



OFFICE of INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

GOVERNANCE:

Observations on Amtrak's Use of CARES Act Funds

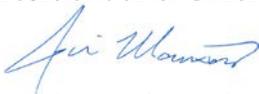
OIG-MAR-2020-013 | August 5, 2020

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Memorandum

To: Tracie Winbigler
Executive Vice President and Chief Financial Officer

From: Jim Morrison 
Assistant Inspector General, Audits

Date: August 5, 2020

Subject: *Governance: Observations on Amtrak's Use of CARES Act Funds*
(OIG-MAR-2020-013)

Beginning in March 2020, Amtrak (the company) experienced a sharp drop in ridership and passenger revenues as a result of the coronavirus pandemic. The company responded with cost-cutting actions, including canceling some train service and reducing management pay and retirement benefits. Despite these actions, the company projected that revenues would still not cover its reduced costs and requested assistance from Congress. Congress responded by providing the company with \$1.018 billion through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)¹ to “prevent, prepare for, and respond to” the coronavirus pandemic. Projecting a slow return of passengers through next year, the company requested an additional \$1.475 billion in supplemental funding for FY 2021, which company executives say is necessary to operate minimum service levels across the passenger rail network and continue capital investments for the future.

On April 16, 2020, we began an audit to monitor and assess how the company is using CARES Act funds and the controls it has in place to accurately account for and report on them. We conducted interviews with key company personnel from the Finance, Human Resources, and Procurement departments, and we reviewed monthly expenditure reports and supporting documentation to identify and assess the company’s processes for tracking CARES Act funds. We also reviewed the company’s efforts to verify the accuracy of its reporting. This interim report provides data on CARES Act funds the company spent from March 1, 2020, through June 30, 2020, and information about controls related to these funds that the company put in place during

¹ Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, div. B, title XII, 134 Stat. 281 (2020).

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this period.^{2,3} We plan to continue to review the company's use of CARES Act funds through the end of the fiscal year. As part of this continued effort, we plan to assess the effectiveness of its processes and controls and to address other issues of interest to stakeholders.

In commenting on a draft of this report, the Executive Vice President/Chief Financial Officer acknowledged the importance of our observations and identified specific actions the company plans to complete by October 30, 2020, to implement them. These include incorporating alternative billing methods into the fiscal year (FY) 2021 state agreements, completing more timely expense testing, and developing a supplies-tracking sheet for office worksite coordinators to manage pandemic-related inventory. For management's complete response, see Appendix A.

BACKGROUND

The company received CARES Act funds through amendments to its FY 2020 grant agreements for the Northeast Corridor and National Network.⁴ Although the amendments require the company to report coronavirus-related spending in its monthly grant expenditure report to the Federal Railroad Administration (FRA), the Act places few restrictions on how the company uses most of these funds. One key restriction, however, is that the Act sets aside \$239 million to offset costs that states owe to the company for providing intercity passenger rail service.

State-supported services. Under cost-sharing agreements with the states, the company provides intercity train service to 17 states on 28 routes.⁵ Under these agreements, the company invoices each state monthly for the amount that its operating costs for these services exceed ticket revenues. The company uses the Amtrak Performance Tracker (APT) system to assign or allocate all revenue and expense to trains based on a set of allocation rules developed jointly with FRA through the Volpe National Transportation

² Although the CARES Act was not enacted until March 27, 2020, and funds were not distributed to Amtrak until April 10, 2020, the company plans to use the funds beginning March 1 to cover costs incurred as a result of the pandemic.

³ Our work was conducted in accordance with standards we developed for alternative products.

⁴ Congress provides annual funding through the Northeast Corridor and National Network grants. The National Network includes state-supported and long-distance routes.

⁵ In 2008, Congress passed the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). Section 209 required the company to develop and implement a standardized methodology for establishing and allocating among the states and Amtrak the operating and capital costs of providing intercity rail passenger service on designated corridors, or routes of not more than 750 miles.

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Systems Center. Congress mandated the creation of APT, and the company began using it in FY 2010. The CARES Act, however, limits the amount that the company can invoice the states for their share of these services in FY 2020 to 80 percent of the amount each state paid in FY 2019. For example, if a state paid the company \$1 million for this service, the state cannot pay more than \$800,000 in FY 2020. To offset this reduction, the CARES Act provides \$239 million in funds that the company is to draw down each month to cover the difference between the full cost of providing state-supported services and the reduced amount the company can charge the states.

Remaining funds. The company plans to use its remaining CARES Act funds in four categories and developed estimates for each category. Before it began spending these funds, the company developed—and FRA agreed with—a formal plan identifying how the company expected to use, report, and account for funds in each.⁶ Through June 2020, the company has spent about \$402 million of the \$1.018 billion in total funds (39 percent), as Figure 1 shows.⁷

⁶ These company estimates are not binding; FRA has approved the general categories of expenses, but FRA confirmed that the company may use the funds as it chooses within these categories.

⁷ These are the most current data available for our assessment.

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Figure 1. Use of CARES Act Funds Through June 2020

Expenditure Category	Description	Estimated Planned Expenditures (in millions)	Funds Spent to Date (in millions)
State-supported services (PRIIA Section 209) 	The CARES Act limits states' share of the company's costs of providing intercity passenger rail service in FY 2020 to no more than 80 percent of the states' FY 2019 payments. These funds are to be used to cover the difference between the actual cost of providing this service and the reduced amount the company can charge the states.	\$239	\$93
Operating Labor and Associated Taxes 	Includes operating labor and associated taxes for all company employees, except those related to state-supported services and services the company provides to other partners such as commuter railroads.	\$385	\$262
Other Qualifying Expenditures 	Includes train-related expenses such as fuel, power, and commissary food, except those related to state-supported services.	\$387	\$43
Salary and Wage Payments to Employees Affected by the Coronavirus 	Includes 14 days of paid leave for employees affected by the coronavirus. The company has identified five potential situations that would make an employee eligible for leave—for example, having an underlying medical condition that puts them at high risk if they contract the virus.	\$5	\$3
Direct Coronavirus-Related Expenditures 	Includes cleaning services for stations, offices, and other facilities, and supplies such as masks, gloves, and train cleaning products.	\$2	\$1
Total		\$1,018	\$402

Source: OIG analysis of Finance department data

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PRELIMINARY OBSERVATIONS

The company moved swiftly to develop a comprehensive plan for using, tracking, and reporting on CARES Act funds. Company managers communicated this plan to primary stakeholders and adjusted it based on their feedback. In some cases, the company is using existing processes and policies to track and manage the funds; for example, the company is using its payroll system to assign CARES Act funds for general salaries and wages. In other cases, the company has developed new processes and accounting codes to track the funds; for example, the company is using a new process to approve leave for coronavirus-related absences and a separate payroll code to track these costs. We observed and discussed these processes with the responsible departments and confirmed that they are in place, but we have not yet completed the work needed to test whether these processes are effective controls in safeguarding CARES Act funds. As we continue our audit, we plan to perform additional work, such as site visits and transaction sampling, to assess the effectiveness of these processes.

During our ongoing work, we identified the following three areas where additional focus could reduce risks:

- **PRIIA 209 cost-sharing agreements.** The drastic impact of the pandemic on service levels has heightened longstanding issues between the company and some states relating to how costs are shared under PRIIA Section 209. These issues affect the company's use of CARES Act funds because the cost-sharing formulas determine the amounts it draws down to offset state costs. With states' agreement, the company is using a legacy process to calculate state contributions in FY 2020 while ensuring that the invoices do not exceed the 80 percent limit stipulated in the CARES Act.

Although company officials, states, and FRA told us they are working together to address issues related to the application of CARES Act funds, some state officials told us they continue to have difficulty understanding the relationship between service levels and costs, which impacts their ability to make informed decisions. For example, one state representative told us the company cannot tell a state how much it would cost to add a car to a train. Another representative told us they did not know how much it would save the state if it reduced the frequency of some routes. Many of the states are facing budget shortfalls in the coming fiscal year, and such information would help them identify opportunities to reduce costs.

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The company is taking steps to provide transparency over how it is drawing down the \$239 million of CARES Act funds set aside for state-supported services, including steps to improve communication and states' access to data. For example, since April 2020, the company has been participating in weekly meetings with the states, FRA, and the State-Amtrak Intercity Passenger Rail Committee (SAIPRC).⁸ Nevertheless, state officials told us they believe the company needs to do more to ensure that states have the information they need to align service decisions with fiscal constraints. Given the significance of this issue, our office initiated a separate audit to assess how states and the company are working to resolve problems and concerns inherent to the process.

- **Spending verifications.** The company's independent review of CARES Act expenditures through June is behind schedule; therefore, the company cannot ensure that the data it is reporting to FRA are accurate and complete. As part of its pledge to increase accountability, compliance, and transparency, the company committed to independently review the monthly grant expenditure reports it submits to the FRA. The compliance plan stated that the company intended to complete a two-part review prior to submitting the monthly report. The two parts include (1) tracing the amounts back to source accounts, and (2) testing a sample of the individual expenditures that departments charged to the accounting codes related to the coronavirus.

Such testing would help verify that purchases charged to these codes represent appropriate uses of CARES Act funds. In June, however, a manager in the Risk Management and Controls group told us that, although he had completed the first review, he had not started testing individual expenditures because he had not yet developed a testing approach. He told us the group was finalizing an approach and plans to complete the testing of April expenditures by mid-July 2020. In commenting on a draft of this report, the company told us that it is still in the process of testing April expenditures but plans to conduct more timely tests of future expenditures. Performing these reviews in a more timely manner could help the company quickly identify any potential problems—such as a department misunderstanding the appropriate uses of the coronavirus-related accounting codes—and fix them before they could result in erroneous charges.

⁸ Congress directed SAIPRC to facilitate collaboration among the company, states, and the FRA and to oversee implementation of a standard cost-sharing methodology for state-supported services.

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The manager in the Risk Management and Controls group agreed that the reviews could be timelier.

- **Supplies and Equipment.** The company is taking positive steps to ensure equitable distribution of scarce supplies and equipment but will need to continue to focus on protecting these goods from loss at end-user locations like offices and crew bases. The company added measures to its procurement and distribution processes to ensure that it equitably distributes hard-to-find cleaning supplies and personal protective equipment across its facilities and worksites. The company is using designated points of contact for each department to order items such as face masks, cleaning wipes, and hand sanitizer. This process helps ensure that departments request and obtain only the amount of supplies they reasonably need to support operations. The Procurement department is also monitoring weekly use and distribution of these items to forecast future need and to verify departments' needs when they request additional supplies. Through these actions, the company is demonstrating good stewardship of the equipment and goods it purchases with CARES Act funds.

Although the company's new processes help ensure that goods are procured and distributed in a fair manner, the company may need to focus additional attention on securing high-demand supplies at end-user locations like offices and crew bases as more employees return to worksites. As a result of the pandemic, the demand for goods like hand sanitizer has increased for households and businesses alike, making these products more costly and difficult to obtain. These conditions raise the risk that employees may misappropriate these goods for personal use or for profit. The company is working hard to acquire and distribute these products in sufficient quantities to keep employees safe at work. If worksite managers do not protect these supplies adequately, there may not be enough to maintain safe worksites and instill confidence in employees that returning to work is safe. As we continue our work, we will assess worksite controls over personal protective equipment and other scarce supplies.

CONCLUSIONS

We are encouraged by the company's initial steps to use, account for, and report on the CARES Act funds. The company is committed to providing transparency and demonstrating fiscal responsibility over its use of these funds. Going forward, however, a focus on providing more transparent data on how changes in service will affect state

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costs will help states as they work through their own budgetary crises. In addition, a more timely verification of pandemic-related expenses will help demonstrate that the company is being a responsible steward of taxpayer dollars. This is especially important considering that the company has requested \$1.475 billion in supplemental funding for FY 2021 to mitigate expected shortfalls in passenger revenue into the next fiscal year. Finally, ensuring that adequate controls are in place to safeguard scarce pandemic-related materials and equipment throughout all links in the supply chain will ensure that these products are available to support the safety and health of the company's workers and the traveling public.

MANAGEMENT COMMENTS AND OIG ANALYSIS

In commenting on a draft of this report, the company's Executive Vice President/Chief Financial Officer acknowledged the importance of our observations and described the company's actions and plans to address them, which we summarize below.

- **Observation 1:** Management acknowledged that the issue of how service levels affect state costs has been ongoing for many years and reiterated the company's commitment to increase communication during the pandemic. Management stated that they are currently working with the states to incorporate alternative billing methods in the event of sudden service changes. The target completion date is October 30, 2020.
- **Observation 2:** Management acknowledged the need to complete testing of individual expenditures related to CARES Act funds on a timely basis. Management stated that its Risk Management and Controls group is working diligently to catch up on completing its testing of April expenses and is planning to complete future testing of expenditures within 30 days of submitting the monthly expense report to the FRA. The target completion date is September 30, 2020.
- **Observation 3:** Management acknowledged and agreed that it is important to ensure that adequate controls are in place to reduce the risk of loss for supplies such as masks, gloves, and hand sanitizers that are in high demand during the pandemic. Management stated that the Procurement department established distribution guidance for these supplies at office sites and an email address for site coordinators to report misuse of or missing supplies. Management also stated that the Procurement department plans to establish a supplies tracking sheet for its office sites. The target completion date is August 31, 2020.

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We will assess these actions as we continue our work. For management's complete response, see Appendix A.

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APPENDIX A

Management Comments

NATIONAL RAILROAD PASSENGER CORPORATION

Memo



Date	July 30, 2020	From	Tracie Winbigler, EVP CFO 
To	Jim Morrison, Assistant Inspector General, Audits	Department	Finance
		cc	William J. Flynn, President & CEO Eleanor Acheson, EVP General Counsel Constantin Comeanu, VP FP&A Shirley Craun, Deputy Strategic Procurement Stephen Gardner, Sr. EVP Carol Hanna, VP Controller Roger Harris, EVP Karim Karmali, Sr. Director FP&A Scot Naparstek, EVP Dennis Newman, EVP Steven Predmore, EVP Mark Richards, Sr Director Amtrak Risk & Controls Qiana Spain, EVP Mark Vierling, VP Procurement & Logistics Christian Zacariassen, EVP
Subject	Management Response to <i>Management Advisory Report: Observations on Amtrak's Use of CARES Act Funds (Draft Report for Project No. 012-2020)</i>		

This memorandum provides Amtrak's response to the draft management advisory report titled, "*Observations on Amtrak's Use of CARES Act Funds*". Management appreciates the opportunity to respond to the OIG's observations. We are taking very seriously our fiduciary duty to spend the CARES Act funds wisely and were pleased with the observation in the report acknowledging our commitment to providing transparency and demonstrating fiscal responsibility over our use of the funds. The observations provided meaningful input and we will initiate actions to address each in a timely manner, as further described below.

Observations:

The report identified three areas where additional focus could reduce risks. A summary of the three observations, followed by management's response, is as follows:

1. **PRIIA 209 cost-sharing agreements (excerpts from the observation)**
 - "Although company officials, states, and FRA told us they are working together to address issues related to the application of CARES Act funds, some state officials told us they

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continue to have difficulty understanding the relationship between service levels and costs, which impacts their ability to make informed decisions.

- The company is taking steps to provide transparency of how it is drawing down the \$239 million of CARES Act funds earmarked for state-supported services, which include steps to improve communication and states' access to data.
- Nevertheless, state officials told us they believe the company needs to do more to ensure that states have the information they need to align service decisions with fiscal constraints."

Management Response/Action Plan: The issue of how service levels affect state costs under PRIIA 209 is something Amtrak and the states have been discussing for many years. A railroad is a business with a high mix of fixed costs (i.e., rolling stock, stations, mechanical facilities) relative to variable costs (i.e., crew, fuel, host railroad charges). When service was reduced, as some states requested due to COVID-19, many fixed costs decreased slowly if at all. (Conversely, when service is increased, many fixed costs do not increase.) Another aspect of the PRIIA 209 formula is that states are credited for passenger revenue, which has dropped significantly due to COVID-19 for both Amtrak and our state partners. The fixed cost nature of the business, together with the dramatically reduced passenger revenue, has left many states anticipating serious future funding challenges pending future emergency federal funding such as the CARES Act. In some cases, we believe that the states' concerns stem from these funding challenges and a frustration with our shared limits to quickly reducing expenses with the fixed cost economics of a railroad.

Since the pandemic started and through June, Amtrak had weekly calls with our state partners, and has had bi-weekly calls from June forward. These calls provide the states with updated financial results, updates on health and safety protocols, and updates from Amtrak Government Affairs, to keep our state partners well informed and to enable prompt decision making.

We are currently working with the states to incorporate more fixed-price alternatives and more pre-forecasted cost scenarios in the case of sudden service changes as seen under COVID-19.

Responsible Amtrak Official(s): Karim Karmali Senior Director Finance FP&A, and Max Johnson Senior Director State Policy & Governance

Target Completion Date: We expect to incorporate these new features into the upcoming FY21 agreements with our state partners, targeting completion by October 30, 2020. Future year agreements may further refine these contract terms.

2. **Spending verification (excerpts from the observation)**

- "The company's compliance plan stated that the company intended to complete a two-part review prior to submitting the monthly report.
- In June, however, a manager in the Risk Management and Controls group told us that, although he had completed the first review, he had not started testing individual expenditures because he had not yet developed a testing approach.
- Although meeting this new target date [mid-July 2020] would put the company back on track for this testing, going forward, performing these reviews in a more timely manner could help the company quickly identify any potential problems—such as a department

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misunderstanding the appropriate uses of the coronavirus-related accounting codes—and fix them before they could result in erroneous charges.”

Management Response/Action Plan: We appreciate the OIG's observations regarding our compliance plan and timing of activities. The intention of the two-part review was to complete part one of the review *prior* to submitting the monthly expenditure report and complete part two *after* the submission. Development of the testing plan for expenses through April was initiated after they were reported on the monthly expenditure report in late May. Understandably there was some time needed to stand up this new testing effort and begin its execution, however, we recognize the value of completing the testing on a timely basis.

We are working diligently to complete the testing of expenses through April and have made substantial progress. Once completed we will move onto testing subsequent months' expenses and move to a frequency of testing expenses in the month subsequent to the filing of the monthly expenditure report.

Responsible Amtrak Official(s): Mark Richards, Senior Director Risk Management and Controls

Target Completion Date: September 30, 2020

3. **Supplies and Equipment (excerpts from the observation)**

- “Although the company's new processes help ensure that goods are procured and distributed in a fair manner, the company may need to focus additional attention on securing high-demand supplies at end-user locations like offices and crew bases as more employees return to worksites.
- The company is working hard to acquire and distribute these products in sufficient quantities to keep employees safe at work – if worksite managers do not protect these supplies adequately, there may not be enough to maintain safe worksites and instill confidence in employees that it's safe to return to work.”

Management Response/Action Plan: We acknowledge and agree on the importance of ensuring that adequate controls are in place to safeguard our pandemic-related materials and equipment. A dedicated workgroup addressing procurement and supply chain issues was formed at the onset of establishing Amtrak's COVID-19 response efforts in early March. The workgroup, led by the Deputy Strategic Procurement, consists of subject matter experts from Procurement, Materials Planning, Material Control, and Emergency Preparedness and was charged with developing distribution strategies. This workgroup initially met daily to address a variety of personal protective equipment (PPE) and cleaning/disinfecting supplies, including masks, hand sanitizers, gloves, disinfecting wipes, and cleaning/disinfecting products. As Amtrak has evolved and transitioned its response efforts, the workgroup continues to meet on a weekly basis.

With the uninterrupted participation in Amtrak's COVID-19 response effort, the Procurement and Supply Chain workgroup has built up significant knowledge in the market for products related to the pandemic as well as in addressing Amtrak's needs.

The risk of loss is addressed from several supply chain perspectives:

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1. Demand Planning

At the very beginning of the Company's response to COVID-19, critical COVID-19 PPEs were identified. Existing stocks were quickly locked down and moved among warehouse locations to ensure quick deployment to points of need. Safety stock targets were swiftly established, and a product tracker was developed to track the supply and demand for these products.

2. Supply

Throughout the course of supporting the Company's COVID-19 work, Procurement made extensive sourcing efforts to establish supply bases for each product family (e.g. masks, gloves, hand sanitizers). As the pandemic progressed and more suppliers joined the PPE market space, in general the cost for PPE sought by Amtrak has been trending down and the availability has become less scarce.

3. Material Control and Distribution

As mentioned under Demand Planning, at the beginning of the Company's response, critical COVID-19 PPEs were identified and existing stock was locked down. A centralized distribution model was deployed and demand was submitted by designated personnel by functional area. The Emergency Preparedness representative in the workgroup coordinated and tracked the product distribution. The functional area designated personnel subsequently assisted with the distribution and monitoring of usage. This practice continues to date.

For the office sites, guidance for material distribution was created for the Site Coordinators. An internal email address has been established for Site Coordinators to report the observation of any misuse/missing materials. A distribution/materials tracking sheet is in development for Site Coordinators' use.

Responsible Amtrak Official(s): Shirley Craun, Deputy Strategic Procurement, Rhonda Hogard, Lead Emergency Planning & Exercise Specialist, and Angel D'Ippolito, Director Real Estate

Target Completion Date: The Company intends to complete development of the distribution/materials tracking sheet by August 31, 2020 and will continue with all other efforts described above for the foreseeable future.

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APPENDIX B

Abbreviations

APT	Amtrak Performance Tracker
CARES	Coronavirus Aid, Relief, and Economic Security
FRA	Federal Railroad Administration
FY	fiscal year
PRIIA	Passenger Rail Investment and Improvement Act of 2008
SAIPRC	State-Amtrak Intercity Passenger Rail Committee
OIG	Amtrak Office of Inspector General
the company	Amtrak

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APPENDIX C

OIG Team Members

Eileen Larence, Deputy Assistant Inspector General, Audits

Leila Kahn, Senior Director, Audits

Katherine Moor, Senior Director, Audits

Todd Kowalski, Audit Manager

Candice Moreno, Senior Auditor

Rachel Powell, Auditor

Alison O'Neill, Communications Analyst

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

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www.amtrakoig.gov/hotline

or

800-468-5469

Contact Information

Jim Morrison

Assistant Inspector General, Audits

Mail: Amtrak OIG

10 G Street NE, 3W-300

Washington D.C., 20002

Phone: 202-906-4600

Email: James.Morrison@amtrakoig.gov