



GAO

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United States Government Accountability Office  
Washington, DC 20548

March 4, 2005

The Honorable John F. Tierney  
House of Representatives

Subject: *Activities of the Amtrak Inspector General*

Dear Mr. Tierney:

In a prior report<sup>1</sup> we suggested that the consolidation of certain offices of inspectors general (IG) could strengthen the independence, efficiency, and effectiveness of the IGs in the federal government. Based on the potential for benefits and the similarities in their basic missions, we identified the Amtrak Office of Inspector General and the Department of Transportation (DOT) Office of Inspector General as among those Congress might consider for consolidation. We reported that by consolidating the office of the Amtrak IG with the larger DOT IG office, the resulting office would have a larger budget and more staff with which to achieve its mission. Potential benefits include an increased ability to improve the allocation of human and financial resources and to attract and retain an adequate and skilled workforce. We concluded that consolidation of smaller IG offices, if implemented properly with specific plans to mitigate potential weaknesses, is a means of achieving economies of scale and greater independence and of providing critical mass and range of skills, particularly given the ever increasing need for technical staff with specialized skills.

This report responds to your request that, building on our prior report, we review the nature of the audit and investigative activities of the Amtrak IG and further consider the potential for consolidating the Amtrak IG office with the DOT IG office. As agreed with your staff, we are providing information on the types of investigations pursued by the IG, the subjects that are the focus of IG investigations, the sources of allegations and information that led to investigations, and the results of the IG's investigations. We also agreed to report any trends or changes indicated by our analysis of Amtrak IG activity. In addition to investigations, we agreed to provide information on the types of audits conducted and audit reports issued by the IG and on the overall results of these audit efforts. We also identified any trends indicated by the audit results. We also agreed to discuss specific information in the context of our previous report regarding the potential for consolidating the Amtrak and DOT IG offices.

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<sup>1</sup> GAO, *Inspectors General: Office Consolidation and Related Issues*, GAO-02-575 (Washington, D.C.: Aug. 15, 2002).

## Results in Brief

We found that, consistent with an increase in investigative budgets and staff, the number of investigations opened by the Amtrak IG increased by 29 percent over the 5-year period we reviewed. This increase was mostly in cases directed at fraud, theft, embezzlement, and other criminal activity by Amtrak employees. Our review of closed investigations over a 3-year period that included an 80 percent increase in the IG's fiscal year 2003 budget showed that both Amtrak union employees and Amtrak management officials were increasingly the subjects of investigations. However, as the IG's overall investigative activity increased, the Amtrak union employees as subjects grew as a percentage of total investigations while Amtrak management as subjects remained mostly constant. Also, for these 3 years, both Amtrak union employees and Amtrak management increased as the sources of allegations leading to investigations. As a total of closed investigations, Amtrak union employees increased as sources of allegations slightly more than Amtrak management.

Regarding audit activity, the number of Amtrak IG audits has not changed significantly over the 5-year period, but there has been a discernable shift toward audits focused on internal operations, with fewer procurement-related audits. The IG stated that this change in focus stems from the office's perception of increased risk associated with cash transactions and ineffective controls as indicated by the increase in investigative cases.

Consistent with the conclusions of our previous report, consolidation would likely provide opportunities to strengthen the ability of the combined Amtrak and DOT IG offices to improve the allocation of human and financial resources and to attract and retain a workforce with the talent, multidisciplinary knowledge, and up-to-date skills needed to ensure that the IG's office is equipped to achieve its oversight mission. Economies of scale and an enhanced critical mass of skills and resources could be provided by the relative size of the DOT IG office providing oversight. In addition, consolidation would enhance the independence of Amtrak oversight. At the same time a targeted plan that addresses the unique characteristics of Amtrak and the resulting needs for oversight would need to be put in place if the DOT and Amtrak IG offices were consolidated, in order to mitigate the potential risk of a loss of oversight in significant areas related uniquely to Amtrak. Amtrak is increasingly being viewed in the context of an overall transportation strategy involving highways, air travel, railroads, and environmental issues. Consolidation could serve to strengthen IG capacity to address these issues in that context.

## **Scope and Methodology**

We obtained information about the Amtrak IG's investigations and audits from the IG's most recent 5 years of semiannual reports to Congress covering fiscal years 2000 through 2004. From this information we summarized the categories used by the IG to identify investigative cases opened over this period, identified trends or significant changes in the investigations, and summarized the results. We obtained additional information from the IG's closed investigative case files for the 3 fiscal years 2002 through 2004, to identify the subjects of investigations and the sources of the information leading to investigations. This allowed us to identify any significant trends or changes in the subjects of investigations and in the sources of the allegations leading to investigations over this period. Open case files were not reviewed to avoid any impairment to the integrity of the investigations for possible future prosecution. The information from closed investigations could vary from that found in open cases. This 3-year period was selected due to the arrival of a new Amtrak CEO in May 2002 and an 80 percent increase in the IG's budget in fiscal year 2003.

We also reviewed the semiannual reports to obtain information about the focus of the IG's audits and to identify any significant trends or changes in the audits over fiscal years 2000 through 2004. We selected individual audit reports to assist in determining any trends in reporting and used IG planning and budget documents to analyze changes in IG resources. We interviewed Amtrak and DOT IG officials regarding the nature of the audit and investigative activities in their offices. We also obtained information related to the Amtrak IG and DOT IG offices and analyzed that information in the context of our previous report that addressed the potential for consolidating IG offices across the federal government. In addition, we obtained the views of both the Amtrak and DOT IGs on the potential effects of consolidating their offices. We performed our audit from July 2004 through January 2005 in accordance with U.S. generally accepted government auditing standards. We provided draft copies of this report to the Amtrak IG for comments, which are included in their entirety in this report along with our response. The DOT IG was briefed on the contents of this report but provided no formal comments.

## **Background**

Amtrak was created by the Rail Passenger Service Act of 1970 to provide intercity passenger rail service because railroads existing at that time found such service unprofitable. However, Amtrak's financial condition has never been strong and it has been on the verge of bankruptcy several times. With a history of operating losses, Amtrak is highly dependent on federal government subsidies to sustain its operations. To illustrate, while Amtrak had estimated ticket sales of about \$1.3 billion in fiscal year 2002 and about \$1.2 billion in fiscal year 2003, Amtrak reported net operating losses of approximately \$1.1 billion and \$1.3 billion, respectively, for these years.

Funding to address Amtrak's losses is provided through DOT's appropriations, which require the Secretary of Transportation to make quarterly grants available to Amtrak to cover operating losses and capital expenditures. Each Amtrak grant request to the Secretary must be accompanied by a detailed financial analysis, revenue projection, and capital expenditure projection justifying federal support. In addition, Amtrak is required to transmit to the Secretary and to appropriate House and Senate committees a comprehensive annual business plan. Congress approved a total of \$1.2 billion for Amtrak's quarterly grants for fiscal year 2004. There were about 21,500 total Amtrak employees in fiscal year 2004, with 18,900 Amtrak union employees and 2,600 Amtrak management employees.

The Amtrak Office of Inspector General was established by the Inspector General Act Amendments of 1988, Public Law 100-504, to provide independent audits and investigations; to promote economy, efficiency, and effectiveness; and to prevent and detect fraud and abuse in Amtrak programs and operations. The current Amtrak IG took office on April 3, 1989, after appointment by the Amtrak Chairman. This position is one of 28 IGs in designated federal entities (DFE) who are appointed by their agency heads, in contrast to the 29 IGs who are nominated by the President and confirmed by the Senate. Regardless of their appointment process, these statutory IGs have basically the same duties and responsibilities for the oversight of their respective agencies as set forth in the Inspector General Act of 1978, as amended.

In fiscal year 2003, the Amtrak IG's budget increased by almost 80 percent from \$6.3 million in the prior fiscal year, to \$11.3 million. Most of this increase was for additional investigative staff to address identified risks, and for professional contracts, computer equipment, and software. For fiscal year 2004 the Amtrak IG had 88 staff and a \$12.5 million budget.

The Amtrak IG's Office of Investigations receives allegations of misconduct from various sources including employees, confidential informants, congressional sources, federal agencies, and other third parties. The IG estimates that \$17 million in ticket sales occurred on board Amtrak trains in fiscal year 2004. Of these sales, the IG estimates that over \$1 million in revenues were lost due to failures to charge proper on-board fares. Also, because approximately 70 percent of these sales are cash transactions, there is a risk of embezzlement or theft. In addition, Amtrak has 250 staffed ticket offices nationwide that handle in excess of \$250 million in cash annually, thus making this an additional area for IG attention.

In 1996 the IG's Revenue Protection Unit became a part of the IG's Office of Investigations to assist IG investigators in detecting theft, fraud, and irregularities on board Amtrak trains. The IG also created an Office of Security Oversight in 2004 to provide continual review of Amtrak's security preparedness and counter terrorism programs. In fiscal year 2004, the Office of Investigations had a total of 35 staff and hired outside consultants on an as-needed basis for a total of \$160,500.

The Amtrak IG's Office of Audits is responsible for conducting independent reviews of Amtrak's internal controls, overseeing and assisting in audits of Amtrak's financial statements, reviewing information technology programs and information security, providing assistance to and oversight of Amtrak financial operations, reviewing certain procurements and material acquisitions, and monitoring compliance with laws and regulations. The Office of Audits had a total of 44 staff in fiscal year 2004, half of the IG's total staff. The Amtrak IG also provides oversight of Amtrak programs through the Inspections and Evaluations Unit. This unit has 8 staff members who focus on management actions and performance in specific areas and provide recommendations to improve the efficiency or effectiveness of the effort in these areas. Evaluations include measuring Amtrak's compliance with legislation, congressional directives, and corporate policies.

The DOT IG has a substantive role in assessing Amtrak's financial performance as required by the Amtrak Reform and Accountability Act of 1997.<sup>2</sup> This act directs the Secretary of Transportation to contract annually for an independent assessment of Amtrak's need for federal financial support. The act also requires the DOT IG to oversee this contract and to reassess Amtrak's financial performance and needs for every year after 1998 in which Amtrak requests federal financial assistance. In 2002, the DOT IG concluded that Amtrak had not made sufficient progress in financial improvements to achieve and sustain operating self-sufficiency. In 2004, the DOT IG concluded that the existing Amtrak system was not sustainable at current funding levels. The DOT IG had fiscal year 2004 budget authority of about \$63 million and 430 full time staff to provide independent audits and investigations at DOT, including broad financial performance and requirements audits of Amtrak.

### **Amtrak IG Investigations**

The Amtrak IG's Office of Investigations reported opening 798 investigative cases during fiscal years 2000 through 2004, with the number of investigations increasing from 157 cases in fiscal year 2000 to 203 in fiscal year 2004, for an increase of 29 percent. Of the total reported investigations for the period, 47 percent were directed at fraud, theft, and embezzlement. The remaining cases were spread across investigations categorized by the IG as other criminal issues, false time and attendance records, mismanagement, abuse of position, noncriminal allegations, false claims, kickbacks, waste, and other irregularities.

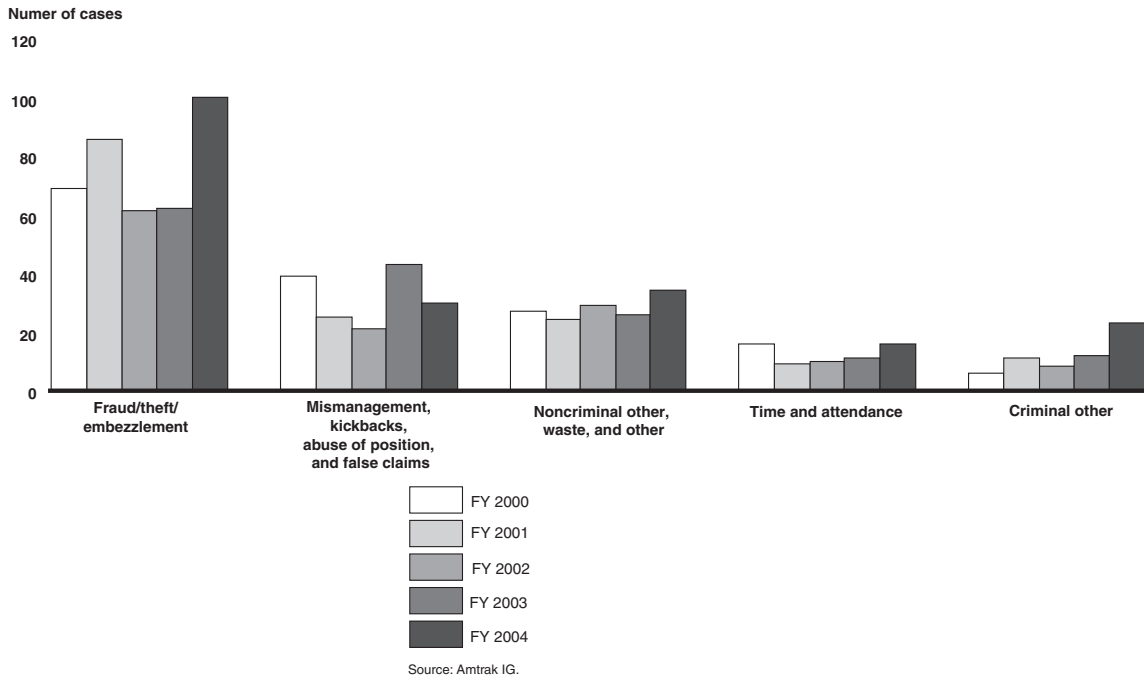
Comparing fiscal year 2000 to fiscal year 2004, the number of investigations opened that address fraud, theft, and embezzlement increased from 69 to 100 cases. The number of criminal investigations increased from 6 to 23. (See fig. 1 and table 1). These investigative cases included, among other things, wrongdoing by Amtrak conductors, ticket offices, vendors, and food service employees resulting in criminal indictments, guilty pleas, felony prosecutions, and pending civil and criminal

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<sup>2</sup> Public Law 105-134, 111 Stat. 2570 (December 2, 1997).

referrals. The IG has reported about \$6 million in fines, penalties, restitutions, and other fees over the 5-year period.

**Figure 1: Classification of Investigative Cases Opened by Type from Fiscal Years 2000 through 2004**



**Table 1: Number and Percentage of Investigative Cases Opened by Type from Fiscal Years 2000 through 2004**

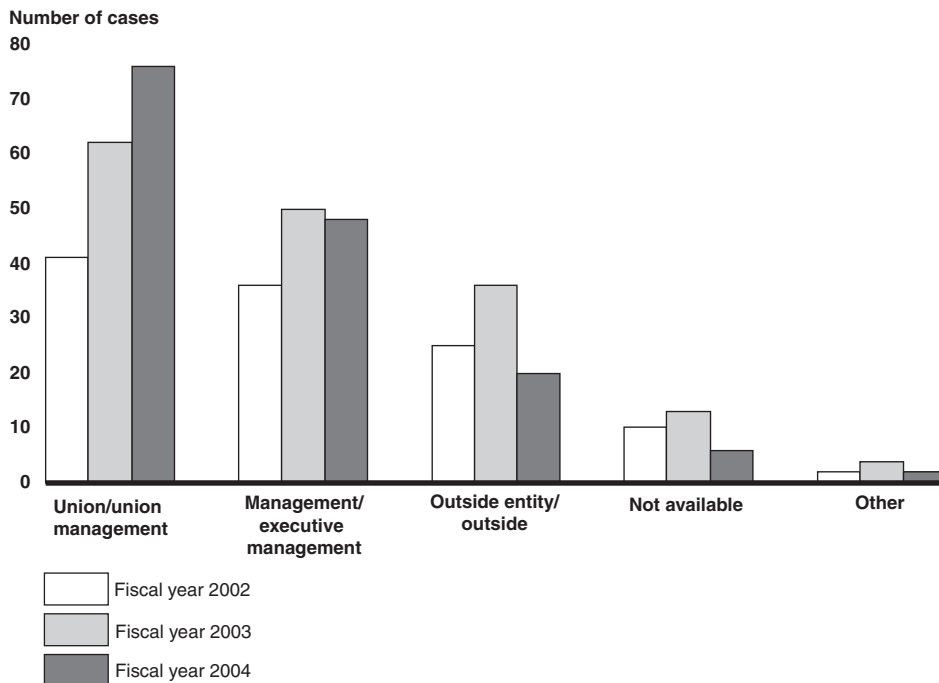
Amtrak Office of Inspector General Classification	FY 2000		FY 2001		FY 2002		FY 2003		FY 2004	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Fraud/theft/embezzlement	69	44	86	56	61	47	62	40	100	49
Mismanagement, kickbacks, abuse of position, false claims	39	25	25	16	21	16	43	28	30	15
Non-criminal other, waste, other	27	17	24	15	29	23	26	17	34	17
Time & attendance	16	10	9	6	10	8	11	7	16	8
Criminal other	6	4	11	7	8	6	12	8	23	11
<b>Totals</b>	<b>157</b>	<b>100</b>	<b>155</b>	<b>100</b>	<b>129</b>	<b>100</b>	<b>154</b>	<b>100</b>	<b>203</b>	<b>100</b>

Source: Amtrak IG

Our review of information from investigations closed during fiscal year 2004 indicated that 50 percent of the subjects investigated were Amtrak union employees. For the same year, we found that Amtrak management officials were subjects of 32 percent of the investigations. Of the remaining cases, outside entities such as contractors were the subject of 13 percent of the investigations. Four percent of the case files did not identify the subjects of investigation, and one percent of cases had other subjects.

To compare how the subjects of investigations may have changed before and after the IG's increase in investigative staff and budgets, we compared information from the closed investigations for fiscal years 2002, 2003, and 2004 to analyze trends in the focus of the IG's investigations. We found that Amtrak union employees were subjects of investigations in 41 cases closed in fiscal year 2002 and 76 cases in 2004, an increase of 85 percent. As a percentage of all closed investigations, Amtrak union employees increased as subjects of investigations from 36 percent to 50 percent. For this time period, we found that Amtrak management officials were subjects of investigations in 36 cases in fiscal year 2002 and 48 cases in fiscal year 2004, an increase of 33 percent, but with no appreciable increase as a percentage of total investigations for those years which stayed fairly constant at about 30 percent. (See fig. 2 and table 2).

**Figure 2: Comparison of Subjects of Allegations in Closed Cases from Fiscal Years 2002 through 2004**



Source: Amtrak IG.

**Table 2: Number and Percentage of Closed Cases by Subject of Allegations from Fiscal Years 2002 through 2004**

Amtrak Office of Inspector General classification of subjects	FY 2002		FY 2003		FY 2004	
	No.	Percent	No.	Percent	No.	Percent
Union/union management	41	36	62	38	76	50
Management/executive management	36	31	50	30	48	32
Outside entity/outside	25	22	36	22	20	13
Not available	10	9	13	7	6	4
Other	2	2	4	3	2	1
<b>Totals</b>	<b>114</b>	<b>100</b>	<b>165</b>	<b>100</b>	<b>152</b>	<b>100</b>

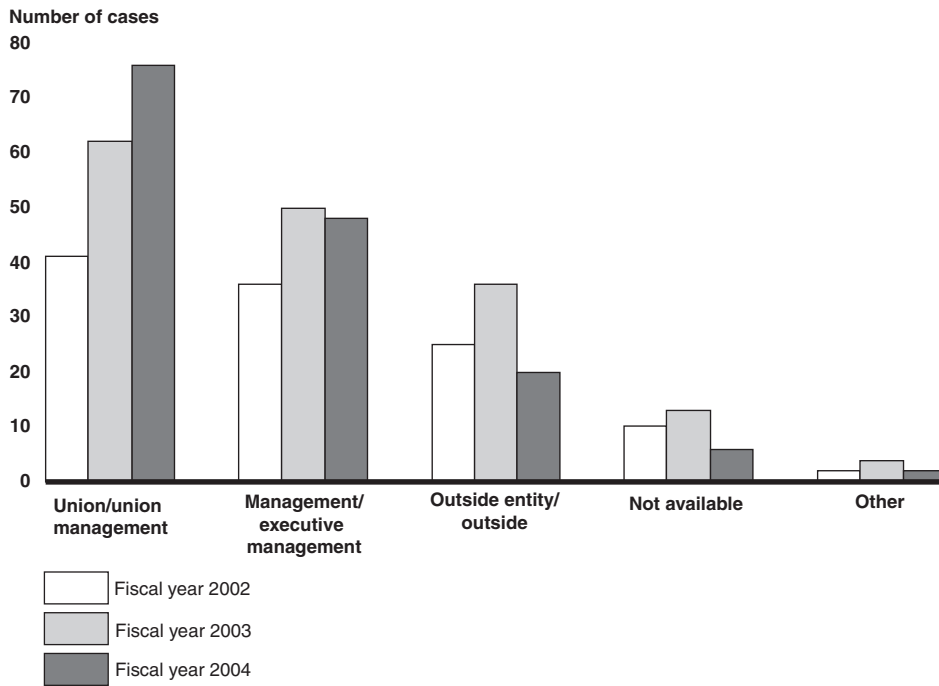
Source: Amtrak IG

Note: The category identified as Union/union management refers to Amtrak union employees, and the category identified as Management/executive management refers to Amtrak management.

To analyze trends in the sources of allegations, we obtained information from the IG's closed investigations for fiscal years 2002, 2003, and 2004. This information included cases where the sources of allegations were confidential or otherwise unavailable. For those cases where the sources were available, we found that Amtrak union employees were increasingly the sources of allegations, from 21 cases in fiscal year 2002 compared to 38 cases in fiscal year 2004. As a percentage of total closed cases, the sources of allegations from Amtrak union employees increased from 18 percent to 25 percent for those years. In addition, Amtrak management increased as a source of allegations, from 41 cases in fiscal year 2002 to 60 cases in fiscal year 2004. As a percentage of total closed cases, the source of allegations from management increased slightly from 36 percent to 39 percent. (See fig. 3 and table 3).



**Figure 3: Comparison of Sources of Allegations in Closed Cases from Fiscal Years 2002 through 2004**



Source: Amtrak IG.

**Table 3: Number and Percentage of Closed Cases by Source of Allegations from Fiscal Years 2002 through 2004**

Amtrak Office of Inspector General classification of sources	FY 2002		FY 2003		FY 2004	
	No.	Percent	No.	Percent	No.	Percent
Management/executive management	41	36	55	33	60	39
Union	21	18	39	24	38	25
Anonymous/confidential	20	18	29	18	24	16
Not available	14	12	10	6	3	2
Office of Inspector General	8	7	13	8	8	5
Outside entity/other	10	9	19	11	19	13
<b>Totals</b>	<b>114</b>	<b>100</b>	<b>165</b>	<b>100</b>	<b>152</b>	<b>100</b>

Source: Amtrak IG

Note: The category identified as Management/executive management includes all Amtrak management sources and the category identified as union includes all union sources.

## Amtrak IG Audits

During the 5-year period, fiscal years 2000 through 2004, the Amtrak IG issued 246 audit reports that showed an evolving change in the IG's audit focus. To illustrate, in fiscal year 2004, 47 percent of all audits were of internal operations, which include environmental issues, inventory, ticket sales, and station controls. Also in fiscal year 2004, 29 percent of the IG's audits were for procurement support, which includes audits of questioned costs, contractor labor rates, scope of work, and other contracting issues. In contrast, for fiscal year 2000 the IG's audits of internal operations were 25 percent of all audits and procurement support was 46 percent of all audits. To partially explain this switch in emphasis, the IG stated that an increased focus on Amtrak's internal operations is a result of the risk associated with cash transactions and the increase in investigative cases which indicates a lack of effective internal controls. The remaining IG focus includes audits of labor, material, and equipment from various freight railroads and terminal companies that support Amtrak's passenger services. Additional IG audits addressed Amtrak leases and licensing agreements, Amtrak's self-insured health care plans for its employees, and information technology. (See table 4).

**Table 4: Number and Percent of Audit Reports by Subject Matter from Fiscal Years 2000 through 2004**

Classification	FY 2000		FY 2001		FY 2002		FY 2003		FY 2004	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Internal operations	15	25	17	33	13	32	17	39	24	47
Procurement support	27	46	20	39	17	41	15	34	15	29
Contractor audits	4	7	7	14	2	5	6	14	6	12
Self-insured health care program	3	5	3	6	3	7	4	9	1	2
Other	10	17	4	8	6	15	2	4	5	10
<b>Totals</b>	<b>59</b>	<b>100</b>	<b>51</b>	<b>100</b>	<b>41</b>	<b>100</b>	<b>44</b>	<b>100</b>	<b>51</b>	<b>100</b>

Source: Amtrak IG

Over the 5-year period, the Amtrak IG's audits questioned about \$75 million in costs where the IG found either violations of laws, regulations, contracts, grants, or agreements; or that the expenditure of funds for an intended purpose was unnecessary or unreasonable. In addition, for the same period the IG reported about \$15 million in unsupported costs that do not have adequate documentation, and \$12.6 million in funds to be put to better use where the IG has identified inefficiencies.

## Consolidation of Amtrak IG and DOT IG

In our August 2002 report, we concluded that the consolidation of selected IG offices could, if implemented properly, serve to enhance the overall independence, economy, efficiency, and effectiveness of the IG community. We also recognized potential risks of consolidation that would have to be mitigated through proactive and targeted actions in order for the benefits to be realized without adversely affecting audit coverage in designated federal agencies. Our prior report also provided matters for congressional consideration that included amending the IG Act to consolidate IGs in designated federal entities with IGs appointed by the President and confirmed by the Senate, where the IGs have related agency missions or where potential benefits to IG effectiveness can be shown. Among examples of potential consolidations provided in the prior report was the consolidation of the Amtrak IG and DOT IG offices because of the related missions of their agencies and the resulting increase in the independence of Amtrak oversight.

The DOT IG already has considerable oversight responsibility for Amtrak operations and financial matters. In accordance with the requirements of the Amtrak Reform and Accountability Act of 1997, the DOT IG performs financial performance audits of Amtrak. The DOT IG also considers Amtrak's role as part of an overall transportation strategy that includes highways, airports, and railroads. The DOT IG concluded in the 2004 Amtrak financial performance report that the existing Amtrak system is not sustainable at current funding levels and that Amtrak could languish as an undeveloped alternative to congested roads and airports.<sup>3</sup>

Given the related agency missions and potential benefits in improved oversight, we continue to believe that consolidation of the Amtrak and DOT IGs is a viable action for congressional consideration. However, while both the Amtrak and DOT IGs recognize a potential enhancement to independent oversight through consolidation, there are agency-specific considerations that would need to be addressed. For example, the key risk pointed out by the Amtrak IG would be the initial lack of first-hand knowledge and day-to-day contact with Amtrak operations and personnel on the part of DOT IG staff. This potential risk is based on an assumption of the loss or relocation of Amtrak IG employees and a resulting loss of Amtrak institutional experience, a situation that may not occur, depending on how the consolidation is implemented.

Other unique aspects of Amtrak would also need to be considered if the IG offices were consolidated, including the following:

- Amtrak is a service organization with extensive decentralized operations.

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<sup>3</sup> DOT IG, *Assessment of Amtrak's 2003 and 2004 Financial Performance and Requirements*, National Railroad Passenger Corporation, Report Number: CR-2005-013 (Washington, D.C.: Nov. 18, 2004).

- Because Amtrak operations involve extensive cash handling at decentralized levels, a focus on investigative activities at these levels is important.
- A heightened focus on the security and safety of Amtrak operations has become increasingly important since September 11, 2001.
- Amtrak functions in a mixed private/public sector model.

A targeted plan that deals with the unique characteristics of Amtrak and the resulting needs for IG oversight would have to be put in place if the DOT and Amtrak IG offices were consolidated. We believe that by mitigating potential weaknesses, consolidation need not result in any material reduction in the oversight of Amtrak and has the potential to create more efficient and independent oversight. For example, the IG's day-to-day contact with Amtrak personnel and communication with the agency head can be successfully maintained as long as the IG has a physical presence at Amtrak and takes other proactive steps to mitigate any potential reduction in communication and audit coverage given the unique characteristics and oversight needs of Amtrak. A dedicated staff for Amtrak oversight issues would likely need to be maintained and a consolidated IG office would still need to carry out risk assessments of Amtrak activities. Currently, in addition to other cities, the DOT IG has an office in each metropolitan area where there is an Amtrak IG office. Therefore, the DOT IG's oversight of Amtrak could be planned to take advantage of the combined resource base in these metropolitan areas, thus achieving greater efficiency. Consolidation could also enable the larger DOT IG office to better target overall resources to areas of greatest value and risk to Amtrak operations.

The consolidation of the two IG offices could also enhance the independence of Amtrak audits and investigations. The Amtrak IG is appointed, and may be removed, by the head of Amtrak. In contrast, the DOT IG is nominated by the President and confirmed by the Senate, and may be removed only by the President. Appointment by the President with Senate confirmation has been recognized previously by Congress as a way to enhance IG independence. Typically, the further removed the appointment source is from the entity to be audited, the greater the level of independence. For example, the perceived limitation of the Federal Deposit Insurance Corporation IG's independence as an agency-appointed IG was recognized as a reason to convert the IG to appointment by the President with Senate confirmation.<sup>4</sup> In addition, the Tennessee Valley Authority IG was an agency-appointed IG, but was converted to appointment by the President with Senate confirmation to enhance the independence of that office.<sup>5</sup> Consolidation of the Amtrak IG with the DOT IG could also serve to enhance independence.

Other IG offices have also been consolidated. For example, through statute, the Department of State IG provides oversight of the Broadcasting Board of Governors and the International Broadcasting Bureau. There are also examples where oversight, provided by IGs appointed by the President and confirmed by the Senate,

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<sup>4</sup> Public Law 103-204, 107 Stat. 2369 (December 17, 1993).

<sup>5</sup> Public Law 106-422, 114 Stat. 1872 (November 1, 2000).

crosses several federal agencies. For example, the IG at the Agency for International Development is authorized by specific statutes to provide oversight of the Overseas Private Investment Corporation, the Inter-American Foundation, and the African Development Foundation.

### **Agency Comments and Our Response**

In commenting on a draft of this report, the Amtrak IG discussed the unique operations of his office, current Amtrak oversight, and his views about consolidation. The Amtrak IG stated that, while there are arguments for consolidation, there are also strong and practical reasons for keeping the Amtrak and Transportation IG offices separate.

In describing some of the unique aspects of Amtrak, the IG points out that Amtrak is a service organization in the business of national rail passenger service and operates in a mixed private sector/public sector environment. For example, the IG refers to Amtrak as a “de facto” government corporation that is exempt from most Office of Management and Budget circulars and many statutes that directly impact IGs. In addition, the IG points out that Amtrak is not subject to Federal Procurement Regulations, Amtrak employees are not under Federal Civil Service, and Amtrak financial statements are prepared according to generally accepted accounting principles used in the private sector.

The IG also discussed the independence of his office, stating that the resolution of reporting responsibility of the IG to the Chairman of the Amtrak Board has improved the IG’s independence. We agree that this is a positive development that should be maintained. The IG also stated that the quality of work of the Amtrak IG is enhanced by having an OIG presence within the organization itself, including attending many key staff meetings.

The Amtrak IG’s comment letter also includes additional analysis of his office’s investigative activities. The IG stated that investigations are driven by the allegations regardless of the source. For example, the IG pointed out that there has been a concentrated effort over the last few years to assess and investigate operations or circumstances where employees handle cash and that investigations have covered both Amtrak management and union employees. Our analysis also indicates that both Amtrak management and union employees have been subjects of IG investigations.

We agree that there are arguments both for and against consolidation in this case. The IG’s comments and our report highlight many of the specific considerations that would need to be taken into account if the IG offices were to be consolidated. These considerations represent specific trade-offs that would need to be weighed in any consolidation decision. In this regard, we continue to believe that a targeted plan that deals with the unique characteristics of Amtrak could be put in place to mitigate potential risks and enhance the oversight of Amtrak through consolidation with the DOT IG. For example, our report recognizes that cash handling at decentralized levels and a heightened focus on security and safety are examples of Amtrak

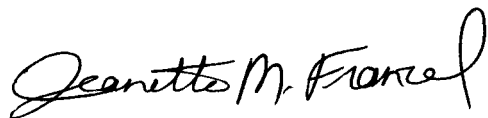
characteristics that would need to be addressed by any office consolidation. Our report also states that the IG's day-to-day contact with Amtrak personnel and communication with the agency head can be successfully maintained as long as the IG has a physical presence at Amtrak and takes other proactive steps to mitigate any potential reduction in communication and audit coverage. In addition, we noted that a dedicated staff for Amtrak oversight issues would likely need to be maintained with an understanding of Amtrak's unique operating environment.

Given the related agency missions and potential benefits of consolidation discussed in our August 2002 report and this report, we continue to believe that the consolidation of the Amtrak and DOT IGs is a viable action for congressional consideration. At the same time, as discussed in our report and the IG's comments, the unique characteristics of Amtrak and the related needs for oversight would need to be specifically addressed for any consolidation to be fully effective.

As agreed with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after its issuance date. At that time, we will send copies to the Amtrak IG; the DOT IG; the Deputy Director for Management of the Office of Management and Budget; the Chairman and Co-Chairman of the Senate Committee on Commerce, Science and Transportation; the Chairman and Ranking Democratic Member of the House Committee on Transportation and Infrastructure; other congressional committees; and interested parties. After our final distribution this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions or would like to discuss this report please contact me at (202) 512-9471 or by e-mail at [franzelj@gao.gov](mailto:franzelj@gao.gov), or Jackson Hufnagle, Assistant Director, at (202) 512-9470, or by e-mail at [hufnaglej@gao.gov](mailto:hufnaglej@gao.gov).

Sincerely yours,

A handwritten signature in black ink that reads "Jeanette M. Franzel". The signature is written in a cursive, flowing style.

Jeanette M. Franzel  
Director  
Financial Management and Assurance

Agency Comments from the Amtrak Inspector General

NATIONAL RAILROAD PASSENGER CORPORATION  
Inspector General, Investment, 1000 North 17th Street, N.W., Suite 410, Washington, D.C. 20036



February 24, 2005

Jeanette M. Franzel  
Director  
Financial Management and Assurance  
United States Government Accountability Office  
Washington, DC 20548

Dear Ms. Franzel:

Thank you for your draft letter and report related to the audit and investigative activities of the Amtrak Office of Inspector General (Amtrak OIG) and the issue of consolidating the Amtrak OIG with that of the Department of Transportation Inspector General (DOT-IG). My response is bifurcated into addressing: (A) the issue of consolidation and (B) audit and investigative activities.

**A. OIG CONSOLIDATION CONSIDERATIONS**

My discussion concerning the issue of consolidation reflects generally the presentation or discussions which the Amtrak OIG presented to GAO during your inquiry, with a supplementation with regards to recent developments. Thus, it does not present many other matters which were not previously discussed or presented to you. However, because the report does not address directly all of the points which we made, this response provides for a more complete record.

The espoused goal of a consolidation of the Amtrak OIG with the DOT-OIG would be more effective oversight of Amtrak's operations and programs and better use of limited OIG resources. Arguably, this goal would be achieved by having a combined OIG operation that would operate with greater independence, improve the quality of work product, and make more effective use of limited OIG resources.

While there are arguments for consolidation, there are strong, cogent and practical reasons for keeping the OIGs separate. Additionally, there are ways in which the Amtrak OIG's independence and OIG's effectiveness can be improved without consolidation; and efforts have been recently implemented to effect these changes, as set forth briefly below.

Any discussion of consolidation must include an examination of the operating environments for the entities being overseen. Within the global OIG community, all OIGs operate under identical statutory authority, Inspector General Act of 1978 (as amended); however, the OIGs operate in three different environments. Some OIGs

oversee “grant agencies” and grant administration. Other OIGs oversee regulatory agencies and are concerned with the efficacy of enforcement activities. And a few OIGs oversee predominantly “service organizations” such as SSA, VA, etc. Within some cabinet-level departments, there may be some combination of these activities, but generally most agencies have primary missions around one of the three activities. This means that OIGs adapt their oversight activities, and roles and responsibilities, to best suit their operating environment.

***Background:***

Amtrak is clearly a “service organization” in the business of national rail passenger service. Amtrak is a private corporation incorporated under District of Columbia laws, but, at the same time, Amtrak is a ‘de facto’ government corporation, with almost 90 percent of its assets under lien-hold (preferred stock) interest of DOT. The President of the United States appoints all of Amtrak’s Board of Directors, with confirmation by the Senate. Amtrak is exempt from most OMB circulars and many statutes that directly impact OIGs (CFO Act, FISMA, GPRA, Privacy Act) and, Amtrak is not subject to Federal Procurement Regulations. Amtrak is considered a Class I. Railroad, and the majority of employees are covered by collective bargaining and employment under the Railway Labor Act; Amtrak employees are not under Federal Civil Service, so their jobs are not covered by OPM or the Merit System Protection Board. Amtrak maintains its business and financial records, and prepares financial statements, in accordance with GAAP. Amtrak is self-insured for purposes of providing medical and health benefits to its workforce.

***Practical Implications:***

For the Amtrak OIG, this operating environment results in adjusting audits, investigations, and evaluations approaches to comply with IG Act requirements in a mixed private sector/public sector environment. Let me provide several examples.

- Although Amtrak is not subject to the CFO Act, the IG works with the Board Audit Committee on the selection and appointment of the external auditor. The Board has also required the company to comply with all Sarbanes-Oxley (SOX) reporting requirements, and the OIG serves as a senior SOX oversight committee member. Amtrak keeps its books according to GAAP, and Amtrak is not subject to government obligation accounting and other GAGAS requirements. The Amtrak OIG serves both as the company’s internal auditor and contract auditor for all intents and purposes.
- The Railway Labor Act and collective bargaining units outside the federal sector cover Amtrak employees. In Amtrak OIG investigations, typical Weingarten and



Kalkines warnings and similar investigations requirements may not be required, but as a matter of caution we apply them.

***GAO Evaluation Criteria:***

The GAO had previously surveyed the PCIE/ECIE OIG community and queried OIGs on their opinions on consolidation. The August 2002 GAO report evaluated OIG inputs and categorized these observations into three major categories with 28 key elements. I will generally comment on the three major areas of concern.

***Independence:***

The Amtrak IG should report to the Chairman of the Amtrak Board; this was the case from 1989 to 1999, albeit the Chairman and CEO roles had been combined for much of that time. Since 1999, the IG has advised the CEOs that he reports to the Chairman and to Congressional oversight committees. Additionally, the IG has provided the Chairpersons and CEOs with all OMB guidelines on the independence of the IG and what “general supervision” entails. During the course of GAO’s inquiry, the OMB, with GAO’s approval, has agreed that the Amtrak Inspector General’s reporting line is to the Chairman of the Amtrak Board.<sup>1</sup>

The resolution of the reporting line helps resolve the ‘appearance’ and operation of IG independence. With respect to actual independence, I can attest further that the OIG has not been directed to restrict any audit, investigation, or evaluation by the current CEO, or his immediate predecessor. There have been several OIG work products that have been strongly opposed and/or objected to by the CEO and senior management, but the work product was produced and reported nonetheless. Similarly, the Chairman of the Board has accorded the Inspector General to take all actions consistent with independence and the letter and spirit of the IG Act.

Finally, the Chairman has made it clear that the IG has complete and unfettered access to the Chair and all Board Members on OIG matters. While the IG usually notices the Amtrak President/CEO on such communications as a professional courtesy, the IG does not ‘clear’ such communications with the President/CEO.

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<sup>1</sup> See Office of Management and Budget, 2004 List of Designated Federal Entities and Federal Entities, 70 FR 4157-01 (January 28, 2005).

Thus, the Amtrak OIG is at the level of independence of many other similarly situated inspector general offices.<sup>2</sup>

***Quality of Work:***

Amtrak OIG work product excels in all statutory reporting categories for OIG performance. OIG reports have been hard hitting and effective; with over 200 employees terminated for cause over the past three years, including the investigation and removal of several senior managers.

Critically, having an OIG presence within the organization itself, including attending most Executive Staff meetings and other senior management meetings, provides the Amtrak OIG with vantage points. Given this unique inside positioning within Amtrak, the presence of the IG serves as an effective preventive control as well as provides timely knowledge of agency missions and priorities. For example, before Amtrak enters into any agreement to provide contract services for states and commuter authorities, the IG ensures that Amtrak is properly reporting and covering all required expenses. In other cases, the OIG has recommended and facilitated the institution of new project management initiatives, such as for the \$900 million dollar New York Penn Station Fire, Life, Safety (FLS) project, and has facilitated closer executive review of Amtrak's critical Acela business line. Most OIGs, certainly those more occupied with broader policy examinations, cannot fill this role.

I must also comment upon and emphasize for you the current relationship between the DOT-OIG and the Amtrak-OIG. Clearly, the DOT-OIG has broad responsibilities for the entire DOT enterprise, and Amtrak is merely 1.5% of DOT's \$58.7 billion FY 05 annual budget, and in some cases has specific requirements for appraising and commenting on Amtrak's annual budget submissions. The DOT-OIG also addresses larger financial policy issues affecting Amtrak and, quite appropriately, views Amtrak in terms of other larger DOT programs, e.g., funding and accountability for rail, transit, highways, etc. The Amtrak OIG performs essentially much closer oversight of Amtrak's day-to-day operations, including procurement activities, financial controls, internal controls, employee conduct, safety and security assessments, etc. On occasion, the two OIGs will coordinate investigations and share information on critical reviews; we have a very good

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<sup>2</sup> To ensure independence some of the other designated federal entities have direct line item budgets from Congress. I have had discussion with Congressional authorization committee staff on the need for the Amtrak OIG to have a separate line item budget, and this will be our legislative priority in the current year re-authorization process. A line item budget will provide the OIG with even greater independence and operational flexibility.

working relationship and understanding and which the Amtrak OIG is better suited for the work at hand. In essence, why reformulate a successful solution.

***Use of IG Resources:***

The Amtrak OIG resources must be viewed in proper context, that is, is there an adequate number of the right kind of workers for mission requirements? On several occasions, I have attempted to gauge how the Amtrak-OIG fares against other DFE-OIGs and cabinet-level PAS OIGs, using ratios such as FTEs/agency budgets, FTEs/number of investigations, OIG FTEs/agency FTEs, etc. These efforts provide 'ballpark' type checks, but they are not conclusive. In general, I know I have a very low 1811-investigator-to-case ratio (my agents and investigators have case ratios in the 1:20-30 area, whereas most OIGs do not like to exceed a 1:5-7 ratio). I also know that the FTE auditor to questioned cost ratio for the Amtrak-OIG is among the highest in the OIG community, but I also know that some OIGs have greater/lesser opportunities to achieve meaningful results in this area.<sup>3</sup>

With respect to having a qualified work force, Amtrak OIG auditors are well trained and well suited to their mission requirements. All Amtrak OIG auditors meet and in many cases exceed the education and training levels of other OIG counter-parts. Similarly, OIG investigators are highly experienced and, more recently, the Amtrak OIG has recruited heavily from Federal law enforcement entities, including the Federal Bureau of Investigation, DOT-IG, Internal Revenue Service CID, and the United States Department of Justice. Person for person, the Amtrak OIG is better staffed than most DFE and many PAS OIGs.

Acting as an independent IG shop has afforded Amtrak OIG a unique ability to attract highly qualified individuals with diversified talent through the hiring of retiring agents from other agencies, which it would not otherwise be able to do under the federal system. Utilizing this pool of talent greatly enhances the Amtrak IG's ability to provide the proper skill sets necessary to meet the diverse challenges of providing oversight to a serviced based commercial entity.

The Amtrak OIG has more attorneys on its staff than most other OIGs because of the complexities of cases and issues we are handling and the need to be independent of the Amtrak OGC. Cabinet-level IGs rely heavily on the various Departments' general counsel offices.

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<sup>3</sup> I readily agree with you there are some areas of government spending, like health care and defense, that should have more OIG resources assigned if the singular measure of success were return on audit/investigations dollar invested.

***Uniqueness:***

Although there are often financial benefits to consolidation of entities, whether they are private or governmental, we are not aware of any analysis that shows a financial benefit to consolidation in this instance. Moreover, given Amtrak's uniqueness, and Congress' pressing concern with the viability of the Company, the level of scrutiny, which we provide, is essential. It is possible that there may not be the same level of scrutiny under consolidation (despite the splendid achievements of the DOT-IG), considering all of the major issues, which the DOT OIG is facing, e.g., their Top Ten Challenges. Finally, the Amtrak OIG's role in combating terrorism has taken on added significance since September 11. There are unique issues and concerns regarding terrorism which relate to passenger railroads that do not exist in other transportation fora. This is most effectively confronted with an IG force dedicated to passenger railroads.

***Conclusions:***

The current organizational independence between the DOT-OIG and the Amtrak OIG works well and is not in need of fixing. Consolidation would most likely not reduce expenses, and would most likely result in fewer OIG investigations, evaluations and inspections. This Report, while highlighting the activities of the Amtrak OIG, does not indicate any lack of oversight, or any perceived lack of independence in regards to oversight activities. This brings into question the benefit to be gained by removing the Amtrak OIG's direct contact with and intimate knowledge of the daily operations of Amtrak. While benefits can be realized through access to DOT-IG resources, an independent Amtrak OIG allows for the focus of personnel and resources to be allocated and directed based on the needs and requirements of the oversight of a commercial enterprise.

**B. INVESTIGATION ACTIVITIES**

As a threshold matter, the Office of Investigations' activities and decisions regarding what matters to investigate have been made solely by OIG officials, and not Company management. During the time period of your review, we reviewed all allegations, accepted some for thorough investigations, and referred others to management for their initial actions and our subsequent review or monitoring (such as time and attendance matters).

Historically OIG-OI has focused investigative resources on matters and or areas of attention as required. A focused approach to stem fraud, theft and embezzlement at the cash transaction level has created an increase in the level of investigations involving

union employees; however, as a percent of population, management employees are more frequently targets of investigative activity.

Critically, to the extent that the inquiry was intended to gauge any Amtrak OIG bias against collective bargaining employees, neither the facts nor the figures establish such hypothesis. Considering the investigations initiated during this period with the relevant employee populations in each category, the statistical likelihood of a management employee being the subject of an investigation was five hundred percent greater than that for collective bargaining employees.<sup>4</sup>

Moreover, in assessing the ratios and statistics in comparing the number of investigations related to collective bargaining employees compared to management employees, the reader should also bear in mind certain considerations. First, because the OI operates significantly in a reactive capacity, usually its decisions are driven by the allegations received, regardless of the source. During the OIG's life span the vast majority of investigative cases have been of a reactive, rather than proactive, nature. Moreover, during the tested time period, because of Amtrak's poor financial condition, the OIG has engaged in a concentrated effort over the last few years to assess and investigate operations or circumstances where employees handle cash. Given Amtrak's business structure it is not surprising that there are far more cash transactions which are handled by union employees (e.g., ticket agents, conductors, lead service attendants) than are handled by management employees. This is critical to deterring fraud, assessing internal controls, protecting the integrity of the various financial streams, and lowering insurance rates.<sup>5</sup> In light of investigations of a proactive nature, future proactive investigations could concentrate on activities in which more management is involved or both management and union employees are involved. Thus, the figures would differ based upon proactive programs which the OIG is conducting for any given period.

The continued increase in allegations being made by the overall employee population depicts the success of the Amtrak OIG in opening the lines of communication to all complainants and encouraging employees and others to come forward when faced with questionable practices or conduct. This is further illustrated by an increase from 22% to 32% of total allegations made against union employees being made by other union

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<sup>4</sup> While in FY2004 76 cases or 50% of closed investigations involved Union Employees, this represents just .04% of the total union population; in contrast the 48 cases or 33 percent of closed cases, represent that management employees are targeted 5 times as often with 2% of the management population being subjects of investigations in FY2004.


<sup>5</sup> As noted in the prior section of this response, many of these proactive investigations of employees handling cash led to successful criminal prosecutions during this time period.

## Appendix I

employees. Thus, the collective bargaining employees have shown an increasing level of confidence in the OIG to solve problems related to fraud, waste and abuse.

I hope these additional comments further explain the bases for the Amtrak OIG's position. Thank you for allowing us the opportunity to respond.

Respectfully,

  
Fred E. Weiderhold, Jr.  
Inspector General

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