DEMOCRATIC VIEWS

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
AMTRAK WORKING GROUP
March 17, 2006

The Honorable Elijah E. Cummings, Lead Democratic Member
The Honorable Jerrold Nadler
The Honorable Brian Baird

Executive Summary

The Amtrak Working Group was established on October 25, 2005, to recommend to the Committee on Transportation and Infrastructure (T&I Committee) whether there is sufficient information from recent Amtrak reports, particularly the report issued by the Government Accountability Office (GAO) entitled *Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability*, "to warrant the establishment of a special Committee taskforce with the authority to conduct hearings."[1]

The Democratic Members of the Working Group recommend against the establishment of a taskforce. We believe that, although the Amtrak reports include useful suggestions for Amtrak to improve its management practices, there is no basis for the extraordinary step of departing from "regular order" and establishing a special taskforce of the Committee to hold hearings on the reports and Amtrak management practices.

We believe that the Subcommittee on Railroads should continue its oversight of Amtrak's management practices and performance. However, that oversight should be based on a fair and balanced view of what Amtrak has accomplished and what remains to be implemented. We believe that both the Amtrak reports and the views of the Majority members of the Amtrak Working Group fail to provide an adequate context for the recommended improvements, thereby creating an inaccurate impression of Amtrak's current management practices and the progress it has made.

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[1] Letter from Chairman Young to Congressman Baker dated October 25, 2005.

As the Amtrak Inspector General stated: "An uninformed reader of the GAO report might improperly conclude that Amtrak has no planning processes, no goals and objectives, and operates without oversight, internal controls, or budget discipline. This is not the case..."

We believe that the Railroad Subcommittee's oversight of implementation of the recommendations in the reports must take full account of the value of Amtrak's current management practices, the progress it has made in improving them, and unique factors in Amtrak's operating environment which make it difficult for the railroad to adopt or obtain the full benefits of generally recommended management practices.

Specifically, the Railroad Subcommittee's oversight should recognize that:

1. Amtrak has in place management practices, which serve the same purpose as many of the practices recommended in the reports.
2. Amtrak has been improving its management practices for several years, implementing some of the recommendations in the reports and beginning the process of implementing others. Operating under these practices, Amtrak has met such goals as reducing costs, while maintaining service and increasing investment in infrastructure.
3. The benefits of some of the planning techniques recommended in the reports are lessened by constraints on Amtrak's ability to implement long-range plans. Moreover, in some cases, Amtrak's management has tried to make the improvements recommended in the reports but was unable to get approval from its Board of Directors or adequate funding from Congress.

4. Amtrak faces difficulties in implementing long-range strategic plans because of great uncertainty regarding its federal funding each year.
5. The Railroad Subcommittee's oversight of Amtrak's management will be greatly enhanced by the extensive oversight of Amtrak's management and performance conducted by the Federal Railroad Administration (FRA), which is now required to approve every capital expenditure undertaken by Amtrak and its annual operating plan. In carrying out this responsibility, FRA reviews extensive financial and operating data provided by Amtrak.

If the Subcommittee's oversight is conducted with these principles in mind, it will be useful in enhancing Amtrak's efforts to make improvements in its management practices.

BACKGROUND

On December 19, 2003, T&I Committee Chairman Don Young asked the GAO to examine Amtrak's management and performance. Since that time, the Subcommittee on Railroads, under the leadership of Chairman LaTourette and Ranking Democratic Member Brown, has held numerous hearings on Amtrak's management practices, including a number of hearings during which the GAO presented the preliminary findings of their report. The final report entitled *Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability* was issued on October 25, 2005. The review focused on five aspects of Amtrak's management and financial operations: (1) strategic planning and a performance-based framework, (2) financial reporting and financial management practices, (3) cost containment strategies, (4) acquisition management, and (5) accountability and oversight.

On October 25, 2005, Chairman Young sent a letter to Congressman Richard Baker requesting that he head up a working group to evaluate the information that has been and is being developed by the GAO, the Amtrak Inspector General, and the DOT IG. According to Chairman Young, the focus of the effort was Amtrak's management practices, how it acquires its goods and services, and the accuracy of information provided to Congress and the public. Chairman Young asked that the working group report back to the Committee by February 17, 2005, and recommend whether there is sufficient information to warrant the establishment of a special Committee taskforce with the authority to conduct hearings or whether no further action should be taken.

On October 26, 2005, Ranking Democratic Member Oberstar appointed Congressmen Cummings, Nadler, and Baird as the Democratic Members of the working group. Congressman Cummings was to serve as the lead Democratic Member. In a letter, Ranking Democratic Member Oberstar stated: "...in view of the federal investment provided to Amtrak, it is important to ensure that Amtrak operates in an efficient and business-like manner. The working group should evaluate the GAO's conclusions and the comments of David Gunn and determine whether the recommendations in the report would be likely to improve the efficiency of Amtrak's operations."[2]

At the initial meeting of the Working Group, Chairman Baker noted that because of scheduling difficulties, and the long recess in January, it would be difficult for the Working Group to hold meetings with all of its Members present. He urged the individual members of the Group to conduct their own investigation, alone or in small groups. The signers of these views and our staffs have held meetings with representatives from Amtrak, Amtrak's Office of Inspector General, the

[2] Letter from Ranking Democratic Member Oberstar to Congressman Cummings.

GAO, the FRA, the Department of Transportation (DOT), the Securities and Exchange Commission, and various investment ratings companies. In addition to holding these meetings, we submitted dozens of questions to Amtrak, Amtrak's Board of Directors (through the auspices of the Railroad Subcommittee), and Amtrak's Inspector General. We also reviewed a substantial amount of information, including past reports of the GAO, the DOT IG, the Amtrak Inspector General, and Amtrak's independent auditors, Amtrak's Procurement Manual, Amtrak's Guidelines for Outside Counsel, Amtrak's grant agreements, the minutes from Amtrak's Board meetings, Amtrak's Strategic Reform Initiatives, and Amtrak's governing documents.

As a result of our investigation, the Democratic Members of the Working Group recommend against the establishment of a taskforce. Although the Amtrak reports include useful suggestions for improving Amtrak's management practices, there is no basis for the extraordinary step of departing from "regular order" and establishing a special taskforce of the Committee to hold hearings on the reports and Amtrak's management practices. Our findings are detailed in the following pages.

FINDINGS

1. **<u>Committee taskforces should be formed only in highly unusual circumstances.</u>** House and T&I Committee Rules provide that subcommittees are the regular means of oversight and recommending legislation. Rule XII of the Committee Rules entitled *Oversight* provides:

"The Committee and the appropriate subcommittees shall cooperatively review and study, on a continuing basis, the application, administration, execution and effectiveness of those laws, or parts of laws, the subject matters of which is within the jurisdiction of the Committee, and the organization and operation of the Federal agencies and

entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs there-under are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, the Committee and the appropriate subcommittees shall cooperatively review and study any conditions and circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of the Committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of the Committee."

The Rules of the T&I Committee do not authorize taskforces.

We believe that a taskforce with authority to conduct hearings should replace the regular Committee process only in extraordinary circumstances: for example, to address issues that are within the jurisdiction of several subcommittees, or to address issues that a subcommittee does not have the necessary resources for.

Our belief that taskforces should be a rare exception to regular order is reinforced by the practices of other Committees. We have surveyed other Committees, and we believe that there have been only a handful of cases in which other Committees have established taskforces with authority to hold hearings.

As we will demonstrate in this report, the Amtrak reports do not raise any unusual or extraordinary circumstances that would justify the T&I Committee establishing such a special oversight mechanism.

2. **<u>The Railroad Subcommittee has conducted appropriate oversight of Amtrak and the reports on Amtrak's management and performance.</u>** Under the leadership of Chairman LaTourette and Ranking Democratic Member Brown, the Railroad Subcommittee has shown that it is concerned about Amtrak's management and performance and that it has the resources to oversee implementation of the recommendations of the reports recently issued. In 2005, the Railroad Subcommittee held several hearings on Amtrak's management (Current Governance Issues at Amtrak on November 15, 2005; Amtrak Reform Proposals on September 21, 2005; Amtrak Food and Beverage Operations on June 9, 2005; and Getting Acela Back on Track on May 11, 2005). The Subcommittee was interested in holding hearings on other issues such as Amtrak's use of outside counsel, Amtrak's mechanical operations, and the final GAO report, but it was not possible to schedule these hearings in the last few months of 2005 because of construction in the Committee's hearing rooms. We note that in its June 9, 2005 hearing the Railroad Subcommittee reviewed many of the GAO's preliminary findings.

We therefore see no reason that oversight of Amtrak's management and performance and implementation of the GAO's recommendations should be removed from the jurisdiction of the Railroad Subcommittee and placed in a special taskforce. We believe that creating such a taskforce or similar mechanism would show an unwarranted lack of confidence in the leadership of the Subcommittee, which would undermine its effectiveness on all issues within its jurisdiction. It would also be unfair to the Members of the Subcommittee, who chose to serve on this subcommittee in the belief that they would be able to play a major role on issues of passenger rail transportation.

3. **The ability of the Railroad Subcommittee to oversee Amtrak's management and performance will be greatly enhanced by the extensive oversight of Amtrak by the Federal Railroad Administration.** Although we believe that the Railroad Subcommittee must continue to monitor Amtrak's management, the Subcommittees will not be solely responsible for this oversight. The Subcommittee's efforts will be facilitated, and its workload lessened, by the extensive oversight of Amtrak that will be conducted by other agencies and its own internal audit mechanisms. Most notably, during the next year, the FRA will be conducting in-depth oversight of Amtrak's finances and management. The FRA has been required, as a condition of providing federal assistance to Amtrak to approve every capital investment of Amtrak, as well as its overall operating plan. In connection with these responsibilities, the FRA receives and reviews extensive information from Amtrak including information on specific routes, financial results, ridership, production, on-time performance, and other statistics. Amtrak also provides the FRA with daily reports of cash balances. Moreover, the FRA has a representative on Amtrak's Board of Directors through the DOT, and through that representative has direct access to all of Amtrak's books and records, including Amtrak's Route Profitability System.

The FRA maintains that if it determines that Amtrak's reporting is insufficient or inaccurate, the FRA has the power to withhold Amtrak's grant funds. Thus far, the FRA has never withheld funds from Amtrak.

We met with representatives from the FRA and DOT and reviewed Amtrak's Grant Agreement for FY2006, which was signed by FRA Administrator Joseph Boardman on January 10, 2006, and Amtrak's Acting President and CEO David Hughes on December 23, 2005. The agreement requires Amtrak to provide the FRA with the following information as a condition of receiving grant funds appropriated by Congress:

- Quarterly funding requests, detailing the amounts and use of federal funds Amtrak reasonably expects to expend in the coming quarter for FY2006 operations.
- Monthly progress reports providing an account of significant progress (findings, events, trends, etc...) made in the operation of rail passenger services during the reporting period, a description of any technical and/or cost problems encountered or anticipated that will affect the operation of any route or general operations for the remainder of FY2006 together with recommended solutions or corrective action plans to such problems, or a statement that no problems were encountered.
- Monthly supplemental reports measuring Amtrak's progress against the approved business plan, which describes the work completed to date, any proposed changes to the approved business plan, and the reasons for such changes.
- Monthly performance reports.
- Monthly financial status reports, including outlays and program income on an accrual basis.
- Monthly Federal Cash Transaction Reports, which the FRA uses to monitor cash advanced to Amtrak and to obtain disbursement or outlay information.
- A report detailing the results and benefits of the FY2006 operations and significant accomplishments, improvements, and challenges within 90 days of expiration of the grant agreement.
- A comprehensive business plan approved by Amtrak's Board of Directors that includes targets for ridership, revenues, and capital and operating expenses and a separate

accounting of such targets for the Northeast Corridor, commuter service, long-distance Amtrak service, state-supported service, and each intercity train route, including Autotrain and commercial activities, such as contract operations and mail and express. The business plan also includes a description of work to be funded along with cost estimates and an estimated timetable for completion of the projects included in the plan.

- Monthly cash forecasts.
- Daily cash flow projections for the following month.
- A matrix designed to address recommendations to Amtrak by the GAO, and present monthly reports to the FRA on progress associated with these actions, delays in implementing specific actions, causes for such delay, and proposed remedial actions.
- Within 45 days of the date of the agreement, a plan with appropriate specific milestones to improve Amtrak's financial reporting and financial management systems, including any recommendations related to such reporting and financial management practices contained in the independent auditor reports.
- Within 90 days of the date of the agreement, a detailed plan, including appropriate intermediate milestones, for the development and implementation of a managerial cost accounting system.
- Within 60 days of the date of the agreement, a comprehensive plan to improve acquisition practices that addresses at a minimum the specific GAO recommendations for acquisition management.
- Within 180 days of the date of the agreement, a "get well" plan for any long-distance train ranked in the bottom third of the total number of long distance trains when measured by a baseline of certain performance metrics, which may include criteria such

as cost recovery ratio, cost per seat-mile, and/or quality service index. Amtrak is also required to report monthly to the FRA on progress associated with these actions.

- A comprehensive valuation of Amtrak's assets, in coordination with the FRA.
- A plan for operational changes to improve the on-time performance of all Northeast Corridor intercity trains, other than Northeast Corridor components of long-distance trains, including appropriate interim measures, milestones, and expected progress toward a goal of average on-time performance in excess of 90 percent. Amtrak is also required to report monthly to the FRA on press associated with implementing this strategy.
- Monthly reports on the status of implementation of Amtrak's Strategic Reform Initiatives.
- Monthly reports on the detailed revenues and costs associated with the provision of passenger rail service, with food and beverage and first class service reported separately, and labor expenses broken down between train and engine crews and on board services.
- Specific information on major capital projects, including financial information, a forecasted progress report, scheduled milestones, and areas of concern.[3]
- Specific information for each route and for each of the more than 300 capital projects undertaken by Amtrak.[4] The FRA uses these charts and descriptions to approve each individual capital project that Amtrak proposes.

In addition to this information, Amtrak is required to submit to Congress an annual business plan, which includes a comprehensive overview of its operations, capital investments, revenue, ridership, and expenditures for the prior fiscal year. This plan also includes a report on Amtrak's progress in implementing its Strategic Reform Initiatives. Amtrak is further required to submit

[3] See Attachment 2.
[4] See Attachment 3.

to Congress a Capital Plan, Legislative Grant Request, and a report on the salaries of Amtrak's senior executives on an annual basis, as well as an extensive performance report for its Board of Directors, the FRA, the DOT Inspector General, and Congress on a monthly basis. All of these reports are posted on Amtrak's website for the public to review.

The FRA maintains that this information "provides adequate oversight of Amtrak." We agree. Proposals to require Amtrak to adhere to Securities and Exchange Commission regulations go too far. We are not aware of any other business corporation that provides such extensive detail to its stakeholders, including Congress and the public.

4. **Amtrak has developed – or is in the process of developing – planning and management practices, which accomplish the same results as many of the GAO's recommendations.** The GAO acknowledges that Amtrak has made progress in the recent past against some of its internal operating goals. However, numerous persons we interviewed, some of whom are responsible for oversight of Amtrak, pointed to the fact that while the GAO recognized some of Amtrak's improvements, it did not elaborate on the policies and procedures that govern the Corporation's current operations.

According to the Amtrak Inspector General, "An uninformed reader of the GAO report might improperly conclude that Amtrak has no planning processes, no goals and objectives, and operates without oversight, internal controls, or budget discipline. This is not the case... we do not believe that 'what works' at Amtrak, and what has been improved at Amtrak, received equal time and space in the final GAO report."

For example, the GAO explained that Amtrak's current approach to management rests in the five tools instituted by Amtrak's former President and CEO David Gunn in 2002: (1) development of a defined organization chart, which identifies a clear chain of command, and is used as a basis for establishing Amtrak's budgets and controlling Amtrak's costs; (2) development of a zero-based operating budget, which is based on the headcounts and resources needed to accomplish department activities and focused on maintaining or reducing the budget; (3) development of a capital budget, which is based on capital investment needed to stabilize the railroad (which includes specific projects with production targets) and is communicated through Amtrak's strategic plan; (4) development of department-by-department goals and objectives, which are used as a basis for Amtrak's budgets; and (5) development of monthly performance reports, which summarize Amtrak's financial results, operating statistics, and capital activity.

The GAO's review of Amtrak's management practices, however, stops short of informing the reader that Amtrak's senior management has used these tools to set corporate-wide and departmental goals, implement strategic plans (all of which were communicated to departmental and rank-and-file workers through numerous training classes and other activities), and measure the Corporation's progress in achieving those goals and strategies. The GAO also failed to acknowledge the fact that through the use of these tools Amtrak has realized some positive results, including increased ridership levels, reductions in overhead, improved losses, and enhanced detailed reporting. In fact, according to Amtrak's Inspector General, David Gunn's management approach resulted in significant operating expense containment through reorganization, reductions in overhead, and elimination of consultants.

"Following his pragmatic approach to getting the railroad 'back to basics', Mr. Gunn emphasized several programs in his three plus years at Amtrak, including greater oversight of and reduction in absenteeism, inventorying wall-to-wall all facilities and storage units for better material control, and insisting on more detailed reporting and accountability for project spending," said the Amtrak Inspector General. "Mr. Gunn had instituted a program to literally 'clean up' the railroad and restore equipment to a state of good repair. He saw equipment and infrastructure repair and restoration as high priorities and, in almost any scenario, this work was necessary regardless of whether or not his strategy was well documented."

The fact is that in addition to implementing David Gunn's five management tools, Amtrak has developed or is in the process of developing new planning and management practices which accomplish the same results as the GAO's recommendations.

Strategic Planning: The GAO report recommends that Amtrak establish a mission statement, a comprehensive strategic plan, and a performance-based approach to compensation. We believe that Amtrak has taken major steps to accomplish these recommendations.

In April 2005, Amtrak issued its Strategic Reform Initiatives, which shows the company's commitment to developing a comprehensive strategic planning process.[5] The Strategic Reform Initiatives include a vision statement, long-term objectives, management controls, new planning and reporting processes, new operating initiatives, (including improvements to financial performance, customer service, and on-time performance improvements) and a legislative agenda.

[5] See Attachment 1.

Amtrak's vision statement is to: "(1) deliver superior service, including continued excellence in operational safety and security, and infrastructure/asset management, while becoming more market and customer oriented; (2) serve as a catalyst for change, helping the nation's intercity passenger rail system achieve the long-term objectives described in the Reform plan; and (3) evolve into one of a number of competitors for passenger rail services and routes, all positioned on equal competitive footing."

While Amtrak does not call its vision statement a "mission statement" per se, the vision statement and the long-term goals provided in Amtrak's Strategic Reform Initiatives accomplish the same objectives as the two examples of mission statements provided on page 49 of the GAO report.[6] [We note that Amtrak has published numerous mission statements, strategic plans, goals and performance objectives during its 30-plus year history.] Such a vision statement is a good management tool, and keeps Amtrak officials and rank-and-file workers focused on the goals of the Corporation.

In addition to providing a vision statement, the Strategic Reform Initiatives recognize the need for development of a detailed implementation plan containing specific business plans, budgets, policies, milestone goals, and timetables for each line of business, transition steps, future progress reports and plan updates, and individual initiatives – all of which are recommended in the GAO report.

We believe Amtrak is going forward with deliberate speed in improving its planning process to better accomplish these objectives. Amtrak is in the process of developing a FY2006 through

[6] The GAO provides that the mission of VIA Rail Canada in its entirety is: "Working together to consistently deliver safe, efficient, and environmentally responsible services for travelers in Canada."

FY2010 Strategic Plan for each business line, which will include milestone goals and timetables. Amtrak has also created a Planning and Analysis Department, which is charged with overseeing the strategic planning process, the development of goals and performance measures, and monitoring progress in achieving those goals.

It is important to point out, however, that Amtrak's ability to fully implement a strategic planning process is limited by factors beyond Amtrak's control, such as lack of stakeholder consensus on Amtrak's future.

In an interview with former Amtrak President and CEO David Gunn, the GAO reported that it was Mr. Gunn's opinion that Congress and the DOT should set the broader strategy for Amtrak from which Amtrak could develop and execute an operational plan. The GAO discounted Mr. Gunn's opinion and instead concluded it was Amtrak management's role to prepare and execute the strategic plan. This divergence of opinion is not insignificant. Both the GAO and Mr. Gunn are correct.

According to the Amtrak Inspector General, developing the strategic plan is a shared responsibility for stakeholders and Amtrak. Amtrak views its primary stakeholders as Congress, the DOT, its Board of Directors, the various state and regional entities it serves and/or with which it has contractual relations, the users of its primary infrastructure, its freight railroad partners involved in service delivery, and the traveling public.

Amtrak's senior management has had to rely upon the strategic direction it has received from these stakeholders, and that message has been mixed. While it *is* Amtrak's ultimate responsibility to become the primary facilitator of shaping the strategic plan, the plan must conform to the statutory directions and appropriations directives which directly affect its operations.

Amtrak must also respond to Congressional pressures. Since the expiration of the 1997 Amtrak Reform Act, there have been a number of Congressional oversight hearings about Amtrak's future. There have also been a number of reports written by the GAO, the DOT IG, and the Amtrak Inspector General, which contain recommendations about how Amtrak should be structured, how it should be funded, and how it should operate, as well as other issues.

According to the Amtrak Inspector General, "To say the least, these evaluations of Amtrak, when combined with the myriad of opinions from Congressional Members, Governors, Mayors, and the public, create a cacophony from which achieving consensus has been difficult."

We believe the GAO should have reviewed this issue in its report. In a prior review by the GAO regarding the effectiveness of the application of the Government Performance Results Act of 1993, the GAO found that, in order for strategic planning to be truly successful and have high impact, three practices appeared critical, "Organizations must (1) involve their stakeholders; (2) assess their internal and external environments, and (3) align their activities, core processes, and resources to support mission-related outcomes."[7]

Since the GAO's starting point for formulating the strategic plan begins with "involvement of stakeholders," which is a logical precept, there should have been some acknowledgment by the GAO of the difficulties Amtrak faces in developing such a plan.

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[7] See GAO "Executive Guide – Effectively Implementing the Government Performance and Results Act" GAO/GGD-118.

A Performance-Based Framework For Compensation: In its report, the GAO criticizes Amtrak for not developing and implementing a pay-for-performance management system to provide incentives to managers and other employees for achieving goals. The GAO appropriately points to the fact that leading organizations they have studied seek to create pay, incentive, and reward systems that clearly link employee knowledge, skills, and contributions to organization results, but thus far Amtrak has not developed such a system.

This deficiency is primarily a failure of Amtrak's Board of Directors, appointed by the President of the United States, not of Amtrak's management or staff. In a review of board meeting minutes between February 2002 and December 2005, we learned that Amtrak's management has been trying for years to establish a pay-for-performance management system, but until recently the Board has tabled management's proposals.

One such proposal was presented to the Board in April 2004 and again in July 2004, but was not approved. The issue was raised again at the September 22, 2005 board meeting. According to the minutes, Bill Crosbie, Amtrak's Chief Operating Officer, stressed to the Board that Amtrak needs an approved career succession plan and compensation plan based on merit. Further discussion was again tabled. Recently, the Board finally approved a framework and is now awaiting development of individual goals and presentation of a three-year plan for the Management Compensation Program.

We are encouraged that Amtrak's Board of Directors has finally agreed to move forward with this program. It should not, however, require issuance of a GAO report to persuade the Board to fulfill its responsibilities.

This failure is illustrative of the Board's failure to address issues which are now considered to be of great significance. In response to questions for the record of the Railroad Subcommittee's hearing on Corporate Governance at Amtrak held on November 15, 2005, Amtrak Board Chairman David Laney stated that the Board was aware of a number of the issues raised in the GAO report before it was issued. If so, we cannot understand why the Amtrak Board did not address these issues earlier. We therefore intend to ask the DOT IG to conduct a further audit of whether Amtrak's Board of Directors is appropriately carrying out its legal and fiduciary responsibilities.

We also would have liked to hear from the GAO on human capital issues at Amtrak, given the fact that there is a strong linkage between a Corporation's performance and the quality and motivation of its workforce. For example, we learned in our investigation that many of Amtrak's managers have worked for three to five years at a time with no salary increase and no cost-of-living adjustment. Many of Amtrak's rank-and-file workers have gone without a renewed contract since 2000. According to those we interviewed, this has resulted in low morale and unnecessary turnover and has contributed to less than optimal staff performance.

Additionally, there has been a tendency on the part of some in Congress to characterize Amtrak employees as somehow being 'less than adequate' because the company cannot attain profitability. This perception is unfounded and discredits many hardworking and dedicated rail workers and managers who manage a safe railroad carrying thousands of travelers daily.

<u>Financial reporting and financial management practices</u>: Perhaps the most compelling evidence of Amtrak's success in this area – according to both the FRA and Amtrak – is demonstrated by the independent financial audits conducted by KPMG over the last four years. The FY2001

audit resulted in $199 million worth of adjustments to Amtrak's financial statements and KPMG wrote a Management Letter citing five material weaknesses and twelve reportable conditions. The FY2004 audit showed only $7 million of adjustments and identified only one reportable condition. The improvements are indisputable.

We applaud Amtrak's management for these successes and hard work. However, more work needs to be done. By Amtrak's own admission, the Corporation's financial systems have not been updated for many years, and the systems are extremely labor intensive. Amtrak has developed a long-term plan to fully replace the existing systems. The first phase of that effort was launched in September 2005 with the beginning of a project to replace the Human Resource and Payroll systems, which is scheduled for completion in December 2006. The second phase is scheduled to begin this summer and it will replace the core financial systems, which won't be fully implemented until the Year 2012. This multi-year endeavor will require millions of dollars and significant employee and consulting effort.

Amtrak may have been able to accomplish this task sooner had Congress been willing to provide the resources that Amtrak requested in its annual Legislative Grant Request. Amtrak's total grant request for FY2006 was $1.85 billion, but Congress shortchanged Amtrak more than $500,000 when it provided the Corporation with just $1.32 billion. Each time Congress funds less than Amtrak needs, Amtrak must reshuffle, reprioritize, and defer individual projects and programs. Efforts like updating financial systems end up taking a back seat to projects required for survival on a year-to-year basis. It is regrettable that the GAO did not recognize in its report that Amtrak has the will, but not the funds, to improve its financial systems.

Cost containment: Amtrak is in the process of preparing a detailed plan, including appropriate intermediate milestones, for the development and implementation of a managerial cost accounting system. In addition, Amtrak has taken immediate steps to implement cost reductions in two specific areas: long-distance service and food and beverage service.

With respect to long-distance service, Amtrak has briefed its Board of Directors on a Long-Distance Business Plan, which includes a timetable for route evaluation, establishing performance thresholds, and implementation of performance improvements. The plan, if implemented, is projected to save Amtrak $190 million.

With respect to food and beverage service, Amtrak has re-negotiated its contract with Gate Gourmet, and has developed an action plan to reduce or eliminate the operating loss of food and beverage service, which includes implementation of a simplified dining car menu, modification of existing food service cars, and a pilot of on-board food and beverage service. According to Amtrak, this initiative could result in an annualized cost recovery of 60.7 percent. In fact, Amtrak indicates that this will reduce the loss from $19.1 million to $7.5 million in FY2006. The GAO did not recognize this potential savings in its report.

In fact, the GAO reports that Amtrak's operating losses will increase about 40 percent to over $1.4 billion by FY2009. This conclusion is misleading. The Amtrak analysis showing the increased loss was not a forecast by Amtrak of what Amtrak expects to happen in FY2009; it is merely a projection of what would happen if no changes were taken to reduce costs or increase revenues. The numbers were derived from Amtrak's FY2005-FY2009 Strategic Plan, published in June 2004. They assume no initiatives are undertaken to offset increases from inflation in wages, fuel, and other cost drivers. Amtrak's Strategic Reform Initiatives, which were released in

April 2005, far before completion of the GAO report, outline several reform plans, which can result in a reduction in Amtrak's operating deficit from about $560 million in FY2006 to $220 million by FY2011.

Amtrak has contained its operating costs and operating cash subsidy requirements for two straight years – in spite of inflationary pressures in health care, fuel prices, and other areas. As a result, Amtrak's core operating expenses were slightly lower in FY2004 than they were in FY2000.

While Amtrak should be applauded for its efforts to contain costs, cost cutting should not be considered in a vacuum. It makes no sense to reduce costs if the reduction will lead to even greater losses in revenues. We are concerned that the GAO, the DOT IG, and Amtrak's Inspector General failed to consider this in their reports. Amtrak, like airlines, must consider the effect of food and beverage costs on its bottom line. The Corporation must decide the effects of particular levels of food service on passenger revenues. High quality service may attract additional passengers while a decline in quality may cause a loss of passenger revenues and end up costing the Corporation more in the end. Striking the proper balance is a difficult business decision. The Southern Pacific Railroad (now a part of Union Pacific) learned that lesson all too well in the 1960s when it did away with sleeping cars and diners and turned long-distance trains into all coach trains with vending cars. It was a dismal failure for the railroad, and ended up costing it more in the end. It's important that Amtrak evaluate such costs before implementing further reforms.

Acquisition management: Amtrak has instituted a number of improvements to its procurement practices. In 2004, Amtrak established Policy 11.39 – Delegation of Contracting Authority, which defined the Procurement Department as the sole authority to purchase goods and services. Amtrak subsequently published and distributed its procurement manual; redefined and published Amtrak's policy regarding sole source contracts; acquired and implemented the eTrax system, which replaced paper forms with electronic approval for purchase[8]; created a Procurement Capital Equipment Spend Unit; developed the Service Contract Unit; implemented the Advance Purchase Program for Capital Projects; and established procurement metrics for Procurement Contracting Agents to monitor their individual backlogs.

The GAO points to the frequency of noncompetitive contract awards at Amtrak. It is important to note, however, that these sole source contract awards were made in FY2002 and FY2003, which were prior to the implementation of Amtrak's Procurement Policy, the new manual, and the clarification of whom in Amtrak has the authority to execute contracts.

Amtrak's Procurement manual[9] – which we reviewed – provides definitive instructions and guidance on how to prepare for, conduct, and conclude a procurement of goods and services at Amtrak. Procedures are furnished to ensure that such goods and services are obtained in an effective manner and in compliance with Amtrak policies and applicable laws, regulations, and contractual requirements.

Amtrak's procurement policy objectives are: (1) to promote open and free competition in the procurement of goods and services to the maximum extent practicable; (2) to procure quality goods and services in a reliable and timely manner at a reasonable cost; (3) to make positive efforts to utilize small businesses and minority or women owned business enterprises as sources

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[8] The eTrax system controls 23 different processes including purchase requisitions, payments requests, and travel and expense reports. It routes those requests to required approvers based on the identity of the user and the total amount of the approval document.
[9] See attachment 4.

of supply and maximize their opportunity for participation in all contracts; and (4) to require all contractors and subcontractors to take affirmative action in their employment and contracting practices to ensure that applicants and employees are not discriminated against based on race, color, religion, sex, sexual orientation or national origin and to comply with the Americans with Disabilities Act.

Amtrak's general policy for the procurement of goods and services requires that only the Procurement Department commit Amtrak to an expenditure of funds. [We note that exceptions are granted for small value purchases made with Amtrak's Pcard and through Amtrak's eTrax system.] All members of the Procurement and Materials Management Department are expected to comply with the procedures in the Procurement manual. In those instances where an employee encounters difficulty in meeting the requirements of the procedures, Amtrak requires that the instance be immediately brought to the attention of the employee's supervisor for resolution. Procurement staff who violate established policies are counseled and/or disciplined (two have been terminated).

In addition to establishing and implementing its procurement process, Amtrak has been reviewing its current legal spending and the legal firms with which it contracts to assess whether the selection of firms should be accomplished by conventional competitive bidding. Amtrak also plans to initiate a pilot exercise in FY2006 to analyze the expansion of the application of competitive bidding to legal services. [In its report, the GAO recommends that Amtrak utilize competition when retaining law firms, and better scrutinize legal invoices to identify those that may have items that do not conform to Amtrak's litigation guidelines.[10]]

[10] See attachment 5.

Further, the Amtrak Legal Department installed matter management software in FY2005 and is implementing an electronic invoicing platform that will allow department management to analyze its legal costs more effectively. This data is being used to track legal fees against Amtrak's budgets and to identify potential savings. Amtrak is also revising its litigation guidelines and will be providing training to its in-house staff to acquaint them with these requirements. The Legal Department's Litigation Guidelines have been revised to require an engagement letter in each matter – rather than just the first time a law firm is engaged – outlining the scope of the representation, the individuals assigned, and the rates to be charged. The department plans to conduct training for in-house attorneys in conjunction with the revised guidelines.

<u>Accountability and oversight:</u> The GAO reports that oversight of Amtrak's performance by some key stakeholders, particularly its Board of Directors, has been limited. This is largely due to the Bush Administration's failure to appoint a full complement of members to the Amtrak Board. Current law requires the President to appoint seven members to the Board that have technical qualifications, professional standing, and demonstrated expertise in the fields of transportation or corporate or financial management. According to the GAO, the Administration is not in compliance with current law, as there are exactly four Directors on the Board. One of those is the Secretary of Transportation and two others are recess appointments.

The GAO also questions whether accountability and oversight of Amtrak would be strengthened if Amtrak were subject to the regulations governing financial markets and other private corporations, as well as other government agencies. This leaves uninformed readers with the mistaken impression that Amtrak is not already subject to a multitude of statutory and reporting requirements.

Amtrak – unlike other private corporations – must work within the statutory requirements and guidelines set forth in the Rail Passenger Service Act; conform to annual appropriations directives and constraints; conform to DOT and FRA directives for use of grant and RRIF funds; and adhere to the policies and directives of its governing Board of Directors.

According to numerous persons we interviewed, including the Amtrak Inspector General, when comparing Amtrak's performance to other private corporations, we must examine the Corporation in its proper context.

- Amtrak has no stable funding source. This makes it very difficult for Amtrak to conduct its business using practices that are more common with other railroads, or common to businesses of Amtrak's size and complexity. What this has meant for Amtrak is that it manages for the short-term in many of the activities that it undertakes. Other private corporations can set both short-term and long-term goals and implement comprehensive strategic plans because they have a better sense of what their funding will be from one year to the next. VIA Rail is a perfect example. The Canadian passenger/tourist railroad receives a fixed subsidy level from the Canadian government. According to the GAO, VIA Rail's management knows that it will receive a set amount every year in government subsidy and can budget accordingly. Amtrak does not have that same ability.

- Amtrak is held to a different standard. The fact is that over the past 35 years, Amtrak has received less total Federal funding than the U.S. is spending on highways in FY2006. The Federal Government has established robust funding mechanisms for highways, aviation, and public transit, and Congress has always properly supported Federal investment in these modes. Although much of this funding comes from user fees, each of these modes also receives substantial General Fund investment. Amtrak, however, is forced to beg for Federal funding year after year, and rarely gets what it needs because of false expectations that it should be profitable on its own.

  Railroads throughout the world receive government support to supplement the revenues paid by passengers. We ought to do no less for Amtrak.

- Amtrak is penalized when it meets or exceeds its fiscal goals. For example, only very recently has Amtrak begun requesting appropriations for establishing a separate working capital fund, and it has done so because of past actions by Congress to eliminate year-end surpluses. Amtrak ended FY2003 in a considerably improved fiscal condition from the prior year, with almost $200 million cash on hand at year's end. Congress viewed these extra year-end monies as an offset to the next year's appropriation shortfalls, and Amtrak's next appropriation was reduced due to this better-than-expected year-end outcome.

  A more egregious example of penalizing Amtrak for better-than-expected fiscal performance occurred in the mid-1980's. Following a Federal effort to convert Washington's Union Station into a Bicentennial Exhibition forum, Union Station was returned to Amtrak in very poor condition. Amtrak inherited a major urban terminal with a leaking roof and limited functionality as a rail station. But, at that time, Amtrak was prepared to act. By 1985, Amtrak had established a working capital 'reserve' that it had accumulated for catastrophic events and for large capital investments. Amtrak committed almost $80 million toward renovating Union Station, and Amtrak completed all station renovations using other Federal and City funds to complete the parking garage and make needed improvements.

As a result of Amtrak's committing these reserve funds to a vital capital program like Union Station, Congress eliminated all capital funding for Amtrak the following year, and considerably reduced Amtrak's capital funding for several additional years. If Congress had left intact these monies, it is very possible that some of the later financial crises affecting Amtrak would not have been so severe.

- Amtrak does not conduct its business on a level playing field and there does not appear to be any concerted effort on the part of its stakeholders to correct or address these inequities. For example, although Amtrak's management is fully aware that it needs to improve on-time performance, Amtrak has only limited ability to achieve this objective. Amtrak has control of their own business, but not those of its host railroads who control most of the trackage used by Amtrak. According to the passenger railroad, host railroads are responsible for 75 to 80 percent of delays to Amtrak trains operating on their lines. Amtrak pursues long-term, medium-term, and near-term strategies and actions to influence host railroads to improve the on-time performance of Amtrak trains. But Amtrak can only influence – not control – host railroad behavior, since Amtrak does not control their dispatching, capital investment, or maintenance, and passenger operations are not their core business and are not the primary drivers of their operational and strategic decisions. Unfortunately, some of Amtrak's key stakeholders have been thus far unwilling to address this issue.

RECOMMENDATIONS

- The Democratic Members of the Working Group recommend against the establishment of a taskforce. Although the Amtrak reports include useful suggestions for Amtrak to improve its management practices, there is no basis for the extraordinary step of departing from "regular order" and establishing a special taskforce of the Committee to hold hearings on the reports and Amtrak's management practices.

- We recommend that the Railroad Subcommittee continue to conduct its oversight of Amtrak. Such oversight must take full account of the value of Amtrak's current management practices, the progress it has made in improving them, and unique factors in Amtrak's operating environment which make it difficult for it to adopt or obtain the full benefits of generally recommended management practices.

- We recommend that Congress establish a national policy for intercity passenger rail, pass legislation to reauthorize Amtrak, and provide adequate and reliable funding for the system. Amtrak's authorization expired in 2002.

- Our investigation indicates that some of the deficiencies cited in the GAO report represent a failure of Amtrak's Board of Directors. Accordingly, we intend to request that the DOT IG conduct an investigation of whether the Board of Directors is adequately carrying out its legal and fiduciary responsibilities.