

## Farm Credit Administration

Office of Inspector General  
1501 Farm Credit Drive  
McLean, Virginia 22102-5090

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March 17, 2010

The Honorable Ray LaHood  
Secretary of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Re: The National Railroad Passenger Corporation (Corporation or Amtrak) and its Office of Inspector General

Dear Secretary LaHood:

The Chairperson of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Phyllis K. Fong, advised you in a January 8, 2010 letter that I would be conducting the first review described below as required by the Consolidated Appropriations Act of 2010, signed by the President on December 16, 2009 (Appropriations Act).<sup>1</sup>

The Appropriations Act, under Operating Grants to the National Railroad Passenger Corporation, provides, in part, that:

...To enable the Secretary of Transportation to make quarterly grants to the National Railroad Passenger Corporation for the operation of intercity passenger rail, as authorized by section 101 of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110-432), \$563,000,000, to remain available until expended: *Provided*, That the Secretary shall not make the grants for the third and fourth quarter of the fiscal year available to the Corporation until an Inspector General who is a member of the Council of the Inspectors General on Integrity and Efficiency determines that the Corporation and the Corporation's Inspector General have agreed upon a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978, as amended...

The Appropriations Act further provides that 1 year after this determination the CIGIE shall appoint another member to evaluate the then operational independence of the Amtrak Inspector General (IG).

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<sup>1</sup> Pub. L. No. 111-117(2009)

## Conclusion

Based on my evaluation of the policies and procedures required by the Appropriations Act and other due diligence described in this report, it is my determination that the Corporation and the IG have agreed to a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978, as amended (IG Act).

As a result, they are now positioned to build a constructive relationship that will enable the Amtrak Office of Inspector General (OIG) to operate unhindered in its role of: 1) promoting economy, efficiency, and effectiveness, 2) preventing and detecting fraud and abuse, and 3) providing a means for keeping the head of the entity and Congress fully and currently informed about the problems and deficiencies relating to Amtrak's programs and operations.

Amtrak will benefit by having a properly functioning OIG that remains independent of Corporation programmatic activities and, thus, able to provide objective assessments and recommendations regarding Amtrak operations.

## Background

The Appropriations Act's requirements resulted from Congressional concern that the OIG's independence and ability to effectively oversee the expenditure of funds, including funding provided by the Federal government, was being undermined by the Corporation.

Congressional focus was heightened in mid-2009 as a result of the IG's unexpected retirement on June 18, 2009. The concern was whether his retirement was involuntary and is evidenced by language in one Congressional letter stating "On June 18, 2009, Mr. Weiderhold entered into a separation agreement with Amtrak...Amtrak presented the agreement to Mr. Weiderhold on June 17, 2009, indicating that if he did not sign it by June 19, 2009, the Chairman of the Board would send a 30-day notice letter to Congress to begin the process of removing him as Inspector General, as required by the IG Reform Act."<sup>2</sup>

Regarding the overall relationship between the Corporation and the OIG, another Congressional letter referred to "...longstanding and serious conflicts between Amtrak management and the Inspector General, and major disputes about the role of the Inspector General within Amtrak."<sup>3</sup> Another member of Congress indicated he was investigating whether the independence of the IG had been undermined by Amtrak officials.<sup>4</sup>

With the IG's retirement on June 18, the Corporation appointed a senior member of the Corporation's staff as Interim IG. This elicited criticism from members of Congress, charging that the appointment of a Corporation official as Interim IG "...undermines the statutory

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<sup>2</sup> July 30, 2009 letter from Charles Grassley, Ranking Member, U.S. Senate's Committee on Finance, and Darrell Issa, Ranking Member, U.S. House of Representatives' Committee on Oversight and Government Reform, to The Honorable Jeffery Zients, Executive Chairperson, Council of the Inspectors General on Integrity and Efficiency, and Deputy Director for Management, Office of Management and Budget

<sup>3</sup> July 28, 2009 letter from Chairman Edolphus Towns and Ranking Member Darrell Issa of the U.S. House of Representatives' Committee on Oversight and Government Reform to Amtrak Board Chairperson Thomas Carper

<sup>4</sup> June 25, 2009 press release from Senator Charles Grassley

independence of the Office of Inspector General.”<sup>5</sup> The Corporation’s Chairman responded in a letter that the Interim IG’s appointment was based in large part on “...her [Interim IG] clear understanding of the role of the Inspector General, her unquestionable integrity, and the short period of time for which she would serve.”<sup>6</sup> The Chairman further stated in the letter that “The Board is committed to having an Office of Inspector General (OIG) that operates under best practices consistent with the Inspector General Act.” The Interim IG remained in place until the current IG was hired effective November 16, 2009.

It was this environment of adversity between the Corporation and its OIG that elicited the concern and involvement of Congress, and resulted in this review, as required by the Appropriations Act.

### Methodology

In conducting this review, I obtained and evaluated various historical documents related to the past issues between the Corporation and the OIG; conducted numerous interviews with Corporation officials, the current IG, and other OIG personnel; and evaluated the policies and procedures, as required by the Appropriations Act, that will serve as guidelines for interaction between Corporation officials and OIG personnel.

Of course, notwithstanding written guidelines developed between the Corporation and the OIG regarding their relationship, the IG Act is the definitive word regarding the role and authorities of an Inspector General established by the statute.

My interaction with Corporation officials in conducting this determination involved: 1) attending the January 2010 monthly meeting between the Amtrak Board of Directors (Board) and the current IG; 2) meeting separately with the Board at its January 2010 meeting; 3) interviewing the Board’s Chairman and all members of Amtrak’s Executive Committee, comprised of the senior leadership of the Corporation, including the President and Chief Executive Officer (CEO) and the Chief Operating Officer; and 4) interviewing the current IG and his senior officials. I also interviewed the Department of Transportation’s (DOT) Inspector General and his General Counsel. This interface resulted in a total of 17 interviews conducted at Amtrak and at the DOT’s Office of Inspector General during the period January 13 – March 16, 2010.

Even though I reviewed historical documents related to the issues between the Corporation and the OIG, I focused my attention on two areas. First, I considered what Corporation and OIG officials said during the interviews regarding their current relationship and developed a perception as to their commitment regarding the working relationship they want going forward. Second, I assessed the policies and procedures agreed to by the Corporation and the OIG for interacting with each other that are consistent with the letter and the spirit of the IG Act.

### Findings

#### Interviews

Throughout the interviews with Corporation officials there was consistency regarding the adversity that had existed between the OIG and Corporation. Corporation officials expressed their perspective that the OIG was not always conducting audits/inspections and investigations

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<sup>5</sup> July 28, 2009 letter from Chairman Edolphus Towns and Ranking Member Darrell Issa of the U.S. House of Representatives’ Committee on Oversight and Government Reform to Amtrak Board Chairperson Thomas Carper

<sup>6</sup> July 31, 2009 letter from Chairman Thomas Carper to Chairman Edolphus Towns and Ranking Member Darrell Issa of the U.S. House of Representatives’ Committee on Oversight and Government Reform

timely and with transparency, handling Corporation documents appropriately, and affording management opportunity to comment on OIG reports of Corporation processes and performance. OIG officials expressed in their view that the Corporation had hindered the independence and effectiveness of OIG operations by delaying and filtering access to information and Amtrak personnel, unnecessarily requiring redacting of OIG reports before being made available to the public, and being untimely in responding to findings, conclusions, and recommendations in OIG reports.

There was also consistency in what Amtrak officials said regarding the relationship between the current IG and the Corporation. They indicated the IG's approach to managing OIG operations and interacting with Corporation officials has built an initial positive relationship.

Similarly, the IG has indicated Corporation personnel have been providing excellent cooperation in his efforts to understand past relationship issues, learn about Amtrak's culture and operations, and build a format for establishing a constructive relationship between the OIG and the Corporation.

This is a new relationship and one that will likely be tested over time, as are virtually all relationships between departments and agencies and their Inspectors General. Nevertheless, it seems that all parties are well aware of their respective responsibilities in building and maintaining an environment in which an ongoing positive relationship between the Corporation and the OIG can exist.

#### Policies and Procedures

The policies and procedures developed by the Corporation and the IG for interacting with each other were provided to me for review on March 2, 2010.

After review of the policies and procedures, I concluded that they are consistent with the letter and the spirit of the IG Act. The IG's independence and ability to oversee Amtrak's operations and expenditure of funds, including funding provided by the Federal government, are properly addressed.

There are a number of features of the policies and procedures that speak to the independence and oversight capabilities of the IG, and the past issues between the Corporation and the IG. A few of these are as follows:

1. The document constituting the policies and procedures is signed by the Chairman, the head of the entity. This provides the necessary import to the message and guidelines contained in the document.
2. The Responsibility section of the document specifies that "The head of Amtrak and the Amtrak Inspector General ("Inspector General") are responsible for the interpretation and administration of this policy." This properly places the responsibility at the highest levels for the successful implementation of the policies and procedures.
3. The document reiterates the IG Act's provision that a designated Federal entity's (DFE) IG, in this case Amtrak, is under the general supervision of the head of the DFE and that the IG is not subject to supervision by any other officer or employee of the DFE. (IG Act, section 8G(d)) This emphasizes the IG's independence.
4. The document reiterates the IG Act's provision that no one in a host establishment or DFE may "...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.” (IG Act, section 8G(d)) This again emphasizes the IG’s independence.

5. The document provides for, as does the IG Act, full and unimpeded access to all information at Amtrak. (IG Act, section 6(a)(1)) This, along with the reiteration of the IG Act in 3 & 4 above, serves to ensure that all Amtrak employees, particularly those not familiar with the IG Act, are informed of these essential provisions of the IG Act.
6. The OIG’s handling of confidential, sensitive, or privileged Amtrak information obtained in connection with OIG review activities has been effectively dealt with in the document. The document provides for a process of internal discussion between the IG and management regarding the public release of such information, but with Amtrak’s acknowledgement of the IG’s final authority to decide whether such information should be released in a public report.
7. The document sets forth a number of general principles to guide the relationship between the Corporation and the IG. These address the Chairman’s and Board’s expectations of all staff regarding matters such as professionalism and mutual respect, open communication, objectivity and fairness, and the need for the OIG to respect and properly protect Amtrak information. All Amtrak personnel should benefit from the Chairman setting forth his and the Board’s expectations in these areas.
8. The document establishes an Audit Liaison position to facilitate and coordinate the OIG’s access and activities within the Corporation. This has the potential to provide an effective bridge between the OIG and the Corporation, and to significantly enhance the Corporation’s effective and timely response to OIG products.

In summary, the document reiterates the role and authorities of the IG as delineated in the IG Act, and sets forth Amtrak leadership’s expectations for all Corporation employees in establishing and maintaining an environment within which the OIG can maximize its effectiveness and contributions to the Corporation’s operations and performance.

However, as also set forth in the document, it will be incumbent on the Chairman and the IG to ensure that all Amtrak employees adhere to all provisions of the policies and procedures.

#### Corporate Governance

Critical to building and maintaining an environment in which a continuing constructive relationship between the Corporation and the OIG can exist are the Chairman and the Board setting: 1) clear expectations for interaction between all Amtrak employees and the OIG, and 2) the proper leadership tone regarding this interaction. These two elements of leadership need to be established by the Chairman, who is the head of the entity, and the Board. The President and CEO, as the day-to-day manager of the Corporation, must play a vital role in the effective implementation of the expectations and leadership tone. During my discussions with the Chairman, the Board, and the President and CEO, each seemed to have a full appreciation for the leadership now required to create and maintain the proper relationship between the Corporation and its IG.

The Chairman also has a full appreciation that, regardless of what the policies and procedures prescribe regarding the relationship between the Corporation and the OIG, effective ongoing implementation of the policies and procedures will be the key. This was evidenced by a comment the Chairman made to me stating, in effect, that written guidelines and good intentions are important, but actions will ultimately be the determining factor in creating a healthy and viable relationship between the parties.

### Concluding Remarks

I wish to thank the Chairman, the Board, the members of the Executive Committee, and the IG and his staff for the many courtesies extended to me as I conducted this evaluation. All personnel with whom I came into contact were most helpful.

If you have any questions, please call me at (703) 883-4030 or 4241. I would be pleased to discuss this report with you.

Sincerely,

A handwritten signature in cursive script that reads "Carl A. Clinefelter".

Carl A. Clinefelter  
Inspector General  
Farm Credit Administration  
Vice Chairperson  
Council of the Inspectors General on Integrity and Efficiency