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BY THE COMPTROLLER GENERAL 112054

# Report To The Congress

OF THE UNITED STATES

# Alternatives For Eliminating Amtrak's Debt To The Government


Amtrak has never made a profit and is unlikely to repay its Federal loans. The Amtrak Reorganization Act of 1979 (P.L. 96-73) requires the Comptroller General to recommend appropriate means to eliminate these loan obligations, which amount to $850 million. The Government should acknowledge that the loans are unrecoverable and write them off. What is the best way to eliminate Amtrak's obligations?

Originally the Government only guaranteed funds to help Amtrak revitalize its rail passenger service. These guarantees became direct Federal loans outside the budgetary control of the Congress and were never recorded in the Federal budget. Any approach to eliminating the debt should fully disclose the transaction in budget totals and should be subject to congressional budgetary control.

After analyzing several alternatives, GAO recommends that the Congress retire the loans with a one-time appropriation of $850 million. A condition of retirement should be the continued protection of the Government's collateral interest in the loans.




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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

As required by the Amtrak Reorganization Act of 1979, this report recommends appropriate means for eliminating $850 million in loan obligations of the National Railroad Passenger Corporation (Amtrak).

Copies of this report are being sent to the President of Amtrak, the Secretaries of Transportation and Treasury, and other interested parties.

Sincerely yours,

Comptroller General
of the United States

COMPTROLLER GENERAL's
REPORT TO THE CONGRESS

# ALTERNATIVES FOR ELIMINATING AMTRAK'S DEBT TO THE GOVERNMENT

## D I G E S T

The Amtrak Reorganization Act of 1979 requires the Comptroller General to recommend appropriate means for eliminating certain obligations of the National Railroad Passenger Corporation (Amtrak). It is specified in the legislation that the Comptroller General consider:

--the likelihood of obligation retirement from profits of the corporation. (As discussed on p. 13, GAO concluded that Amtrak is unlikely to retire its debt from profits.)

--the ability of the corporation to continue to carry its debt service within the context of operating subsidies, fairly and accurately reflecting current operating costs. (As long as Federal funds are provided for this purpose, Amtrak can continue to pay the interest out of Federal subsidies. However, this approach is really not in the best interests of the Government. This matter is discussed in detail on p. 14.)

--the extent to which debt incurred by the corporation prior to the effective date of the Act should be recognized as unrecoverable. (GAO believes that Amtrak is unlikely to make a profit and pay off the debt. Therefore, the debt should be recognized as unrecoverable without liquidation of assets. See p. 17.)

--the feasibility of converting such obligations into stock issued by the corporation. (As discussed on p. 18, GAO does not believe that this is an acceptable means for retiring the loans.)

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**Tear Sheet**. Upon removal, the report cover date should be noted hereon.

The obligations in question consist of $850 million in loan obligations. Amtrak originally borrowed from private lenders and the loans were guaranteed by the Federal Government. Subsequently they were converted to direct Federal loans from the Federal Financing Bank.

The nature of Amtrak and its relationship to the Federal Government affect the appropriate action to be taken in regard to Amtrak's loans. Factors of this relationship include: the Federal commitment to rail passenger service; congressional controls over Amtrak such as influence on the make-up of the board of directors, route structure, and accountability as a mixed-ownership Government corporation; and significant financial support of Amtrak (nearly $5 billion of Federal funding since Amtrak's inception). (See pp. 5-12.)

Amtrak's guaranteed loans illustrate how loan guarantees adversely affect certain budgetary principles. The loan guarantees were converted to direct Federal loans that were not included in the budget. Budget and deficit totals were understated, creating problems in accountability such as lack of full disclosure of budget information and loss of congressional budgetary control. (See pp. 21-25.)

There are a number of ways in which Amtrak's debt can be retired. GAO's analysis of these alternatives leads to the conclusion that--in spite of the large impact on the budget--a one-time appropriation of $850 million should be made to retire the debt. This would provide full budgetary disclosure and control. Although other alternatives would be easier politically, GAO believes that any retirement plan that minimizes present day budget impact at the cost of good budgetary principles and program accountability is not acceptable.

Currently a portion of the Government funds provided to Amtrak under the loan guarantee is protected by security agreements. These security agreements pledge certain Amtrak equipment to the Government in case of default or liquidation. This protection would terminate if Amtrak's loans are retired. GAO believes that the current protection should be continued.

## RECOMMENDATION

GAO recommends that the Congress retire Amtrak's debt to the Federal Government through a one-time appropriation. As a condition of this retirement, the existing Government interest in Amtrak's assets should be continued by obtaining a continuing lien on equipment. The guarantee authority backing the debt should also be cancelled. As discussed on page 30, provision would have to be made for Amtrak's lease obligations which place a restriction on retiring the debt and cancelling the loan guarantee authority.

## AGENCY COMMENTS

GAO briefed agency officials on this report and obtained oral comments. In addition, Amtrak officials provided the written response included as Appendix II.

Department of Transportation officials agreed with GAO's facts and indicated no objection to GAO's making this recommendation. They emphasized that the Government's collateral interest should be maintained after the debt is retired.

Amtrak officials stated that (subject to the approval of the board of directors) they would be willing to enter an agreement with DOT granting a continuing lien on equipment. They believe that a one-time appropriation is not feasible because of its impact on budget totals and recommend other methods. GAO believes that a one-time appropriation is the best alternative because it provides full budgetary disclosure and control. (See p. 40.)

C o n t e n t s

# CHAPTER 1

# INTRODUCTION

## PURPOSE AND SCOPE OF THIS STUDY

Section 129 of the Amtrak Reorganization Act of 1979 (Public Law 96-73, Sept. 29, 1979) requires the Comptroller General to recommend appropriate means for eliminating certain loan obligations of the National Railroad Passenger Corporation (Amtrak), amounting to $850 million. Loans were originally obtained from private lenders and only guaranteed by the Federal Government, but were subsequently converted to direct Federal loans. Amtrak's interest expense (estimated at $32.9 million for fiscal year 1981) on these loans has caused Amtrak proponents to seek ways to eliminate the debt. The Comptroller General is required to report to Congress within 180 days of the effective date of the Act. It is specified in the legislation that the following shall be considered:

--the likelihood of obligation retirement from profits of the corporation,

--the ability of the corporation to continue to carry its debt service within the context of operating subsidies, fairly and accurately reflecting current operating costs,

--the extent to which debt incurred by the corporation prior to the effective date of the act should be recognized as unrecoverable, and

--the feasibility of converting such obligations into stock issued by the corporation.

These considerations are discussed in detail in chapter 3 of this report.

In addition to these four issues, we analyzed the relationship of Amtrak to the Federal Government. We believe that the relationship is relevant to any action regarding the debt. Our analysis, however, is merely to determine what the existing relationship is. We have not attempted to analyze or assess the appropriateness of that relationship.

We have also obtained information on Amtrak's financing and searched the public record to trace the history of the debt. We reviewed legislation, congressional hearings, records, other materials, and studies on loan guarantees. We interviewed officials of Amtrak, the Office of Management and Budget (OMB), Department of Transportation (DOT), the Congressional Budget Office (CBO), Department of the Treasury including the Federal Financing Bank (FFB), and numerous congressional committees.

This report discusses how Amtrak's guaranteed loans, and loan guarantees in general, affect budgetary issues of full disclosure and control. The impact of FFB and its relation to Amtrak's loans is included in the analysis. We also look at the budgetary problems of Federally guaranteed loans to large single borrowers as exemplified by Amtrak.

Finally, our report analyzes various alternatives for retiring Amtrak's Federally guaranteed debt in the light of selected criteria.

We briefed agency officials and obtained oral comments which we have summarized in the report. In addition, we received a written response from Amtrak (see appendix II).

## PURPOSE OF AMTRAK

In 1970, the Congress enacted the Rail Passenger Service Act which created the National Railroad Passenger Corporation (Amtrak). Amtrak was created to manage the Nation's rail passenger system and be responsible for modern, efficient intercity passenger trains. The corporation started with no personnel or equipment of its own and relied on contracts with other railroads to provide all its services and maintain the railroads.

Prior to the creation of Amtrak, the very existence of rail travel was threatened. Travel by rail became less popular as travel by car and airplane increased. Thus, losses from passenger operations resulted and the rail carriers wanted to terminate their passenger rail services. The Congress determined that it was in the national interest to preserve rail passenger service as a way to promote a balanced transportation system. Another reason for preserving rail passenger service, according to proponents, was a growing energy shortage. Since passenger trains were considered to be a more economical and efficient mode of transportation, they needed to be preserved. With sufficient ridership levels and modern equipment, it was hoped that Amtrak could provide a valuable mode of transportation.

## AMTRAK'S GUARANTEED LOANS

Section 602 of the Rail Passenger Service Act of 1970 authorized Amtrak to borrow funds for capital expenditures which would be guaranteed by DOT. This authorization led to the Amtrak debt which is the key issue of this report. The Federal guarantees insured lenders that principal and interest on obligations issued by Amtrak to finance capital improvements would be paid by the United States in the event of default. These guarantees initially aided Amtrak in purchasing equipment without the Government making a direct investment. Keeping direct Federal dollars out of Amtrak financing as much as possible helped maintain an appearance of separation between the Federal Government and Amtrak.

Amtrak began borrowing funds utilizing the guarantees in 1971. In 1975 the guaranteed loan authority (i.e., the amount of loans that could be outstanding at any given time) was raised to $900 million. That amount, the maximum loan authority, was obligated by Amtrak and it is estimated that it will be outlayed by fiscal year 1981.

At first, funds were obtained from private lenders, using the guarantee authority. In 1974, when the Federal Financing Bank (FFB) was created as a part of Treasury to centralize agency borrowing, Amtrak switched all of its borrowing from private lenders to FFB. (A detailed analysis of the problems and issues relating to Amtrak borrowing from FFB is discussed in chapter 4.)

In 1976, when it became doubtful that Amtrak would ever make a profit, the Congress stopped funding Amtrak's capital acquisitions through guaranteed loans. Since that time the capital program has been financed solely by grants. Table 1 shows the growth of both guaranteed loans and capital grants for Amtrak's capital program. (Note that in 1978 and 1979 appropriations were made to reduce the loans and loan guarantee authority to $850 million.)

## Table 1

## Amtrak's Capital Program

($ in millions)

| Fiscal year | Guaranteed loan authority | Capital grants |
|---|---|---|
| 1971 | $100 | |
| 1972 | 50 | |
| 1973 | 50 | |
| 1974 | 300 | |
| 1975 | 400 | |
| 1976 | | $111 |
| 76TQ | | 25 |
| 1977 | | 93 |
| 1978 | (-25)* | 130 |
| 1979 | (-25)* | 130 |
| 1980 | | 211 |
| TOTAL | $850 | $700 |
| 1981 est. | (-25)* | 250 |

* Appropriations to repay outstanding loans and reduce the loan guarantee authority.

Eliminating Amtrak's $850 million debt is the subject of this report. Before discussing alternatives to eliminate this debt, however, we believe it is necessary to explain the relationship between Amtrak and the Government.

## CHAPTER 2

## AMTRAK HAS A UNIQUE RELATIONSHIP TO THE FEDERAL GOVERNMENT

The nature of Amtrak and its relationship to the Federal Government affects the appropriate action to be taken regarding Amtrak's loans. Amtrak was originally authorized to be established in the Rail Passenger Service Act of 1970 as a private, for-profit corporation. Section 804 designated Amtrak as a mixed-ownership Government corporation to insure accountability of Amtrak to the Federal Government. Under the 1970 Act Amtrak was authorized to receive Federal financial assistance. When established, it received investment capital from the issuance of common stock and payments from participating railroads. It appears that the Congress viewed the need for Federal funds as a temporary measure of financing necessary to allow Amtrak to fully develop a modern, profit-making train service.

### IS AMTRAK A PRIVATE, FOR-PROFIT CORPORATION?

We do not believe that Amtrak is, in a practical sense, a private, for-profit corporation as was originally planned by Congress in the Rail Passenger Service Act. Our analysis describes the factors which have changed the planned relationship between the Government and Amtrak.

If Amtrak were a totally private corporation, then the Government would probably require it to repay its loans or take appropriate action. Nonpayment of principal and/or interest on its Federal loans would ordinarily lead to default and the Government could exercise its rights under the loan guarantee agreements, including recourse to corporate assets.

Amtrak is and has been in a potential default situation since its inception. It never has met its expenses out of operating revenues as anticipated. However, Amtrak has received direct Federal funds which have made up its deficits and kept default from occurring. This financial support, representing about two-thirds of Amtrak's total funding, has continued because of the congressional policy to maintain and improve rail passenger service.

We believe that this strong commitment, for all practical purposes, has changed the planned relationship between the Government and Amtrak.

## AMTRAK'S RELATIONSHIP TO THE GOVERNMENT

Amtrak retains some characteristics of a private entity, supplies an essential service to the public, and is significantly controlled and financed by the Federal Government.

We believe the relationship between Amtrak and the Government must be understood and considered in determining appropriate action regarding the debt. Characteristics of this relationship which are discussed in this chapter relate to

--the Federal commitment to maintain and improve rail passenger service,

--Federal controls over Amtrak management and operations, and

--significant Federal financial support of Amtrak.

### Federal commitment to rail passenger service

Until the Rail Passenger Service Act was passed in 1970, it appeared that passenger trains might disappear in a relatively short time. At that time the Congress clearly stated that it was in the public interest to provide for continued and improved rail service. The declaration of purpose of the Act states:

> "The Congress finds that modern, efficient, intercity passenger service is a necessary part of a balanced transporation system; that the public convenience and necessity require the continuance and improvement of such service to provide fast and comfortable transportation between crowded urban areas and in other areas of the country; that rail passenger service can help to end the congestion on our highways and the overcrowding of airways and airports; that the traveler in America should to the maximum extent feasible have freedom to choose the mode of travel most convenient to his needs; that to achieve these goals requires the designation of a basic national rail passenger system and the establishment of a rail passenger corporation for the purpose of providing modern, efficient, intercity rail passenger service; that Federal financial assistance as well as investment capital from the private sector of the economy is needed for this purpose . . ."

This statement reflected a congressional commitment leading to deep involvement in Amtrak's organizational structure and to expenditure of a significant amount of Federal funds.

The Federal goal for passenger train service was defined at that time to include a national route structure and a rate structure that would compete with the rates of other modes of transportation. To meet this goal, large and continued Federal expenditures have been required for capital improvements and operational deficits.

Government control over Amtrak

There has always been substantial Federal involvement in setting policies which affect control of Amtrak operations. This includes such items as the make-up of its board of directors, its route structure, requirements related to its status as a mixed-ownership Government corporation, and other areas.

Board of directors

Congress established a board of 17 directors whose composition is heavily influenced by Federal decisionmaking. Eight board members are appointed by the President of the United States. Two ex officio members are the Secretary of Transportation and the President of Amtrak. Only three board members are elected by the four common stockholders. Common stock is held by four private railroads: Burlington Northern, Milwaukee Railroad, Grand Trunk Western, and Trustees of the Penn Central. The law allows for four of the seventeen members to be elected by preferred stockholders, but these seats remain unfilled since no preferred stock has been issued.

The board of directors is empowered to adopt and amend bylaws governing the operation of the corporation which are consistent with provisions of the Rail Passenger Service Act.

Route structure

Primary Government control of the corporation has been maintained through congressional decisions regarding Amtrak's route structure. The Congress set out to expand, upgrade, and increase use of the basic system. Therefore, Congress initially designated a basic route system. In addition, it set a policy that passenger rates would be competitive with those of alternate modes of transportation. Many congressional decisions basically expanded routes and increased service to the public. For example, legislation was passed which authorized new experimental routes and operation of rail passenger service to Canada and Mexico.

These efforts increased not only service, but also Amtrak's expenses, deficits, and the corporation's dependence on Federal monies. It was not until 1975 that Amtrak, along with DOT and the Interstate Commerce Commission, was authorized to submit proposals to the Congress to add or delete Amtrak routes. Even after the change, the Congress continued to control Amtrak's operations and has also reduced service. For example, DOT's restructuring study on Amtrak's route system issued in January 1979 suggested Amtrak reduce rail passenger service by 43 percent. According to the study, this reduction would have realized a 23 percent savings in Federal subsidies. In the Amtrak Reorganization Act of 1979, the Congress only eliminated 16 percent rather than the proposed 43 percent of Amtrak's routes. This clearly indicates that the Congress has a strong hand in controlling Amtrak operations.

### Mixed ownership corporation accountability

Mixed ownership corporations usually involve both private and Government ownership of capital stock. Certain requirements and regulations regarding the financial activities of these corporations exist to make them accountable to the Federal Government. In Amtrak's case there is no Government ownership but the accountability requirements exist.

Requirements include:

--audit of financial transactions. In Amtrak's case GAO performs annual performance or management type audits.

--banking or checking accounts. Amtrak's banking or checking accounts must be kept with the U.S. Treasurer or, with approval, a Federal Reserve Bank or a bank designated as a fiscal agent of the United States.

--bonds, notes, debentures, and similar obligations. Amtrak cannot issue such obligations unless approved by the Secretary of the Treasury.

## Other congressional involvement

The Government exercises direct control over the levels of rolling stock (i.e., locomotives and passenger cars) and other capital assets that Amtrak purchases. As is the case with Federal agencies, Amtrak annually prepares and submits budget requests and justification material to the Congress indicating anticipated funding requirements. The Congress holds biennial authorization and annual appropriation hearings on these budget requests and approves funding levels for Amtrak. Considerable oversight and control over Amtrak's operations are exercised through this process.

Government control also reaches into the management of Amtrak. For example, there are statutory ceilings for Amtrak officers' salaries.

DOT has several full-time staff members devoted to Amtrak. In addition, we routinely perform audits related to both Amtrak's operations and management.

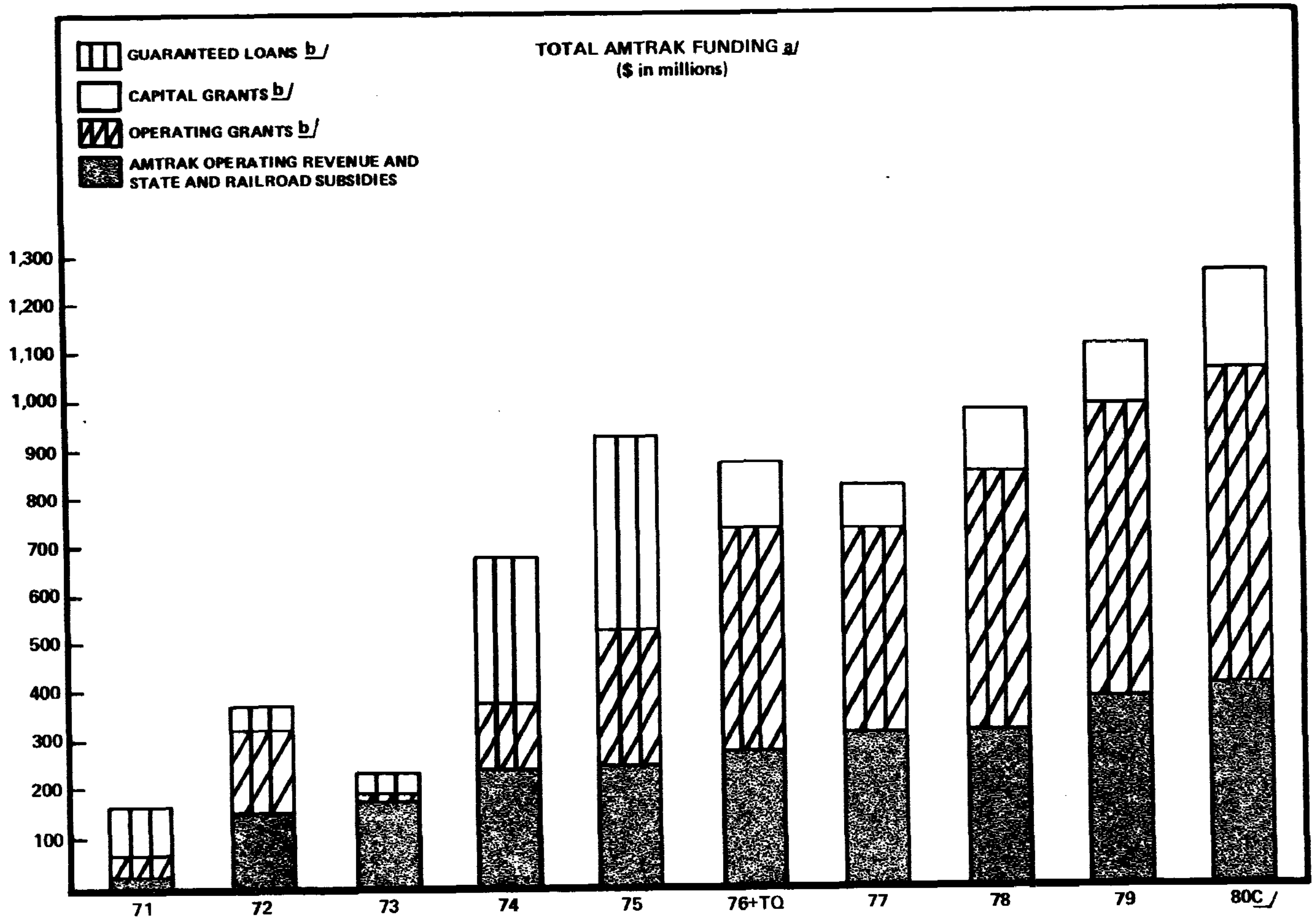
## Federal Financial Role

The Government plays a major role in the finances of Amtrak. Initial financing to support the commitment by the Congress to rail passenger service began in 1971 with authorization of $40 million for operating expenses and $100 million in loan guarantees for capital acquisitions. Since that time the Government has provided Amtrak with all of its capital funding and over half of its funding for operations.

Amtrak's current financing is composed of three components: Federal contributions, Amtrak ticket and sales revenue, and small subsidies from States and other railroads. The Federal share has been by far the largest component representing about two-thirds of total funding. Total Amtrak financing from its outset to the present has amounted to nearly $5 billion (see figure 1 and table 2).

As Amtrak's financial requirements have grown, it has continued to rely on Federal funds. The level of service provided cannot be supported from revenues available through normal operations. Thus, the Government's large financial involvement in Amtrak has become a major part of its overall commitment to modern passenger train service.

Figure 1




a/ Excludes Northeast Corridor funding.

b/ Federal funds.

c/ Includes Amtrak appropriation in 1980 DOT and Related Agencies Appropriation Act (Public Law 96-131, November 30, 1979), and Amtrak estimate of operating revenue from Amtrak's 1981 budget request.

Table 2

FUNDING SOURCES
FOR AMTRAK a/

($ in millions)

| Fiscal year | Amtrak and other b/ | Federal Government c/ | Total | Federal funding as a percentage of total |
|---|---|---|---|---|
| 1971 | $ 22.6 | $ 140.0 | $ 162.6 | 86% |
| 1972 | 152.7 | 220.0 | 372.7 | 59 |
| 1973 | 177.3 | 59.1 | 236.4 | 25 |
| 1974 | 240.1 | 439.5 | 679.6 | 65 |
| 1975 | 246.5 | 676.5 | 923.0 | 73 |
| 1976 & TQ | 277.8 | 591.2 | 869.0 | 68 |
| 1977 | 311.3 | 513.1 | 824.4 | 62 |
| 1978 | 313.0 | 666.0 | 979.0 | 68 |
| 1979 | 381.3 | 730.0 | 1,111.3 | 66 |
| 1980 | 405.0 est. | 861.4 | 1,266.4 est. | 68 est. |
| | $2,527.6 est. | $4,896.8 | $7,424.4 est. | 66% est. |

a/The most recent estimates of funding levels for "Amtrak and other," and the Federal Government for fiscal year 1981 are $490 million and $923 million, respectively.

b/Includes ticket and sales revenue, and subsidies from States and other railroads.

c/Includes operating grants (FY 71-80), capital grants (FY 76-80), guaranteed loans (FY 71-75), and excludes Northeast Corridor funding. FY 80 figure from DOT and Related Agencies fiscal year 1980 Appropriation Act, Public Law 96-131, November 30, 1979.

Protection of the Government's collateral interest

One element of the Government's relationship to Amtrak that requires special consideration concerns its collateral interest in Amtrak's rolling stock (i.e., locomotives and passenger cars). Currently a portion of Government funds provided to Amtrak under the loan guarantees is protected by security agreements which pledge certain equipment to the Government in the event of default or liquidation. This protection would terminate if Amtrak's loans are retired. We believe that the current protection should be continued.

The assets of Amtrak are being built up only because of the investment of public monies. If there were no protection for the Government, whatever value may be derived from those assets, in the event of liquidation, would go to the four railroad owners whose investment in Amtrak has been minimal.

If the current Federal loans are retired, liens against Amtrak rolling stock could be established to continue the Government's existing collateral rights. DOT officials stated that they believe this is an essential condition of retirement. Amtrak officials said that, subject to the approval of the board of directors, they would be willing to enter into an agreement with DOT granting a continuing lien.

## CONCLUSION

In the Rail Passenger Service Act of 1970, Congress established a strong commitment to maintain rail passenger service. This commitment has led to substantial Federal control and funding of Amtrak operations.

When originally established, it was expected that Amtrak would eventually become a profit-making entity. However, the corporation continues to be financially dependent on the Federal Government and a unique relationship between the two has emerged. Amtrak is subject to substantial control from the Federal Government and depends upon significant Federal financing. We believe that it is necessary to understand this relationship in considering appropriate action for Amtrak's guaranteed loans. This view of Amtrak underlies all of our remaining analysis in this report.

Current protection of the Government's interest in Amtrak should be continued. Because the value of Amtrak assets was built up largely with Federal funds and might accrue to the four railroad owners, Congress should continue protection of the Government's collateral interest in Amtrak.

# CHAPTER 3

## CONSIDERATIONS REQUIRED BY PUBLIC LAW 96-73 (Amtrak Reorganization Act of 1979)

Section 129 of Public Law 96-73 requires the Comptroller General to consider the following issues concerning Amtrak's debt:

--the likelihood of obligation retirement from profits of the corporation;

--the ability of the corporation to continue carrying its debt service within the context of operating subsidies, fairly and accurately reflecting current operating costs;

--the extent to which debt incurred by the corporation prior to the effective date of the Act (October 1, 1979) should be recognized as unrecoverable; and

--the feasibility of converting such obligations into stock issued by the corporation.

This chapter discusses these four issues and other relevant considerations.

### RETIRING THE DEBT FROM AMTRAK PROFITS

As we discussed in chapter 2, Amtrak has not become the profit-making enterprise envisioned by its authorizing legislation. Operating costs have outdistanced revenues, requiring increased Federal subsidies for continued operations. Amtrak's operating deficit has grown from $154 million in fiscal year 1972 to $617 million in fiscal year 1979. The corporation lost $9 per passenger in 1972 and an estimated $27 per passenger in fiscal year 1979.

While Amtrak's deficit continues to increase, Government financial assistance in the form of capital grants and operating subsidies also continues to rise. Total Government loans, grants, and operating subsidies (as previously shown in Table 2, p. 11) have amounted to nearly $5 billion.

Total agreement exists among executive and legislative branch officials and Amtrak officials whom we contacted that Amtrak is unlikely to make a profit within the forseeable future. DOT officials stated that, even with 100 percent of the seats filled on every trip, Amtrak would continue to lose money. In 1978 the Rail Passenger Service Act was amended to state that Amtrak should be "operated and managed as" a for-profit corporation. In this amendment, Congress formally recognized that Amtrak was not likely to make a profit.

Our analysis of all available evidence leads us to conclude that Amtrak is unlikely to retire its debt with profits. We have used this assumption throughout the remainder of our report.

## ABILITY OF AMTRAK TO CARRY DEBT SERVICE

The second consideration required by Public Law 96-73 is the ability of Amtrak to continue to carry its debt service within the context of operating subsidies, fairly and accurately reflecting current operating costs. We believe Amtrak has the ability to continue to carry its debt service within the context of its operating subsidies. To do so, however, places a burden on both Amtrak and the Federal Government.

Debt servicing in Amtrak's case means paying the interest on its Federal loans. Interest expense amounted to $31.4 million in 1979 1/ and accounted for about 3 percent of Amtrak's total operating costs of $998.1 million.

Amtrak, however, cannot pay all of its operating expenses, including the interest expense, out of its own revenues; it is the established policy of the Congress to provide operating subsidies to make up the differences in Amtrak's operating revenue and its expenses (this difference has averaged about one-half of Amtrak's operating expenses). Therefore, if the Congress remains committed to this policy, Amtrak can continue to pay the debt service from Federal subsidies.

The overall implication of continuing this practice is that it affects the figures reported in the Federal budget--both "on budget" and "off budget" figures. In addition the Government incurs no net or real cost in terms of Treasury outlays and the transaction has no effect on the

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1/The most recent data for the 1981 estimate puts the interest expense at approximately $33 million.

public debt 1/. For the on budget transactions, both budget authority and outlays for the interest expense are reflected in DOT's budget (Amtrak appropriation) and the budget deficit estimate is increased (or a surplus estimate would decrease). To this extent there is an impact on the allocation of budget resources. Normally, the impact would be the same as with any other program competing for those resources. In this case, considering both on and off budget transactions, the Federal Government is appropriating funds to pay itself the interest. This happens because the loans on which Amtrak is paying the interest are actually owed to the Federal Government via the Federal Financing Bank (this arrangement is discussed further in chapter 4). Amtrak, then, owes interest to the Government which it cannot pay, so the Congress appropriates funds to Amtrak to pay that interest. The payment is recorded in an offsetting receipt account in the Treasury (the DOT outlay plus Treasury receipt equal "0" cost). The transaction and the budget effects are depicted in figure 2 (Amtrak's 1979 interest expense of $31.4 million, is used in the figure).

The law requires that we consider whether servicing the debt in this manner fairly and accurately reflects current operating costs. The interest expense on those loans currently outstanding is a "current" operating cost.

The interest expense on Amtrak's Federal loans has a negative effect on Amtrak's financial picture. There is an incentive for Amtrak to improve its financial picture because the Congress has established in legislation (Amtrak Reorganization Act of 1979) goals for improving the ratio of Amtrak's operating revenues to its operating expenses. The ratio is Amtrak's operating revenues stated as a percentage of operating costs (less depreciation). The goal has been set at 44 percent for 1982 and 50 percent for 1985. For 1979 the actual ratio was 40 percent. Eliminating the debt, and therefore, the interest expense, would improve the ratio by about 3 percentage points. Such a change would not reflect a real improvement in Amtrak's financial condition.

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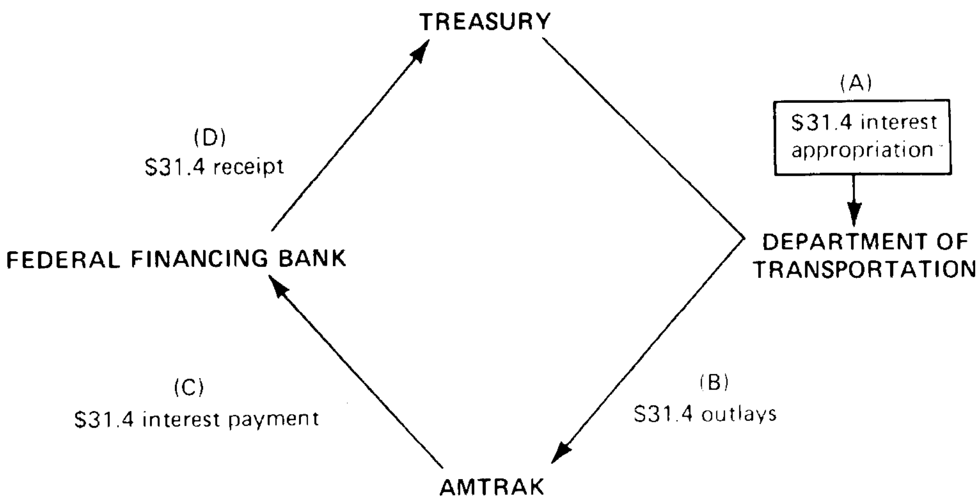
1/Most Federal entities are included within the Federal budget totals (on budget). However, some entities, federally owned in whole or in part, have been excluded from the budget totals under provisions of law (off budget), e.g., the Federal Financing Bank. These fiscal activities are not included in either budget authority or outlay totals, but are presented in a separate part of the budget appendix and as memorandum items in various tables in the budget.

Figure 2
($ in millions)

Transactions Resulting From
Amtrak Interest Appropriation

This depicts the flow of funds resulting from an appropriation (A) to DOT of $31.4 million (Amtrak's 1979 interest expense on loans)--within the operating subsidy appropriation--to cover Amtrak's interest expense on its loans with FFB. After DOT receives the interest appropriation (A), it gives Amtrak the funds (B) to pay the interest on the loans (C) owed to FFB. Treasury then receives the interest owed by FFB (D). Note that there is a "0" net effect on Treasury outlays. (For simplicity, we have not counted the 1/8 percent additional interest which FFB adds to the Treasury lending rate.)




Budget Totals and Cash Impact

| | Treasury | FFB | DOT |
|---|---|---|---|
| On budget | $31.4 Receipt | -- | $31.4 Budget authority<br>$31.4 Outlays |
| Off budget | -- | $31.4 Interest payment receipt<br>$31.4 Outlays | -- |
| Net cash effect | -0- | N/A | N/A |

Amtrak reduces its debt service with capital grant advances

Amtrak has a unique way of reducing its interest expense and, therefore, its operating costs. The Congress gave the corporation specific authority to use its annual capital grant appropriation to temporarily pay off part of its loans with FFB. Amtrak uses its appropriation to make obligations for capital acquisitions as it normally would. Instead of waiting to actually draw out the appropriation from Treasury when equipment is delivered, Amtrak may draw it out in advance. It is then used to temporarily pay off loans with FFB, thereby reducing Amtrak's interest expense. As of October 1, 1979, the outstanding loan balance was $432 million.

It must be remembered, however, that $900 million, an amount equal to the total loan guarantee authority originally provided, has been obligated by Amtrak and is the actual amount of Amtrak's debt to the Government which will have to be retired (less the $50 million already retired). While temporarily reducing the loan balance and reducing the interest expense improves Amtrak's ratio of revenues to to operating expenses, it does not change the total obligation.

Although Congress authorized advances of capital grants in fiscal year 1980, both the Senate Appropriations Subcommittee on Transportation and DOT officials stated that they want to stop this activity. Also, the 1981 budget assumes that this activity will not be continued. Since the interest expense has a negative effect on Amtrak's financial picture, proponents of Amtrak are exerting pressure to retire Amtrak's debt and eliminate the interest. If the interest is eliminated, Amtrak's appropriation could be reduced.

Conclusion

Obviously, as long as sufficient Federal funds are provided, Amtrak can continue to service the debt with Federal operating subsidies. In our opinion, this approach is really not in the best interest of the Government.

## CONSIDERING THE DEBT UNRECOVERABLE

A third factor the Congress asked us to consider was the extent to which the debt incurred by the corporation should be recognized as unrecoverable. We have already determined that paying off the debt from Amtrak's profit is not realistic and we believe the Government should acknowledge that the debt is unrecoverable without liquidation of assets. Even with liquidation of assets, full recovery may not be possible. Given Amtrak's unique relationship with the Government and the Congress' demonstrated desire to continue rail passenger service, liquidation appears to be an unacceptable alternative.

Acknowledging a bad debt and "writing it off the books" is an accepted accounting principle. Some have argued, however, that writing off Amtrak's debt may set an undesirable precedent for eliminating other obligations to the Federal Government. In our opinion, each debt must be examined as to its recoverability and other factors. In Amtrak's case, we see no useful purpose being served by continuing to carry the loan on the books since repayment from profits is unlikely.

## CONVERTING THE DEBT INTO STOCK

The fourth and last consideration required by Public Law 96-73 is the feasibility of converting the debt obligations into stock issued by the corporation. Because of Amtrak's history of deficits, it is not probable that Amtrak will make a profit. Therefore, we did not consider the offering of stock for sale to the public to be realistic and our analysis was based solely on issuing stock to the Federal Government. We do not believe that converting Amtrak's debt to stock is an effective approach to eliminating the debt. In our opinion, a more visible, direct, and prompt manner of retiring the debt should be used to simplify the financing and accountability for current and future railroad operations.

Since the debt is guaranteed by and owed to the United States, converting the debt into stock amounts to the Government substituting the debt for stock and becoming stockholders in a "private" corporation. Section 304 of the Rail Passenger Service Act of 1970 authorizes Amtrak to issue both common and preferred stock. At present, four railroads own the common stock and no preferred stock has been issued.

We do not believe it was the intent of Congress, in requiring the Comptroller General to consider the issuance of stock to retire the debt, that the United States would become a holder of common stock, with the same rights as the four railroad owners. We found no evidence of discussion about the United States becoming a common stockholder.

There has been, however, a proposal to make the United States a preferred stockholder. For example, in one version of the Amtrak Reorganization Act of 1979 (H.R. 3996, not adopted) the FFB would have been required to accept preferred stock from Amtrak in full settlement of all loans made to Amtrak by the FFB with the guarantee of DOT. Dividends would have been paid by the issuance of additional preferred stock. The stock would have had no voting rights and resale of the stock was not expected. The basic intended effect was to simply retire the debt. In addition, the House report on H.R. 3996 stated that certain provisions of the bill would continue to protect the interests of the Government because of the rights of preferred stockholders to Amtrak assets.

In letters to the House Interstate and Foreign Commerce Committee, the Office of Management and Budget and the Department of Treasury both objected to using preferred stock to retire the debt. They were concerned that the end result would be an off budget appropriation (see chapter 4 for a discussion of this issue). It was also pointed out by Treasury and OMB that there is a legal limitation in the Rail Passenger Service Act of 1970 on ownership of any preferred stock Amtrak might issue (no owner may hold more than 10 percent of the total).

From a strictly budgetary aspect, a technical problem exists in issuing preferred stock. Direct Federal loans (as defined by OMB Circular No. A-11) include the investment in obligations or preferred stock of any privately owned enterprise. As such, preferred stock would not change the budgetary status of the debt at all. Even in the business community, preferred stock is issued largely as interim financing. To some extent, then, issuing preferred stock in exchange for the debt would not be a clear acknowledgement by the Government that its loan is unrecoverable.

We do not believe this is a sound approach to retiring the debt.

## CONCLUSION

Amtrak is not likely to have the financial capacity to retire its debt to the Government out of corporate revenues. Since Amtrak's operating revenue does not cover all its expenses (including the interest payments on the loans), the Federal Government subsidizes Amtrak for the debt service owed to the Federal Government. While Amtrak currently has the ability to continue to carry its debt service within the context of operating subsidies, this ability will remain only so long as the Government funds such interest expense. We believe that continuing this activity is not in the best interests of the Government since it adds complexity to the financing and accountability.

We believe the Government should recognize this debt as being unrecoverable and write it off.

We do not believe exchanging preferred stock for the debt is an effective alternative to retiring it. While preferred stock may afford the Government some financial protection it would technically stay classified as a loan.

Having determined that the above considerations do not provide a satisfactory answer to retiring the debt, other alternatives must be explored. We examined various alternatives for retiring Amtrak's debt. Before discussing specific ones, however, we believe it is necessary to show how Amtrak's guaranteed loans, and loan guarantees in general, affect budgetary issues of full disclosure and control. We also include in this discussion the impact of FFB's role in loan guarantees.

## CHAPTER 4

## AMTRAK'S GUARANTEED LOANS IMPACT ON FULL DISCLOSURE AND CONGRESSIONAL BUDGETARY CONTROL

All loan guarantees have potential for causing problems of disclosure and control. Amtrak's loan guarantee was converted to direct, off budget Federal loans. This resulted in understated budget and deficit totals, creating problems related to disclosure of budget information and congressional control.

To illustrate this, we have discussed Amtrak's debt in the context of three aspects of loan guarantees:

--the uncontrollable nature of loan guarantees,

--the impact of loan guarantees becoming direct Federal loans from FFB, and

--the problem of large, single borrowers.

### LOAN GUARANTEE AUTHORITY IS EXCLUDED FROM THE BUDGET ALLOCATION PROCESS

Loan guarantee authority is excluded from the budget allocation process by the Congressional Budget Act of 1974. This act provides that budget authority does not include authority to insure or guarantee the repayment of indebtedness by another person or government. It is the "contingent" nature of loan guarantees that has caused this exclusion. The guarantee is a commitment by the United States to pay part or all of the principal and/or interest of a loan only if the borrower fails to repay the loan. Thus, since loan guarantees are a contingent liability, they have been excluded from the basic definition of spending authority and consequently are not considered within the budget.

The problems which have evolved because of this exclusion have evoked numerous comments and recommendations. The Congressional Budget Office has said that

"More and more attention has been focused on the growth of Federal credit programs in recent years, and it has become clear that traditional budget techniques, with their focus on direct spending and taxing, are unable to control credit program levels." 1/

In addition, the House Budget Committee stated that Congress should be able to consider loan guarantees within a comprehensive budget framework. 2/

In recent testimony before Congress, we recommended that changes should be made to more fully integrate the Government's credit activities into the "unified budget." 3/ Although no adequate mechanism to control loan guarantees has been put in place, the fiscal year 1981 budget contains a review of Federal credit programs and administration recommendations of annual appropriation limitations for a wide range of credit activities. The budget document contains information about direct Federal loans (both on and off budget) and loan guarantees, including data on the lending activities of the Federal Financing Bank.

The credit presentation contained in the President's 1981 budget plan is an important first step towards fully disclosing and controlling Federal credit activities within the budget allocation process. We believe that Amtrak offers a good illustration of the need for budgetary controls by highlighting the adverse effects of guarantee programs on accountability through the budget process.

## AMTRAK IS AN EXAMPLE OF THE UNCONTROLLABLE NATURE OF LOAN GUARANTEES

Federal guarantees can become uncontrollable Federal expenditures

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1/Federal Credit Activities: An Analysis of the President's Credit Budget for 1981, Staff Working Paper, February 1980, Congressional Budget Office, p. xvii.

2/Congressional Control of Expenditures, Committee on the Budget, U.S. House of Representatives, January 1977, p. 93.

3/Statement of Elmer B. Staats, Comptroller General, U.S. General Accounting Office, before the Budget Process Task Force, House Committee on the Budget, on the Federal Budget Process, December 11, 1979, p. 6.

--when the lender is the private sector and default occurs, and

--when the lender is the Federal Financing Bank which borrows from the U.S. Treasury.

First, when the United States is the guarantor only and financing is obtained from the private credit market, default forces a payoff by the Federal Government to the private lender. One way of providing for this payoff is to give borrowing authority to the Federal agency guaranteeing the debt. In Amtrak's case, DOT is the guarantor. If Amtrak had defaulted on its guaranteed loans while it received financing from private lenders, DOT would have been required to use its borrowing authority to obtain funds from the Treasury and pay off the loans. This procedure would have automatically increased DOT's actual budget totals (budget authority and outlays) and the public debt (assuming Treasury had to increase its borrowings) disclosing the default in budget totals. This illustrates how loan guarantees, by their very nature, can become uncontrollable expenditures by increasing budget totals and Treasury outlays. Loan guarantees may require outlays without any current action by the Congress.

Second, loan guarantees can become uncontrollable when the Federal Financing Bank provides the loans. Amtrak's loans became uncontrollable expenditures without default occurring when it obtained direct Federal loans from FFB without congressional budgetary action. The budgetary problems with FFB loans, as illustrated by Amtrak's loan guarantees, are described in the next section.

The Federal Financing Bank contributes to lack of disclosure and control

FFB was created as a part of the Treasury to raise the efficiency and lower the costs of Federal agency borrowing activities. The bank purchases different kinds of debt and guaranteed obligations of Federal agencies and private borrowers and substitutes its own borrowing for that of the agencies.

As we stated in an earlier report 1/ the bank's accomplishments have been noteworthy in managing and

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1/"Government Transactions with Federal Financing Bank Should Be Included in the Budget" (PAD-77-70, Aug. 3, 1977).

reducing the cost of agency borrowing activities. However, two aspects of FFB's activities are not strictly related to its essential role as a financial conduit and have created problems of disclosure and control. First, when FFB was established, its receipts and disbursements were excluded by law from the budget totals; i.e., they were put off budget. The result has been a cumulative understatement of outlays on budget of approximately $47 billion by the end of fiscal year 1979 and estimated to be $64 billion by fiscal year 1980. We believe this causes inadequate disclosure of budget activities. Second, it was originally thought that the bank would finance its activities by issuing its own securities in the private money and capital markets. Instead, nearly all of the bank's borrowing has been from the Treasury. This creates a concern with loss of controllability over a relatively large amount of direct Federal loan activity. Because the Federal Financing Bank is purchasing guaranteed loans, a large volume of direct loans which would normally be reported at face value in the budget is being transferred to off budget status. These direct loans are excluded from the resource allocation and control processes established by the Congressional Budget Act of 1974.

In view of the consequences resulting from the off budget status of FFB, we recommended in the 1977 report that the bank's receipts and disbursements be included in the Federal budget totals.

The very same problems discussed above were involved when Amtrak began to convert its loans from the private credit market to FFB. Funds borrowed by Amtrak from FFB represent a real cost to Treasury that is not disclosed and recorded in the budget totals due to FFB's off budget status. This large expenditure has not been subject to controls of the budget process. We believe that Amtrak's loans highlight the budget problems surrounding guaranteed loans, especially those held by FFB.

We have assumed for our analysis that FFB will remain off budget. If, as we have recommended, FFB is returned to on budget status, disclosure would not be an issue. Then, the loan would be properly recorded on budget, and attention could be focused on the retirement mechanism.

<u>Large, single borrowers like Amtrak increase likelihood of uncontrollable expenditures</u>

The Amtrak guarantee is part of a distinct category of guarantee programs--large, high risk, single borrowers.

However, the guarantee is unique because of the close relationship between Amtrak and the Federal Government.

In this category, programs represent decisions by the Federal Government to back discrete ventures by guaranteeing large loans to a single borrower or a few borrowers with commonly shared risks. In this category, ventures may involve technologies or economical competitiveness yet to be proven. Moreover, economic success may require large initial capital expenditures. Unlike more traditional use of guarantees such as the Federal mortgage insurance programs, the risk cannot be pooled over many borrowers. The number of guarantees of this type has been relatively small and the circumstances so individual that default rates cannot be compared. Because of these factors, loan repayment by large, single borrowers is not predictable. These factors increase the probability that the loan will become an uncontrollable Federal expenditure without congressional budgetary action. If (1) default occurs, thereby obligating the Government to pay off the loan and (2) the loan is guaranteed by an on budget agency, then the payment increases the outlays of the agency which guaranteed the loan and decreases the discretionary funds available in functional classifications within the budget allocation process. In this category of loans, Amtrak is an important example.

## CONCLUSION

We believe that Amtrak's loans highlight the need for full disclosure and strengthened control and accountability of Federal guarantee programs within the budget process.

# CHAPTER 5

# ALTERNATIVES FOR RETIRING AMTRAK'S DEBT

Based on our analysis of issues required by the Amtrak Reorganization Act of 1979, we concluded earlier in this report that the Government should recognize that Amtrak's debt is unrecoverable and should be retired. There are a number of alternative ways in which this can be accomplished. Our consideration of these alternatives is based on the assumption that Amtrak, as discussed in chapter 2, has a unique relationship with the Federal Government. To assess the alternatives systematically, we developed criteria for evaluating the positive and negative effects of alternative means of retiring Amtrak's debt. In this chapter, the alternatives are described and evaluated using these criteria.

## CRITERIA FOR EVALUATING ALTERNATIVES FOR RETIRING AMTRAK'S DEBT

The criteria used here to assess alternatives which we have identified provide a basis for evaluating any potential alternative for retiring the debt. The criteria are not independent of each other, can conflict with or influence one another, and cannot be considered of equal weight. We believe, however, that the option selected by the Congress should meet as many of these criteria as possible.

Our criteria concern the following issues:

--Maintaining a viable rail passenger service.

--Full budgetary disclosure.

--Congressional budgetary control.

--Protection of the Government's collateral interest.

--Political feasibility.

--The desirability of the precedent established.

These criteria are discussed in detail below.

## Maintaining a viable rail passenger service

Congress has supported maintaining a viable rail passenger service since 1970, when it passed the Rail Passenger Service Act which identifies the public need for a modern and efficient rail passenger service. The commitment to this goal is reinforced by Congress' prolonged involvement in Amtrak's operations and by its continually expanding financial assistance. Therefore, we have considered how alternatives for retiring Amtrak's guaranteed loans will impact on the goal of maintaining viable rail passenger service.

## Full disclosure

We believe the Congressional Budget Act of 1974, which increased involvement by the Congress in the budget process, requires full and complete budgetary disclosure of information to the Congress. The Federal budget should contain full and clear information on all Federal expenditures to enhance accountability and public and congressional understanding of the budget, and to increase its usefulness for purposes of decisionmaking, public policy determination, and financial planning. Since Amtrak's loans with the Federal Financing Bank are direct Federal outlays which were never included in the budget totals, we believe that any debt retirement action should be fully disclosed in the Federal budget. Therefore, in applying this criterion, we considered whether alternatives would provide retirement on budget. We also considered whether the full information would be available in one budget year, thereby having more impact on decisionmaking, rather than over a period of years.

## Congressional budgetary control

The Congress has a clear constitutional role in controlling public monies. With the passage of the Congressional Budget Act of 1974 it took a major step in asserting and increasing its control over the Federal budget process.

Federal loan guarantees, as discussed in chapter 4, weaken congressional budgetary control because as a contingent liability, they are excluded from the definition of budget authority; and if default occurs, they may result in Federal expenditures outside the current control of the Congress. Our congressional budgetary control criterion is aimed at the retirement aspect of loan guarantees, i.e., when a loan has to be paid by the Federal Government as guarantor.

Often when the Government guarantees a loan, permanent borrowing authority is established for the guaranteeing agency. If default occurs, that agency then borrows from the Treasury. That transaction results in a recording in the budget totals of budget authority and outlays, all without current congressional budgetary control. Borrowing authority of this type is known as "backdoor authority." Such authority is granted by authorization committees outside the appropriations process. A major objective of the Congressional Budget Act of 1974 was to eliminate "backdoor spending" by placing new spending authority within the appropriations process.

We believe the principle of congressional budgetary control should be applied to loan guarantees whenever practicable. Although the actual expenditure related to Amtrak's loans has largely taken place, in considering retirement the Congress clearly is in a position to make a deliberate decision about how it should be carried out. Amtrak's loans have already involved the use of complex, backdoor practices. We do not believe new ones should be invented to cover the write-off. The guarantees should be retired within the budgetary control of Congress.

Establishing a precedent

The decision to retire a large loan which has been recognized as a bad debt could set a precedent for future Federal actions involving unrecoverable debts. The method of write-off selected should be considered not just for its immediate effect, but also for setting a standard. Setting this standard makes the principles involving public needs, full budgetary disclosure, and congressional budgetary control even more important. Therefore, we questioned each alternative not only in terms of the immediate effect, but also in terms of possibly establishing a precedent for future actions.

Protection of the Government's collateral interest

As discussed on page 11, the Federal Government has security agreements with Amtrak which pledge rolling stock (i.e., locomotives and passenger cars) to the Government in case Amtrak defaults on its Federal loans. These agreements establish a collateral interest which would be terminated if the loans are retired. We believe this interest should be continued. We evaluated whether the alternatives would provide any degree of protection.

### Political feasibility in terms of budget impact

The way in which $850 million in loans is retired can have many political implications. One such implication relates to budget impact, with regard to both budget principles and budget totals. These two impacts affect the many participants in the budget process differently. While some would be more concerned with principles, others would care more about the effects on the allocation of resources. For example, some decisionmakers will be more concerned with the principle of full disclosure in retiring Amtrak's loan because of their emphasis on accountability and improving the discipline of the budget process. Full disclosure, as we have described it, however, would cause maximum impact on budget totals. From that perspective, other decisionmakers will give greater weight to the dollar impact on the competition for resources than on the principle of accountability and full disclosure.

The current pressures to hold down Federal spending and balance the budget weigh against the principle of full disclosure. For example, the administration would have to balance support for retirement on budget with the goal of reducing budget totals and eliminating the deficit.

Because of such considerations we have questioned the political implications in terms of budget impacts which result from the implementation of each alternative for retiring Amtrak's debt.

## EVALUATION OF ALTERNATIVES FOR RETIRING THE DEBT

There are many alternatives for retiring Amtrak's debt and an infinite number of possibilities in applying different combinations of length of time and amount of the debt retired. A number of these options are described below and evaluated using the criteria outlined in the preceding section. These include:

- --A one-time appropriation.
- --Appropriations extending beyond 1 year.
- --Formal declaration of default and use of DOT's permanent borrowing authority to repay the loans.
- --Use of legislation to forgive the debt.

One restriction on retiring the debt and cancelling the loan guarantee authority involves Amtrak's lease obligations. Under any alternative, Amtrak's loans and guarantee authority may not be reduced below the level of certain outstanding lease obligations. By statute these leases, which amounted to about $77 million as of October 1, 1979, are guaranteed by the loan guarantee authority. The backing of the leases by the guarantee restricts how much of the loan and guarantee authority may be retired immediately. Therefore, any alternative for retiring the debt must include a way to allow these leases to remain in effect until they expire or until early termination is agreed upon. Appendix I describes these lease arrangements.

One-time appropriation

The Congress could appropriate the total $850 million necessary to retire the debt. Although Amtrak has temporarily paid down its loan balance at FFB with advanced capital grants (see page 17), we have simplified the discussion of this transaction by assuming that the full $850 million is outstanding.

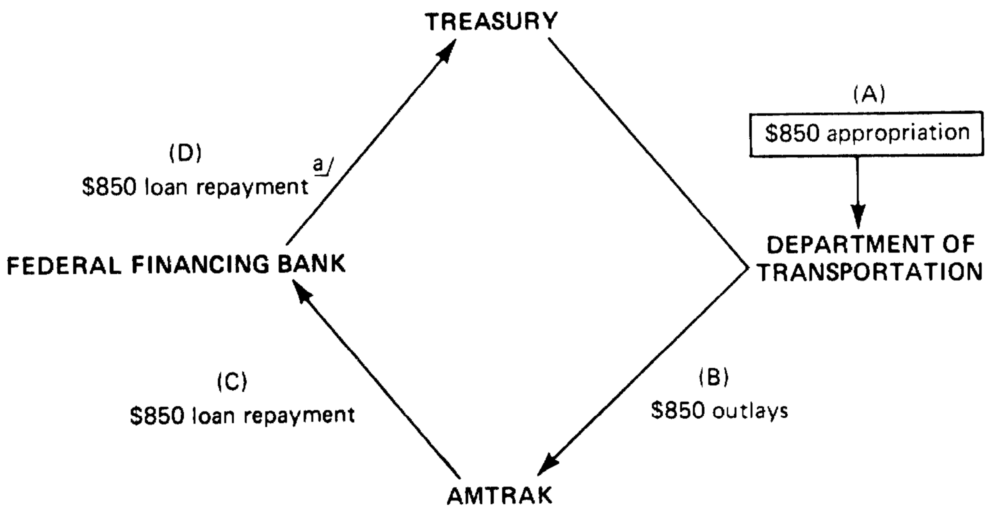
The required appropriation could be requested in the President's budget or the Congress could initiate the action by making an appropriation to the "Grants to the National Railroad Passenger Corporation" account (69-0704-0-1-401) in the Federal Railroad Administration in DOT. Figure 3 illustrates how this transaction would take place and what its effects would be, assuming the full $850 million is outstanding. In this transaction, $850 million in budget authority would be recorded in the budget, and $850 million in outlays would be recorded when the funds are provided to Amtrak causing an apparent increase in budget authority and outlays. Since FFB is an off-budget agency, Amtrak's loan repayment would not be included in the budget as a receipt of funds. Instead, the $850 million loan repayment to FFB would be recorded off budget as a receipt and subtracted from FFB's overall requirement for cash from the Treasury. In this transaction, theoretically, Treasury is repaid for the funds loaned to Amtrak via FFB.

Since the debt is internally held, repayment by the Government would be an intragovernmental transfer with no net cash effect on Treasury. The estimated budget deficit would increase by $850 million (or an estimated surplus would decrease), but the on-budget outlay would be offset by an off-budget loan repayment. Thus, repayment by the Government results in no actual increase in the Federal debt. The debt was increased when FFB provided loans to

## Figure 3
($ in millions)

## Transactions Resulting From Appropriations To Retire Amtrak's Loans

This depicts the flow of funds which would result from an appropriation (A) to DOT of $850 million to retire Amtrak's loans with FFB/Treasury. After DOT received the appropriation (A), it would give Amtrak the funds (B) to repay the loans (C) owed to FFB. FFB would then repay Treasury the funds (D) it originally borrowed to lend to Amtrak. Note that there is a "0" net effect on Treasury outlays.




### Budget Totals and Cash Impact

| | Treasury | FFB | DOT |
|---|---|---|---|
| On budget | -- | -- | $850 Budget authority<br>$850 Outlays |
| Off budget | -- | $850 loan repayment a/ | -- |
| Net cash effect | -0- | N/A | N/A |

a/Amtrak's loan repayment to FFB reduces the requirement by FFB for Treasury funds by $850 million and has the effect of an $850 million loan repayment to Treasury.

Amtrak. At that time, Federal borrowings reflected an increase equal to the amount of Amtrak's outstanding loan balance.

### Evaluation of a one-time appropriation alternative

A one-time appropriation would not significantly affect the goal of maintaining a viable passenger rail service although it could impact on funding decisions during the year in which the appropriation was made. If $850 million for debt retirement were included in the budget, it could impact on Amtrak's ability to compete for resources. The fiscal year 1980 appropriation for Amtrak was $861.4 million (excluding Northeast Corridor funding). Whether or not the $850 million could be included in the budget totals without reducing the desired funding level for this activity and the related level of service is questionable.

In terms of political feasibility, evaluation of this alternative is made more difficult because of the off-budget status of the FFB. This situation requires that the repayment of the loans be recorded as outlays in the budget, even though there is no net outflow of cash from the Treasury. (The cash outflow <u>actually</u> occurred when FFB made the loans.) As a result of this situation, however, an appropriation to repay the debt will cause an <u>apparent</u> increase in budget authority, outlays and the deficit. As this apparent increase worked its way through the budget process, it could begin to affect resource allocation decisions. These potential effects would have to be considered in judging the political feasibility of this alternative.

In contrast, in terms of accountability and good budget practices, this alternative clearly is politically feasible. The one-time appropriation method would meet the criterion of full disclosure by placing the entire $850 million on budget all at once. It would also meet the controllability criterion since this alternative would require direct congressional budgetary action within the appropriation process. Therefore, in terms of a technical approach, this option would set a desirable precedent in writing off a debt which has been recognized as unrecoverable.

A one-time appropriation would not protect the Government's collateral interest. However, as discussed on p. 12, the collateral interest could be continued through an agreement between Amtrak and the Department of Transportation granting a lien on equipment.

Our analysis leads to a conclusion that in spite of the large impact on the budget figures (although there would be no net Treasury outlay), this alternative is the best means of retiring the debt. It meets other important goals of full budgetary disclosure and controllability, sets the best precedent for future action in writing off unrecoverable debts, and supports the basic mission of maintaining a viable rail passenger service. As a condition to retiring the debt, a lien should be obtained continuing the Government's existing interest in Amtrak's assets.

Appropriations extending beyond 1 year

Many possibilities exist for retiring the debt with appropriations over a period extending beyond 1 year. Depending on the effects, different parties support different retirement periods. For example, the administration has proposed $25 million for retirement in each of the last four budgets (1978-1981). As stated earlier, Congress has appropriated $50 million ($25 million in fiscal years 1978 and 1979). At this rate it would take 34 more years to retire the remaining $850 million in loans. DOT suggested a shorter period for retirement extending through fiscal year 1984 in its restructuring study of Amtrak.

An extended appropriation period would meet the criterion of maintaining a viable rail passenger service. It would comply with the controllability criterion by requiring positive congressional budgetary action. Also, it is more politically acceptable than a one-time appropriation since there is less budget impact. Budget impact becomes more acceptable as the writeoff period is extended over longer time periods. Political feasibility also depends on balancing current pressures to reduce budget totals against other goals which include increased accountability, good budgetary practices, and the most reasonable approach to financing Amtrak operations.

Retirement over a number of years does not protect the Government's collateral interest, but would partially delay the loss of that interest during the length of the retirement period. As discussed under the previous alternative, collateral interest could be extended through a lien as a condition of debt retirement.

More importantly, this method does not totally satisfy the principle of full budgetary disclosure. Even though the total amount of the loan would be recorded on budget over time, a repayment schedule which spreads the appropriations over a number of years reduces the visibility and impact of the payment in the budget. Because it does not totally comply with full disclosure goals, this alternative does not set a desirable precedent for future retirement actions. For this reason, we believe this is a less desirable alternative than the one-time appropriation.

Default and use of DOT borrowing authority

If Congress deliberately failed to provide sufficient financial support, Amtrak would probably not be able to pay all of its expenses including the principal and/or interest on its loans with FFB. In this event, a formal default action would require DOT, as guarantor, to pay the loans by using its permanent borrowing authority. If this happened the Government could exercise its collateral rights under existing security agreements. Congress would have to appropriate funds to liquidate DOT's borrowings from the Treasury.

This scenario would substantially change the existing relationship between Amtrak and the Government. The criterion of providing a viable rail passenger service would be met to the extent that the Federal Government continued to support and provide such service even though there surely would be some practical operational difficulties. This approach could only meet the full disclosure and budgetary control criteria if it were included in the President's budget or Congress added it to the budget. It could also occur outside of the budget cycle which reduces the visibility of the transaction and its impact on budget decision-making. Although a transaction outside of the budget process would not meet full disclosure and control criteria, it may be more politically feasible since it has less impact on budget.

We believe that default and use of borrowing authority, in the case of Amtrak, is unnecessary since the Government is both the guarantor and the lender. A default action would be contrary to the objectives of the legislation establishing Amtrak. It is also not likely since Congress appears commited to maintaining passenger rail service within its current relationship with Amtrak. In our opinion, default would only become a possibility if the Congress decided that the public's interest were better served by changing Amtrak's institutional framework.

## Forgiveness of loans by legislation

The Congress could cancel all obligations related to Amtrak's Federal guaranteed loans by legislation. Such a solution would not impact on the goal of maintaining a viable rail passenger service. Those who wish to minimize the impact of the loan transaction on the budget may consider this to be politically feasible. The protection of the Government's collateral interest would be eliminated, but could be continued through agreement to a lien.

This alternative, however, does not meet the criteria which relate to budgetary goals of full disclosure and controllability. Since this solution would have no impact on the budget, it would not be politically acceptable to those who support improved budget practices. In addition, even though it requires a direct action by the Congress, the action would not occur within the budget allocation process. We believe that setting a precedent for retiring unrecoverable debts without meeting budgetary control and full disclosure criteria is undesirable. In our opinion, it is the least desirable alternative which we identified, primarily because Amtrak is not unique in receiving a large guarantee that has been converted to a direct off budget loan through the FFB. If this approach were used, there may be attempts to have other similar loans follow this precedent of, in effect, becoming a grant without an appropriation. This occurs in three steps: (1) loan guarantee, (2) converted to direct Federal loan via FFB, and (3) debt cancelled by legislation. We cannot support the use of such a backdoor device. If Congress intends to make a direct subsidy, we believe it should be done through the budget process in such a way that accountability is clear and the public is fully informed of the decisions being made.

## CONCLUSION

Since loan guarantees like Amtrak's can result in a big impact on Federal outlays, we believe that any retirement plan must provide for these expenditures to be recorded on budget. Although we recognize that constraints on budget resources will always continue to be present, we believe that a retirement plan that minimizes present day budget impact at the cost of good budgeting principles and program accountability is not a viable alternative.

## RECOMMENDATION TO CONGRESS

We recommend that Congress retire Amtrak's debt to the Federal Government through a one-time appropriation. As a condition to this retirement, a lien on equipment which continues the existing Government interest in Amtrak's assets should be obtained.

We also recommend that the guarantee authority backing the debt be cancelled. As discussed in our report on page 30, provision would have to be made for Amtrak's lease obligations which place a restriction on retiring the debt and cancelling the guarantee authority.

## AGENCY COMMENTS

We briefed DOT and Amtrak officials on the content of this report and obtained their oral comments. In addition, Amtrak provided a written response to our briefing (see appendix II).

Department of Transportation officials agreed with our facts and indicated no objection to our making this recommendation. They stated that, in their opinion, it was essential to continue the Government's collateral interest in Amtrak's loans if they are retired.

Amtrak officials agreed with our facts and stated a willingness to enter into agreements with DOT continuing the current collateral interest of the Government in Amtrak's assets. In his letter response, the President of Amtrak reaffirmed this willingness.

Amtrak's position on the best way to retire the debt, however, is different from ours. Amtrak recommended two options for retiring the debt, both of which we believe are unacceptable. Both would be off budget transactions. As we have stated in this report, we believe any alternative for debt retirement should be on budget.

Our complete response to Amtrak's letter is included as a part of appendix II.

## AMTRAK'S LEASE OBLIGATIONS

Amtrak's leases present a complicating factor which must be considered when writing off Amtrak's debt and terminating its loan guarantee authority. Amtrak has outstanding, as of October 1, 1979, six lease obligations with a balance of $77 million, which are connected directly to loan guarantees of the Department of Transportation (DOT). These obligations are binding, legal contracts which remain in effect until the expiration date unless affected parties mutually agree on early termination. Thus, $77 million of Amtrak's debt which is tied to lease obligations and the guarantees backing the leases can only be retired when the lease arrangements expire unless affected parties agree to early termination.

### WHAT ARE AMTRAK'S LEASE OBLIGATIONS?

Amtrak entered into seven transactions pursuant to the conditional guarantee authority provided DOT in 1972 amendments to section 602 of the Rail Passenger Service Act of 1970 (P.L. 92-316). The unpaid principal amount of leases is guaranteed by DOT under this authority. Guaranteed leases were the primary method by which Amtrak financed new rolling stock until DOT disallowed the use of guarantees for this purpose. In general, the leases were to remain in effect 15 years with an option to purchase the equipment at the end of the lease period. Of the seven leases, six are still in effect. The one exception is a lease which was terminated by mutual agreement with a penalty payment of approximately $2.5 million dollars.

Below is a schedule which shows Amtrak's lease obligations as of October 1, 1979, the original cost, the guaranteed balance, and the expiration dates:

| Lease Obligation | Original Cost ($ in millions) | Guaranteed Balance ($ in millions) | Expiration Date |
|---|---|---|---|
| 36 SDP 40 General Motors diesel locomotives | $17.8 | $14.8 | 1- 1-89 |
| 29 SDP 40 General Motors diesel locomotives | 13.6 | 12.4 | 1-15-90 |
| 25 E-60 General Electric electric locomotives | 19.7 | 20.3 | 7-15-91 |
| American Fletcher computer | 0.75 | 0.4 | 5-31-81 |
| 4 RTG French Turbo Trains | 14.1 | 13.4 | 7- 5-90 |
| 25 P30 CH General Electric diesel locomotives | 15 | 15.6 | 12-31-90 |
| TOTAL UNPAID GUARANTEED BALANCE | | $76.9 | |

## HOW WILL LEASE OBLIGATIONS AFFECT DEBT RETIREMENT AND TERMINATION OF GUARANTEE AUTHORITY?

All of Amtrak's guaranteed loans and the guarantees backing the loans can be retired immediately except the portion tied up in the six lease arrangements. For both legal and practical reasons, the unpaid principal amount of approximately $77 million (as of October 1, 1979) in lease obligations must be retired when the leases expire. Because the leases are complex arrangements, early termination of these contracts is impractical and expensive. It would require penalty fees as high as $11 million, since the lessee is responsible for any losses the private investor may incur by reason of early payoff. More important, lease arrangements are binding, legal contracts. Early termination requires agreement by all affected parties. In addition, the Department of Transportation guarantee authority is binding and may not be terminated, cancelled, or otherwise revoked until the lease obligations expire. Section 602(c) of the Rail Passenger Service Act (45 U.S.C. 602(c) states that "(c) any guarantee made by the Secretary under this section shall not be terminated, canceled or otherwise revoked; shall be conclusive evidence that such guarantee complies fully with the provisions of this [Act] and of the approval and legality of the principal amount, interest rate, lease rate, and all other terms of the securities, obligations, leases, or loans and of the guarantee, and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, lease, or loan, except for fraud or material misrepresentation on the part of such holder."

Also, section 601(a)(1)(3) (45 USC 601(a)(1)(3)) states that payments authorized under that provision to reduce the principal amount of the guarantee authority (thus, to retire Amtrak's guaranteed loan) do not include payments for lease arrangements.

Thus, legal provisions preclude early termination of the guarantee and the lease arrangement by the Government alone.

National Railroad Passenger Corporation, 400 North Capitol Street N.W. Washington D.C. 20001 Telephone (202) 383-3000

March 14, 1980

Amtrak

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, D. C. 20548

Dear Mr. Staats:

I appreciate the excellent briefing by your staff on Friday, March 7, 1980, on your study concerning retirement of our guaranteed loan authority.

During the briefing, your staff requested Amtrak's position regarding our willingness to enter into an agreement with the Department of Transportation granting a lien on equipment and capital improvements to the value of the original $900 million loan authority as a part of arrangements to retire the loan authority. Subject to Board of Directors approval (which I believe would be forthcoming), Amtrak would be willing to enter into such an agreement. This would result in the government's interest being fully protected.

I understand the many complex considerations you faced in developing your recommendations, but I believe the circumstances surrounding Amtrak's guaranteed loan authority are unique and deserve consideration of approaches that might not apply in other guaranteed loan situations.

At the time guaranteed loan authority was provided by the Congress it was expected that at some future date Amtrak would become profitable and the loans would be repaid by the Corporation. This is now recognized to be very unlikely. During the development of the FY 1976 budget, the Administration and the Congress made two basic decisions. First, that future capital funding would be made through grants; and second, given that the loans would not be repaid from Amtrak profits, a plan for liquidation of the guaranteed loan authority should be established. These decisions were implemented by appropriations enacted by PL 94-134 (November 24, 1975) in regard to capital grants and by PL 95-85 (August 2, 1977) with respect to the first loan retirement installment.

Honorable Elmer B. Staats
March 14, 1980
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During the debate on FY 1980 appropriations for Amtrak the question of early and more rapid retirement of the loan authority led to the Congressional request to the Comptroller General to recommend "appropriate means for the National Railroad Passenger Corporation to eliminate the obligations of the Corporation that are guaranteed under Section 602 of the Rail Passenger Service Act."

In addition to the fact that the Administration and Congress have concluded that our guaranteed loan authority cannot be repaid from Amtrak profits, another factor exists. The guaranteed loan authority was provided during the period FY 1971-Fy 1975. As a result, capital programs supported by this authority have essentially been executed. As of January 31, 1980, only $73.6 million remains unexpended (primarily for Superliner cars). Thus, the question is how to best "clear the books" of $850 million of guaranteed loan authority that (1) cannot be repaid from Amtrak profits and (2) covers programs that are over 91 percent completed and 100 percent obligated. I believe these factors provide a basis for a simplified approach to the problem.

The options available, as I see the problem are:

1. Legislation that directs the Treasury Department (through the Federal Financing Bank) to lend money interest free to Amtrak until all program obligations are liquidated, at which time the loan be written off Treasury books.

   This would recognize the fact that the loan would not be repaid and write-off is in order. It also eliminates the budget processing of appropriations for programs that are substantially executed. There would be no impact on cash withdrawals from the Treasury beyond those contemplated by the guaranteed loan authority.

2. Legislation that would require Amtrak to issue preferred stock to retire debt.

   This would establish a governmental ownership interest in Amtrak equivalent to the value of stock issued. It would provide further protection to the government above existing liens on equipment. Authorizations and

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appropriations to cover programs almost completed would not be required. There would be no impact on cash withdrawals from the Treasury beyond those contemplated by the guaranteed loan authority.

3. Appropriate $850 million to liquidate the guaranteed loan authority.

   This would be the highest level "on budget" solution, providing a capital grant to substitute for the guaranteed loan authority. Budget obligations and outlays would be reflected in a current year for programs that had already been executed in prior years. Net cash flow impact on the Treasury would be zero since funds disbursed by Treasury would be immediately paid to Treasury to reduce loans. No real budgetary control would be imposed by this option.

4. Continue a phased retirement of the guaranteed loan authority.

   This would continue the present procedure of gradual debt retirement. Under such a plan, which is an "on budget" transaction, interest expense would continue on the outstanding debt balance. Amtrak's annual authorizations and appropriations would have to be increased to accommodate these requirements.

5. Leave the guaranteed loan authority at the current $850 million level.

   The effect of this action would be a continuing increase in interest expense to the Corporation to service a debt that all parties agree cannot be repaid from Amtrak earnings. Authorizations and appropriations would have to be increased to accommodate the increasing interest costs.

Honorable Elmer B. Staats
March 14, 1980
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Based upon the unique conditions that prevail concerning Amtrak's guaranteed loan authority, I believe that either option 1 or 2 above represents the most practicable and feasible way to retire the outstanding loan authority. I do not believe option 3 is feasible due to its significant impact on the budget. Option 4 is the most feasible "on budget" solution, but does not offer any early solution to debt retirement. Option 5 would be inconsistent with the objective to retire the loan authority.

Amtrak recommends that the outstanding guaranteed loan authority in the amount of $850 million be retired as an "off budget" transaction under procedures described in either Option 1 or Option 2 above.

As we discussed in detail with your staff, legislation and implementation of any of these options must recognize Amtrak's long term guaranteed lease obligations and the implications of early termination.

Sincerely,

Alan S. Boyd

Alan S. Boyd
President

GAO Notes:

In general, Amtrak in its response

--reaffirmed the accuracy of our facts,

--agreed with our issues supporting debt write-off, and

--expressed willingness to enter into an agreement to provide for the Government to retain its collateral interest in Amtrak's equipment.

Amtrak did not, however, agree that our recommended alternative was the best choice. Overall, Amtrak believes that the debt should be retired off budget. Amtrak's response discusses five options, two of which would, in their opinion, accomplish that objective.

First, Amtrak suggested legislation that would provide the loans interest-free to Amtrak until all program obligations are liquidated, at which time the loans would be written off. While we understand Amtrak's desire not to incur additional interest expense, we do not agree that this would address the basic problem--that Amtrak is not able to repay the debt. We believe this option of retiring the debt with a legislative write-off is undesirable because not only is it off budget, but as stated on page 35 of this report, the option does not meet the criteria of full disclosure and controllability. This, in our opinion, sets a very undesirable precedent. As we noted in our report, the interest expense is now financed by direct appropriations. If Amtrak loans were made interest-free, Amtrak's appropriation should be reduced by the amount it would have received to pay the interest.

While we agree with Amtrak that issuing preferred stock would provide protection to the Government, Amtrak itself has stated it would be willing to enter into an agreement whereby the Government's interest would be maintained without issuing preferred stock. Furthermore, Amtrak agrees in its response that the debt will not be paid off and should be eliminated. As noted in our report, preferred stock is considered by the Federal Government to be the same as a loan. Hence the budgetary status of the debt would not be changed and the unrecoverable status of the loans would not be clearly acknowledged. Again, as noted above, if the Congress chose this alternative, Amtrak's appropriation should be reduced by the amount of the interest.

We disagree with the the "off-budget" aspects of Amtrak's response. In our judgement, any off-budget alternative for loan retirement is unacceptable because

--it would not provide full disclosure;

--it would not be carried out within the budgetary control of the Congress; and

--it would set a bad precedent by effectively providing direct subsidies without previous positive congressional action.

Our recommended approach, an $850 million appropriation (Amtrak's option 3), was dismissed by Amtrak as not being politically feasible due to budget impact. We have acknowledged in our report the budget impact problems of this alternative but believe it is the best option because it provides full disclosure of the transaction on budget and provides congressional budgetary control. Amtrak's statement about no budgetary control being imposed apparently refers to the fact that no current outlays would be involved. However, to the extent that the transaction represents "providing a capital grant to substitute for the guaranteed loan authority," we believe that such a change should be subject to congressional decisionmaking within the controls of the budget process.

Amtrak's fourth option is to continue a phased retirement of the guaranteed loan authority. We discuss this option starting on page 33.

Amtrak's fifth option is to leave the guaranteed loan authority at the current $850 million level. We discuss this option starting on page 14 in our analysis of Amtrak's ability to continue to carry the debt service.

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