AMTRAK

OFFICE *of* INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

GOVERNANCE:

Better Adherence to Leading Practices for Ethics Programs Could Reduce Company Risks

OIG-A-2017-012| June 26, 2017

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AMTRAK OFFICE *of* INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

Memorandum

To: Charles Moorman
President and Chief Executive Officer

From: Tom Howard
Inspector General

Date: June 26, 2017

Subject: *Governance: Better Adherence to Leading Practices for Ethics Programs Could Reduce Company Risks* (OIG-A-2017-012)

Our recent work has shown that Amtrak (the company) has experienced a series of recurring ethical lapses at all levels across the company. Since September 2014, we have publicly reported on numerous ethical lapses related to conflicts of interest, theft, timecard and fuel card fraud, improper gifts, and improper hiring, as we discuss in Appendix B of this report. For example:

- We identified five employees who accepted prohibited gifts from a company vendor—including airfare, hotels, and meals—over two years. The company terminated one employee (who opted to retire), suspended three others, and reprimanded the fifth employee.

- We identified an executive who was terminated after engaging in improper hiring, conflicts of interest, and gross mismanagement of company resources, including writing a book during work hours and steering a contract to an unqualified vendor.

These lapses raise questions about the effectiveness of the company's efforts to prevent and detect unethical behavior and mitigate the resulting impacts on the company.
In addition, because the company receives federal grant funding—close to $1.5 billion in 2016—it is vital that the company's leadership and employees adhere to the highest standards of ethical behavior to protect this investment and maintain the trust of investors.

In this report, we assess the extent to which the company has an effective ethics program, consistent with leading practices, to prevent and detect criminal and other unethical behavior. To complete this review, we assessed the company's ethics policy and other information and data related to the company's ethics activities. We also interviewed key executives to obtain an understanding of their roles in and their perspectives about these activities, including the Vice Chairman of the Board of Directors, the Executive Vice President/Chief Legal Officer, General Counsel and Corporate Secretary—who also serves as the Corporate Ethics Officer—and the former Executive Vice President/Chief Human Capital Officer.

To identify leading practices, we conducted a review of available literature, contracted with the American Productivity and Quality Center to conduct research on effective practices,[1] and interviewed representatives from five private-sector companies with ethics programs rated as high-functioning—Cisco Systems, Inc.; Cummins Inc.; General Electric; Norfolk Southern Corporation; and Royal Caribbean Cruises, Ltd. We then compared and contrasted the company's activities to these practices to identify any opportunities for enhancing the company's activities. For a comprehensive list of the eight leading practices we identified and used to assess the company's efforts, see Appendix C.

We realize that in organizations with high-functioning ethics programs, the program is often a component of a broader compliance function. The company is considering establishing a compliance function to address compliance with a wide array of laws and regulations, and this function could encompass the company's ethics activities, according to the Executive Vice President/Chief Legal Officer, General Counsel, and Corporate Secretary. However, to more clearly diagnose the actions the company could take to help prevent the types of ethical lapses our work has identified, we focused our review on leading practices for ethics programs rather than broader compliance functions. For a detailed discussion of our scope and methodology, see Appendix A.

SUMMARY OF RESULTS

The company's current ethics-related activities partially align with some leading practices; however, these actions do not, in the aggregate, constitute a comprehensive and effective ethics program that is necessary to help prevent and detect criminal conduct or other unethical behavior. Without a robust ethics program that is fully in line with these practices, the company remains vulnerable to legal risks from

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[1] The American Productivity and Quality Center is a member-based nonprofit organization that provides organizations with solutions in business benchmarking, best practices, process and performance improvement, and knowledge management.

employees' unethical actions, as well as harm to the company's reputation. Moreover, taxpayer dollars will remain at risk. We identified the following opportunities for enhancing the company's activities:

- The Chief Executive Officer (CEO) and Board of Directors have taken some steps to voice their commitment to maintaining a culture of integrity. However, these actions have been ad hoc in nature, and insufficient to ensure that the company has an effective program in place and to institutionalize a culture of integrity by "setting the tone at the top." Although it is clear from our office's interactions with members of the Board of Directors, CEOs, and executive leadership that they are individually and collectively committed to promoting a culture of integrity, that commitment has not been institutionalized in a manner consistent with best practices. We found that setting the tone is the most important program component of an effective ethics program. Executive leadership takes decisive and proactive steps to communicate and demonstrate company-wide the importance of behaving in accordance with the highest ethical standards and taking responsibility to enforce those standards.

- The company defined the roles, responsibilities, and lines of authority for some important positions that support an effective program but is missing other key positions. Specifically, the company established a Corporate Ethics Officer and delineated that person's role, responsibilities, and authority. However, the company has not established several other positions that organizations with high-functioning programs deem necessary—such as an executive-level steering committee to help ensure company-wide accountability for ethical conduct, and a program director with support staff to manage the day-to-day operations.

- The company has a formal, written ethics policy that generally defines the ethical standards employees should meet. The company also has procedures for implementing some of the ethics activities it conducts, such as the annual process by which non-agreement employees certify their compliance with the policy. However, the company does not have procedures for other important activities, such as how to conduct investigations of possible ethical lapses and communicate the results. In addition, the company does not have a code of ethics to provide a succinct, easily understandable way to communicate core standards, employee responsibilities, and methods for employees to safely ask questions about complying with the standards and report potential violations.

- The company has an annual process for non-agreement personnel to certify that they do not have conflicts of interest, as well as a Help Line for employees to anonymously report ethical violations. However, the company has not developed a communications plan and training program to ensure that all employees fully understand the standards and their responsibilities, especially the responsibilities of managers and supervisors to enforce the standards. Leading organizations proactively deliver such communications and training to all employees through a myriad of channels, including e-mail, videos, in-person sessions, intranet postings, town hall meetings, and corporate ethics events.

- The company does not fully leverage its corporate risk assessment to proactively identify functions that are vulnerable to ethical lapses and then ensure that controls are in place to help prevent such lapses, does not extensively monitor business data to detect lapses, and does not assess program results to make any necessary adjustments.

These improvement opportunities exist, in part, because the company deemed that its set of ethics-related activities was sufficient to ensure compliance with the corporate ethics policy, according to several executives involved with these activities. Nevertheless, these executives acknowledged that the company can improve in a number of ethics areas. Our analysis and the recurring problems our past work has identified demonstrate that the company's activities do not go far enough to prevent and detect lapses. Without implementing a comprehensive ethics program consistent with leading practices, the company remains vulnerable to legal risks from employees' unethical actions, harm to the company's reputation, and loss of taxpayer dollars.

We recommend that the company take several steps to implement a comprehensive ethics program, including setting the management tone at the top and establishing an executive steering committee and a full-time program director. Once established, we recommend that the Program Director coordinate with appropriate stakeholders to implement the critical components of an ethics program, such as defining program roles and responsibilities, implementing a communications plan and training program, and measuring program performance.

In commenting on a draft of this report, the company agreed with two recommendations, partially agreed with a third, and provided information on actions the company plans to take by September 30, 2017.

We are encouraged by the company's planned actions and target completion dates, which are positive steps that will help the company develop and implement an ethics program that is more comprehensive and effective than currently exists. However, management declined to establish a program director position for the ethics program at this time, stating that it would assess the need for additional resources as it implemented the remaining recommendations in this report and developed an overall compliance program where responsibility for the ethics program will reside. We do not believe that delaying the ethics position while waiting for further assessments or the development of a compliance program is in the company's best interest. Many of the opportunities for ethics program improvement identified in this report are due in large part to limitations in how the company has organized, resourced, and implemented its ethics-related activities. Our recommendations are intended to address those limitations. Foremost is getting someone to assume ethics program duties full-time—and without delay.

Therefore, we continue to believe that a dedicated, full-time program director is fundamental for the company to succeed in developing an ethics program that is consistent with the leading practices of organizations with high-functioning ethics programs. Without a dedicated program director, or other action to provide additional resources to its ethics-related activities, we are skeptical that the company will be able to effectively implement the remaining recommendations in this report, particularly those involving activities that would be the responsibility of a program director and support staff.

BACKGROUND

Two business units have the most direct roles in conducting the company's current ethics activities: General Counsel and Human Resources.

- ***General Counsel***

  The Executive Vice President/Chief Legal Officer, General Counsel, and Corporate Secretary has the collateral duty of serving as the Corporate Ethics Officer and is ultimately responsible for implementing the company's ethics policy.

- *Human Resources*
  - The Vice President, Human Resources, provides staff support to the annual process by which employees disclose potential conflicts of interest or certify that they comply with the company's policy on these conflicts.
  - The Talent Acquisition office manages the new hire process, including a cultural fit assessment that gauges a candidate's likelihood to maintain high ethical standards.
  - The Employee Relations office responds to reports of potential ethical violations and determines discipline for substantiated violations.

THE COMPANY DOES NOT HAVE AN EFFECTIVE PROGRAM TO PREVENT AND DETECT CRIMINAL AND OTHER UNETHICAL BEHAVIOR

The company does not have an effective ethics program consistent with the following eight leading practices.

Set the Tone at the Top

The company's executive leadership has taken limited steps to proactively communicate and demonstrate a commitment to ethical behavior, stress ethics as a corporate priority, and promote a culture of integrity that permeates the organization, as leading practices dictate. Although it is clear from our office's interactions with members of the Board of Directors, CEOs, and executive leadership that they are individually and collectively committed to promoting a culture of integrity, that commitment has not been institutionalized in a manner consistent with best practices.

> ***Leading Practice:*** *Communicate and demonstrate leadership's commitment to ethical behavior, and stress ethics as a corporate priority.*

We found that setting the tone at the top is the most important component of an effective ethics program. Executive leadership in organizations with high-functioning programs takes decisive steps to affirm ethical behavior as a top corporate priority and to instill a culture that encourages the highest ethical conduct by all employees. In that regard, organizations with high-functioning ethics programs typically include boards of directors and CEOs who formally communicate their commitment to ethics in a number of ways, including the following:

- proactively and continually discussing the importance of ethical behavior to them personally and to the company overall, including marketing to all employees the company's ethical standards, as well as employee responsibilities for meeting those standards
- setting expectations that all employees, vendors, and contractors should act in accordance with the highest ethical standards and holding them accountable

Similarly, boards of directors and CEOs at these organizations demonstrate their commitment by, for example:

- ensuring that the achievement of high ethical standards is built into the organization's strategy
- providing all necessary authorities, organizational structures, and resources to achieve an effective program and its goals
- providing strong guidance and oversight for the ethics program
- personally adhering to requirements similar to those for employees, such as taking ethics training, and disclosing and resolving potential conflicts

Company executives noted that, at executive-level meetings, the Board of Directors and former CEO voiced their commitment to maintaining a culture of integrity. However, efforts to proactively communicate and demonstrate this commitment to the entire company have been limited. For example, in fiscal year 2016, the former CEO did not issue or sponsor any messages directed at achieving ethical standards. In addition, the Corporate Ethics Officer reported having access to the CEO and Board of Directors to discuss ethics issues, but these leaders do not provide regular guidance or conduct oversight of the company's ethics-related activities. For example, the Board of Directors does not receive regularly scheduled briefings on the status of company efforts to ensure adherence to standards.

Further, the former CEO did not provide the key resources and organizational structures that leading practices indicate an organization needs to administer a comprehensive program, such as an overall program director and support staff, as discussed in the following section. If the CEO and Board of Directors do not actively affirm ethical behavior as a top corporate priority, other efforts to establish a robust ethics program will likely be ineffective.

Establish and Define Roles, Responsibilities, and Reporting Lines for All Ethics Program Stakeholders

The company defined the roles, responsibilities, and reporting lines for the Corporate Ethics and Human Resource Officers, but it has not established several other key positions or defined and documented the roles for the remaining stakeholders that are critical to an effective ethics program.

> ***Leading Practice:** Establish and document the roles, responsibilities, and reporting lines of all ethics program stakeholders.*

To establish clear program accountability, organizations with high-functioning ethics programs establish several key positions and document the roles, responsibilities, and reporting lines for all ethics program stakeholders. The stakeholders generally include the following:

- **Board of Directors and CEO**. Provide guidance and resources, and proactively conduct oversight of program effectiveness, including receiving regular briefings on program results.
- **Executive-level steering committee**. Provides oversight and guidance, usually led by the CEO and staffed by senior leadership; ensures that communication regarding and accountability for high ethical behavior cascades down into business units.
- **Chief Ethics Officer**. Serves as the senior official with overall accountability for the program.
- **Program Director and staff**. Includes a full-time official who is responsible for day-to-day program operations, coordinates activities of all stakeholders, has sufficient staff, and usually reports to the Chief Ethics Officer but also has direct access to the CEO and Board of Directors.
- **Other units and functions**. Additional units—such as Human Resources, Communications, Law, and other functions—support the program as needed, including ethics counselors, data analytics personnel, and investigators.[2]

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[2] For Amtrak, the role of these investigators is separate and distinct from the role of investigators in the Office of Inspector General who address tips on possible violations while conducting the office's legally mandated, independent oversight function.

The company defined the role, responsibilities, and authorities for the Chief Ethics Officer—officially called the Corporate Ethics Officer—who is responsible for administering and interpreting the company's ethics policy. The company also established that the Corporate Ethics Officer has a direct reporting line to the CEO and the Board of Directors, which provides a channel to keep them informed of ethics issues. In addition, the company defined in policy that the Chief Human Capital Officer—now the Vice President, Human Resources—should provide support to the Corporate Ethics Officer as appropriate.

However, the company is missing several key pieces in its structure that organizations with high-functioning programs have found to be important. For example, the company has not set up an executive-level steering committee to provide oversight. In addition, the Corporate Ethics Officer has other substantial responsibilities as the company's Executive Vice President/Chief Legal Officer, General Counsel, and Corporate Secretary. Moreover, the Corporate Ethics Officer does not have a program director and support staff to manage the day-to-day tasks and activities involved in an ethics program. The company also has not identified the support needed from other organizational units and functions, and it has not clearly defined these roles, responsibilities, and reporting lines. Without establishing and resourcing the robust organizational structure necessary for an effective program—and clearly defining and documenting stakeholders' roles, responsibilities, and reporting lines—the company will continue to be at risk for the types of violations our work identified.

Establish Ethics Policies and Implementing Procedures

The company established a formal ethics policy outlining standards of ethical conduct, among other things, but it has not established all of the related implementing procedures or a code of ethics that provides employees an easily accessible, understandable, and succinct version of the standards and employee responsibilities, as called for in leading practices.

Leading Practice: *Establish clear ethical standards in policy, implementing procedures, and an easily understandable code of ethics.*

Organizations with high-functioning ethics programs implement policies to outline clear standards of appropriate and inappropriate behavior. In fact, representatives of organizations told us that ethics-related issues often require multiple policies or more detailed guidelines to address specific ethical standards, such as when employees can accept gifts or may have conflicts of interest. Organizations then establish implementing procedures to provide instructions to all stakeholders on how to enact the policies and the overall program. For example, organizations establish standards for the types of issues that should be elevated to the board, consistent practices for conducting investigations, and workflow processes for consulting stakeholders when determining what discipline to administer.

Finally, these organizations publish a condensed, easily understandable code of ethics that distills the organization's policies and quickly communicates their values. This includes highlighting and clearly identifying core ethical standards and prohibited behaviors. These codes also identify avenues for employees to safely ask questions about complying with standards and report potential violations. For example, one organization noted that its code of ethics includes a decision tree that maps out each of the organization's ethical principles, which employees can use to determine if a specific action or practice complies with policy. Organizations also use codes of ethics to support their ethics program communication strategy because codes can be easily posted or published on an intranet page, in physical locations, in employee newsletters, and other formats.

The company has an established ethics policy that outlines standards and guidelines for dealing with common situations that could imperil an employee's judgment or jeopardize the stewardship of taxpayer funds. The policy also reinforces that certain activities are prohibited and criminal in nature—such as theft and fraud—and outlines employee responsibilities for reporting possible violations. In addition, the Corporate Ethics Officer stated that the company has revised the policy in the past, such as to clarify contractors' ethical responsibilities. However, the current policy issued in 2014 is outdated; for example, it incorrectly refers to the Chief Financial Officer as the Corporate Ethics Officer instead of the Executive Vice President/Chief Legal Officer, General Counsel, and Corporate Secretary. Additionally, the Corporate Ethics Officer stated that some areas of the policy could be improved, including the standards for outside employment.

Further, the company has procedures for conducting some of its ethics activities (such as how to conduct the annual process by which non-agreement employees certify that they comply with the policy), but it does not have procedures for other activities (such as how to investigate possible lapses and with whom to share investigative results). The company also does not have a code of ethics to provide a succinct, easily understandable way to communicate core standards, employee responsibilities, and methods that employees can use to safely ask questions about complying with the standards and to report potential violations. Relying on a policy without these associated tools does not provide assurance that employees are aware of, and refer to, the company's ethical standards to guide their decisions.

Exercise Due Diligence in Hiring Employees Who Will Uphold Standards

The company has processes in place that are consistent with leading practices to help ensure that it hires individuals who exhibit traits aligned with the company's core values and have not engaged in unethical behavior; however, some of these processes do not always work as well as intended.

Organizations with high-functioning ethics programs use several tools to screen potential candidates for prior unethical behavior and potential ethical conflicts, including checks of a candidate's employment and criminal history, and any declared, potential conflicts of interest. The company's process for screening new hires is largely consistent with these leading practices. Specifically, early in the hiring process, the company requires all candidates to take a "Cultural Fit Assessment" to determine, among other things, if their character and behavior align with the company's mission, vision, and standards, according to a senior Human Resources official.

Leading Practice: *Make reasonable efforts to ensure that new hires align with the company culture.*

Candidates who pass this assessment are supposed to undergo a screening interview by phone and then an in-person interview designed, in part, to assess their compatibility with the company's ethical standards. This official stated that once the company extends an offer, but before the person is hired, the candidate must also disclose any past convictions. Once the offer is accepted, the new hire must report any possible conflicts of interest. At the same time, the company employs a third-party vendor to conduct a background check, which in part, validates the accuracy of some employee disclosures.

However, our work has identified parts of the screening process that do not always function as planned—including some controls intended to verify the accuracy of a candidate's disclosures. For example, according to a senior Human Resources official, the company typically conducts phone interviews of candidates prior to inviting them for an in-person interview. However, the company does not conduct phone interviews with all candidates covered by collective bargaining agreements because it does not have sufficient capacity. The official noted that this is a significant shortcoming because the phone interview provides the company an additional opportunity to interact with candidates to assess their behavior against company values, which adds one more layer of assurance about a candidate's suitability.

Similarly, in response to an Office of Inspector General (OIG) Hotline tip about a potential ethical violation, we identified that an employee failed to disclose his prior felony convictions for theft, robbery, battery, and escape from custody, and the background check did not uncover it. The senior Human Resources official was unsure why this occurred and noted that the company did not go back to the vendor to resolve the problem and validate the background check process. In addition, the employment history review covers only a candidate's last two employment experiences, which for some candidates might cover only the prior 6–12 months, according to a senior Human Resources official. This may be too short a time to validate the accuracy of a candidate's work history disclosures. If the company does not ensure that all parts of the screening process are working as intended, it risks hiring employees who may not adhere to its ethical standards.

Foster Employee Awareness of Ethical Standards and Responsibilities to Abide by Them

The company does not have a comprehensive communications plan or conduct formal company-wide ethics training to ensure that employees are aware of their responsibilities to adhere to ethical standards and report violations, as leading practices maintain.

Leading Practice: *Foster employee awareness of ethics policies and responsibilities, as well as the consequences for violations, through a comprehensive communications plan and training program.*

Organizations with high-functioning ethics programs implement an annual communications plan, similar to a marketing campaign, to regularly reinforce tone at the top, company standards, employee responsibilities—such as the need to report violations—and the consequences of unethical behavior. These organizations proactively deliver such communications to all employees through a myriad of channels, including email, videos, intranet postings, mailings, newsletters, posters, town halls, and corporate ethics events. For example, one organization we spoke with found that using an ethics "mascot" was a creative and effective way to attract employees' attention to ethics.

In contrast, the company issued some ethics-related communications over the past year—such as a July 2016 communication regarding fraudulent overtime charges—but these communications have been ad hoc, limited, and not always disseminated to all employees. The current and two former corporate ethics officers stated that the company should communicate more with employees on standards, responsibilities, reporting tools, and consequences.

Organizations with high-functioning ethics programs also conduct formal company-wide ethics training, and they coordinate this training with the organization's communications plans. These training efforts are both company-wide and targeted to different business units with unique ethics issues—such as targeted training on conflicts of interest for procurement and contract officers. Organizations also use a combination of online and in-person training.

The company, however, has not developed a formal plan to deliver regular company-wide ethics training to educate employees on standards, responsibilities, and reporting tools, consistent with leading practices. The former Managing Deputy General Counsel stated that he provided three ethics training sessions over the past several years when specific business units requested the sessions, but the company has not provided any other training. In the absence of robust communications and training, employees are not likely to be aware of all of the standards, responsibilities, and available mechanisms to report violations. Further, managers and supervisors are not likely to be aware of their responsibilities for enforcing the standards. For example, we identified an employee who had failed to report a felony conviction for evading the police because he claimed that he was unaware of the reporting requirement in the policy. We also identified that an employee engaged in a conflict of interest by creating a website for a company project using a website development business that the employee owned, claiming he was unfamiliar with the policy. If the company does not improve its communications and training efforts, it will continue to be at risk for these and other types of ethical violations.

Ensure Accountability for Achieving Ethical Standards

The company has taken some steps to help ensure accountablity for compliance with its ethics standards that are consistent with leading practices. However, the company has not documented in policy its process for determining the discipline for ethical violations or guidelines to help ensure that discipline is consistently applied, as leading practices maintain. The company also does not provide incentives to promote ethical behavior among employees.

***Leading Practice:** Ensure accountability for and compliance with ethics policies by carrying out timely and consistent discipline, and providing incentives for employees to adhere to ethical standards.*

Organizations with high-functioning ethics programs document their disciplinary process in policies and guidelines to help ensure consistent discipline. These organizations typically use a cross-functional panel to decide what discipline to impose for ethical violations—including officials from Human Resources, Law, the ethics program, and other functions as appropriate. In addition, some of these organizations communicate the results of their process, such as violations identified and the company's response, to reinforce that the company does not tolerate unethical behavior.

Further, these organizations provide incentives for employees to promote ethical behavior. Specifically, organizations use performance evaluations to help assess an employee's adherence to ethical standards. Some organizations also publicly acknowledge extraordinary examples of ethical behavior through communications and awards programs. For example, one organization's ethics program issued a company-wide communication highlighting an employee's good deed to return a customer's lost property. In addition, some organizations make employees certify that they are in compliance with their ethics policies, particularly regarding conflicts of interest.

A number of the company's actions are consistent with these practices. For example, the company takes timely action in response to confirmed violations, averaging 17 days to close cases, compared to 35–40 days for other organizations. In addition, the company's Employee Relations office in the Human Resources department manages the process for determining discipline for ethics violations, according to an Employee Relations official. When determining what discipline to impose, Employee Relations staff consider the circumstances of individual cases and historical actions taken on similar cases. The official stated that they then coordinate proposed disciplinary actions with other stakeholders, such as the Law department if there is a legal issue. Furthermore, the company asks employees each year to disclose conflicts of interest or certify that the employees are in compliance with company policy on conflicts

However, the company does not have documented policies or guidelines that staff can consult to (1) help ensure that they make consistent decisions about the type and severity of discipline to impose and (2) provide a stable source of guidance when staff changes occur. The company also does not internally publicize the actions it takes in response to ethical violations to help deter unethical behaviors. In addition, the company does not offer clear incentives to promote employee adherence to ethical standards. For example, employee competencies form the basis for annual performance evaluations; nevertheless, the evaluations do not include any direct reference to ethical behavior. Moreover, the company's awards program does not provide a way to recognize and reinforce good, ethical behavior. In the absence of such established accountability mechanisms, the company runs the risk of not consistently promoting and enforcing its ethics policies.

Monitor Functions and Company-Wide Data to Prevent and Detect Unethical Conduct

The company does not leverage its corporate risk assessment to proactively identify business functions that pose the highest risks of ethical lapses, such as the procurement function, and implement controls to mitigate these risks, as called for in leading practices. In addition, the company does not extensively monitor available business data to detect unethical conduct.

Leading Practice: *Proactively monitor vulnerable business functions to implement controls intended to help prevent and detect unethical behavior.*

Organizations with high-functioning ethics programs ensure that their business units leverage corporate risk assessments to identify where unethical conduct is most likely to occur and take steps to prevent it. For example, employees who approve contracts could have personal or business associations that create conflicts of interest that could unduly influence their vendor-selection decisions. These organizations minimize risks by instituting controls, such as providing extra scrutiny of contracting employees' financial disclosures and additional supervisory review of award decisions. In addition, these organizations monitor and analyze available business data to detect misconduct. For example, some organizations monitor corporate credit card accounts and expense reports to identify anomalies or other indications of unethical behavior.

The company has a risk assessment process but does not fully leverage it to identify functions that pose the highest risks of unethical conduct and ensure that controls are in place to mitigate those risks. The company's Enterprise Risk Management Office coordinates a corporate risk assessment and works with departments to conduct a more detailed assessment of major company processes. This office also developed a framework that departments can use to assess the extent to which they have management controls in place to mitigate significant risks. In addition, the office conducts a fraud risk assessment and implemented some controls to prevent unethical behavior, according to the Senior Director, Amtrak Controls. However, not all departments have focused on identifying the potential risks of ethical lapses when assessing their processes or have taken actions to mitigate these risks, according to the office's director. In addition, the director said that the company is now proactively monitoring business data for some functions, such as purchase cards, to look for anomalies that could indicate fraud. However, the director also noted that the company is not conducting all of the data analytics it could to protect the company from ethical violations. Our investigative work identified that the company continues to have ethical lapses partly because of these gaps.

Measure Program Effectiveness and Continually Improve

The company does not measure the overall effectiveness of its current ethics activities or take remedial actions to improve them on a regular, ongoing basis, as leading practices maintain.

Leading Practice: *Measure ethics program effectiveness against established performance indicators and make continuous improvements.*

Organizations with high-functioning ethics programs ensure that their internal program offices establish key performance indicators and collect data against each indicator to measure program effectiveness—both overall and for individual program components. For example, organizations' program offices collect the following information:

- data from their hotlines and investigations to identify trends in reported tips and the number, type, and location of violations
- case data on the timeliness of their investigations, as well as the consistency of discipline imposed

- results of independent third-party assessments of the program's effectiveness

Organizations' program offices then analyze the data they collect and assess the results to determine if this information indicates a need, pattern, or trend that merits additional management controls or actions. For example, representatives from several organizations told us that a decrease in hotline call volume may indicate a need for increased ethics-related communications to employees. Similarly, trends that show a problem in a particular part of the organization or with a particular type of violation—such as a conflict of interest or timecard fraud—may indicate a need to (1) adjust the policy or guidelines or (2) tailor communications and training to these problem areas.

The company collects some data and statistics on its ethical activities but does not proactively mine the information to assess the effectiveness of these activities. For example, the company receives monthly and year-to-date data from its third-party Help Line vendor, including the number and type of reported incidents and call activity. The vendor also supplies a year-to-date market comparison that enables the company to benchmark its performance against other organizations and to make improvements. However, the Corporate Ethics Officer does not use these data for this purpose.

In addition, the company does not use the results of our work to help inform it about the effectiveness of its ethics activities. More specifically, employees can submit anonymous tips to our office via the OIG Hotline, which is independent from the company's Help Line and the investigators who are to resolve tips about possible violations. We review these tips and either refer them to the company to pursue, or we investigate them ourselves to determine if they are substantiated violations.

The company uses our reports to help decide the discipline to impose, and we find that the company takes timely action on our cases. However, the Corporate Ethics Officer does not regularly consider whether the results of our individual investigations indicate a need for the company to adjust or improve its ethics-related activities. For example, the company did not consider our reports showing individual fuel theft using company credit cards or the misuse of relocation benefits to determine if it needed to take action to mitigate such behavior, including adding controls, communications, or training. Furthermore, the Employee Relations office collects some relevant data, such as the types of discipline imposed over time, but the Corporate Ethics Officer stated that the company does not use these data—or collect and analyze any other performance data—to measure program effectiveness and improve results.

AN EFFECTIVE ETHICS PROGRAM COULD HELP REDUCE COMPANY RISK

Implementing an effective ethics program in accordance with leading practices could help mitigate risks to the company from employees' unethical behavior, including financial liability, poor stewardship of taxpayer dollars, and reputational risk. Although it may not be realistic to eliminate all ethical violations, implementing a strong ethics program can help address issues internally before they become systemic problems and pose broader risks, such as the following:

- **Risks to taxpayer funds.** As a federal grant recipient, the company has a duty to ensure the proper stewardship of taxpayer dollars. A weak ethics program can expose the company to ethical violations such as theft, fraud, and conflicts of interest, which could subject the company to financial loss. Implementing a robust program aligned with leading practices can help the company ensure that federal funds are used as intended.

- **Legal risk**. Under the U.S. Federal Sentencing Guidelines for Organizations—one of the core building blocks for ethics leading practices—any company can be held financially liable for the criminal conduct of an employee who acts as an agent of the company. However, companies can reduce their potential fines by as much as 95 percent by demonstrating that they have an effective ethics program aimed at preventing and detecting criminal conduct.[3] Organizations with high-functioning ethics programs have found that implementing a comprehensive program that complies with the sentencing guidelines helps drive down the number of violations and limits financial liability. For example, one business survey reported that organizations that implemented such a program experienced a drop in misconduct. The company's Corporate Ethics Officer agreed that complying with the sentencing guidelines was important in limiting the company's potential financial liability.

- **Reputational risk**. Representatives from organizations told us that a key reason for investing in a comprehensive and proactive ethics program was to protect their reputation in the marketplace. These organizations did not want negative publicity from high-profile criminal or other ethics violations to damage their

[3] PricewaterhouseCoopers LLP, *Best Practices and Practical Tips for Your Compliance & Ethics Program,* Association of Corporate Counsel, Northeast Chapter, February 2014.

reputation. For the company, negative publicity from such violations could result in damage to the brand, a loss of public confidence, reduced market share, and a decrease in ridership and revenue. For example, research found that the single largest factor in the loss of shareholder value is damage to the organization's reputation. As a private company operating in an open market, Amtrak is subject to these same risks and the same need for increased protection from such risks that a robust ethics program provides.

CONCLUSIONS

The company's current ethics-related activities partially align with some leading practices; however, these actions do not, in the aggregate, constitute the comprehensive and robust program necessary to help prevent and detect criminal conduct or other unethical behavior. In the absence of a comprehensive ethics program, our office continues to identify ethical lapses at all levels across the company. Taking additional steps to build on its current set of activities will help the company achieve an effective program that includes all of the leading practices we identified and will help mitigate the company's financial, legal, and reputational risks.

RECOMMENDATIONS

To proactively promote the highest standards of ethical conduct among employees and mitigate the risks of unethical conduct, we recommend that the company take steps to establish a robust and effective ethics program consistent with the eight leading practices of organizations with high-functioning programs, as defined in detail in Appendix C. These steps should include the following:

1. The Chief Executive Officer, in conjunction with the Board of Directors, should set a clear tone at the top by regularly demonstrating and communicating a commitment to maintaining high ethical standards as a corporate priority. This includes ensuring that ethics are reflected and resourced as part of the company's corporate strategy.

2. The Chief Executive Officer should establish an executive steering committee to guide program implementation across the departments, a program director with support staff to manage day-to-day program implementation and to provide assistance to the Corporate Ethics Officer and any other authorities and resources needed to implement a comprehensive program.

3. Once established, the Program Director, with guidance and oversight from the Corporate Ethics Officer and input from the responsible departments, should take the following actions:

    a. Ensure that the program roles, responsibilities, and reporting lines are clearly defined in policy for all stakeholders, including the Board of Directors, Executive Steering Committee, Program Director and staff, and other departments that have a role in program implementation, including Human Resources, Communications, and Law.

    b. Update the ethics policy and any associated policies as necessary and reflect new program changes, ensure that stakeholders and departments establish related implementing procedures for all program components and activities, and create and disseminate an easily understood code of ethics.

    c. Work with the Human Resources department to close any shortcomings in the processes used for hiring and background checks to assess the likelihood that new hires will maintain ethical standards.

    d. Increase employee awareness of ethical standards and responsibilities by designing and implementing a communications plan in conjunction with the Communications office, and designing and implementing a training program with the Human Resources department.

    e. Work with the Human Resources and Law departments to establish employee incentives to promote ethical behavior—such as evaluating employees' compliance with standards as part of performance ratings and recognizing outstanding compliance in awards programs—and document the criteria and processes used to investigate potential ethics lapses and determine discipline for violations to help provide for consistent decisions.

    f. Work with the Enterprise Risk Management office to help ensure that departments better assess which processes are vulnerable to ethical lapses and implement controls that could help prevent problems, as well as proactively analyze available business data to look for indicators of possible unethical behavior and work with the relevant departments to address problems.

g. Establish measures and collect the relevant performance data to routinely gauge the effectiveness of the overall program and its major components—such as communications and training activities—and make any needed adjustments.

h. Provide regular briefings on program results to the CEO and Board of Directors to ensure that the program is effective and has the necessary resources and support.

MANAGEMENT COMMENTS AND OIG ANALYSIS

Amtrak's Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary provided comments on a draft of this report on June 12, 2016. The official stated that the company agreed with two of our recommendations, partially agreed with a third, and provided additional information on actions the company plans to take to implement the recommendations. The company's target completion date for all planned actions is September 30, 2017.

We are encouraged by the company's planned actions and target completion dates. We believe these are positive steps that will help the company develop and implement an ethics program that is more comprehensive and effective than currently exists. However, as discussed below, management declined to establish a program director position for the ethics program at this time. We continue to believe that a dedicated, full-time program director will be necessary in order for the company to succeed in developing an ethics program that is consistent with the leading practices of organizations with high-functioning ethics programs.

The company's planned actions are summarized below.

- **Recommendation 1.** Management agrees with our recommendation to set a clear tone at the top regarding ethics. Management's response notes that they are in the process of taking steps to communicate their commitment to ethical behavior and the need to maintain high ethical standards. In addition, management plans to send employees regular communications that reinforce the commitment of Amtrak leadership to ethical behavior and the need to maintain high ethical standards.

- **Recommendation 2.** Management agrees with our recommendation to establish an executive steering committee for the ethics program, noting that the company's Executive Committee will take on this function and oversee the development of the ethics program.

  However, management declined to establish a program director position for the ethics program at this time, stating that it would determine how best to manage the day-to-day ethics program and support the Chief Ethics Officer as it develops the overall program in accordance with the remaining recommendations in this report. In addition, management stated it intends to stand up an overall compliance program where responsibility for compliance with Amtrak's ethics program will reside, and to hire a Chief Compliance Officer. Management noted that, at that time, they will assess whether additional support for the ethics program is needed.

  We acknowledge that in organizations with high-functioning ethics programs, those programs are often one component of a broader compliance function. Nevertheless, these organizations also generally appoint full-time program directors, who may reside within the compliance function, to provide undivided attention to implementing all of the components of a robust ethics program. The overall message of our report is that while the company's current ethics-related activities partially align with some leading practices, those activities do not, in the aggregate, constitute a comprehensive and robust program that is necessary to help prevent and detect criminal conduct or other unethical behavior. This is due in large part to limitations in how the company has organized, resourced, and implemented its ethics-related activities and our recommendations are intended to address those limitations.

  Therefore, we continue to believe that the company would benefit from establishing a dedicated, full-time program director with support staff, sooner rather than later, to develop a robust and effective ethics program consistent with the leading practices of organizations with high-functioning ethics programs. Moreover, without a dedicated program director, or some other action to provide additional resources to its ethics-related activities, we are skeptical that the company will be able to effectively implement the remaining recommendations in this report, particularly those involving activities that would be the responsibility of a program director and support staff. Those responsibilities involve disparate and time-consuming activities such as clarifying reporting lines, updating policies, addressing shortcomings in the hiring and background checking processes, revamping the company's communications and training, and establishing employee incentives.

- **Recommendation 3.**

a. Management agrees with our recommendation to define program roles, responsibilities, and reporting lines, except for the program director aspect. (See response above.)

b. Management agrees with our recommendation to update policies and procedures, intends to revise the Ethical Conduct and Conflict of Interest policy, and plans to prepare and communicate a code of ethics that clearly communicates the expectations set forth in the policy.

c. Management agrees with our recommendation to close any shortcomings in the hiring and background check processes. It committed the Human Resources department to review the processes used to screen candidates—including background checks, assessment exams, and in-person interviews—and to make recommendations for improvements to the Executive Committee.

d. Management agrees with our recommendation to implement a communications plan and a training program to make employees aware of the company's ethical standards, processes, and resources, as well as employees' ethical responsibilities.

e. Management agrees with our recommendation to establish an incentive program and document disciplinary criteria and processes, and commits the Human Resources and Law departments to jointly recommend appropriate actions.

f. Management agrees with our recommendation to identify processes vulnerable to ethical lapses, implement controls, and incorporate them into the Management Control Framework. In addition, the Controls team plans to work with process owners and leadership to explore opportunities to leverage data analysis techniques to detect indications of unethical behavior.

g. Management agrees with our recommendation to measure and collect performance data and commits to establishing metrics to measure the effectiveness of the overall ethics program, regularly report on those to the Executive Committee and the Board of Directors, and use those to adjust communications and training to address any negative trends.

h. Management agrees with our recommendation to brief company management and commits to provide regular briefings on program results to the CEO and Board of Directors.

For management's complete response, see Appendix D.

APPENDIX A

Scope and Methodology

This report provides the results of our audit of the company's ethics program. Our objective was to assess the extent to which the company has an effective ethics program, consistent with leading practices, to prevent and detect criminal or other unethical behavior. We conducted this audit from November 2016 through March 2017 in Washington, D.C.

The scope of our work included a review of Amtrak's corporate-level policies and procedures for addressing ethics issues. To provide information on the status of the company's ethics process, we interviewed the following people:

- Corporate Ethics Officer (currently the Executive Vice President/Chief Legal Officer, General Counsel, and Corporate Secretary)
- the former Executive Vice President/Chief Human Capital Officer
- the former Managing Deputy General Counsel
- two former Corporate Ethics Officers
- Vice-President and Comptroller
- Senior Director, Amtrak Controls
- Vice-President and Chief Logistics Officer
- Chief Labor Relations Officer
- Senior Director, Talent Acquisition
- other officials involved in personnel or ethics matters

We also reviewed the company's ethics policy and other data related to the company's ethics activities.

To identify leading practices, we obtained information from various sources:

- We contracted with the American Productivity and Quality Center to conduct secondary research and provide leading practices for how other organizations successfully ensure the ethical conduct of their employees.
- We interviewed officials from the U.S. Office of Government Ethics—including

the Deputy Director for Compliance and the Chief Program Review Branch—to identify leading ethics practices in the federal government. As part of this effort, we reviewed the Ethics in Government Act of 1978, as amended, as well as federal ethics regulations issued under that act.

- We reviewed publicly available research by private-sector ethics program consultants and researchers.
- We reviewed noted standards for ethics programs and internal controls, including the U.S. Federal Sentencing Guidelines for Organizations and the Internal Control Integrated Framework from the Committee of Sponsoring Organizations of the Treadway Commission.
- We identified private-sector companies that are recognized as having high-functioning ethics programs, and we interviewed representatives from five of them—Cisco Systems, Inc.; Cummins Inc.; General Electric; Norfolk Southern Corporation; and Royal Caribbean Cruises Ltd—to understand how their programs operate.
- We reviewed publicly available codes of ethics from six private-sector companies. We did not review the ethics policies from any private-sector companies because these are generally proprietary.

Based on our combined research, we identified eight leading practices for developing a comprehensive, effective ethics program to prevent and detect criminal and other unethical behavior, and to reduce the risks that can result from such behavior. We then compared the company's activities and actions against these eight leading practices, the results of which form the basis of this report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Internal Controls

Our review considered the extent to which the company used its internal control framework to assess if departments implemented controls designed to specifically mitigate risks of ethical misconduct. We did not conduct an independent review of company controls.

Computer-Processed Data

Our analyses and findings do not rely on computer-generated data from any company information systems.

APPENDIX B

Related Investigative Summaries

The following are summaries of completed OIG investigations of ethical violations that we reported publicly from September 2014 to May 2017. For the complete text of these investigations and all other Amtrak OIG reports, see www.amtrakoig.gov.

- *Theft of Company Property* (OIG-I-2017-520), May 17, 2017. A company employee stole Amtrak property, including copper cables and a rechargeable grinder, and sold it for personal gain. The employee admitted to the theft and resigned; judicial proceedings are pending.

- *Misuse of Grant Funds* (OIG-WS-2017-301), May 12, 2017. Two senior employees improperly used federal grant funds for projects outside the scope of the grant agreement and also committed associated violations of company policy. One employee was released from Amtrak on unrelated matters prior to the completion of our investigation. The other employee was terminated.

- *Theft and Misuse of Company Resources* (OIG-I-2016-525), April 7, 2017. A company inspector was involved in scrap metal theft, misuse of company resources, falsifying a safety form, covering up an operating rules violation, and making false statements to our investigators. The inspector retired instead of facing administrative charges.

- *Falsification of Safety-Related Documents, Obstruction, and Retaliation* (OIG-I-2017-512), April 7, 2017. A company supervisor improperly directed subordinates to instruct employees to falsify safety-related forms. The supervisor also gave false statements during our investigation and made threatening comments against employees he believed were cooperating with the investigation. The supervisor retired from his position following the release of our investigative report.

- *Violation of Amtrak Employee Rail Pass Program Policy* (OIG-I-2017-513), March 27, 2017. A company employee used her Employee Rail Pass to supply tickets to individuals who were not eligible for this benefit. The employee also fraudulently claimed more than $26,000 in travel benefits in the name of an individual she claimed to be her husband, although we found no evidence to substantiate this claim. The employee was terminated, and criminal proceedings are pending.

- *Conflict of Interest* (OIG-I-2017-507), March 3, 2017. A company employee had an undisclosed personal relationship with an employee of a contractor and inappropriately steered work to the contractor, obligated company funds without authorization, misrepresented her credentials on an employment application, misused company electronic devices for excessive personal use, routinely violated the company telework policy, and was terminated.

- *Fuel Card Misuse* (OIG-I-2017-508), February 7, 2017. A supervisor gave two company fuel cards to a non-employee who used the cards to purchase fuel in exchange for cash to buy illegal drugs for both individuals. The supervisor resigned and cannot be rehired.

- *Two Employees Terminated and Eight Others Suspended for Violations of Amtrak Policies* (OIG-I-2016-525), January 13, 2017. Two company foremen performed work at a supervisor's residence using company equipment on company time, provided false or misleading information about this to investigators, and were terminated. The supervisor was terminated as well. Another eight employees violated company policy, including performing work at the supervisor's residence, helping a company employee move on company time, and misusing company equipment and resources. One employee was suspended for 20 days; the others, for 10 days.

- *Unauthorized Leave of Absence/Forgery* (OIG-I-2016-524), January 9, 2017. An employee forged a physician's signature on multiple forms for medical leave of absence. The employee pleaded guilty to two felony charges and was terminated.

- *Violation of Corporate Policy by Amtrak Manager* (OIG-I-2017-501), December 6, 2016. A manager failed to disclose stock ownership in a vendor with whom the company was doing business, and he reportedly participated in the company procurement process with that vendor. The company issued a formal counseling letter to the employee, which included a final warning regarding additional misconduct. The manager informed his supervisor that he sold his stock interest.

- *Violation of Amtrak Ethics Policy* (OIG-I-2017-502), November 29, 2016. For two years, five employees accepted prohibited gifts from a company vendor—including airfare, hotels, and meals. The company terminated one employee (who opted to retire), suspended three others, and issued one a letter of reprimand.

- *Violation of Corporate Policy by Yard Engineer* (OIG-I-2016-522), October 13, 2016. An employee failed to report a felony conviction for evading the police. The company reasoned that this was a little-known requirement and opted to educate the employee on the policy rather than discipline that person.

- *Violation of Amtrak Policy* (OIG-I-2016-521), September 29, 2016. An employee created a conflict of interest by using his company position to further his private interests. The company said it had counseled the employee.

- *Violation of Amtrak Policies* (OIG-I-2016-525), September 21, 2016. An employee concealed a serious safety violation, brought an unauthorized firearm onto company property, and used company resources for personal benefit. The employee was terminated.

- *Employee Theft* (OIG-I-2016-526), September 21, 2016. An employee took Amtrak tools and equipment to a pawn shop to exchange for money. The employee was charged with theft and resigned.

- *Relocation Expense Fraud* (OIG-I-2016-520), May 20, 2016. An employee received a double payment by using a company credit card for relocation expenses while also accepting a separate reimbursement for the same expenses. The employee was terminated, and the supervisor was terminated for failing to enforce the policy.

- *Failure to Disclose Violent Criminal History* (OIG-I-2016-518), April 14, 2016. An employee made false statements on his employment application, including failing to disclose prior felony convictions for assault and murder. The employee resigned.

- *Violation of Amtrak Policy* (OIG-I-2016-515), April 8, 2016. A manager inappropriately intervened in employment matters on behalf of his relative and was disciplined.

- *Fuel Card Fraud* (OIG-I-2016-510), February 23, 2016. An employee made fraudulent, personal purchases with a company fuel card while on medical leave. The employee pleaded no contest to theft, was ordered to pay restitution, and was terminated.

- *Outside Employment Policy Violation* (OIG-I-2015-518), October 13, 2015. An employee inappropriately engaged in outside employment while on medical leave. The employee resigned.

- *Ethics Policy Violation* (OIG-I-2015-524), June 24, 2015. An executive did not notify procurement officials of his ownership in an outside company during his participation in the selection of that company as a vendor. The executive also worked on personal business with Amtrak resources during work hours. The employee was terminated.

- *Ethics Policy Violation* (OIG-I-2015-506), April 15, 2015. An executive engaged in improper hiring, conflicts of interest, and gross mismanagement of Amtrak resources, including hiring his friend's son, writing a book during work hours, and steering a contract to an unqualified vendor. The executive was terminated.

- *Ethics Policy Violation* (OIG-I-2015-508), March 30, 2015. An executive failed to disclose a potential conflict of interest between his duties and his spouse's activities. The executive was counseled.

- *Theft of Property* (OIG-I-2014-516), March 3, 2015. An employee ordered goods from company inventory that he did not need to fulfill his job duties. He then used, gave away, or sold the items. The employee pled guilty to felony theft, was ordered to pay restitution, and resigned.

- *Two Employees Forge Medical Forms* (OIG-I-2014-519, OIG-E-2014-520), September 30, 2014. Two employees forged the signature of medical officials on disability forms. Both employees resigned.

- *Safety Officer Fails to Disclose Criminal Convictions* (OIG-I-2014-518), September 30, 2014. An employee failed to disclose on his application his extensive criminal history, which included felony convictions for robbery, theft, battery, and escape from custody. The employee resigned.

- *Employee Leaves Jobsite to Work Out* (OIG-I-2014-515), September 30, 2014. During the workday, an employee regularly left the jobsite without authorization to work out at a local health club. The employee was terminated.

- *Employee Pads Expense Reports With False Meal Checks* (OIG-I-2014-514), September 30, 2014. An employee submitted meal checks for expenses he did not incur. The employee pled guilty to misdemeanor fraud, was ordered to pay restitution, and was terminated.

APPENDIX C

Leading Practices for Establishing and Operating an Effective Ethics Program

<table>
<tr><th>CATEGORY</th><th>LEADING PRACTICES</th></tr>
<tr><td>Set the tone at the top</td><td>At the executive leadership level, demonstrate and communicate a commitment to ethical behavior, including stressing ethics as a corporate priority and promoting an organizational culture that expects the highest ethical conduct. To do so, executive leadership:
Proactively and frequently communicates company-wide to emphasize the importance of behaving in accordance with ethics policies and to highlight the need to report unethical behavior
Leads by example, including adhering to requirements similar to those for employees, such as taking ethics training and disclosing and resolving potential policy conflicts
Ensures that ethics are built into the organization's strategy
Sets expectations that all employees, vendors, and contractors should act in accordance with the highest ethical standards and holds them accountable
Provides the authorities, organizational structures, and resources necessary to achieve program goals
Provides strong guidance and oversight for the ethics program</td></tr>
<tr><td>Define and document ethics program roles, responsibilities, and reporting lines</td><td>Define and document the roles, responsibilities, and organizational reporting lines for all ethics program stakeholders, including:
Board of Directors, which sets the tone, receives regular briefings from the Chief Ethics Officer, and provides oversight for the program
Chief Executive Officer, who also sets the tone, provides resources, and has overall responsibility for the program
Executive-level steering committee (usually led by the CEO and staffed by senior leadership), which provides guidance and oversight for the program, facilitates communication between program and functional business units, and ensures that accountability cascades into these units
Chief Ethics Officer, who serves as the senior accountable official responsible for program implementation and has the authority and independence to directly brief the Board of Directors and CEO on significant trends or issues
Program Director (usually a full-time official accountable to the Chief Ethics Officer), who is responsible for day-to-day program operations, coordinates all program components, periodically reports to the Board of Directors and CEO on program results, and has sufficient staff to effectively implement the program
Other business units that provide support, such as human resources, corporate communications, legal, internal audit, and finance
Other functions that provide support, including:
Ethics counselors who answer employee questions on compliance with ethics policies
Ethics investigators who investigate alleged violations (Note: for Amtrak, the role of these investigators is separate and distinct from the role of OIG investigators who address tips on possible violations while executing our congressionally mandated, independent oversight function.)</td></tr>
</table>

CATEGORY	LEADING PRACTICES
	▪ Data analytics personnel who analyze the highest ethics risks, such as conflicts of interest within the procurement function
Establish clear ethical standards in policy, implementing procedures, and an easily understandable code of ethics	• Establish policies outlining clear standards for ethical behavior that address specific risks • Develop written procedures to implement the policies and the overall program • Ensure that stakeholder roles, responsibilities, and reporting lines are documented in either the policies or procedures • Develop a condensed, easily understandable code of ethics and other guidance that: o Clearly communicates the vision of appropriate conduct o Highlights core ethical standards and employees' responsibilities to abide by them, and clearly defines prohibited behaviors o Advertises the channels that employees can use to clarify questions on ethics policy or report potential violations
Exercise due diligence to ensure that new hires align with the company culture	• Take reasonable steps to ensure that new hires align with the corporate culture and exhibit the highest ethical standards: o Assess the consistency of a candidate's behavioral traits with the company's values and ethical standards o Perform background checks of prospective hires to reasonably ensure they have not engaged in criminal activity
Foster employee awareness of ethics policies and responsibilities, as well as consequences for violations through a comprehensive communications plan and training program	• Develop and implement a detailed communications plan, similar to a marketing campaign, and a program for conducting company-wide training. Communications and training should aim to: o Effectively publicize, clarify, and reinforce the content of the ethics policies, code, and procedures o Be well-coordinated so that communications and training reinforce each other • Communicate regularly and attempt to reach target audiences using a variety of channels, which can include email, electronic broadcast messages, the company website, town hall meetings, posters, and other creative promotional techniques. Communications can be tailored to: o Address specific business units or the highest corporate risks o Coincide with annual events, such as holiday reminders about restrictions on accepting gifts • Conduct training that incorporates scenarios of common ethical conflicts for employees to consider. Training can be in-person or computer-based and can be tailored to specific positions; for example, training for managers and first-line supervisors may differ from training for employees in general or new hires.

CATEGORY	LEADING PRACTICES

Ensure accountability for and compliance with the code of ethics, and provide consistent enforcement	• Provide incentives for employees to adhere to ethical standards through performance evaluations and awards for exceptional conduct
	• Provide a policy of non-retaliation for individuals who raise ethics concerns
	• Consistently conduct thorough, timely investigations of ethics allegations—in accordance with written policies and procedures—and inform the person reporting the incident of its resolution
	• Establish an enforcement process that provides for:
	  o Consistent and timely discipline
	  o Stakeholder coordination, such as with the human resource office, labor relations, Law department, and the employee's home unit
	• Communicate, as appropriate, investigation results company-wide, including the nature of the violation and the consequences, while protecting employee privacy

Monitor and address vulnerable business functions to prevent and detect unethical behavior	• Leverage assessments of highest risks across business functions to ensure that sufficient controls are in place to help prevent unethical behavior
	• Use data analytics to proactively detect criminal or other unethical behavior. Examples include monitoring:
	  o Entertainment expenditures and employee expense reports
	  o Corporate credit card accounts

Measure ethics program effectiveness and continuously improve	• Monitor the overall effectiveness of the ethics program and its components, and continuously improve by:
	  o Establishing a manageable set of key performance indicators to measure results
	  o Collecting the data necessary to measure program effectiveness and identify areas of concern for each indicator, including:
	    ▪ Characteristics of allegations (such as hotline and other data on employee tips about ethical lapses, as well as trends in these tips over time)
	    ▪ Characteristics of substantiated allegations (Investigations data on the percentage of tips that are substantiated as violations)
	    ▪ Organizational or geographic location of employees with violations
	    ▪ Timeliness of investigations and consistency of discipline
	    ▪ Training completion rates
	    ▪ Third-party assessments of the program's comprehensiveness and effectiveness
	  o Analyzing collected data to identify patterns and trends that merit additional management controls or actions
	  o Taking remedial actions, such as adjusting or augmenting policies, communications, training, and enforcement

APPENDIX D

Management Comments

NATIONAL RAILROAD PASSENGER CORPORATION
60 Massachusetts Ave NE., Washington, DC 20002

Memo

AMTRAK

Date June 12, 2017

From Eleanor D. Acheson
Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary

To Tom Howard
Inspector General

Department Law

Subject Management Response to Audit Report No. 003-2017 – Governance: Ethics Program

Cc Wick Moorman
Bill Feidt
Stephen Gardner
Jason Molfetas
Scot Naparstek
DJ Stadtler
Caroline Decker
Matt Gagnon
Carol Hanna
Wm Herrmann

This memorandum provides Amtrak's response to the Audit Report for Project No. 003-2017 entitled "*Governance: Better Adherence to Leading Practices for Ethics Programs Could Reduce Company Risks.*" Management appreciates the opportunity to respond to the OIG recommendations. As indicated in our responses, we agree with each of the OIG recommendations, excepting of one aspect of one recommendation, and have initiated actions to address each in a timely manner.

Recommendation 1:
The Chief Executive Officer, in conjunction with the Board of Directors, should set a clear "tone at the top" by regularly demonstrating and communicating a commitment to maintaining high ethical standards as a corporate priority. This includes ensuring that ethics are reflected and resourced as part of the company's corporate strategy.

Management Response/Action Plan:
Management agrees with the recommendation and is in the process of taking steps to communicate the commitment to ethical behavior and the need to maintain high ethical standards as we strive to achieve Amtrak's strategic goals. In addition, we plan to send regular communications which reinforce Amtrak leadership's commitment to ethical behavior and the need to maintain high ethical standards.

Responsible Amtrak Official(s): Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary working with the Vice President, Government Affairs & Corporate Communications.
Target Completion Date: July 30, 2017 for first communication

NATIONAL RAILROAD PASSENGER CORPORATION
60 Massachusetts Ave NE., Washington, DC 20002

Recommendation 2:
The Chief Executive Officer should establish an Executive Steering Committee to guide program implementation across the departments, a Program Director with support staff to manage day-to-day program implementation and to provide assistance to the Corporate Ethics Officer, and any other authorities and resources needed to implement a comprehensive program.

Management Response/Action Plan:
Management agrees with the recommendation to establish an Executive Steering committee for the ethics program; the Amtrak Executive Committee which includes the President and CEO and the six Executive Vice Presidents will take on the Executive Steering Committee functions and oversee the development of the ethics program. Management declines to establish a Program Director position for the ethics program at this time. As Management develops the overall program in accordance with the remaining recommendations, we will also identify how best to manage the day-to-day ethics program and support the Chief Ethics Officer. Management intends to stand up an overall compliance program where responsibility for compliance with Amtrak's ethics program will reside and to hire a Chief Compliance Officer; at that time, Management will assess whether additional support for the ethics program is needed.

Responsible Amtrak Official(s): Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary
Target Completion Date: July 30, 2017

Recommendation 3:
Once established, the Program Director, with guidance and oversight from the Corporate Ethics Officer and input from the responsible departments, should take the following actions:

a. Ensure that the program roles, responsibilities, and reporting lines are clearly defined in policy for all stakeholders, including the Board of Directors, Executive Steering Committee, Program Director and staff, and other departments that have a role in program implementation, such as the Human Resources, Communications, and Law departments.

   Management Response/Action Plan:
   Management agrees with the recommendation, except for the Program Director aspect.

   Responsible Amtrak Official(s): Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary
   Target Completion Date: September 30, 2017

b. Update the ethics policy and any associated policies as necessary and reflect new program changes; ensure that stakeholders and departments establish related implementing procedures for all program components and activities; and create and disseminate an easily understood code of ethics.

   Management Response/Action Plan:
   Management agrees with the recommendation and intends to revise the Ethical Conduct and Conflict of Interest policy to accord with this recommendation. In addition, Management will prepare and communicate a code of ethics that simply and clearly communicates the expectations set forth in the policy.

   Responsible Amtrak Official(s): Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary
   Target Completion Date: September 30, 2017

NATIONAL RAILROAD PASSENGER CORPORATION
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c. Work with the Human Resources department to close any shortcomings in the hiring and background check processes used to assess the likelihood that new hires will maintain ethical standards.

Management Response/Action Plan:
Management agrees with the recommendation and commits to review within the Human Resources department the processes currently used to screen candidates including background checks, assessment exams and in-person interviews and to make recommendations to the Executive Committee to ensure that Amtrak's hiring process appropriately screens for ethical conduct awareness and values.

Responsible Amtrak Official(s): Vice President, Human Resources
Target Completion Date: September 30, 2017

d. Increase employee awareness of ethical standards and responsibilities by designing and implementing a communications plan in conjunction with the Communications office, and a training program with the Human Resources department.

Management Response/Action Plan:
Management agrees with the recommendation and commits to developing a communication plan and a training program which make employees aware of the ethical standards required of all Amtrak employees, the Company's ethics processes and resources and their responsibilities.

Responsible Amtrak Official(s): Vice President, Government Affairs and Corporate Communications and Vice President, Human Resources
Target Completion Date: This will be developed for rollout in conjunction with the delivery of the revised Ethics policy and a code of ethics, September 30, 2017

e. Work with the Human Resources and Law departments to establish employee incentives to promote ethical behavior—such as evaluating employees' compliance with standards as part of performance ratings and recognizing outstanding compliance in awards programs—and document the criteria and processes used to investigate potential ethics lapses and determine discipline for violations to help provide for consistent decisions.

Management Response/Action Plan:
Management agrees with the recommendation and commits to a review by Human Resources and the Law departments which will jointly recommend to the Executive Committee appropriate incentives to promote ethical behavior and criteria and processes, including documentation, for discipline with respect to ethical lapses.

Responsible Amtrak Official(s): Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary and Vice President, Human Resources
Target Completion Date: September 30, 2017

f. Work with the Enterprise Risk Management office to help ensure that departments better assess which processes are vulnerable to ethical lapses and implement controls that could help prevent problems, as well as proactively analyze available business data to look for indicators of possible unethical behavior and work with the relevant departments to address problems.

NATIONAL RAILROAD PASSENGER CORPORATION
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Management Response/Action Plan:
Management agrees with the recommendation and commits to incorporate ethical obligations (objectives, associated risks and related controls) into the Management Control Framework. Amtrak controls will evaluate the design and operation of controls and work with Management to improve controls where possible to better prevent, deter, and/or detect and address unethical acts or ethical lapses.

In addition, the Amtrak Control team will work with Amtrak process owners and leadership to explore opportunities to leverage data analysis techniques to implement monitoring controls to detect indications of unethical behavior, where possible and appropriate.

Responsible Amtrak Official(s): Senior Director, Amtrak Controls
Target Completion Date: September 30, 2017

g. Establish measures and collect the relevant performance data to routinely gauge the effectiveness of the overall program and its major components—such as communications and training activities—and make any needed adjustments.

Management Response/Action Plan:
Management agrees with the recommendation and commits to establishing metrics to measure the effectiveness of the overall program, regularly report on those to the Executive Committee and the Board of Directors, and use those to adjust communications and training to address any negative trends.

Responsible Amtrak Official(s): Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary
Target Completion Date: September 30, 2017

h. Provide regular briefings on program results to the Executive Committee, CEO and Board of Directors to ensure that the program is effective and has the necessary resources and support.

Management Response/Action Plan:
Management agrees with the recommendation and commits to regular briefings on program results to the CEO and Board of Directors.

Responsible Amtrak Official(s): Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary

Target Completion Date: September 30, 2017

APPENDIX E

Acronyms and Abbreviations

CEO	Chief Executive Officer
OIG	Amtrak Office of Inspector General
the company	Amtrak

APPENDIX F

OIG Team Members

Eileen Larence	Deputy Assistant Inspector General, Audits
J.J. Marzullo	Senior Director, Audits
Heather Brockett	Senior Auditor, Lead
John Borrelli	Senior Auditor, Lead
John Fenstermaker	Contractor

OIG MISSION AND CONTACT INFORMATION

Mission

The Amtrak OIG's mission is to provide independent, objective oversight of Amtrak's programs and operations through audits and investigations focused on recommending improvements to Amtrak's economy, efficiency, and effectiveness; preventing and detecting fraud, waste, and abuse; and providing Congress, Amtrak management, and Amtrak's Board of Directors with timely information about problems and deficiencies relating to Amtrak's programs and operations.

Obtaining Copies of Reports and Testimony

Available at our website www.amtrakoig.gov

Reporting Fraud, Waste, and Abuse

Report suspicious or illegal activities to the OIG Hotline

www.amtrakoig.gov/hotline

or

800-468-5469

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