Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Subject: **<u>INFORMATION</u>:** Amtrak RRIF Loan Condition 8

Date: December 9, 2003

From: Kenneth M. Mead
Inspector General

Reply to Attn of: J-1

To: The Secretary
Deputy Secretary Designate
Chief of Staff
Under Secretary for Policy
General Counsel Designate
Assistant Secretary for Transportation Policy
Assistant Secretary for Budget & Programs Designate
Federal Railroad Administrator

On June 28, 2002, the Department of Transportation (DOT) approved a direct loan to the National Railroad Passenger Corporation (Amtrak) under the Railroad Rehabilitation and Improvement Financing (RRIF) Program in the amount of $100 million. Attachment A to the loan agreement requires Amtrak to satisfy 12 conditions. Condition 8 requires Amtrak to identify the extent to which commuter operations would be affected in the event of an Amtrak shutdown. Prior to the RRIF loan and an emergency Federal appropriation of $205 million, Amtrak had threatened to shut down all services, including commuter services. Condition 8 specifically requires that:

> By August 1, 2002, Amtrak management will provide to the Board of Directors and DOT a detailed report on all operating relationships between Amtrak and commuter rail systems, including a concise inventory of such relationships on a state-by-state basis. The report should explain the manner and extent to which any suspension of Amtrak operations would affect commuter rail operations. The DOT Inspector General will review and have an opportunity to comment on the draft report, review the final report, and provide an assessment to DOT and the Congress.

We have reviewed all of the information Amtrak provided and find that Amtrak has failed to comply with the requirements of loan condition 8. This memorandum provides our comments on Amtrak's lack of compliance with this condition.

Amtrak's initial (draft) response included a matrix outlining the functions it provided to 13 commuter rail systems, as well as brief summaries of the terms included in its contracts with the agencies that run them. Based on our review of that information, we concluded that Amtrak did not fully "explain the manner and extent to which any suspension of Amtrak operations would affect commuter rail operations," and we requested additional information. We also met with several high ranking Amtrak officials on August 5, 2003, to clarify our request. We asked Amtrak to provide:

- An analysis of the overhead expenses that would be incurred to operate the Northeast Corridor (NEC) and commuter services if all other services were shut down;
- An analysis of the capital funds required to maintain the NEC and commuter services for periods of 3 months and 1 year if all other services were shut down; and
- A report incorporating these analyses into a detailed assessment of the operating and funding requirements for providing commuter services if all other services but the NEC were shut down;

In response, Amtrak simply provided us a number of documents from which some, but not all, of the required data could be obtained. Amtrak neither performed the required analyses nor developed the coherent response contemplated by loan condition 8.

The information required by this condition is necessary to provide Congress with an accurate calculation of the dollars necessary to keep commuter services operating regardless of Amtrak's financial health. Congress included language in Amtrak's fiscal year (FY) 2003 and 2004 appropriations requiring that sufficient funds be reserved to satisfy the contractual obligations of Amtrak for commuter operations. However, without the accurate information that only Amtrak can provide, it is not known whether the reserved funds ($60 million in FY 2004) would be sufficient if they were needed.

Amtrak depends on Federal taxpayers for its existence, but in this instance Amtrak management is not meeting its obligation to provide those taxpayers with accurate, mandated information. Furthermore, Amtrak's RRIF loan agreement did not include any adverse consequence for noncompliance with loan condition 8. The Government's ability to employ adverse consequences, such as a reduction in appropriations, for noncompliance with Federal requirements is severely impaired because such actions would trigger the very insolvency of Amtrak that the Government is endeavoring to avoid. Situations such as this are among the reasons underlying proposals to give the states greater control of intercity passenger rail services.

If I can answer any questions or be of further assistance, please feel free to contact me at (202) 366-1959, or Mark R. Dayton, Assistant Inspector General for Competition and Economic Analysis, at (202) 366-9970.

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