

**AMTRAK'S BOARD OF DIRECTORS PROVIDES  
LEADERSHIP TO THE CORPORATION BUT CAN  
IMPROVE HOW IT CARRIES OUT ITS OVERSIGHT  
RESPONSIBILITIES**

*National Passenger Rail Corporation (Amtrak)*

*Report Number: CR-2007-074*

*Date Issued: September 14, 2007*




# Memorandum

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** Amtrak's Board of Directors Provides  
Leadership to the Corporation but Can Improve  
How It Carries Out Its Oversight Responsibilities  
National Passenger Rail Corporation (Amtrak)  
Report Number CR-2007-074

Date: September 14, 2007

From: David A. Dobbs   
Principal Assistant Inspector General  
for Auditing and Evaluation

Reply to  
Attn. of: JA-50

To: Federal Railroad Administrator  
Amtrak Board of Directors

On April 25, 2006, the Democratic Members of the House Committee on Transportation and Infrastructure Amtrak Working Group requested that our office conduct an audit of Amtrak's Board of Directors (the Board).<sup>1</sup> This request was prompted by the Working Group's review of Amtrak's performance related to the issues raised in a 2005 Government Accountability Office (GAO) report<sup>2</sup> concerning Amtrak. The GAO report cited deficiencies in Amtrak's strategic planning, financial reporting, acquisition management, cost containment, and accountability and oversight.

In their request, the Members indicated their belief that some of the deficiencies cited in the GAO report represented a failure of Amtrak's Board. Their chief concern was whether the Board had exercised sufficient oversight of the corporation and held management accountable for results. In addition, there were concerns regarding the appropriateness of the Board's expenses.

The objectives of our audit were to determine: (1) the rules, procedures and authorities under which the Board operates; (2) whether the Board has followed established processes and procedures; (3) whether the Board has set long-term

<sup>1</sup> The current Board was established by the Amtrak Reform and Accountability Act of 1997, Pub. L. no. 105-134 (1997), which specifies the Board's structure, the Director's qualifications, and how Board members are appointed. There are up to seven voting Board members, and the Amtrak CEO serves as a non-voting member. Board members are nominated by the President and confirmed by the Senate; they serve 5-year terms.

<sup>2</sup> *Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability*. October 2005. GAO-06-145.

goals and performance objectives; (4) whether the Board's processes and procedures are sufficient for ensuring oversight of and requiring accountability from Amtrak management; and, (5) whether the Board members' expenses comply with corporate guidelines and if those guidelines ensure the prudent use of corporate resources.

We performed the audit in accordance with Generally Accepted Government Auditing Standards prescribed by the Comptroller General of the United States. We reviewed the Board's actions from January 2002 to July 2007 and Board expenses from January 1, 2002, through December 31, 2006. To complete this audit, we attended Board meetings and reviewed legislation and policies relevant to the management and governance of Amtrak, Board meeting minutes, applicable corporate board "best practices," and Board expenses. We also conducted interviews with Amtrak Board members, Amtrak's President and Chief Operating Officer (CEO) and other senior Amtrak officials, and those who worked on the 2005 GAO report. Exhibit A details our audit scope and methodology.

## RESULTS IN BRIEF

We found that the Board complies, with limited exceptions, with the rules and procedures delineated in its corporate bylaws and Statement of Policy. We also found that the Board established a strategic direction for Amtrak in April 2005 but did not fully implement it. In June 2007, the Board adopted a revised plan for FY 2007 through FY 2008. We also found that the Board has the tools to conduct oversight and hold management accountable and provides oversight of management's actions. However, the Board could improve its effectiveness by implementing some corporate governance best practices. Finally, we found that the Board members' expenses comply with corporate guidelines and are reasonable.

**The Amtrak Board sets and oversees Amtrak's strategic direction while the Amtrak CEO manages day-to-day operations.** The general authorities under which the Board and CEO operate are enumerated in Amtrak's bylaws, which were established in accordance with the District of Columbia Business Corporation Act.<sup>3</sup> These bylaws charge the Board to "manage Amtrak's affairs and business." The CEO is charged with "general supervision of Amtrak's affairs and, subject to the policies and direction of the Board, supervising and directing all of Amtrak's officers and employees." These respective responsibilities result in the Board setting and overseeing Amtrak's strategic direction and the CEO managing Amtrak's day-to-day operations.

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<sup>3</sup> As a for-profit corporation incorporated in Washington, DC, Amtrak is subject to District of Columbia Business Corporation Act.

**With few exceptions, the Board followed established processes and procedures.** We found that, in general, the Board followed its established processes and procedures; however, we noted three exceptions. The Board did not consistently meet in the committees called for in its Statement of Policy or hold an annual election of the Board Chairman and Vice Chairman as required in its bylaws. Recently, the Board took action to address these issues. In addition, the Board did not receive detailed lists of capital projects over \$1 million included in its proposed Annual Grant and Legislative request prior to approving that request as called for its Statement of Policy. These lists were prepared by and available to Amtrak management as part of the capital budget planning process, but were not provided to or requested by the Board. Amtrak management indicated that the Board would receive this information at its next scheduled meeting.

**The Board set a long-term strategic direction for Amtrak, but this plan lacked detail and was not fully implemented.** The Board set a strategic direction for Amtrak with its April 2005 *Amtrak Strategic Reform Initiatives and FY 2006 Legislative Grant Request*. This document provides high-level strategic direction to guide Amtrak management and employees in the performance of their duties.

The April 2005 document contained broad long-term objectives that were not translated into a detailed plan with outcomes, milestones, and performance measures. According to the Board Chairman, this resulted from resistance to the planning process by the previous CEO and the transition to a new CEO and senior management team. As a result, the Board and Amtrak management lacked a comprehensive standard against which to evaluate how Amtrak's day-to-day activities are addressing the Board's strategic vision for Amtrak. The revised June 2007 plan addresses this problem in part by providing measurable, near-term goals but provides only limited and non-quantified long-term goals.

**The Board has limited but sufficient tools to conduct oversight and hold management accountable.** We found that the Board has sufficient tools available to conduct oversight and hold management accountable; however, the tools available to it are more limited than those available to a typical corporate board. The available tools are both formal, such as the requirement that it approve an annual legislative and grant request, and informal, such as the ability to challenge management's proposals by asking incisive questions and examining underlying assumptions and trade-offs.

**While the Board conducts oversight and holds management accountable, its practices could be improved.** The Board has shown a willingness to conduct oversight and hold management accountable. Nevertheless, we found that the Board's oversight and accountability system could be improved by adopting

corporate best practices regarding the timing and quality of information it receives and evaluating its own effectiveness.

**Board members' expenses comply with corporate guidelines and are reasonable.** We found that between 2002 and 2006, board members' compensation (i.e., director's fees) and expense reimbursements complied with applicable guidelines. We also found that these guidelines were adequate to ensure the prudent use of corporate resources. While these guidelines do not limit the amount of travel, subsistence, or other expenses for which a board member may be reimbursed, in practice, board members apply a standard of reasonableness to their reimbursement requests. In addition, all of the Board's expenses are reviewed for reasonableness by the Amtrak General Counsel's Office before being paid. Issues regarding reimbursement requests are raised to the Amtrak CEO and resolved between the CEO and the Board Chairman. This level of review and oversight is commensurate with the limited amount of funds involved.

## **FINDINGS**

### **The Amtrak Board Sets and Oversees Amtrak's Strategic Direction While the Amtrak CEO Manages Amtrak's Day-To-Day Operations**

Amtrak's bylaws give the Board responsibility for managing Amtrak's affairs and business<sup>4</sup> and the CEO responsibility for general supervision of Amtrak's affairs and, subject to the policies and direction of the Board, supervision and direction of Amtrak's officers and employees. Both Amtrak's Board Chairman and CEO told us that, in practice, these authorities result in the Board setting, and overseeing progress towards, a strategic direction for Amtrak and in the CEO managing Amtrak's day-to-day operations.

The Board has adopted a Statement of Policy that delineates the rules and procedures through which it implements the authorities provided to it by the corporation's bylaws. The Statement of Policy requires the Board to approve: (1) an annual corporate budget, including a capital budget and a revenue and expense operating budget; (2) capital and lease commitments exceeding \$1 million; (3) changes to capital and lease commitments that exceed specific thresholds; (4) major operating budget resets; (5) a corporate strategic business plan; (6) certain business transactions that exceed specific thresholds; (7) executive level compensation and personnel actions, (8) the initiation or termination of train service; and (9) pattern collective bargaining agreements.

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<sup>4</sup> This language is taken directly from the District of Columbia Business Corporation Act, D.C. Code Section 29-101.32(a).

The Statement of Policy also specifies the compensation and expense reimbursement policy for the Board's members, committee structure, and certain delegations of authority. Amtrak's bylaws also stipulate who will chair Board meetings in the absence of the Chairman, where to hold meetings, how often to hold meetings, what committee procedures will be, and what will constitute a quorum.

### **With Few Exceptions, the Board Followed Established Processes and Procedures**

We found that, in general, the Board followed established rules and procedures. However, we noted three exceptions. The Board has taken steps to address these exceptions.

First, we found that the Board did not consistently meet in the committees called for in its Statement of Policy. According to the Board Chairman, the number of vacant board positions in recent years made it impractical to meet in committees. As shown in Table 1, the Board last had a full complement of seven members in May 2003. Exhibit B lists the names and dates of service of all Board members from 2002 to present. At times, the Board has had only three members, while its Statement of Policy called for five committees at the time.<sup>5</sup> As a result, the Board as a whole sought to conduct the activities that would otherwise have been assigned to committees. In April 2007, the Board restructured and re-established its committees, assigned a different member to chair each committee, and began holding committee meetings before regularly scheduled Board meetings. At present, all five board members serve on each committee.

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<sup>5</sup> Until April 2007, the Statement of Policy established the following five committees: Audit, Compensation and Personnel, Corporate Affairs, Finance, and Legal Affairs. In April 2007, the Board replaced these committees with the following four committees: Audit and Finance, Government Relations and Corporate Affairs, Personnel and Compensation, and Risk Management and Legal Affairs.

**Table 1. Board Membership**

Date	Number of Months	Voting Members
January 2002-October 2002	10	6
November 2002-May 2003	7	7
June 2003-August 2003	3	5
September 2003-June 2004	10	3
July 2004-May 2006	23	4
June 2006	1	3
July 2006-August 2006	2	5
September 2006-November 2006	3	6
December 2006-July 2007	8	5

Second, we also found that the Board did not hold an annual election of the Board Chairman and Vice Chairman, as its bylaws required, between July 2003 and July 2007. At its April 2007 meeting, the Board formally voted to re-elect David Laney as Board Chairman. Mr. Laney has been serving as Board Chairman since being elected to that position on July 23, 2003. The Board formally voted to elect Donna McLean and Hunter Biden as co-Vice Chairmen at its July 2007 meeting. The Board had elected Sylvia DeLeon as Vice Chairman on July 23, 2003. However, Ms. DeLeon left the Board in August 2004.

Third, we found that in the last 2 years, the Board did not receive detailed lists of, or grant approval for, capital projects costing over \$1 million included in its proposed Annual Grant and Legislative request. The Statement of Policy requires that the Board not only approve the overall capital budget, but also the individual capital projects over \$1 million. According to Amtrak staff, these extensive lists were prepared each year and used by Amtrak executives in managing Amtrak's capital program. However, Amtrak did not provide these lists to the Board as it had done previously and the Board did not request them. Instead, the Board received higher-level summary information on the proposed capital program. Amtrak management indicated that the Board would receive the capital projects list at its next meeting.

The Board has been working with Amtrak management to improve the capital planning process. We believe that a prioritized list of proposed projects that are valued at \$1 million or more is an important part of this process in terms of management of the capital program. The Board should ensure that this list is prepared and used by management. However, we do not believe that it is necessary for the Board to review the capital program on a project-by-project-basis. Instead, the Board should focus on how the program's priorities are set, what the program's expected outcomes are, what risks are involved in

implementing the program, and the projects that are large-dollar or otherwise significant.

### **The Board Set a Long-Term Strategic Direction for Amtrak, but This Direction Lacked Detail and Was Not Fully Implemented**

The Board established a strategic direction for Amtrak with its April 2005 *Amtrak Strategic Reform Initiatives and FY 2006 Legislative Grant Request*. This is an important role for the Board because, unlike a typical public corporation, there are many different viewpoints regarding how Amtrak should carry out its role in providing intercity passenger rail service. In fact, the different goals supported by various stakeholder groups, such as maximizing revenue, maximizing ridership, minimizing costs, and minimizing losses, can be mutually exclusive. In contrast, the goal of most corporations is to create and increase shareholder value. The Amtrak Board is responsible for balancing competing goals for Amtrak and articulating a strategic direction for the corporation, within the limits of the policies and requirements established in law.

The April 2005 document specified Amtrak's key long-term goals and performance objectives as: (1) the development of passenger rail corridors through a federal-state capital matching program; (2) the return of the Northeast Corridor infrastructure to a state of good repair; (3) the establishment of performance measures for long distance routes; and (4) the introduction of competition in all passenger rail functions and services. It also outlined Amtrak's long-term structural, operational and legislative strategic initiatives.

Also, the Board reviewed, but did not formally approve, a mission statement at its April 2006 meeting. Amtrak officials told us the Board was comfortable with the statement, but wanted to make minor adjustments to it. This effort was put on hold to permit the new CEO to have input. The draft mission statement is currently used by Amtrak senior management and included in the orientation briefing package for new board members. Together, the April 2005 plan and the draft mission statement provide high-level strategic direction to generally guide Amtrak management and employees in the performance of their duties.

However, the April 2005 document's broad, long-term objectives were not translated into a detailed plan with outcomes, milestones, and performance measures. According to Chairman Laney, this was due, in part, to the previous CEO's strong resistance to the planning process and the transition to a new CEO and restructured senior management team. In addition, the step-by-step plans for each specific reform initiative promised in the April 2005 document; including business plans, budgets, policies, milestone goals, and timetables; have been completed for some but not all the initiatives. As a result, the Board and Amtrak



management have lacked a comprehensive standard against which to evaluate whether Amtrak's day-to-day activities are addressing the Board's strategic vision for Amtrak.

During the past several months, the Board has worked with Amtrak senior management to update the April 2005 strategic plan. In June 2007 the Board approved an updated plan for FY 2007 to 2008. The updated, but abbreviated, plan outlines Amtrak's financial and performance priorities and includes measurable, near-term goals and deadlines for most initiatives. It focuses on company-wide cost reductions and revenue enhancements that will help in reducing Amtrak's reliance on Federal operating subsidies, containing cost growth, improving financial transparency, providing a safe environment for employees and passengers, improving human capital management, conserving natural resources, and expanding state corridor services where circumstances and resources permit.

Compared to the April 2005 plan, this plan has a much shorter timeframe (15 months vs. 5 years), and places less emphasis on both evolving Amtrak into a purely operating company and introducing competition into the provision of intercity passenger rail service. Finally, the revised plan provides only a limited number of long-term goals, called strategic policies, none of which are quantified.

### **The Board Has Limited but Sufficient Tools To Conduct Oversight and Hold Management Accountable**

We found that the Board has sufficient tools to conduct oversight and hold management accountable even though it does not have all the tools that are available to other corporate boards.

The formal oversight and accountability tools available to the Amtrak Board include the authority to withhold approval of, or require modification to, proposed annual legislative and grant requests, budgets, within-year budget reallocations, consultant contracts, and executive-level hires and promotions. In addition the Board may replace a CEO or other senior executive. The informal tools include the ability to challenge the corporation's performance and management proposals by asking incisive questions; examine the key assumptions and trade-offs underlying management's proposals; ensure there is a reasonable, well-informed, thoughtful corporate decision making process and request detailed briefings at board meetings on areas of concern. Another tool for holding management accountable is Amtrak's pay-for-performance system, scheduled to go into effect at the start of the next fiscal year.

While the Board does conduct oversight and takes steps to hold management accountable, it does not have all the tools available to other corporate boards. For example, the Amtrak Board does not have the final say on funding or all policy issues. This is because Congress determines Amtrak's overall funding level through the annual appropriations process and sets policy through legislation and the Administration approves both how funds are spent and certain Board decisions.

We found that the Board followed many corporate governance best practices, particularly those related to board independence, which directly affect its ability to conduct oversight and hold management accountable. The Enron scandal of 2001 was viewed by many as evidence that some corporate boards lacked the necessary ability to conduct meaningful oversight. After Enron, for example, both the New York Stock Exchange and the NASDAQ Stock Market adopted new listing standards seeking to improve board oversight by increasing board independence.

The practices that contribute to the Amtrak Board's independence are: (1) ensuring that Board members are not dependent on management for their positions on the Board; (2) meeting regularly without the CEO or other Amtrak executives to discuss sensitive topics; (3) setting its own agenda, in consultation with the CEO; (4) having full and direct access to top-level executives, outside advisors, and consultants; and (5) meeting independently with the outside financial auditor. In many ways, the Amtrak Board is more independent than other corporate boards in which Board members have direct personal, family or professional ties to the CEO; have less direct access to information; and are led by a CEO who also serves as Board Chairman.

### **While the Board Conducts Oversight and Holds Management Accountable, Its Practices Could Be Improved**

We found that the Board has shown a willingness to conduct oversight and hold management accountable. For example, the Board regularly questions management's proposals and at times, requires management to either provide further justification or modify proposals before the Board approves them. It has also replaced a CEO and other senior management officials.

Nevertheless, we believe the Board's system of oversight and accountability could be improved by implementing some corporate governance best practices and formalizing some of its procedures. First, a best practice the Board did not follow is evaluating the timeliness and adequacy of information it receives. As a result, the Board does not always have the information needed to independently evaluate Amtrak's performance and plans. For example, the Board does not receive the

staffing information<sup>6</sup> needed to evaluate management's proposed salary and wage expenses, the largest component of Amtrak's operating costs.

The Board Chairman told us that he has recognized the need for better and more reliable information; he also noted that the quality of information the Board receives has improved in recent years and the Board's Finance Committee Chair has begun to work with management on this issue. Also, he stated that, ultimately, the Board receives whatever information it requests, in the format requested, if that information is available to Amtrak. However, this is an ad hoc process rather than a forward looking, comprehensive process designed to ensure that the right information is available to the Board when it is needed.

The Board also does not regularly review its own effectiveness in carrying out its duties. Such reviews can range from a simple self assessment completed and analyzed by the Board members to the hiring of outside consultants specializing in corporate governance. We believe this type of annual review would help identify areas in which the Board's practices and oversight could be improved. Therefore, we recommend that the Board amend its Statement of Policy to require at least an annual review of (1) the timeliness and adequacy of the information it receives and (2) its own effectiveness in carrying out its fiduciary and oversight responsibilities.

In addition, we found that some of the Board's limited time during its 10 annual board meetings was spent considering and voting on relatively insignificant items. Figure 1 lists all the items in the Statement of Policy that require Board approval. Management, in turn, devotes time and resources to preparing supporting materials for these votes. For example, the Board was required to review and vote on a proposed 5 year lease with a donut shop at an Amtrak-owned station with annual payments of only approximately \$100,000. We note that in some instances, such as with capital reprogrammings, the requirement for Board approval of some seemingly small ticket items may provide some useful information regarding the status of the underlying program. However, to better utilize the Board's and management's limited time, we recommend that the Board amend its Statement of Policy to provide better guidance and more flexibility with respect to the types of actions requiring its approval.

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<sup>6</sup> For example, the Board does not receive data on full-time equivalent work years (FTE) which drives salary and wage costs. An FTE is equal to 2080 hours of work regardless of the number of employees needed to work those hours. For example, two half-time employees equal one FTE. Instead, the Board receives staffing data in terms of headcount, which measures the number of employees working at a particular point in time and is not directly related to salary or wage costs.

### **Figure 1. Actions or Items Requiring Board Approval**

- Annual corporate budget
- Annual grant and legislative request
- Corporate strategic business plan
- Collective bargaining agreements
- Operation of new routes
- Route discontinuances
- Legal settlements greater than \$1 million
- Capital/lease commitment approval requests (CARs) included in annual budget when they exceed \$1 million
- Reprogramming of CARs in excess of \$1 million
- Addition of new CARs in excess of \$500,000 (if not included in approved budget)
- Cost overruns on approved CARs in excess of \$250,000 or 5% of the original amount (whichever is less)
- Sale or retirement of fixed assets (other than rolling stock/real estate) in excess of \$1 million
- Revenue producing real estate transactions of \$500,000 or more and all development projects
- Contracts for consultant services of \$200,000 or more
- Any proposed personnel action regarding an Executive employee

Finally, as we noted previously, some of the Board's oversight tools are informal, such as its willingness to ask incisive questions. The Board's willingness to ask questions cannot be mandated, but the results of its oversight can be made more transparent to external stakeholders. To this end, we recommend that the Board amend its Statement of Policy to (1) require management to submit for the Board's approval an annual multi-year strategic plan with measurable goals and performance objectives and (2) require Amtrak to publish an annual evaluation of its performance against the previous year's goals.

### **Board Members' Expenses Comply With Corporate Guidelines and Are Reasonable**

We found that between 2002 and 2006, board members' compensation (Director's fees) and expense reimbursements were a minor part of Amtrak's overall expenses and complied with the guidelines contained in the Board's Statement of Policy. The average annual cost for Board compensation and expenses during this period was \$95,434 (see Figure 2). Of this average annual amount, \$44,340 was for Director's fees, \$33,344 was for airfare,<sup>7</sup> \$13,026 was for hotel and meals, and \$4,725 was for other expenses. By comparison, Amtrak's average annual operating expenses during this time period were \$3.04 billion.

<sup>7</sup> During this period, the Board Chairman frequently flew first class, although these flights were almost always promotional upgrades that were priced at the unrestricted coach fare.

**Figure 2. Amtrak Board Expenses by Type (2002 – 2006)**



According to the Board’s Statement of Policy, board members<sup>8</sup> receive a \$600 Director’s fee for participating in a regularly scheduled Board meeting, a \$500 fee for participating in Amtrak-related duties (not including attendance at a regularly scheduled Board meeting)<sup>9</sup> if such performance exceeds 3 hours, and a \$250 fee for performance of duties if such performance is 3 hours or less. Board members also are reimbursed for travel expenses related to board meetings and their performance of duties and for other reasonable expenses (such as photocopies, postage, etc.) incurred in connection with the performance of their duties.

The Amtrak Board’s responsibilities are similar to that of other for-profit private corporations, but its compensation is significantly less.<sup>10</sup> Amtrak is not in a position to compensate board members at levels comparable to industry standards, nor should it. The Amtrak Board Chairman told us that board members serve, in part, out of a sense of public service. However, he also said the compensation limitations may limit the pool of potential new members since it can cause Board members to pay some costs “out-of-pocket.”

<sup>8</sup> The Department of Transportation’s representative on the Board does not receive either compensation or expense reimbursement from Amtrak.

<sup>9</sup> Performance of duties includes participation in Board committee meetings, conferences, or meetings with members of management regarding corporate business that is properly subject to Board consideration, on-site visitations of corporate facilities relating to corporate business that is properly subject to Board consideration, and advice and assistance on Board matters when requested by the Chairman of the Board. Performance of duties does not include travel time, casual visits to corporate headquarters or other facilities, or personal travel.

<sup>10</sup> According to a board remuneration study completed by Steven Hall & Partners, the average 2006 compensation (not including expenses) for board members for corporations with less than \$2.5 billion in revenues was \$142,112.

The Board has a system to review expenses for suitability before they are paid. We found that the reimbursement policy sufficiently ensures the prudent use of corporate resources and that no abuses of the policy have occurred. New board members are advised during their orientation that only “reasonable” expenses are reimbursed. Both the Board Chairman and Amtrak’s General Counsel told us that board members are sensitive to the appearance of extravagance and, therefore, do not request unreasonable reimbursements. These statements are supported by the fact that, on occasion, board members will not request reimbursement for the full airfare or hotel costs they personally incurred if they felt that amount would be excessive. To ensure reasonableness, all Board expenses are reviewed by the Amtrak General Counsel’s Office before being paid. Issues regarding reimbursement requests are raised to the Amtrak CEO and resolved between the CEO and the Board Chairman and, if necessary, the full Board.

The absence of specific limits in the Board expense reimbursement policy has raised concerns among some observers that the policy could be abused. For example, since they are not Amtrak employees, Board members are not subject to the reimbursement policy covering Amtrak employees, which includes specific limitations and prohibits reimbursement for purchases of alcohol. We believe the current review process is sufficient to prevent such abuses and is commensurate with the limited amount of funds involved.

## **RECOMMENDATIONS**

We recommend that the Amtrak Board of Directors:

1. Amend its Statement of Policy to require at least an annual review of (a) the adequacy and timeliness of the information it receives and (b) its own effectiveness in carrying out its fiduciary responsibilities;
2. Amend its Statement of Policy to provide better guidance and more flexibility with respect to the types of actions requiring its approval, and
3. Amend its Statement of Policy to require (a) management to submit for the Board’s approval an annual, multi-year strategic plan with measurable goals and performance objectives and (b) Amtrak to publish an annual evaluation of its performance against the previous year’s goals.

## **AMTRAK BOARD OF DIRECTORS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

We provided Amtrak's Board of Directors with a draft of this report. In his response, the Board Chairman agreed that there is room for improvement in the Board's oversight of management's implementation of Board policy direction for Amtrak. Specifically, the Chairman indicated the Board would implement Recommendation 1 at its October 2007 meeting through a revision to its Statement of Policy. The Chairman agreed with Recommendation 2 and indicated an internal process is underway to reassess and revise the types of actions that require Board consideration and approval. We understand this proposal will be brought to the Board for consideration this fall. We concur with the Board's responses to these recommendations.

With regards to Recommendation 3, The Board Chairman agreed with the importance of having a multi-year strategic plan that was periodically updated, but suggested these updates could occur, at times, on a bi-annual instead of an annual basis. The Chairman disagreed with Recommendation 3(b), which called for an annual evaluation of Amtrak's performance against the previous year's goals, because the information needed to assess Amtrak's performance is already available through a variety of means.

We recognize the time and effort required of the Board and Amtrak to fully develop a multi-year plan and that circumstances may not always warrant an annual revision. Therefore, we concur with the Board's proposal to update the multi-year plan as needed, but at least on a bi-annual basis. In general, the information needed to evaluate Amtrak's performance against its goals is publicly available from different sources. As long as this information remains publicly available in a timely manner, Amtrak is meeting the intent of our recommendation.

We appreciate the courtesies and cooperation of the Amtrak Board and Amtrak representatives during this review. If you have any questions concerning this report, please call David Tornquist, Assistant Inspector General for Competition and Economic Analysis at (202) 366-1981 or Mitch Behm, Program Director, at (202) 366-1995.

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## **EXHIBIT A. SCOPE AND METHODOLOGY**

### **Scope**

In a letter to the Acting Inspector General, the Democratic Members of the House Working Group on Amtrak requested that our office assess whether the structure and activities of Amtrak's Board of Directors are adequate to meet its legal and fiduciary responsibilities and whether the Board's expenses comply with corporate guidelines. The Working Group was a bi-partisan group of Members of Congress established by the House Committee on Transportation and Infrastructure to explore the long-term viability of Amtrak.

As agreed to with the requestors, our objectives in this audit were to determine (1) the rules, procedures, and authorities under which the Board operates; (2) whether the Board has followed established processes and procedures; (3) whether the Board has set long-term goals and objectives for Amtrak; (4) whether the processes and procedures that the Board follows are sufficient for ensuring oversight of and requiring accountability from Amtrak management; and (5) whether the board members' expenses comply with corporate guidelines and whether those guidelines ensure the prudent use of corporate resources.

Our audit reviewed (1) the laws, rules, and policies governing Amtrak's Board of Directors, (2) the Board's practices and decisions as reflected in regularly scheduled Board meetings, and (3) Board members' expenses from 2002 to 2006. There has been no prior audit coverage of the Amtrak Board of Directors by the Department of Transportation's Office of Inspector General.

### **Methodology**

To determine the rules, procedures, and authorities under which the Board operated, we first reviewed Amtrak's articles of incorporation, bylaws, and the Board's Statement of Policy as well as all other relevant legislation. Such legislation included the Amtrak Reform and Accountability Act of 1997 and DC Code Section 21-101, otherwise known as the DC Business Corporation Act.

To determine whether the Board complies with its rules and procedures, the Assistant Inspector General for Competition and Economic Analysis (AIG) attended all Board Meetings from March of 2006 to June 2007. In addition to the AIG's observations of Board practices during Board meetings, we read Board-approved meeting minutes from 2002 to April 2007. We reviewed the meeting minutes and other Board-approved documents to find relevant information regarding the establishment of long-term goals and objectives, management



accountability, and Amtrak's corporate governance practices. In addition, we interviewed Board Chairman David Laney, President and CEO Alexander Kummant, as well as Amtrak's then General Counsel Alicia Serfaty regarding Board policy, practice, and governance. We also spoke to other Amtrak executives regarding specific issues.

Because the Government Accountability Office (GAO) had previously conducted an audit of Amtrak management, which included an evaluation of the Board, we also met with the GAO audit team that worked on that project to discuss its findings and to gather any relevant information.

In addition, we conducted a literature review of corporate governance best practices in order to benchmark the Board's ability to conduct oversight, hold management accountable, and establish long term objectives. Our review of best practices included the Business Round Table whitepaper, Principles of Corporate Governance,<sup>11</sup> a Report of the American Bar Association Task Force on Corporate Responsibility<sup>12</sup> and the American Bar Association Corporate Director's Guidebook.<sup>13</sup> From these documents, we identified best practices that were relevant to Amtrak. We noted any areas in which Amtrak's Board practices were not in compliance with best practices we identified.

Regarding the Board's expenses, we documented all policies and procedures that relate to expense reimbursement and compensation for the Board of Directors<sup>14</sup>. During our interviews with Amtrak management and Chairman Laney, we also discussed and noted any standard practices regarding compensation and expense reimbursement. We obtained records of board member expenses reimbursed by Amtrak as well as all Director's Fees paid to board members, between 2002 and 2006 to determine if the records indicated compliance. We also reviewed whistleblower information provided to us by the requestors.

We noted and requested clarification from Amtrak management of expenses that appeared to have been either unreasonable or out of compliance with Board rules. In virtually all cases, these apparent discrepancies proved to be clerical errors. We also reviewed current practices regarding corporate board compensation.

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<sup>11</sup> The Business Roundtable. Principles of Corporate Governance. May 2002.

<sup>12</sup> American Bar Association. Report of the American Bar Association Task Force on Corporate Responsibility. March 31, 2003.

<sup>13</sup> American Bar Association. Corporate Directors Guidebook. 2004, 4th Edition.

<sup>14</sup> These policies include: The DC Business Corporation Act, The National Passenger Railroad Corporation Bylaws, and the Board Adopted Statement of Policy.

## **Exhibit A. Scope and Methodology**

## EXHIBIT B. AMTRAK BOARD MEMBERSHIP, 2002 - PRESENT

Table 2 displays the names of all Amtrak board members since 2002 as well as the month of the confirmation (or recess appointment) and expiration of each member's appointments.

**Table 2. Amtrak Board Membership 2002-Present**

<b>Board Member</b>	<b>Term</b>
R. Hunter Biden*	July 2006-Present
Sylvia A. de Leon	January 1994-June 1998 July 1999-August 2004
Michael S. Dukakis	June 1998-June 2003
Floyd Hall*	July 2004-December 2005 January 2006-Present
A. Linwood Holton	September 1998-September 2003
David M. Laney*	November 2002-Present
Donna McLean*	June 2006-Present
Norman Mineta	July 2001-July 2006
Mary Peters*	October 2006-Present
Amy Rosen	February 1996-June 1998 September 1998-September 2003
John Robert Smith	July 1998-June 2003
Enrique Sosa	August 2004-December 2005 January 2006-February 2007

\*Current Amtrak board members

The Secretary of the Department of Transportation is a voting member of the Board. However, the Secretary may designate a representative to sit on the Amtrak Board of Directors. Table 3 displays Secretarial designees since 2002.

**Table 3. Secretarial Designees**

<b>Designee</b>	<b>Term</b>
Michael Jackson	June 2001-August 2003
Allan Rutter	August 2003-June 2004
Kirk Van Tine	June 2004-December 2004
Jeff Rosen	January 2005-June 2006
Joseph Boardman	October 2006-Present

**EXHIBIT C. MAJOR CONTRIBUTORS TO THIS REPORT****THE FOLLOWING INDIVIDUALS CONTRIBUTED TO THIS REPORT:**

<b><u>Name</u></b>	<b><u>Title</u></b>
David Tornquist	Assistant Inspector General for Competition and Economic Analysis
Mitchell Behm	Program Director
Debra Mayer	Project Manager
Andrew Surlis	Analyst
Lisa Mackall	Auditor
Dawn Boswell	Analyst

## APPENDIX. RESPONSE FROM AMTRAK'S BOARD OF DIRECTORS

NATIONAL RAILROAD PASSENGER CORPORATION

60 Massachusetts Avenue, NE, Washington, DC 20002  
tel 202 906.3740 fax 202 906.2921

**David M. Laney**  
Chairman, Amtrak Board of Directors



September 11, 2007

The Honorable Calvin L. Scovel III  
U. S. Department of Transportation  
Office of the Inspector General  
1200 New Jersey Avenue, SE  
7th Floor - West Building  
Washington, DC 20590

Re: National Railroad Passenger Corporation (Amtrak) Comments on U.S. Department of Transportation, Office of Inspector General report, *"Amtrak's Board Of Directors Provides Leadership To The Corporation But Can Improve How It Carries Out Its Oversight Responsibilities"*.

Dear Inspector General Scovel:

Amtrak agrees with much of the analysis and all but one of the recommendations of the U.S. Department of Transportation, Office of Inspector General (DOT OIG) report regarding the Amtrak Board of Directors entitled *"Amtrak's Board Of Directors Provides Leadership To The Corporation But Can Improve How It Carries Out Its Oversight Responsibilities."* In particular, we agree that there is room for improvement in the Board's oversight of management's implementation of Board policy direction for Amtrak; we would concede as well that there always will be. Amtrak also agrees with the conclusions of the DOT OIG that, within practical tolerances, the Board is in compliance with its governing documents, that it has adequate tools to oversee and hold Amtrak management accountable, and that Board expenses both comply with Amtrak guidelines and are reasonable.

The DOT OIG report appropriately recognizes certain reasons why the Amtrak April 2005 Strategic Initiatives document was not fully developed into a plan detailing performance measures. Those obstacles delaying that development are past, and Amtrak management and senior staff now have greater resources, capacity and focus on that aspect of planning. Moreover, the scope and quality of information necessary for the development of such detail have been materially improved.

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*September 11, 2007*  
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Amtrak agrees with the DOT OIG that the Board has tools to enable adequate oversight and accountability. To the tools referenced by the OIG, we would add that each Board member has access, through Board meetings and newly reconstituted Board committees (each with assigned management support), to Amtrak senior managers for information and perspective, and the current Board is not reticent in utilizing such access.

Amtrak agrees fully that the Board is not in a position to review Amtrak's capital program on a project by project basis, or to approve each capital project on the scale of \$1 million; yet it is critical for the Board's fulfillment of its fiduciary duties, and otherwise in the company's interests, that the Board develop an understanding of, and ultimately approve, the process by which Amtrak identifies, prioritizes, budgets and implements capital projects, as well as an understanding of the schedule and anticipated risks and outcomes of chosen priorities. The Board, working with senior management (including Amtrak's new Chief Financial Officer), is developing a revised approach to inform the Board about Amtrak's capital program, including priorities and budget, and capital reprogrammings and a revised method of bringing the program, its budget and necessary reprogrammings to the Board both for informational purposes and for approval. It is expected that the Board will consider and adopt revisions to its current approach and methodology no later than the October 2007 Board meeting. The Board Statement of Policy will be revised appropriately.

Regarding the DOT OIG's apparent reservations regarding Amtrak's updated 2007 strategic planning document because of its 15 month time frame (as opposed to the five years of the April 2005 Strategic Initiatives document), the Board concluded that the shorter time frame, with more granular measures than a multi-year plan would allow, would be of greater value to Amtrak management at this point, was more practicable considering Amtrak's information systems constraints, and would provide an important foundation for a subsequent, longer-term strategic planning document.

Finally, with respect to the specific recommendations contained in the DOT OIG report, Amtrak's comments are as follows:

- 1. Amend its Statement of Policy to require at least an annual review of (a) the adequacy and timeliness of the information it receives and (b) its own effectiveness in carrying out its fiduciary responsibilities.*

The Board agrees with this recommendation and intends to have the Board Statement of Policy so amended at the Board's October 2007 meeting. At that same meeting, the Board expects to approve a form of annual evaluation of the adequacy and timeliness

*The Honorable Calvin L. Scovel III*  
*September 11, 2007*  
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of the information it receives as well as its own effectiveness in carrying out Board responsibilities.

2. *Amend its Statement of Policy to provide better guidance and more flexibility with respect to the types of actions requiring its approval.*

Both the Amtrak Board and management agree with this recommendation, and as the DOT OIG is aware, Board members and management personnel have begun the reassessment and revision of the types and financial/value levels of matters requiring Board approval.

3. *Amend its Statement of Policy to require (a) management to submit for the Board's approval an annual, multiyear strategic plan with measurable goals and performance objectives and (b) Amtrak to publish an annual evaluation of its performance against the previous year's goals.*

The Amtrak Board and management consider part (a) of this recommendation a valuable suggestion if amended to eliminate unnecessary burden without affecting the substance and merit of a multi-year strategic plan approach. Practically speaking, the process of, each year, developing a full multi-year strategic plan of a level of quality satisfactory to the Board would present capacity challenges without a material added value return. But a multi-year strategic plan which, once fully developed, would be updated and extended periodically (or more if possible and needed to lay out strategic direction) is an excellent and achievable suggestion. Whether the process would occur annually or bi-annually is a matter to be considered by the Amtrak Board.

Amtrak does not concur with part (b) of this DOT OIG recommendation – that Amtrak publish an annual evaluation of its performance against the previous year's goals. Such a requirement would only add to Amtrak's administrative burdens without offering new information or analysis to the DOT, Congress or the public. Virtually all information relating to Amtrak's fiscal and operating performance, including year over year, is transparent to and available to DOT, Congress and the public through Amtrak's required reports and filings, through Federal Railroad Administration, DOT and Congressional oversight (including Congressional hearings), and through Amtrak's web site, annual report and public affairs/corporate communications offices and resources. Respectfully, we see no added value in this proposal.

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*September 11, 2007*  
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In closing, our appreciation of the effort on your part in examining Amtrak Board functions and highlighting opportunities for improvements. We look forward to working with you going forward.

Sincerely,

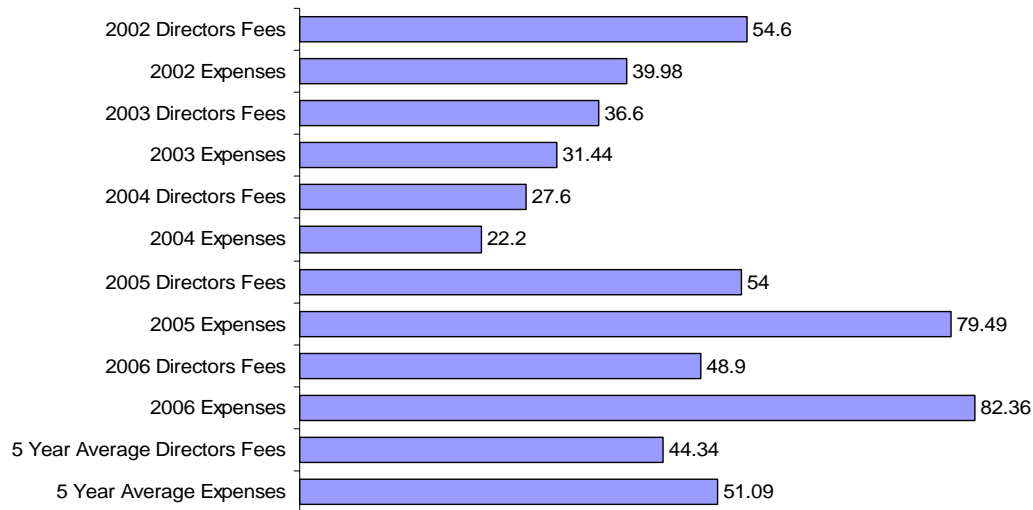
A handwritten signature in black ink, appearing to read "David M. Laney". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

David M. Laney  
*Chairman of the Board*

## 508 Compliant Charts and Tables

### Amtrak’s Board of Directors Provides Leadership to the Corporation But Can Improve How It Carries Out Its Oversight Responsibilities

**Figure 2. Amtrak Board Expenses by Type (2002 – 2006)**



**Data Table for Figure 2.**

	2002	2003	2004	2005	2006	5 Year Average
Directors Fees	\$54.60	\$36.60	\$27.60	\$54.00	\$48.90	\$44.34
Expenses	\$39.98	\$31.44	\$22.20	\$79.49	\$82.36	\$51.09
2002 Directors Fees	54.6					
2002 Expenses	39.98					
2003 Directors Fees	36.6					
2003 Expenses	31.44					
2004 Directors Fees	27.6					
2004 Expenses	22.2					
2005 Directors Fees	54					
2005 Expenses	79.49					
2006 Directors Fees	48.9					
2006 Expenses	82.36					
5 Year Average Directors Fees	44.34					
5 Year Average Expenses	51.09					