NATIONAL RAILROAD PASSENGER CORPORATION

OFFICE OF INSPECTOR GENERAL

INVESTIGATIVE CLOSING REPORT

TITLE: Misappropriation of TRA-97 Funds **CASE NUMBER: 07-132**

DATE OF REPORT: November 27, 2009

REPORT PREPARED BY: [redacted]

CLOSED

Allegation:

In September 2007, Amtrak Inspector General Fred Weiderhold received a congressional request from Congressman James Oberstar, Chairman of the United States House of Representatives Committee on Transportation and Infrastructure. Congressman Oberstar requested that the Amtrak Office of Inspector General ("OIG") investigate the circumstance in which the State of South Dakota ("SD") replenished its Aeronautics Fund with Taxpayer Relief Act of 1997 ("TRA-97) funds after the expenditure of 1.5 million dollars for the purchase of a State airplane. Congressman Oberstar also requested that OIG conduct an audit of TRA-97 expenditures by all six Non-Amtrak states.

The Amtrak OIG Office of Investigations ("OI") opened a case focusing on the appropriateness of the airplane purchase by the State of South Dakota as well as analyzing the expenditures by South Dakota and the 5 other states to determine their propriety with TRA-97.

Investigative Summary:

OI's inquiry addressed two essential questions. The first critical question addressed was whether South Dakota's use of the Amtrak funds was consistent with the Taxpayer Relief Act of 1997.

OI found that South Dakota utilized State funds for the purchase of the aircraft, which makes it less likely that the state's utilization of the funds was improper. This requires an interpretation of the TRA-97, as well as confirmation regarding for what purposes South Dakota utilized the TRA-97 funds.

In our review, OI examined the various relevant statutes, obtained documents of the State expenditures, and interviewed several persons with information, including State officials. This review established that South Dakota did not utilize TRA-97 funds to purchase the aircraft, but used State funding instead. The investigation initially revealed that TRA-97 money, which was transferred into the South Dakota State Aeronautics Fund, was not separately accounted for, which caused interest accrued on unused TRA-97 money to not be calculated. In October 2005, South Dakota corrected this deficiency and reallocated interest. Further analysis of South Dakota's use of the TRA-97 funds depicts that it has, thus far, used the funds consistent with TRA-97.

The investigation further revealed that testimony by a South Dakota official at a February 1, 2005, budget hearing of the Joint Appropriations Committee of the South Dakota Legislature raised concerns that TRA-97 money was used to purchase an aircraft for the State, which is not an allowable expenditure under TRA-97 and the Surface Transportation Revenue Act of 1998 ("STRA-98"; Public Law 105-178). The official told our office during the interview of him that his testimony was inaccurate. The money used to purchase the aircraft was drawn from the State Aeronautics Fund. TRA-97 money was then used to replenish the State Aeronautics Fund. Subsequently, the TRA-97 money in the State Aeronautics Fund was spent on qualified expenses. The other State officials interviewed also claim that the TRA-97 funds were used for qualified expenses.

A review of South Dakota's TRA-97 expenditures indicates that the money was used for qualified expenses. South Dakota accounted for the $23,230,000 it received, plus accrued interest of $7,147,201. The review and interviews reveal that upon receipt of the TRA-97 money the funds were put in a separate account. TRA-97 money was subsequently transferred to the State Aeronautics Fund, the Highway Fund, or the Railroad Administration Fund, as needed. Our office sent verification letters to twenty-seven businesses of the one-hundred and fifty-eight identified businesses and municipalities who received TRA-97 money. The returns to date indicate that the funds received were used for allowable qualified expense projects. Our review also revealed that in 1993 the South Dakota Department of Legislative Audit opined that the Aeronautics Commission had the authority to purchase aircraft under South Dakota Codified Laws.

The second critical question investigated was whether other non-Amtrak States utilized the TRA-97 funds properly.

In addition to South Dakota, the other five non-Amtrak States at the time of TRA-97 and STRA-98 enactment were Alaska, Hawaii, Maine, Oklahoma, and Wyoming. Since that time, Maine and Oklahoma have acquired Amtrak service.

This office reviewed Public Law 105-34, TRA-97, Section 977, which details the requirement that Amtrak pay 1% of its TRA-97 refund to each non-Amtrak State. Amtrak's refund was $2,323,000,000. Each non-Amtrak State received $23,230,000. TRA-97 set forth the allowable "qualified expenses." In general, the qualified expenses were for the acquisition and maintenance of intercity passenger rail and bus service.

TRA-97 requires the States to return any unused portion of the money and accrued interest to the United States by the year 2010. In addition, any portion of the money used by the States and any interest thereon, which is used for purposes other than to finance qualified expenses, must be returned. Specifically, TRA-97 did not provide for how the States should account for the money. TRA-97 did not require the States to provide Amtrak or Congress with a periodic accounting of the $23,230,000.

This office also reviewed Section 9007 of STRA-98, which provided additional qualified expense allowances to non-Amtrak States. It was provided for in STRA-98 that section 9007 shall take effect as if included in the enactment of section 977 of TRA-97. In general, the STRA-98 qualified expenses allow funding of mass transit, highway, highway safety, rural air service, passenger ferryboat service, and harbor improvement projects. Similar to TRA-97, STRA-98 also did not establish how the States should account for the money received. Nor did STRA-98 require the States to provide Amtrak or Congress with a periodic accounting of the $23,230,000.

Finally, Section 209 of the Amtrak Reform and Accountability Act of 1997 (Public Law 105-134) contained limitations on Amtrak's use of the TRA-97 funds. Pursuant to Section 209, Amtrak is limited in using any funds received under TRA-97 to: (a) identified purposes under sections 977(c) and 977(e)(1) of the TRA-97; and (b) may not offset other amounts used for any purpose other than the financing of such expenses.

This office also requested an accounting of TRA-97 money from the other five non-Amtrak States. Alaska, Hawaii, Maine, Oklahoma, and Wyoming provided an accounting, which indicate that the TRA-97 money was used for qualified expenses, consistent with the law.

In response to a follow-up request for clarification, the State of Hawaii provided detailed documents on its TRA-97 expenditures. This office questioned, and further investigated, the expenditure of $1,120,000 of TRA-97 funds on February 28, 2001 by the Department of Land & Natural Resources for the acquisition of land to preserve "the scenic view plane of Lumahai Beach [Kauai] from Kuhio Highway" (State Route 560). An examination of the response given by the Hawaii Department of Transportation and applicable federal law, indicates the purchase is an allowable qualified expense. A review of the remaining TRA-97 expenditures by Hawaii indicates they were for allowable qualified expenses.

Report to Congress:

On February 18, 2009, then Inspector General Weiderhold delivered to Congressman Oberstar, a copy of a Report to Congress, which included the investigative summary, the investigative details, conclusion, and relevant exhibits.

Recommendation:

Pending further information or Congressional requests, this case should be closed.

CLOSED

Deputy Inspector General/Counsel: [signature] Date: 12/1/2009