger Corporation (Amtrak) Office of Inspector General (OIG). Remind staff that the Amtrak OIG is the primary entity within the Amtrak Corporation to address issues or concerns related to fraud, waste, and abuse.
4. Request that the National Railroad Passenger Corporation (Amtrak) management and the Office of Inspector General (OIG) jointly develop a plan for the OIG to evaluate and investigate potentially fraudulent employee injury claims, including outlining the Corporation's and the OIG's roles and responsibilities and identifying funding required by the OIG to conduct these investigations.
5. Until a plan is developed for the National Railroad Passenger Corporation (Amtrak) Office of Inspector General (OIG) to investigate potentially fraudulent employee injury claims, establish a process for the Corporation to refer those claims to the Amtrak OIG.

Management's Comments

Amtrak's Board of Directors agreed with the findings and recommendations. The Amtrak OIG will include their progress toward addressing independence items and the recommendations in this report in the *Semiannual Report to Congress*. The board agreed that the OIG should maintain one hotline for fraud, waste, and abuse; however, they stated there remains a need for a Corporation complaint line for employment, safety, and ethics matters. The Amtrak complaint line serves as a necessary legal compliance function, provides for reporting of passenger safety and ethics incidents and employee relations matters, and offers economies and efficiencies through a low-cost reporting technology. Management plans to take steps to differentiate the complaint line from the OIG hotline. This includes not referring to the complaint line as a hotline; providing initial prompts to callers directing fraud, waste, and abuse items to the OIG hotline; training employees on the differences between the hotline and complaint line; and posting notices in common areas for all employees explaining the purpose of the hotline and the complaint line. The board agreed the OIG should continue with current access to the complaint line. Further the Amtrak president and CEO will annually communicate requirements for all employees to report suspected violations of fraud, waste, and abuse to the OIG.

Amtrak and the OIG are working to establish guidance and a process by December 31, 2011, for referring potentially fraudulent employee injury claims to the OIG. The board offered specific guidance to the Corporation on working with the OIG to identify criteria and refer claims appearing to be fraudulent to the OIG; and continuing management of employee injury claims including the investigation, litigation, and disposition of settlements subject to referrals and cooperation with the OIG. The board also offered guidance for the OIG to use discretion with investigations to accommodate functions and interests of both the Corporation and the OIG.

See [Appendix C](#) for management's comments in their entirety.

Evaluation of Management's Comments

The U.S. Postal Service Office of Inspector General considers management's comments responsive to the recommendations and corrective actions should resolve the issues identified in the report.

Appendix A: Additional Information

Background

The Consolidated Appropriations Act of 2010 (the act) included two provisions to assure Congress that the Amtrak OIG is operating independently from the Amtrak Corporation. First it required an IG determine if Amtrak and the Amtrak OIG have agreed upon a set of policies and procedures for interacting with each other that are consistent with the letter and spirit of the IG Act. Second, the act required that 1 year after such determination was made, the CIGIE appoint an IG to evaluate the current operational independence of the Amtrak OIG.

On January 8, 2010, CIGIE appointed the FCA IG to conduct a review to determine that Amtrak and its IG “have agreed upon a set of policies and procedures for interacting with each other” that are consistent with the IG Act. On March 17, 2010, the FCA IG issued a report⁸ concluding that the Corporation and the Amtrak IG agreed to a set of policies and procedures for interacting with each other that is consistent with the letter and the spirit of the IG Act.

To complete the second provision outlined in the act, CIGIE appointed the Postal Service OIG to review the current operational independence of the Amtrak OIG.

Objective, Scope, and Methodology

Our objective was to evaluate the operational independence of the Amtrak OIG. To accomplish the objective we:

- Interviewed Corporation and Amtrak OIG officials and staff to discuss the operational independence of the Amtrak OIG. This included visits to the Boston, MA; Chicago, IL; Los Angeles, CA; and Philadelphia, PA, field locations.
- Reviewed audit and investigative plans, projects, and reports; and interviewed staff to determine if the Corporation inappropriately influenced OIG decisions.
- Reviewed audit follow-up procedures by interviewing Amtrak OIG employees and the Corporation’s audit liaison.
- Reviewed Corporation and Amtrak OIG policies and procedures from an independence perspective.
- Identified and evaluated past, present, and potential future issues related to operational independence.

⁸ FCA report *The National Railroad Passenger Corporation (Corporation or Amtrak) and its Office of Inspector General*, dated March 17, 2010.

- Reviewed settled Corporation employee injury claims⁹ for \$120.7 million during January 2008 through May 2011.

We conducted this audit from November 2010 through October 2011 in accordance with generally accepted government auditing standards and included such tests of internal controls as we considered necessary under the circumstances. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. We discussed our observations and conclusions with management on September 22, 2011, and included their comments where appropriate.

We assessed the reliability of data obtained from the Corporation's database by interviewing knowledgeable officials and performed reasonableness tests on that data. We determined that the data were sufficiently reliable for the purposes of this report

Prior Audit Coverage

There have not been any prior audits of Amtrak OIG independence. However, the following documents pertain to the subject review:

Title	Author	Date	Summary
Letter to Chairman Issa, Chairman Mica, and Ranking Member Grassley regarding the U.S. Department of Transportation (DOT) OIG review of the departure of the former Amtrak IG	Calvin L. Scovell III, Inspector General, DOT	3/23/2011	The letter concluded that the departure of the former IG did not constitute a removal based on federal employment law; however, this basis may frustrate the intended purpose of the 30-day notice requirement to Congress.
<i>Recent Allegations against Thomas C. Carper, Chairman of Amtrak, and Eleanor Acheson, General Counsel of Amtrak</i>	Majority Staff, Office of Oversight and Investigations, Senate Committee on Commerce, Science & Transportation	11/16/2010	The Majority Staff memorandum concluded that the IG is working to restore trust with the Corporation; and that the Minority Staff report did not provide a full picture of the deteriorating relationship between the Corporation and the former IG.

⁹ Work-related injuries to Amtrak employees are subject to the Federal Employers' Liability Act, which is a fault-based, contested process, rather than a no-fault system like the workers' compensation system. Injured employees must prove railroad negligence or a defect in railroad equipment. An employee's compensation is reduced in proportion to the employee's own comparative fault. Damages include compensation for economic loss as well as the full range of tort damages, including pain and suffering, disfigurement, and mental anguish. Damages are determined through negotiation or by jury trial in state or federal court.

<i>The Removal of the Inspector General for The National Railroad Passenger Corporation (Amtrak)</i>	Minority Staff Report, 111th Congress	9/13/2010	The report concluded that the Amtrak Board of Directors removed the former IG without prior notice to Congress, as required.
<i>The Amtrak Office of Inspector General – An Organizational Assessment</i>	National Academy of Public Administration (NAPA)	August 2010	The report identified immediate and long-term recommendations focused on eight benchmarked areas to enhance OIG operations.
<i>The National Railroad Passenger Corporation (Corporation or Amtrak) and its Office of Inspector General</i>	FCA, Office of IG	3/17/2010	The evaluation determined that the Corporation and the IG agreed to a set of policies and procedures for interaction consistent with the act.
<i>System Review Report on the Amtrak's Office of Inspector General Audit Organization</i>	Legal Services Corporation, Office of IG	9/30/2009	The OIG received a peer review rating of "pass" with deficiencies concerning the system of quality control for the audit function of the Amtrak OIG.
<i>Report on Matters Impairing the Effectiveness and Independence of the Office of Inspector General of the National Railroad Passenger Corporation (Amtrak)</i>	Willkie Farr & Gallagher, LLP	6/18/2009	The white paper outlined recommendations for the Corporation to comply with the IG Act and reestablish the OIG's independence.

Appendix B: Progress Towards Amtrak OIG's Operational Independence

New IG Appointed in November 2009

The National Railroad Passenger Corporation (Amtrak) is a government-owned corporation created by the Rail Passenger Service Act in 1970. Because the Corporation receives federal funding, Congress established the Amtrak OIG in 1989. In November 2009, the board appointed the current IG, who accepted the position in the midst of concerns being expressed by Congress regarding the relationship between the Corporation and the previous IG, who was appointed in 1989. The new IG undertook several initiatives to establish the Amtrak OIG as an independent OIG, as discussed below.

Improved Corporation and OIG Relationship

On March 4, 2010, Corporation management and the IG reached agreement on a new relationship policy. The policy aligns with the IG Act and establishes the responsibility and authority of the Amtrak OIG and the general principles for ensuring a productive relationship between the OIG and the Corporation; and summarizes the Amtrak OIG processes for conducting audits, evaluations, and investigations. The relationship policy served as the basis for the FCA IG review. The FCA IG review concluded the relationship policy reiterated the role and authorities of the Amtrak OIG and was consistent with the letter and spirit of the IG Act.

Further, the IG meets with Corporation management on a continual basis. He attends the monthly Corporation board meetings including private executive sessions with the board. He also attends weekly executive committee meetings and meets privately with the president and CEO once a month. According to the IG, there have been no instances of resistance to or restrictions on Amtrak OIG oversight.

Reviews of the Amtrak OIG

Upon assuming his position at Amtrak, the new Amtrak IG quickly recognized deficiencies within audit, inspections and evaluations, and investigations. The IG immediately began taking action to address deficiencies cited in the following reviews.

- On September 30, 2009, the Legal Services Corporation issued a peer review report on the system of quality control for the audit function of the Amtrak OIG. The report stated the Amtrak OIG received a "pass with deficiencies" rating. The report concluded the OIG's policies and procedures were out-of-date and did not fully incorporate current Government Auditing Standards. The OIG revised several policies and procedures in an effort to fully incorporate Government Auditing Standards. They also implemented changes in audit processes, quality control, and training procedures that addressed deficiencies identified in the 2009 peer review. For example, on April 12, 2010, the IG issued a memorandum to all staff outlining new audit procedures, including new quality control documents that all projects need

to include, such as report and work paper quality checklists, cross-indexed reports, and statements of independence. In addition, audit and evaluation staff attended a training course in performance auditing. The internally developed course included training in audit evidence, documentation and report writing, and newly established Amtrak OIG policies and procedures for conducting audits.

- The Amtrak OIG hired a consultant to conduct a quality assessment review of its Investigations unit. In August 2010, the consultant issued a report stating the Amtrak OIG system of internal safeguards and management procedures were not in compliance with the quality standards established by CIGIE. The report identified deficiencies that required corrective action prior to the Amtrak OIG receiving a full compliance rating from an external peer review. The Amtrak OIG must complete such a review to obtain statutory law enforcement authority. Under the Attorney General Guidelines for Offices of IG with statutory law enforcement authority, each OIG must certify that every investigator who will be exercising law enforcement authority has completed the Criminal Investigator Training Program at the Federal Law Enforcement Training Center (FLETC), or an equivalent program. According to the consultant's review, only five of the 26 investigators had completed the required FLETC training, and one was attending the training during the review. Nineteen Amtrak OIG criminal investigators had not completed a formal basic criminal investigator's training course at FLETC. The review also pointed out that the Amtrak OIG lacked an orderly and systematic information management system, allowing them to efficiently track, analyze, and report workload data, results and accomplishments described in the Quality Standards for Investigations. The report supported the IG's decision to completely reorganize the Office of Investigations.

Reorganization of the Amtrak OIG

One of the first tasks the new IG did upon joining the Amtrak OIG was to reorganize the office to align similarly to other federal OIGs. When the IG took office, the head of the offices of Audit and Investigations directly reported to the IG as a deputy IG. The IG created a new deputy IG position and separated the previously consolidated roles of AIG for Investigations and OIG Counsel into two positions: an OGC and an Office of Investigations. The IG hired a new deputy IG, AIG for Investigations, AIG for Audit, two deputy AIGs for Investigations, and four senior directors for audit. The new hires brought an average 27 years of experience from other federal OIGs and the Government Accountability Office. In June 2011, the IG reorganized the Investigative unit by abolishing the old positions and requiring all agents to reapply for newly established positions that meet federal law enforcement standards. Once the Office of Investigations meets the prerequisites established in the Attorney General guidelines, they will seek statutory law enforcement authority.

In addition to reorganizing the agency, the IG also changed the position titles and descriptions to become consistent with other federal OIGs. The previous IG had created multiple titles to circumvent compensation restrictions imposed on them by the Corporation human resource policies. On February 11, 2011, the current OIG and the

Corporation signed a delegation of authority clarifying the OIG's independent hiring authority as authorized by the IG Act. This delegation of authority allowed the OIG to align position titles and descriptions with those of other federal OIGs. These organizational changes align Amtrak OIG with other federal OIGs. Table 3 identifies the new and old position titles.

Table 3 – Position Titles

New Position Titles	Old Position Titles
Office of Investigations	
AIG – Investigations	Deputy IG – Investigations and General Counsel
Deputy AIG Investigations	Chief Inspector
Special Agent-in-Charge	Regional Special Agent-in-Charge
Assistant Special Agent-in-Charge	Supervisory Special Agent
Criminal Investigator	Senior Special Agent
Investigative Analyst	Principal Special Agent
Principal Technical Applications and Document Control	Special Agent
Coordinator, Loss Prevention	Investigative Analyst
Analyst, Loss Prevention	Senior Technical Agent Document Control
Analyst	Loss Prevention Analyst/Coordinator
	Loss Prevention Analyst
Office of Audit	
AIG – Audit	Deputy IG – Audit
Senior Director, Audit	Senior Director, Audit
Audit Manager	Senior Director, Audit & Services
Senior Auditor	Audit Director
Auditor	Audit Project Manager
	Manager-Audits
	Information Technology (IT) Audit Manager
	Audit Project Supervisor
	Senior Auditor
	Senior IT Specialist/Auditor
	Principal Auditor
	ARRA Principal Auditor
	ARRA Analyst
	Audit Assistant

Source: Amtrak OIG

Refocused the Offices of Audit and Investigations

In addition to aligning the organizational structure to be consistent with other federal OIGs, the Amtrak OIG refocused the type of audits and investigations they performed.

- In March 2010, the Amtrak OIG issued a 5-year strategic plan. The strategic plan set forth the OIG's strategic outline for promoting positive change, maximizing efficiency and value in their work, and leading by example in creating a model organization. The plan is aligned with the goals, objectives, strategies, and performance measures to support the Corporation's new mission and goals.
- During FY 2011, new Amtrak OIG management evaluated all open audits and investigations and closed those they did not believe met auditing standards, were dormant, or were administrative in nature. In total, the Amtrak OIG cancelled or closed 20 audits and 275 investigations. The Amtrak OIG did not cancel or close any of the audits or investigations based on outside influence or considerations of the Corporation. Audits were closed because they were limited scope audits and were not conducted in accordance with auditing standards. This was a key finding in the September 2009 peer review report. The OIG closed investigations because they sat dormant for years or addressed administrative matters more appropriately handled by Corporation management. The new AIGs for Audit and Investigation stressed the importance of conducting higher level audits and investigations with more meaningful impact. We interviewed 47 auditors and investigators and concluded that the decisions to close projects were always the OIG's decision and not influenced by the Corporation. Currently, the Amtrak OIG has 22 ongoing audits and 91 ongoing investigations.

NAPA Organizational Assessment

The Amtrak IG commissioned the NAPA to conduct an organizational assessment of the Amtrak OIG. The assessment was intended to help the OIG implement the goals in their strategic plan by identifying its core organizational strengths and weaknesses and developing specific, prioritized actions to improve OIG processes, policies, and management practices. NAPA issued their report in August 2010, identifying eight areas where the Amtrak OIG can enhance its operations, one of which was independence. In addition, NAPA concluded the OIG has been performing internal audit/control functions for the Corporation by conducting audits of invoices submitted by other railroads. They suggested the Corporation should not rely on the Amtrak OIG to provide these internal control functions. NAPA concluded that it will take time for both OIG and Corporation staff to embrace best practice concepts of independence and transparency, but it appeared that everyone recognizes that it needed to happen. They recommended the OIG:

1. Continue to have conversations with Amtrak management and the board about its role and resolve issues as they arise.

2. Use the relationship policy to educate all stakeholders about the roles and responsibilities of the Amtrak OIG and the Corporation. Also, develop a practical, applied definition of “independent yet transparent.”¹⁰
3. Work with Amtrak management and the board to eliminate Amtrak-imposed restrictions on the OIG’s use of funds, hiring actions or other resources that may adversely affect the OIG’s ability to fulfill its responsibilities. For example, the NAPA recommended that the OIG’s relationship with Amtrak Human Resources be reviewed and redefined so that OIG recruitment is not stalled or inhibited.

We determined the Amtrak OIG and the Corporation implemented each of the recommendations related to independence. Further, the OIG plans, at the beginning of FY 2012, to discontinue performing the internal audit and control function of auditing invoices the Corporation pays to other railroads. In addition, the OIG identified and addressed, or continues to address, additional issues related to independence.

Independence Issues Identified by the Amtrak OIG

The Amtrak OIG established an internal team to address all known and newly identified independence issues. The independence team identified 15 action items to achieve over an 18 month period, including development of a definition of “independent yet transparent” as it applies to the Amtrak OIG. Additionally, the Amtrak OIG is working to resolve other areas of concern through MOU with the Corporation. Table 4 outlines those areas and our assessment of the implemented measures.

Table 4 – Amtrak OIG 18-Month Action Plan

Action Item	Status	Postal Service OIG Assessment
1. Improve OIG communications with Corporation management and the board.	The IG meets with Corporation management on a continual basis. He attends monthly Corporation board meetings including private executive sessions with the board. He also attends weekly executive committee meetings and meets privately with the president and CEO once a month.	We agree with the actions taken to resolve the action item.

¹⁰ “Independent yet transparent” recognizes the difference between providing enhanced visibility for the results of the OIG’s work and the need for the OIG to maintain both independence and confidentiality during activities such as audits and investigations, in order to stay within the law and preserve legal privileges on issues such as individual privacy, grand jury restrictions, or investigative techniques.

2. Develop a definition of “independent yet transparent” as it applies to the Amtrak OIG.	The OIG defined “independent yet transparent” as recognizing the difference between providing enhanced visibility for the results of the OIG’s work (for example, reports) and the need for the OIG to maintain independence and confidentiality during activities such as audits and investigations, in order to stay within the law and preserve legal privileges on issues such as individual privacy, grand jury restrictions, and investigative techniques.	We agree with the action taken to resolve the action item.
3. Restrict Corporation access to OIG IT systems.	The OIG implemented a separate e-mail system and contracted with the National Aeronautics and Space Administration to host both the Amtrak Investigative Management Systems case management and TeamMate audit management systems. Further, the Corporation updated the IT policy to include an OIG protocol MOU.	We agree with actions taken to resolve the action item.
4. Establish independent personnel authority.	The IG documented the delegation of authority to the vice president, Human Resources, which sets forth the scope of services to be provided by the Corporation and established a mutual understanding regarding IG personnel decision authority.	We agree with actions taken to resolve the action item.
5. Establish the OIG’s role in Ethics and Compliance and ARRA Hotline.	The Corporation provided an interim solution through a simultaneous feed of Ethics hotline complaints from the vendor to the OIG. The OIG drafted a MOU to document the process; however, a solution is needed for instances of complaints sent directly to the OGC.	We agree with the interim actions taken; however, we recommend the Ethics and Compliance hotline be combined with the OIG hotline.
6. Establish the OIG role with independent public accountants (IPA) for financial statement audits.	The OIG sent an engagement letter to the chief financial officer describing a phased implementation plan for OIG monitoring of the IPA and a 3-year audit plan. Additionally, the Audit and Finance Committee of the board adopted a Charter on March 11, 2011, to include the role of the OIG.	We agree with actions taken to resolve the action item.

7. Define the Corporation's responsibility to provide certain items and services for OIG use, at no charge to the OIG, pursuant to §6(c) of the IG Act.	The OIG established working relationships with all Corporation departments to obtain the required services.	We agree with actions taken to resolve the action item.
8. Define the chief information officer's involvement with OIG purchases of IT equipment, software, and services.	The Corporation revised the IT Policy to include the OIG protocol MOU with a policy for independent purchase authority.	We agree with actions taken to resolve the action item.
9. Develop an internal procedure for alerting the IG of new instances impeding independence.	The OIG issued a directive to employees and updated audit policies to cover any new issues that arise.	We agree with actions taken to resolve the action item.
10. Develop a database to track independence issues.	The OIG created a spreadsheet to track known independence issues and updates the spreadsheet based on progress made to resolve these issues.	We agree with actions taken to resolve the action item.
11. Corporation's indemnification of employees who are subject to (or witnesses for) OIG investigations.	The OIG contacted other OIG offices and private corporations, including railroads, to determine industry best practices. The board agreed with the OIG's proposed changes to the Corporation's policy which excludes employees who are a witness or subject of an OIG investigation.	We agree with actions taken to resolve the action item.

12. Review and revise Corporation policies and processes with embedded restrictions on OIG authority or impairment of independent direct access. Develop separate supplemental OIG policies or exemptions where necessary.	The Corporation and OIG have reviewed and agreed to policy changes with respect to existing policies. Most of these changes have been incorporated into official policy. The OIG has also met with corporate policy stakeholders and discussed with and made them aware of basic independence concerns in preparing and drafting future policies. In addition, the OIG has prepared an internal policy for addressing reviewing or commenting upon company policies in the future.	This is still open.
13. Establish the OIG's role as it relates to the Corporation's settlement of matters which impact investigations or potential prosecution. This includes confidentiality agreements which may prevent the OIG from gaining unrestricted access to information. ¹¹	The OIG is working with the Corporation to develop an MOU that will address the issue.	This is still open.
14. Define the OIG's Independent Contracting Authority.	The OIG drafted an independent procurement policy.	This is still open.

¹¹ The Amtrak OIG is concerned that the Corporation may include confidentiality agreements or other language in settlement agreements that may restrict their statutory obligation to report issues to Congress or the public.

15. Restrict physical access to OIG work spaces.	The OIG is reviewing the status of physical security at all OIG work locations to determine the effect on independence and scope of additional work required. The Corporation and the OIG have agreed to certain basic matters; however, the OIG has continued to review each location, working to reach understandings with the company and building owners regarding access and to secure all OIG work locations.	This is still open.
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Appendix C: Management's Comments

NATIONAL RAILROAD PASSENGER CORPORATION
60 Massachusetts Avenue, NE, Washington, DC 20002
tel 202 906.3740 fax 202 906.2921



Thomas C. Carper
Chairman, Amtrak Board of Directors

October 19, 2011

Shirian Holland
Acting Director, Audit Operations
1735 North Lynn St.
Arlington, VA 22209

SUBJECT: Draft Audit Report – National Railroad Passenger Corporation (Amtrak)
Office of Inspector General Operational Independence (Report Number FF-
AR-11-DRAFT)

Dear Director Holland:

This response to the US Postal Service Office of Inspector General's Draft Audit Report is submitted by the Board of Directors of the National Railroad Passenger Corporation (Amtrak) in its dual roles as the corporate authority responsible for Amtrak and as "head of entity" for purposes of the Inspector General Act, as amended, and the Amtrak Office of Inspector General. I am Chairman of the Board of Directors and the Board has authorized me to provide Management's response as set forth below.

The Board appreciates the hard work of the USPS OIG in accomplishing this review.

The Board agrees with the substance of each of the USPS OIG's five recommendations, in three cases with some specific direction as to how the recommendations shall be implemented and why.

Recommendation 1:

Request the National Railroad Passenger Corporation (Amtrak) Inspector General to report in the *Semiannual Report to Congress* progress made in completing actions to address all open independence items with Amtrak and recommendations in this report, and comment on the Inspector General's report in the Chairman's transmittal letter.

Board of Directors Response/Action Plan:

Agree. The Board of Directors shall review the Amtrak Inspector General's Semiannual Reports to Congress and comment on the contents concerning progress made in completing actions to address all open independence items with Amtrak as the Board sees fit.

Target Implementation Date:

On the occasions of the Amtrak Inspector General's Semiannual Reports to Congress.

Responsible Official:

Chairman of the Board of Directors

Recommendation 2:

Combine the National Railroad Passenger Corporation Ethics and Compliance hotline with the National Railroad Passenger Corporation (Amtrak) Office of Inspector General (OIG) hotline into a single hotline managed by the Amtrak OIG. Further, Amtrak Corporation and the OIG should jointly develop policy and procedures that allows the Amtrak OIG to review all hotline allegations first and determine whether to investigate further or refer to the Amtrak Corporation for administrative action, as appropriate.

Board of Directors Response/Action Plan:

Agree. Amtrak should maintain one hotline for the reporting of waste, fraud and abuse and that that hotline should be maintained exclusively by the Amtrak OIG. As the Amtrak OIG has such a hotline, Amtrak Management shall cease referring to Management's complaint line as a "hotline" and take the steps described below to highlight the Amtrak OIG's hotline for waste, fraud and abuse and to differentiate between the OIG's waste, fraud and abuse hotline and Management's toll free phone line for employment, safety, ethics and other Management concerns and complaints.

The Amtrak Board of Directors believes that Amtrak Management should have a complaint line for employment, safety and ethics matters for the following reasons:

(i) Legal Compliance

A separate Amtrak Management complaint line serves a necessary legal compliance function for Amtrak. It is principally used as a method for employees to make internal reports of civil rights, employment rights and Federal Railroad Safety Act (FRSA) violations for investigation by Management. Under various federal and state civil rights laws, employers can escape liability, or at least avoid punitive damages, by showing that they have policies and procedures in place to prevent, investigate and promptly remediate possible harassment, and the employee unreasonably failed to take advantage of those policies.¹

(ii) Other Amtrak Interests Served

The Management complaint line is also used by Amtrak passengers to report incidents involving other employment and safety matters and ethics matters, which categories of problems are immediately routed to the appropriate departments for action. And a significant number of the complaints received are employee relations matters that are for Management to be aware of and address and are referred to the appropriate HR office for attention.

¹ This defense was first established in a pair of 1998 U.S. Supreme Court sexual harassment cases, known jointly as "Faragher/Ellerth", and since then, it has been widely adopted in other types of harassment cases including FRSA cases. The Amtrak complaint line is a critical component of our Faragher/Ellerth defense in these cases. Because Management must rely on this evidence in defending against any subsequent legal claim, Amtrak Management must maintain this evidence.

(iii) Efficiencies Achieved by Using Technology for This Function

Complaint line technology increases productivity by streamlining the reporting function at a very low cost. Amtrak adopted this technology in lieu of employing full-time management employees who were needed to take and transcribe internal employee complaints. The technology creates a written record of the calls received and an efficient means to manage the caseload.

The Board of Directors directs Amtrak Management to rename its current hotline for employment, safety, ethics and other Management concerns and complaints to a complaint line or other such name so that the differentiation between them and the Amtrak OIG's waste, fraud and abuse hotline is clear.

Further, the Board is directing the company to take the following additional steps to support a clear differentiation of the Amtrak OIG hotline and the company's complaint line: Amtrak management will work with the OIG to ensure that there is minimal confusion among over the purpose and use of the OIG Hotline and any other management toll free phone lines. To that end, Amtrak will look into having an initial prompt that directs reports of waste, fraud or abuse to the OIG's hotline; Amtrak will address in its trainings the two phone lines and differentiate the purposes of each; Amtrak will post in every break room, lunch room, coffee room or other employee gathering place where legal notices to employees of their rights are posted flyers about each hotline explaining the subject matter for each.

Finally, the Board of Directors agrees with the second sentence and aspect of Recommendation 2 and notes that this is the current practice at Amtrak. The Board also directs Management to provide the Amtrak OIG the same prior access to the Management complaint line.

Target Implementation Date:

On or before January 31, 2012.

Responsible Official:

Amtrak Chief Financial Officer and Vice President & General Counsel under the supervision of Amtrak President & CEO.

Recommendation 3:

Reinforce policy requiring all employees to report suspected violations of fraud, waste, and abuse to the National Railroad Passenger Corporation (Amtrak) Office of Inspector General (OIG). Remind staff that the Amtrak OIG is the primary entity within the Amtrak Corporation to address issues or concerns related to fraud, waste, and abuse.

Board of Directors Response/Action Plan: Agree

Target Implementation Date:

At least annually by memorandum from Amtrak President & CEO to all Amtrak employees.

Responsible Official:

Amtrak President & CEO.

Recommendation 4:

Request the National Railroad Passenger Corporation (Amtrak) management and the Office of Inspector General (OIG) jointly develop a plan for the OIG to evaluate and investigate potentially fraudulent employee injury claims, including outlining the Corporation's and OIG's roles and responsibilities and identifying funding required by the OIG to conduct these investigations.

Recommendation 5:

Until a plan is developed for the National Railroad Passenger Corporation (Amtrak) Office of Inspector General to investigate potentially fraudulent employee injury claims, establish a process for the Corporation to refer those claims to the Amtrak Office of Inspector General.

Board of Directors Response/Action Plan:

Agrees with recommendations 4 and 5, with specific guidance noted below. The guidance arises from the FELA context and process and the material ways in which that civil litigation process, established by Congress and applied to railroad workers, differs from a no-fault, essentially workmen's compensation system.

FELA Context and Process: Amtrak employees' claims for work-related injuries are made under the Federal Employees Liability Act (FELA) which is a fault based, contested, civil litigation process which drives disputed claims either to a settlement or to a jury verdict on the facts, rather than a no-fault workmen's compensation type system.²

² Injured employees must prove railroad negligence or a defect in railroad equipment, and any damages recovered by an injured employee are reduced in proportion to the employee's own comparative fault. Damages include compensation for economic loss as well as the full range of tort damages, including pain and suffering, disfigurement, mental anguish, etc., and they are determined on the basis of advanced and challenged evidence and through negotiation or by trial in state or federal court. FELA claims against Amtrak are managed by an experienced in-house professional Claims staff and a group of litigation management attorneys within the Law Department. Each FELA claim is investigated by that Claims staff to determine whether an accident happened, the responsibility for and circumstances of the accident, and the genuineness of injuries claimed and disabilities claimed, to determine Amtrak's liability, if any, and to evaluate the reasonable settlement value of each claim. Surveillance -- a diligence fact investigation tool used generally in civil litigation and employee injury FELA claims and litigation by the freight railroads, as well as Amtrak-- is simply one of many tools in the Claims staff's toolkit and the toolkit of Amtrak's counsel if suit is brought on a claim. The adversarial aspect of the process and the toolkit of investigation and discovery techniques in civil litigation are designed to and work effectively to differentiate everything from fact versus fiction to shades of overstatement; for most claims, as that differentiation becomes clear, the matter settles, but for some, that differentiation is decided by a jury.

If and when fraud or abuse occurs in the context of the FELA claims context, it is important that where the Amtrak OIG is investigating a claim for fraud, the company must be able to respond to the OIG and, also, continue to manage subject to its own discretion its responsibility to protect the company and minimize the company's exposure and liability.

The Board's guidance to implement the recommendations are as follows:

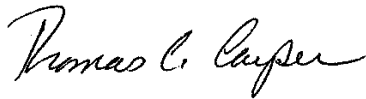
- Amtrak Claims staff must make sure they are well-equipped to meet their obligations under the IG Act and Amtrak's OIG policy to refer any claim (or other activity) that appears to involve fraud or abuse to the Amtrak OIG. To meet that responsibility, Claims staff shall develop with input from the Amtrak OIG criteria or indicia of fraud to be considered by the Claims staff with respect to each claim and a process for referring any claim meeting such criteria to the OIG. The Board understands that the Amtrak Claims staff has had preliminary discussions with Amtrak OIG staff on this subject, has convened a working group focusing on this task and to consult further with OIG staff, with the goal of getting such guidance and process in place no later than December 31, 2011.
- The Amtrak Claims staff shall continue to manage all aspects of the FELA claims process including the investigation of claims and use of surveillance in connection with that process, the litigation process for those claims that go to suit and the disposition of claims by settlement or jury verdict, appeals processes, etc., subject to Claims staff referring, and cooperating on, claims involving fraud and abuse to the Amtrak OIG.
- The Amtrak Claims staff will refer any such claims to the Amtrak OIG which will exercise its discretion as far as its investigation of any FELA claim—whether it is referred by Amtrak Claims staff or comes to the OIG by a different route. The Amtrak Claims staff will cooperate fully with the OIG. With respect to any claim being investigated by the Amtrak OIG that is also the subject of an active claims process being managed by Amtrak Claims staff, the Board understands that, under Amtrak's existing OIG policy, the OIG and Claims staff shall work together to accommodate their respective functions and interests.

Target Implementation Date: December 31, 2011

Responsible Official:

Amtrak Vice President & General Counsel under the supervision of Amtrak President & CEO.

In our view, neither the USPS OIG report nor this response contains information that may be exempt from disclosure under the FOIA.



Thomas C. Carper
Chairman
Board of Directors
National Railroad Passenger Corporation

cc: Joseph H. Boardman
Theodore (Ted) Alves

Attachment: Amtrak OIG Relationship Policy

Amtrak OIG Relationship Policy

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Office of Inspector General	Inspector General	March 4, 2010	2.1.2

1.0 PURPOSE

To establish the responsibility and authority of the Amtrak Office of Inspector General ("OIG"), the general principles for ensuring a productive relationship between the OIG and the rest of the company, and to summarize the process followed by the OIG when conducting audits, evaluations, and investigations.

2.0 SCOPE

This policy applies to all Amtrak employees, contractors, programs, and operations.

3.0 RESPONSIBILITY

The head of Amtrak and the Amtrak Inspector General ("Inspector General") are responsible for the interpretation and administration of this policy. As of the date of this policy, the "head" of Amtrak is defined as the Chairperson of the Board of Directors of Amtrak (the "Chair").

4.0 AUTHORITY AND RESPONSIBILITIES OF THE OIG

4.1 Mission of the OIG. The Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3), hereinafter "IG Act," established the OIG as an independent and objective unit within Amtrak to:

- (a) Provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to Amtrak programs and operations;
- (b) Provide leadership and coordination and to recommend policies for activities designed (1) to promote economy, efficiency, and effectiveness in the administration of, and (2) to prevent and detect fraud and abuse in Amtrak programs and operations;
- (c) Review existing and proposed legislation and regulations relating to Amtrak programs and operations and make recommendations in its semiannual reports concerning their impact on the economy and efficiency in the administration of programs and operations administered or financed by Amtrak or the prevention and detection of fraud and abuse in such programs;
- (d) Keep the Chair and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by Amtrak, recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing corrective actions.

4.2 Establishment of the OIG.

- (a) The Inspector General is appointed by the Chair without regard to political affiliation, and solely on the basis of integrity and demonstrated ability in

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<i>Thomas C. Casper</i> Chairman, Board of Directors		2.1.1	1

INSPECTOR GENERAL

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accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

- (b) The Inspector General reports to and is under the general supervision of the Chair and is not subject to supervision by any other officer or employee of Amtrak. The Chair cannot prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.
- (c) The Inspector General serves as a non-voting, ex officio member of the Executive Committee. This is an important mechanism to foster open communications and facilitate the exchange of information. It allows the IG to be aware of management issues and concerns and to provide appropriate input for management to consider. The IG's role will be limited and subject to the following conditions:
 - (1) The IG will not be a voting member;
 - (2) The IG will not perform programmatic functions or roles, which are proscribed under the IG Act;
 - (3) The IG's participation will be in a mutually agreed capacity, which allows the IG to decide not to attend certain meetings, or Amtrak management to elect to conduct meetings or segments of meetings, without the IG's presence;
 - (4) Both the IG and Amtrak management will respect the IG's statutory requirement to maintain independence and objectivity and will not request participation or agreement with respect to any matter that would impair or compromise that independence or objectivity;
 - (5) The IG will not make management decisions or perform management functions.
- (d) If the Inspector General is removed from office or is transferred to another position or location within Amtrak, the Chair must communicate in writing the reasons for the removal or transfer to both Houses of Congress, at least 30 days before the removal or transfer. The Chair can also take other personnel actions authorized by law.
- (e) The Chair also provides the OIG with appropriate and adequate office space at central and field office locations of Amtrak, together with needed equipment, office supplies, communications facilities and services, and necessary maintenance services.

4.3 Authority of the Inspector General. In carrying out the provisions of the IG Act, the Inspector General is authorized to:

- (a) Conduct audits and investigations and issue reports relating to Amtrak programs and operations that, in the judgment of the Inspector General, are necessary or desirable;
- (b) Have access to all Amtrak records, reports, audits, reviews, documents, papers, recommendations, or other material available to Amtrak which relate to programs and operations with respect to which the Inspector General has responsibilities;

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- (c) Request such information or assistance as may be necessary to carry out the duties and responsibilities provided by the IG Act from any Federal, State, or local governmental agency or unit thereof;
- (d) Require by subpoena the production of information, documents, reports, answers, records, accounts, papers and other data needed to accomplish the functions assigned by the IG Act (procedures other than subpoenas will be used by the Inspector General to obtain documents and information from Federal agencies). Because the Inspector General has access to all Amtrak information, subpoenas are not used to obtain documents and information from Amtrak;
- (e) Administer oaths, affirmations, and affidavits, when needed to carry out the functions assigned by the IG Act;
- (f) Have direct and prompt access to the Chair when necessary for any purpose pertaining to the performance of functions and responsibilities under the IG Act; and
- (g) Enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the IG Act.

5.0 GENERAL PRINCIPLES GUIDING RELATIONSHIPS WITH THE OIG

- 5.1 To work together most effectively, the OIG and Amtrak's management, employees, and contractors should:

- (a) **Interact with professionalism and mutual respect.**
 - (1) Representatives of Amtrak's management and the OIG should always act in good faith and expect the same from the other.
 - (2) Amtrak's management and the OIG share as a common goal the successful accomplishment of Amtrak's mission.
- (b) **Ensure mutual respect for each mission.**
 - (1) Amtrak's officers, directors, employees, and contractors should recognize the OIG's primary responsibility and authority to conduct independent and objective audits, evaluations, and investigations of Amtrak programs and operations, and the OIG's responsibility to report to both the Chairman and the Congress.
 - (2) The OIG will seek to carry out its work with a minimum of disruption to the primary mission of Amtrak.
 - (3) Amtrak's management will promptly notify the OIG in the event that it initiates reviews or examinations related to fraud or waste which could be the subject of an OIG audit, investigation, or inspection. Once notified, the Inspector General will determine whether it is a matter subject to the jurisdiction of the OIG and respond promptly to management to determine how to proceed. To the extent the Inspector General deems appropriate, the OIG will coordinate with the responsible department where management is engaged in a review or examination or litigation involving matters of common interest to the OIG and management.

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- (4) If, in the course of its work, the OIG discovers facts or circumstances related to safety or other matters which have some immediacy or may cause significant business or legal harm to the company unless management is notified and given the opportunity to intervene, the Inspector General will, at his discretion, notify and coordinate with appropriate Amtrak managers or the department head in order to address safety issues quickly or to limit significant business or legal harm.
- (c) Foster open communications at all levels.**
- (1) The OIG's access to information, records, facilities and people must be unimpeded. Amtrak's employees, contractors, and representatives should promptly respond to OIG requests for information to facilitate OIG activities.
 - (2) Amtrak managers will be forthcoming in recognizing the existence of challenges that the OIG can help to address.
 - (3) Surprises are to be avoided. The OIG will seek to avoid undertaking its work or presenting its findings without reasonable notice to management and management will keep the OIG informed of significant challenges and problems.
 - (4) With limited exceptions, primarily related to criminal investigations, the Inspector General will keep the President and the Chairman advised of its work and its findings on a timely basis, and the OIG will provide information helpful to Amtrak's management at the earliest possible stage.
 - (5) Because some OIG investigations may involve allegations of criminal misconduct or other need for confidentiality, circumstances will dictate whether, and what type of, notice will be given. This will be at the discretion of the Inspector General, with consideration of all factors of confidentiality, sensitivity, and investigative techniques.
- (d) Be thorough, objective, and fair.**
- (1) The OIG will perform its work thoroughly, objectively, and with due consideration of the point of view of Amtrak's management.
 - (2) When working with the OIG, Amtrak's management and staff should objectively consider differing opinions and alternative ways to improve operations.
 - (3) Both the OIG and other departments of Amtrak should recognize successes in addressing management challenges and advancing Amtrak's mission.
- (e) Respect confidential information.**
- (1) The OIG will respect Amtrak's need to protect confidential, sensitive, or privileged information from inappropriate disclosure, while meeting OIG's obligation to report to the Department of Justice, external oversight entities such as Congress, and the public.
 - (2) The terms confidential, sensitive, and privileged will be accorded the meanings ascribed to them under the Freedom of Information Act (FOIA).
 - (3) Other than the Department of Justice, in disclosing to external oversight entities (such as the Congress, Department of Transportation, OMB, and

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GAO) or other law enforcement entities, information that may be confidential, sensitive or privileged, the OIG will notify the recipient entities of the confidential, sensitive, or privileged nature of the information and request that they treat the information with the level of protection set forth under the FOIA or as otherwise required by law. If the IG believes there is a significant risk that the information could be released inappropriately, he may, at his discretion, consult with the appropriate department head to ensure that the company's interests are protected.

- (4) The process to determine the sensitivity of information included in OIG audit, evaluation, and investigative reports that will be subject to public release is described in sections 6 and 7 below.
- (f) **Be engaged.**
 - (1) The OIG, Amtrak's management, and the Board will work cooperatively to identify the most important areas for OIG work, as well as the best means to address the results of that work, while maintaining the OIG's required independence.
 - (2) Amtrak's leadership will recognize that the OIG's limited resources must also be applied to address work that is initiated by the OIG, requested by members of Congress, or mandated by law or regulation.
- (g) **Facilitate the exchange of information.**
 - (1) The OIG will keep abreast of Amtrak's programs and operations, and keep Amtrak's management and Board informed of OIG activities and concerns that are raised in the course of the OIG's work.
 - (2) Amtrak's management and Board should ensure that the OIG is kept up to date on current matters and events affecting Amtrak or that may affect it in the future.
 - (3) Amtrak and the OIG will implement mechanisms, both formal and informal, to ensure prompt and regular feedback.
 - (4) All Amtrak employees, contractors, and representatives should understand that the OIG is the primary entity within Amtrak to address issues or concerns related to fraud or abuse; and that they have a responsibility to report suspected violations of the law or Amtrak policy that could result in fraud or abuse.
 - (5) The failure to cooperate with or the intentional furnishing of false or misleading information to the OIG by Amtrak employees, contract personnel, or representatives, may result in disciplinary action, contract termination, and/or criminal sanctions.
 - (6) Amtrak's managers must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG or other lawful authority.

6.0 COORDINATION BETWEEN AMTRAK OFFICIALS AND THE OIG ON INVESTIGATIONS

6.1 General Investigative Process.

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- (a) The OIG determines whether it will initiate an investigation once it receives an allegation regarding fraud, abuse, criminal action, or other wrongdoing. Allegations originate from various sources including employees, vendors, Congress, federal agencies, and prosecutors. The OIG may also initiate investigations proactively to ensure that Amtrak is not being subject to fraud, waste, or abuse.
- (b) The investigative process generally involves: (1) determining the basis for an allegation; (2) analyzing the issues involved; and (3) obtaining relevant, objective evidence from individuals and entities, in the form of interviews, documents, tangible objects, and data.
- (c) The OIG follows the Quality Standards for Investigations (issued by the Council of the Inspectors General on Integrity and Efficiency ("CIGIE")) to guide its investigative activity.
- (d) Allegations are reviewed and screened and resources are allocated based on, among other things, the seriousness of the allegations, potential harm to Amtrak or the public, whether a violation of a statute or regulation likely occurred, and the effect of the alleged illegal or improper activity on Amtrak programs and operations.
- (e) If the OIG determines that an investigation should be undertaken, it seeks to obtain all relevant facts by examining documents and other tangible materials and interviewing individuals. When appropriate or required by law, the OIG informs subjects of their legal rights, including the right or opportunity to remain silent and to obtain legal counsel.
- (f) The process may result in one or more of the following OIG actions: administrative report to management, referral to a prosecutor for consideration, or closing the investigation.
- (g) When the investigation substantiates a wrongful act which is considered administrative, the OIG usually prepares an investigative report, which describes the allegation, the factual evidence to support its findings, and recommendations. This report is submitted to management for a written response. These administrative reports often recommend that management take action, but usually do not recommend specific disciplinary action. Privacy concerns usually restrict these reports from public release.
- (h) If an issue identified in an investigative report is a recurring or systemic problem, the OIG may also identify this broader problem to managers and, usually, make recommendations for management to consider in addressing the problem. Management normally is given an opportunity to provide comments before the report is issued. The process for obtaining comments and issuing the report is described in Section 7.2(h).
- (i) If there is evidence of criminal wrongdoing, the OIG presents the report to the Department of Justice or other appropriate prosecutors for their consideration. This may lead to prosecution of the subject(s) in Federal, state, or local court. In cases where there is evidence of criminal wrongdoing, the Inspector General may, in his/her discretion, also refer the report to management for administrative action.

6.2 Requirements And Responsibilities.

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(a) OIG.

- (1) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.
- (2) The OIG will ensure that Amtrak's confidential, sensitive, or privileged information as defined in section 5.1(e) above is not inappropriately disclosed by OIG employees.
- (3) Circumstances when the OIG will disclose such information include:
 - (A) referrals to appropriate agencies for law enforcement purposes;
 - (B) disclosures under court order;
 - (C) responses to requests by Congress; and,
 - (D) referrals to other agencies that may have cognizance over the matter.
- (4) The OIG will usually honor an employee's request that counsel be present during an interview. The counsel may not be another employee of Amtrak, paid for by Amtrak (unless approved in accordance with Amtrak's Bylaws and policies), a potential subject, or a witness in the case.
- (5) Employees who allege that action was taken against them as reprisal or retaliation for cooperating with or disclosing information to the OIG while they were employed at Amtrak may request the OIG to investigate their reprisal or retaliation allegations.

(b) Amtrak Management, Employees, and Contractors.

- (1) All Amtrak employees must comply with requests for interviews and briefings.
- (2) The failure to cooperate with or the intentional furnishing of false or misleading information to the OIG by Amtrak employees, contract personnel, or representatives, may result in disciplinary action, contract termination, and/or criminal sanctions or penalties.
- (3) Amtrak's managers must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.
- (4) In the context of investigations, managers should not question staff about their interactions with the OIG.
- (5) Any employee who makes a complaint to the OIG with the knowledge that the complaint is false or that it is made with willful disregard for the truth of the information may be held accountable for such statements and may be subject to disciplinary action or criminal prosecution.

7.0 COORDINATION BETWEEN AMTRAK OFFICIALS AND OIG ON AUDITS AND EVALUATIONS

- 7.1 Types of Audits and Evaluations.** The OIG conducts audits and evaluations of Amtrak programs and operations, including performance of contractors. Some audits and evaluations may be specifically required by statute.

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- (a) An audit is an independent, formal, and methodical examination of an organization, program, function, or activity, designed to help Amtrak accomplish its mission efficiently and effectively. OIG audits are performed in accordance with Government Auditing Standards (commonly called the Yellow Book).
- (b) Evaluations are reviews of an organization, program, function, or activity. Evaluations are performed in accordance with the Quality Standards for Inspections issued by the CIGIE.
- (c) Audits and evaluations may include financial or performance reviews.
 - (1) Financial reviews include financial statement audits and any other financially related reviews related to Amtrak's financial operations.
 - (2) Performance reviews include evaluating whether Amtrak programs and operations are working efficiently and effectively as well as whether programs are achieving expected results.
- (d) The OIG also routinely gathers information and data but does not use that information in a formal audit report. These activities may be in response to a congressional inquiry, a request for testimony, or routine planning purposes. Normally, OIG staff members assigned to these activities directly contacts responsible managers to collect information. The assigned OIG staff will inform management of the nature of the data gathering effort.

7.2 **Audit and Evaluation Processes.** The audit and evaluation processes involve the following steps:

- (a) **Audit or Evaluation Planning.** The OIG often conducts informal research to help it develop audit or evaluation plans or to better understand emerging issues. Audit plans outline potential reviews to be conducted, the objectives of each review, and the resources required to conduct them. In developing the audit or evaluation plan for the year, the OIG considers the following:
 - (1) Issues that may pose a risk to or would promote Amtrak's mission;
 - (2) Objectives of Amtrak's Board and senior managers; and
 - (3) Objectives of Congress.
- (b) **Notification.** The OIG will notify responsible management officials of its intent to begin a review.
- (c) **Entrance Conference.** As a general practice, the OIG will request an entrance conference with responsible management officials to advise them of the objectives and scope of the review and the general methodology that will be followed, and to solicit input from Amtrak officials.
- (d) **Survey.** In some cases, particularly for large or complex reviews, the OIG will perform initial research to refine the objectives, determine the scope, and develop a sound methodology.
- (e) **Field Work.** The OIG analyzes selected areas of a program, activity, or function. It obtains sufficient evidence to support the findings and conclusions and to make recommendations. Frequent interaction with responsible managers and employees occurs during fieldwork.

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- (f) **Exit Conference.** Prior to the issuance of a draft audit or evaluation report, the OIG will contact the responsible management official to set up an exit conference to discuss the results of the work. In some cases discussion draft reports or fact sheets are used to facilitate the discussion. The OIG strives to maintain an open channel of communication with managers to ensure that findings, conclusions, and recommendations are accurately and fairly presented in the report.
- (g) **Draft Report.** The OIG provides a draft report to the Audit Liaison, responsible managers of audited organizations, and Amtrak departments affected by the audit findings for their review and comment. The draft report will have been approved by OIG management and will contain the objectives, results, conclusions, and recommendations resulting from the OIG's audit or evaluation.
- (h) **Management Response.** Responsible management officials are normally provided 30 days to respond in writing to the draft report, indicating how they plan to address the findings and recommendations contained in the report. In some cases, the OIG requests a quicker response. Extensions to the established due date will be granted by the responsible Assistant Inspector General.
- (1) Comments should clearly indicate whether responsible management officials concur with each of the recommendations.
 - (2) Concurrence is when management agrees to implement the recommendation or to take an alternative action that will correct the deficiency, along with actual or estimated completion dates.
 - (3) Nonconcurrence is when management does not agree to implement the recommendation or an acceptable alternative. In this case, management should explain the rationale, and include additional facts, if necessary.
 - (4) Management should also identify any information contained in the report that should be protected from public release on the basis that its release may cause significant business or legal harm to Amtrak (the information so designated must not be subject to public release pursuant to the Freedom of Information Act, as amended, 5 U.S.C. § 552). The responsible manager should also weigh the public benefit of transparency against the harm, or potential harm, to company interests, in light of the fact that the company receives Federal subsidies.
 - (5) With respect to decisions regarding confidential, sensitive or privileged information, the Inspector General will follow the standard set forth in Section 5.1(e) above. If the OIG disagrees with management's assertion that specific information should be withheld from public release because it is confidential, sensitive, or privileged, the IG will confer with the responsible department head regarding the need to redact the information before publicly releasing the report. If so requested, the department head has one week to articulate in writing to the IG the bases or reasons for protecting the information from disclosure, including identifying the significant business or legal harm anticipated compared to the benefit of transparency. If, following that consultation, the IG determines that the

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information should be publicly released, he will consult with the Chair before including such information in a publicly released report.

- (i) **Final Report.** The OIG will amend the draft report, as appropriate, based on management's response. The Inspector General makes final determinations about what information will be included in the issued report. The OIG also normally includes the entire management response, along with the OIG's analysis of the response in the final report.
- (j) **Report Distribution.** The OIG usually distributes audit and evaluation reports to the Chairman, other Board members, responsible management officials, and Congress. Final reports are normally public documents and are available on the OIG Web site.
- (k) **Recommendation Follow-up.** Amtrak managers are responsible for implementing OIG recommendations to the extent there is concurrence, and OIG staff and Amtrak's Audit Liaison monitor managers' actions to ensure that recommendations are implemented in a timely manner.

7.3 Audit and Evaluation Process Responsibilities.

- (a) **Audit Liaison.**
 - (1) The Audit Liaison is an individual, or individuals, designated by Amtrak management to perform the functions outlined in this section.
 - (2) Facilitates OIG audits and evaluations with Amtrak management. In this role, the liaison ensures that Amtrak managers are aware of OIG reviews and that OIG staff is provided with initial contacts to begin the review process.
 - (3) Coordinates entrance and exit conferences with appropriate Amtrak managers.
 - (4) Follows up with Amtrak managers to track the status of management actions to implement OIG recommendations.
 - (5) Ensures that management's response to draft reports is coordinated with affected departments, is approved by the head of the audited department or organization and is completed in a timely manner.
- (b) **Inspector General Managers.**
 - (1) Notifies responsible management officials of the intent to begin a review.
 - (2) Contacts responsible management officials and the audit liaison to schedule entrance conferences and exit conferences.
 - (3) Provides copies of draft reports to the Audit Liaison, responsible management officials of audited organizations, and Amtrak departments affected by audit findings.
 - (4) Reviews and evaluates management response to the draft report and, as appropriate, either revises the report or provides the OIG's analysis of the response in the final report.
 - (5) Grants extensions to the established due date for management comments.
 - (6) Distributes final reports to the Audit Liaison and the appropriate Amtrak departments, and makes further distribution to authorized committees and subcommittees of Congress and the public.

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(c) **Responsible Management Officials.** To maximize the value of OIG reports, management officials or their designees will:

- (1) Attend exit conferences, unless they are waived by agreement with the OIG.
- (2) Prepare responses to draft OIG reports.
- (3) State in the proposed management decision whether they concur with the recommendations presented in the corresponding audit or evaluation report or propose alternative actions to correct the deficiency. For nonconcurrences, explain why management does not concur and present additional facts, if necessary.
- (4) Take prompt and effective action to implement agreed-upon corrective actions.

8.0 OTHER POLICIES

- 8.1 The presumption is that this policy will take precedence in instances where other policies are inconsistent with this policy. When inconsistencies are identified, OIG and management will consult and reconcile differences.

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