United States General Accounting Office

GAO

Report to Congressional Committees

March 1998

INTERCITY PASSENGER RAIL

Issues Associated With a Possible Amtrak Liquidation

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-277703

March 2, 1998

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce,
Science, and Transportation
United States Senate

The Honorable Bud Shuster
Chairman
The Honorable James L. Oberstar
Ranking Minority Member
Committee on Transportation and
Infrastructure
House of Representatives

The National Railroad Passenger Corporation (Amtrak) carries over 20 million passengers a year through the trains that it operates. It also provides services, such as dispatching, to state and local commuter rail operators. Since 1971, Amtrak has received over $20 billion in federal assistance to cover its operating losses and to make capital improvements. Yet Amtrak's financial condition has continued to deteriorate, raising the possibility of both bankruptcy and liquidation.

In July 1997, the Chairman of the Senate Committee on Commerce, Science, and Transportation asked us to report on the financial and other issues associated with a possible Amtrak bankruptcy. Subsequently, section 413 of the Amtrak Reform and Accountability Act of 1997 required us to report on these issues. If Amtrak filed for bankruptcy, the trustee appointed to handle the bankruptcy could attempt to reorganize the Corporation rather than immediately liquidate it. However, owing to the difficulty in predicting how Amtrak might be reorganized, you asked us to focus on the issues associated with a possible liquidation of Amtrak. Specifically, this report discusses (1) uncertainties in estimating the potential costs associated with a liquidation; (2) possible financial impacts on creditors, including the federal government; (3) possible financial impacts on participants in the railroad retirement and unemployment systems; and (4) possible impacts on intercity, commuter, and other rail service.

Results in Brief

Amtrak has estimated that the net cost to creditors and others of a possible liquidation could be as much as $10 billion to $14 billion over a 6-year period.[1] However, the costs associated with a possible liquidation are difficult to predict because they will depend on such uncertainties as Amtrak's debt and financial obligations at the time of liquidation, the market value of its assets, and the proceeds from the sale of its assets. For example, the Amtrak Reform and Accountability Act of 1997 eliminates, as of May 31, 1998, labor protection arrangements for Amtrak workers who lose their jobs as a result of a discontinuation of intercity passenger rail service and requires that Amtrak and its unions negotiate any new arrangements. Amtrak's financial obligations, if any, to employees who lose their jobs as a result of a liquidation would depend on the results of these negotiations. In addition, most of the costs identified by Amtrak are not liquidation costs. For example, after a liquidation, the costs that Amtrak currently pays to operate, maintain, and rehabilitate infrastructure (such as tracks and stations) could be borne by other parties as a result of decisions to provide passenger or other rail service,[2] especially on the Northeast Corridor.[3] In this regard, existing commuter rail agencies and others that operate on Amtrak tracks might assume some of these costs.

Amtrak's creditors might face losses in the event of a liquidation. For example, as of September 30, 1997, data from Amtrak showed that its debt to all institutional creditors (such as lenders and vendors) could be about $2.2 billion. The extent to which these creditors' claims could be paid would depend in large part on the market value of assets available to satisfy such claims. As of September 1997, the value of one of Amtrak's largest assets, real property on the Northeast Corridor, was about $4.3 billion. However, the market value of this property is untested and may be affected by the easements commuter and freight railroads possess to provide service on the Northeast Corridor. With the exception of its interest in the Northeast Corridor and certain other real property, the federal government's financial interests in the event of liquidation would generally be subordinate to other creditors'.

[1]This is net of about $850 million from the sale of assets. This estimate is from Amtrak's analysis in a September 1997 draft entitled "Budget Implications of a Zero Federal Grant: Why Zero Isn't Zero."

[2]We also recognize that potential effects could be associated with changes in highway and aviation congestion, air quality, and/or energy consumption as the result of a diversion of Amtrak passengers to other modes of transportation (such as automobiles and airplanes). These topics are outside the scope of this report.

[3]The Northeast Corridor is a 460-mile segment of railroad tracks and facilities between Washington, D.C., and Boston, Massachusetts. Most of this is owned by Amtrak. However, two sections, one between New Rochelle, New York, and New Haven, Connecticut (56 miles), and one within the state of Massachusetts (38 miles), are owned by others.

For participants in the railroad retirement and unemployment systems, an Amtrak liquidation would result in higher payroll taxes on employers and employees of other railroads or a reduction in benefits to compensate for the loss of Amtrak's annual contributions. According to the Railroad Retirement Board, which administers these systems, if no actions were taken to increase payroll taxes or reduce benefit levels, the balance of the railroad retirement account would start to decline by 2000 and would be depleted by 2026. The railroad unemployment account, on the other hand, would experience more immediate financial problems requiring the imposition of surcharges on participants as well as borrowing from the retirement account. According to the Railroad Retirement Board, these measures would be required for 2 to 3 years to maintain financial solvency in the unemployment account.

The liquidation of Amtrak could also disrupt intercity and other passenger rail service. A number of factors could affect the continuation of rail service, including access to the tracks and stations that are owned by Amtrak and others, and the ability of states and commuter railroads to absorb the cost of continuing service. A liquidation could also affect commuter rail operators that contract with Amtrak to provide service, requiring them to find new operators—a potentially time-consuming and expensive proposition. Finally, some freight railroads use the Northeast Corridor and may also face the potential loss of millions of dollars of business to the extent that they are unable to retain access to the Corridor.

Background

Amtrak was created by the Rail Passenger Service Act of 1970 to operate and revitalize intercity passenger rail service. Prior to Amtrak's creation, intercity passenger rail service was provided by private railroads, which had lost money, especially after World War II. The act, as amended, gave Amtrak a number of goals, including providing modern, efficient intercity passenger rail service; giving Americans an alternative to automobiles and airplanes to meet their transportation needs; and minimizing federal subsidies. Through fiscal year 1998, the federal government has provided Amtrak with over $20 billion in operating and capital subsidies.

Amtrak provides intercity passenger rail service to 44 states and the District of Columbia (see fig. 1).[4] In fiscal year 1997, Amtrak served about

[4]The states of Alaska, Hawaii, Maine, Oklahoma, South Dakota, and Wyoming do not currently receive Amtrak service.

20 million intercity rail passengers on 40 routes[5] and had passenger revenues of about $964 million. Amtrak also operates intercity passenger rail service that is financially supported by others—such as a state or a group of states.[6] As illustrated in figure 1, in fiscal year 1997, 11 states paid Amtrak a total of about $70 million for such service to transport about 4.6 million passengers.[7] In addition, Amtrak operates commuter rail service under contract. During fiscal year 1997, Amtrak was the contract operator of seven commuter rail systems serving about 49 million passengers.[8] According to Amtrak, an average of 179,000 passenger trips are made each weekday on the 708 commuter trains it operates; and in fiscal year 1997, Amtrak received about $242 million in revenue to operate commuter rail service.

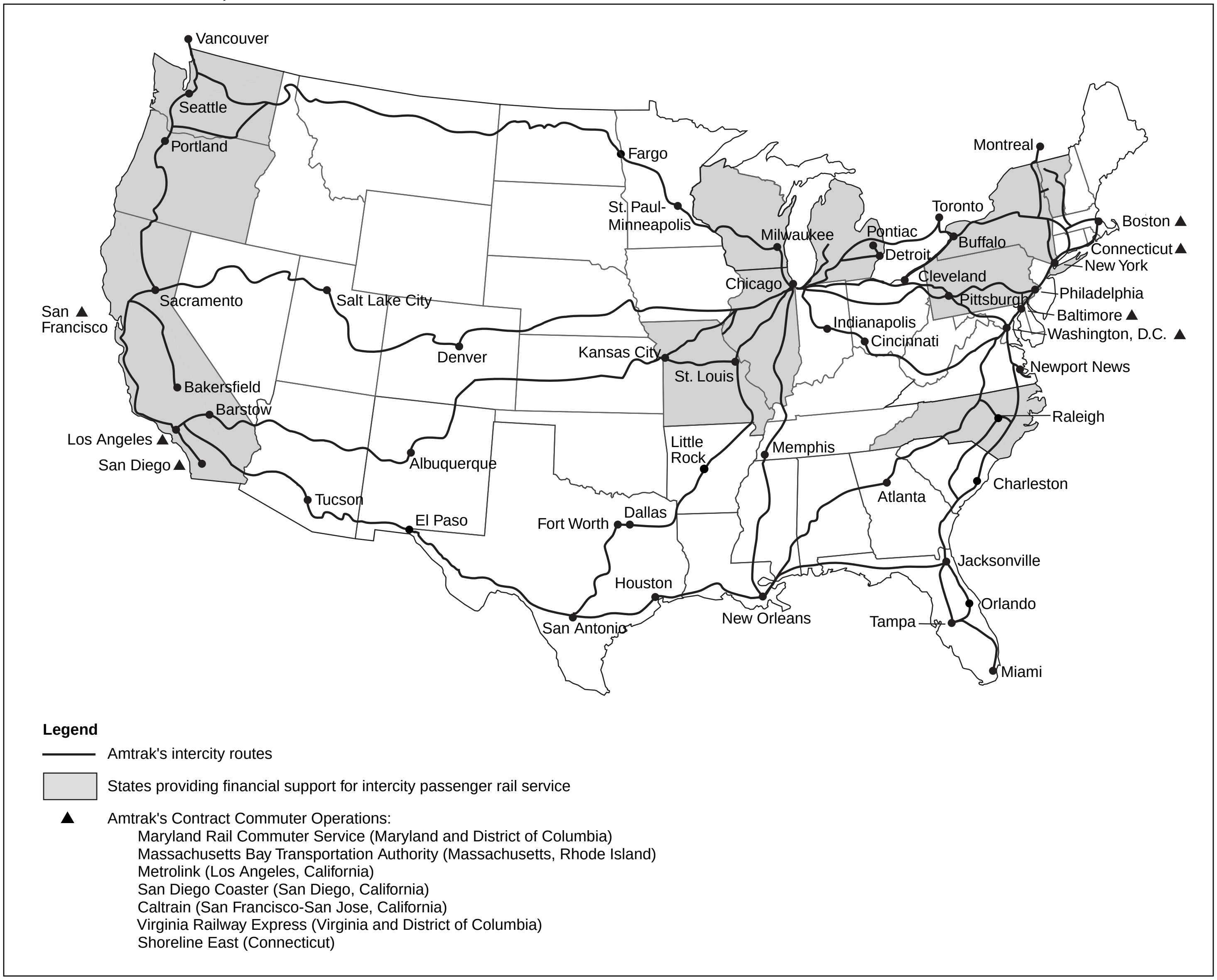
[5]During fiscal year 1997, service on three routes (Gulf Coast Limited, Desert Wind, and Pioneer) was discontinued.

[6]Formerly known as section 403(b) service under the Rail Passenger Service Act.

[7]In June 1997, the Texas Department of Transportation also loaned Amtrak $5.6 million to continue train service on the Texas Eagle through September 30, 1997. This loan is expected to be repaid in July 1999.

[8]These systems are the Maryland Rail Commuter Service (Maryland-Washington, D.C.); the Massachusetts Bay Transportation Authority (Massachusetts-Rhode Island); Metrolink (Los Angeles, California); the San Diego Coaster (San Diego, California); Caltrain (San Jose, California); the Virginia Railway Express (Virginia-Washington, D.C.); and Shoreline East (Connecticut).

Figure 1: Amtrak’s Routes, States Providing Financial Support for Intercity Passenger Rail Service, and Amtrak’s Contract Commuter Rail Service, as of November 1997



Source: Amtrak.

Amtrak also provides train-dispatching, maintenance-of-way, and other services for commuter and freight railroads that use its tracks and facilities. According to Amtrak, four commuter rail systems (with more than 429,000 passengers per day)—mostly on the Northeast Corridor—pay to use its rails or facilities.[9] In fiscal year 1997, four freight railroads operated on the Northeast Corridor: the Springfield Terminal Railway Company, the Providence and Worcester Railroad, the Connecticut Southern Railroad, and Conrail. As measured in train-miles—the movement of a train the distance of 1 mile—Conrail is by far the largest freight user of the Corridor. Overall, the freight railroads own about 97 percent of the tracks over which Amtrak operates (about 22,300 miles), and Amtrak directly owns only about 650 miles of tracks.[10]

Despite attempts to address growing losses, Amtrak's financial condition raises the specter of possible bankruptcy. At the end of fiscal year 1996, the gap between Amtrak's operating deficits[11] and federal operating subsidies had begun to grow; Amtrak was continuing to experience working capital deficits (the difference between current assets and current liabilities); and debt levels had increased significantly.[12] In fiscal year 1997, Amtrak's net loss was $762 million, and its overall loss was $70 million.[13] Although these losses were less than those for fiscal year 1996, Amtrak's overall loss was still about $26 million more than planned. In addition, as of September 30, 1997, Amtrak had borrowed $75 million from banks to meet payroll and other operating expenses. Financial prospects for fiscal year 1998 may also be dim. Amtrak's strategic business plan projects a cash flow deficit of about $100 million by September 1998, even assuming the successful implementation of all of the strategic business plan's actions. The Congress recently provided about $2.2 billion in the Taxpayer

[9]These systems include the Long Island Rail Road; New Jersey Transit; Metra (Chicago); and the Southeastern Pennsylvania Transportation Authority.

[10]By statute, Amtrak is guaranteed the right to use freight railroads' tracks to provide service. Operating agreements negotiated between Amtrak and the freight railroads govern the terms and conditions of this use as well as the fees Amtrak pays. Amtrak is expected to pay the incremental costs that freight railroads incur for passenger rail service.

[11]Operating deficits are defined as total revenues minus total expenses less noncash items (such as depreciation).

[12]Intercity Passenger Rail: Amtrak's Financial Crisis Threatens Continued Viability (GAO/T-RCED-97-147, Apr. 23, 1997). For additional information on Amtrak's financial and operating issues, see Amtrak's Strategic Plan: Progress to Date (GAO/RCED-96-187, July 31, 1996) and Intercity Passenger Rail: Financial and Operating Conditions Threaten Amtrak's Long-Term Viability (GAO/RCED-95-71, Feb. 6, 1995).

[13]Net loss is defined as total revenues minus total expenses. Overall loss is the same as net loss, except the federal operating support received and noncash items (such as depreciation) are excluded. Amtrak refers to overall loss as its "budget result."

Relief Act of 1997 that may be used to acquire capital improvements.[14] However, because of high operating costs, Amtrak continues to face challenges in improving its financial health.

Should Amtrak's financial condition force it to file for bankruptcy, it must do so under chapter 11 of the Bankruptcy Code.[15] This chapter contains provisions regarding the management and reorganization of debtors, including railroads, and specifies the circumstances under which a railroad may be liquidated.[16] Among other things, chapter 11 seeks to protect the public interest in continued rail service. However, a railroad may be liquidated upon the request of an interested party (such as a creditor), if the court determines liquidation to be in the public interest. A railroad must be liquidated if a plan for reorganizing it has not been confirmed within 5 years after filing for bankruptcy. The trustee who is appointed plays a key role and, subject to the court's review, directs the railroad and its affairs during bankruptcy.[17] In a liquidation, the trustee administers the distribution of the railroad's assets (called the estate) in accordance with the Bankruptcy Code. Appendix I contains a more detailed description of the bankruptcy process as it might apply to Amtrak.

Costs Associated With a Liquidation Are Difficult to Predict

In September 1997, Amtrak estimated the net cost to creditors and others of a possible liquidation to be between about $10 billion and $14 billion over a 6-year period. However, the financial impacts associated with a possible liquidation are difficult to estimate because of the uncertainties connected with the financial condition of the Corporation at the time of liquidation. These uncertainties are associated with different types of costs. These costs include, for example, (1) obligations that are due to creditors, such as lenders, vendors, and Amtrak employees; (2) costs that Amtrak currently pays, or might have to pay in the future, that could be

[14]Under the act, Amtrak may use the funds to acquire equipment, rolling stock (cars and locomotives), and other capital improvements; upgrade maintenance facilities; maintain existing equipment in intercity passenger rail service; and pay interest and principal on obligations incurred for such acquisitions, upgrades, and maintenance.

[15]In addition, three or more of Amtrak's creditors whose unsecured claims total at least $10,000 could file a petition for Amtrak to be placed in bankruptcy. Amtrak believes it is unlikely that the Corporation would be placed in involuntary bankruptcy by creditors to whom it owes small amounts.

[16]Chapter 7 of the Bankruptcy Code generally applies to corporate liquidations. However, liquidations of railroads are governed by chapter 11 of the Bankruptcy Code.

[17]A trustee is required in a railroad bankruptcy and is selected by the U.S. Trustee (an official in the U.S. Department of Justice) for the region in which the case is pending from a list of five names submitted by the Secretary of Transportation.

assumed by other parties; and (3) costs to administer and close out the estate. Virtually all the costs associated with a liquidation would likely be borne either directly by those who do business with Amtrak or by those who benefit from Amtrak's existence. In this regard, most of these costs would represent Amtrak's existing financial obligations and the costs of providing future levels of rail service, which would be borne by other parties.

One of the uncertainties associated with any estimate of the financial impacts involved in a liquidation is the obligations to creditors. These obligations can vary over time. For example, Amtrak's debt levels and capital lease obligations have increased significantly in recent years—from $492 million in fiscal year 1993 to about $1.3 billion in fiscal year 1997. This total does not include about $820 million that is expected to be incurred in fiscal year 1998 and beyond to finance high-speed trainsets and locomotives and related maintenance facilities for the Northeast Corridor. Future obligations to creditors may be affected by a variety of factors, such as the Taxpayer Relief Act of 1997. This act provides Amtrak with a total of about $2.2 billion in federal funds in fiscal years 1998 and 1999 that may be used to acquire capital improvements and repay principal and interest on certain debt. In addition, a default on Amtrak's obligations to creditors primarily represents a transfer to its creditors and/or their insurers to the extent that assets are not sufficient to satisfy Amtrak's debts, rather than generating an additional cost resulting from liquidation. This is because the responsibility to repay financial obligations existed before any liquidation occurred and did not arise solely because of the liquidation.

Also uncertain is Amtrak's future labor protection obligations to those employees who would lose their jobs as the result of a discontinuance of service. Amtrak has estimated that, if it were liquidated, its labor protection obligations to its employees could amount to about $6 billion over 6 years. Since this estimate was made, the Congress passed the Amtrak Reform and Accountability Act of 1997. This act eliminates current labor protection arrangements on May 31, 1998, and requires Amtrak and its unions to negotiate new arrangements for the payment of salaries, wages, and benefits to employees who would be affected if service were discontinued. Amtrak's obligations, if any, to employees who lose their jobs as a result of a liquidation would depend on the results of these negotiations.

Finally, after a liquidation, costs to operate, maintain, and rehabilitate infrastructure, such as tracks and stations, that Amtrak currently pays could be borne by other parties as a result of decisions to provide passenger or other rail service. For example, existing commuter rail agencies might assume some of these costs. How much of these costs might actually be assumed is uncertain because, in part, it would depend on such factors as the extent to which the commuter authorities needed the infrastructure, the price the new owner might charge for use of the facilities, and the level at which the infrastructure would be maintained.

Amtrak believes that the Northeast Corridor's infrastructure costs would not decrease much if intercity passenger service were eliminated. However, several commuter rail agencies disagree, telling us that, without Amtrak, they would not need as much infrastructure as currently exists and would pare it back to reduce costs. Nevertheless, costs might increase if the new owner of the infrastructure charged more for its use than Amtrak currently charges. The amount of infrastructure costs that might be assumed is also uncertain because it would depend on future capital investments. As we reported in May 1997, the Federal Railroad Administration (FRA) and Amtrak estimated that about $2 billion in capital funds would be needed over a 3- to 5-year period to upgrade tracks and other infrastructure on the southern end of the Northeast Corridor and preserve Amtrak's ability to operate at current service levels.[18] Some amount of the $2.2 billion provided by the Taxpayer Relief Act may be used to address these needs. As discussed for default on obligations to creditors, these infrastructure costs might be assumed by others as a result of liquidation but would not arise solely because of a liquidation.

Creditors Could Bear a Financial Burden in the Event of a Liquidation

In a liquidation, Amtrak's institutional creditors could sustain losses. As of September 1997, data from Amtrak showed that its combined secured and unsecured debt liability could be about $2.2 billion.[19] The extent to which this liability could be met would depend in large part on the market value of Amtrak's available assets and liquidation proceeds. With the exception of its interests in the Northeast Corridor and certain other real property, the federal government's financial interests in the event of a liquidation would generally be subordinate to those of other creditors.

[18]Transportation Financing: Challenges in Meeting Long-Term Funding Needs for FAA, Amtrak, and the Nation's Highways (GAO/T-RCED-97-151, May 7, 1997).

[19]Secured claims are supported or backed by collateral; unsecured claims are not.

Secured and Unsecured Creditors Could Face Losses

As of September 1997, secured creditors that have financed Amtrak's equipment purchases would have had about $1.1 billion in claims if the railroad defaulted on these purchases, according to Amtrak's data. Generally, these secured creditors would be entitled to recover the equipment, or its value, used to secure Amtrak's debt. However, to the extent that secured creditors' claims exceeded the value of the equipment, these creditors would be considered unsecured and payments to them would depend on the proceeds available to satisfy unsecured claims following the sale of Amtrak's assets.

It is difficult to predict the market conditions that Amtrak's trustee or secured creditors would face in attempting to sell or lease equipment in a liquidation. For example, Amtrak's locomotives may be readily usable by other railroads, and selling them might generate cash sufficient to allow secured creditors to avoid losing money on their loans. (Locomotives represent about 41 percent of the outstanding loan balance.) In contrast, the sale or lease of passenger cars might generate little cash because, according to two rail industry officials we spoke with, these cars might need to be reconfigured to accommodate the needs of a purchasing railroad, either in the United States or abroad. Table 1 shows the outstanding balances of loans secured by rolling stock and the percent of the total loan balance that each type of equipment represents.

Table 1: Outstanding Balances of Loans Secured by Locomotives and Railroad Cars, as of September 30, 1997

Dollars in millions

Equipment type	Loan balance	Percent of total
Passenger cars	$651.6	57
Mail and express freight cars	25.0	2
Locomotives	463.6	41
Total	**$1,140.2**	**100**

Note: Amtrak's secured debt also included a $5.6 million loan for financing continued service on a route that was scheduled to be eliminated in 1996. Unlike loans for new equipment purchases, which are generally secured by the financed equipment, this loan is secured by 47 of Amtrak's older passenger cars. This amount is not included in the table.

Source: Amtrak.

In a liquidation, unsecured creditors' positions would be more uncertain than secured creditors'. As of September 30, 1997, Amtrak's data showed that unsecured liabilities totaled about $1 billion. Unsecured creditors depend entirely on the proceeds from the sale of Amtrak's available assets for payment—to the extent that these proceeds exceed the amounts required to satisfy secured creditors.[20] As of September 30, 1997, all of Amtrak's rolling stock was encumbered by liens and would have been unavailable to satisfy unsecured creditors' claims. However, unsecured creditors could have received payments from the sale of Amtrak's real property, such as property on the Northeast Corridor. As of September 30, 1997, the value of Amtrak's Northeast Corridor property was $4.3 billion.[21] Whether the actual sale proceeds would be more or less than this amount is uncertain because the market value of Amtrak's real property is untested. For example, the Northeast Corridor has commuter and freight rail easements that may affect its market value. In addition, according to FRA, the market value might be affected by the extent to which the property could be used for telecommunications and other utilities. Table 2 shows the categories of unsecured creditors and the amounts they were owed as of September 30, 1997.

[20] Certain unsecured claims are granted priority status under the Bankruptcy Code and would be provided for before other unsecured claims. App. I identifies several types of unsecured claims that would have a priority should Amtrak file for bankruptcy.

[21] This represents Amtrak's original cost plus capital improvements. Depreciation is not included.

Table 2: Amounts Owed to Amtrak's Unsecured Creditors, as of September 30, 1997

Dollars in millions

Category of creditor	Description	Amount owed
Commuter rail systems, freight railroads, and other customers	Refunds of advances and overpayments for such services as maintenance-of-way work performed by Amtrak	$15
Passengers	Refunds of cash paid for reservations in advance of actual travel	48
Retired employees and employees eligible to retire	Postretirement medical benefits	50
Banks, insurance companies, and others	Repayment of capital loans for new and renovated facilities	65
Issuers of letters of credit	Bonding requirements and/or additional collateral for various financings	72
Landlords	Rent due for station and office space under noncancellable long-term leases	142
Banks	Repayment of short-term cash loans for operating expenses	0 to 150[a]
Injured passengers, employees, and others	Payment of claims filed for personal injuries and wrongful deaths resulting from Amtrak's operations	209[b]
Vendors, employees, and others	Accrued expenses for such items as materials and services and unpaid wages, vacation pay, and sick leave	279
Total		**$1,030[a]**

[a]Amtrak currently has short-term lines of credit of $150 million. In the past, Amtrak has borrowed from these credit lines in order to make ends meet. Since it is possible that, in the event of a liquidation, Amtrak's short-term lenders could be owed as much as $150 million, we have included this amount in the total.

[b]Estimated.

Source: Amtrak.

Unsecured creditors may have other sources of payment. These include such assets as receivables due to Amtrak and the sale of Amtrak's materials and supplies inventory. According to Amtrak's data, as of September 30, 1997, these other assets totaled about $173 million. Receivables include, for example, amounts due from travel agents and credit card companies that participate in the sale of Amtrak tickets. Materials and supplies consist primarily of items for the maintenance and improvement of property and equipment, such as spare parts, as well as fuel. As of September 30, 1997, Amtrak's data showed that up to about $82 million, or 100 percent of its receivables, might be recovered in cash. In contrast, the data showed that only about $30 million of the approximately $91 million on its balance sheet for materials and supplies could be recovered, in part due to the unique nature of Amtrak's spare parts inventory.

In addition to the unsecured obligations outlined in table 2, employees who would lose their jobs if Amtrak stopped operating trains would be considered unsecured creditors and could raise claims against Amtrak's estate. The extent of these claims, if any, is uncertain. Amtrak estimated the maximum 6-year labor protection liability associated with payments to these employees to be about $6 billion. This liability could change substantially, however, as a result of the Amtrak Reform and Accountability Act of 1997, as discussed earlier. As a result, it is not currently possible to quantify the claims, if any, that employees could raise.

In our opinion, the United States would not be legally liable for secured or unsecured creditors' claims in the event of an Amtrak liquidation. Therefore, any losses experienced by Amtrak's secured and unsecured creditors would be borne in full by the creditors themselves or their insurers. Nevertheless, we recognize that creditors could attempt to recover losses from the United States.[22]

Federal Government Unlikely to Recover Its Financial Interests

The federal government is both a secured creditor and a preferred stockholder in Amtrak; however, because of the nature of its financial interests, the federal government is not likely to recover these interests in the event of Amtrak's liquidation. In exchange for funds for the purchase of and improvements to property and equipment, Amtrak has issued two promissory notes to the U.S. government. The first note, representing about $1.1 billion in noninterest-bearing debt, matures on November 1, 2082, with successive 99-year renewal terms, and is secured by a lien on Amtrak's rolling stock. The note would be accelerated and become due in the event of Amtrak's liquidation. However, according to FRA officials, to assist Amtrak in obtaining financing from the private sector, the federal government subordinated its lien on the equipment acquired by Amtrak after 1983 to the security interests of Amtrak's equipment creditors.

[22]See our letters to Representatives Kasich and Shuster on federal liability for Amtrak's obligations (B-277814, Oct. 20, 1997).

Consequently, in a liquidation, these other creditors would have first claim on this equipment or its value. Furthermore, while the federal government would be entitled to Amtrak's pre-1983 equipment or its value, this equipment may be of limited value because of its age.

The second note, representing about $3.8 billion in noninterest-bearing debt, matures on December 31, 2975, and is secured by a mortgage on Amtrak's real property, primarily on the Northeast Corridor and in the Midwest. The mortgage on this property has not been subordinated. However, the note does not mature for over 970 years, and no payments are due until then. Furthermore, the note could only be accelerated upon the enactment of a statute requiring immediate payment. According to FRA, the present value of the mortgage—that is, the government's interest in the property—is nominal. In a liquidation, the trustee could pay off the mortgage and sell the property or sell the property to a purchaser who would assume the mortgage. In either case, proceeds from the sale would be available to satisfy creditors' claims. It is not likely the federal government would sustain a financial loss on such transactions because it has no expectation of payment for over 970 years. While the federal government's financial interest might not be affected, any interest the federal government might have in continuing intercity passenger rail service could be jeopardized if a purchaser did not use Amtrak's property for this purpose.

The U.S. government also holds all of Amtrak's preferred stock, about $10.6 billion as of September 30, 1997. While the Amtrak Reform and Accountability Act of 1997 eliminated the liquidation preference attached to such stock as well as the requirement to issue such stock, this stock ownership nonetheless represents a substantial interest in Amtrak.[23] However, the federal government's claim associated with this stock would be secondary to the payment of the claims of secured and unsecured creditors.

[23]The act also requires Amtrak to redeem all common stock—currently held by four private companies—by October 2002.

Liquidation Could Place Financial Burden on Participants in the Railroad Retirement and Unemployment Systems

In contrast to the losses that creditors might suffer, participants in the railroad retirement and unemployment systems would have increased financial obligations in the event of Amtrak's liquidation.[24] The financial health of some of these participants—especially small freight railroads and commuter passenger railroads—might be adversely affected to the degree that they cannot increase revenues or cut costs to offset increased payroll taxes.

The primary source of income for the railroad retirement system is payroll taxes levied on employers and employees. Because the retirement system is on a modified pay-as-you go basis, the financial health of this system is closely related to the size of the railroad workforce and the income to the railroad retirement account derived from this workforce. In 1996, Amtrak paid about $335 million in payroll taxes into the railroad retirement account (about 8 percent of the total receipts for the railroad retirement account in calendar year 1996). A loss of this contribution could have a significant impact. A February 1997 analysis by the Railroad Retirement Board found that, if Amtrak had been liquidated in 1997 and no actions had been taken to increase payroll taxes or reduce benefit levels, the balance in the railroad retirement account would have begun to decline in 2000 and that the account would have been depleted by 2026. For this analysis, the Board assumed that all Amtrak employees were terminated and all Amtrak employees who were eligible for retirement at the time of a liquidation (about 1,300 employees) actually retired.[25]

Although the retirement account would not have been depleted until 2026, the Railroad Retirement Board would have had to take action before that time to protect the retirement account's financial health. According to the Board, if Amtrak had been liquidated in 1997, this would have required, beginning in 1998, one of three actions: (1) a permanent "tier II" payroll tax increase on either employers or employees of other railroads or both, (2) tier II benefit reductions, or (3) a combination of the first and second actions equivalent to 2.3 percent of tier II taxable payroll. If the adjustment

[24]The Railroad Retirement Board administers the railroad retirement and unemployment systems. The Board, an independent agency of the federal government, was created in the 1930s to provide retirement and unemployment benefits to railroad workers. In 1996, these systems covered about 257,000 active railroad workers, of which Amtrak had about 9 percent (or about 23,000 employees).

[25]The Railroad Retirement Board's analysis did not consider employees with "flowback" rights (reemployment rights for Amtrak workers who joined the Corporation from other railroads when it was created). The analysis assumed that Amtrak employees would not come back to work in the rail industry. The Board acknowledged that to the extent that Amtrak employees returned and replaced freight employees with lesser service, the impact on the retirement system could be greater than the analysis showed. Both Conrail and Amtrak officials agreed that about 1,000 Amtrak employees could be eligible to return to Conrail.

had been made totally as a tax increase, it would have resulted in a new combined employer and employee tax rate of 23.3 percent.[26] Because the Board does not have the authority to increase retirement taxes, it would have to seek legislation to change the tax rate.

Similarly, participants in the railroad unemployment system would be affected by a liquidation. In contrast to the impacts on the retirement account, the financial effects would be more immediate and shorter-term. The Railroad Retirement Board estimated that, if Amtrak had been liquidated in 1997, separated Amtrak employees would have received about $322 million in benefit payments that would not have been paid for by Amtrak. In order to pay these benefits, other railroads would have been required to increase their payroll tax contributions. In particular, the average tax rate would have been increased by a maximum of about 9 percentage points (a 400-percent increase)—from 3 percent to 12 percent in 2000.[27] This estimate assumed that terminated employees would have exhausted all their unemployment benefits and that they would have received no labor protection benefits. The Board also assumed that the unemployment account would have had to borrow $288 million from the retirement account, as permitted by statute, over 2 years. Because this borrowing would have been short-term, the Board believes that it would have had little or no overall effect on the retirement account. By taking these actions, the Board projected that the unemployment account would have remained financially solvent and been out of debt by 2001.

An Amtrak Liquidation Could Affect Intercity, Commuter, and Other Rail Service

Liquidating Amtrak could disrupt intercity and other passenger rail service—service that affects over 20 million intercity passengers and over 100 million commuter and other passengers on the Northeast Corridor annually. In particular, for both intercity and commuter rail, issues associated with accessing tracks and stations—and the cost of such access—would largely determine the extent of service, if any, including service on the Northeast Corridor. Commuter railroads that contract for

[26]Railroad retirement payroll taxes are composed of tier I and tier II tax rates and are used to pay tier I and tier II benefits. The tier I benefit is paid on the basis of an employee's combined railroad and nonrailroad service and is generally the amount that would be payable under the Social Security Act. The tier II benefit is paid on the basis of an employee's railroad service only. The Board estimated that no change in the tier I tax rate, equivalent to the Social Security tax rate, would be needed in the event of Amtrak's bankruptcy. Both the tier I and tier II tax rates are subject to maximums based on annual increases in national wage levels.

[27]The railroad unemployment system is financed exclusively by the contributions of railroad employers, on the basis of the taxable earnings of their employees. In 1997, the basic tax rate on railroad employers ranged from a minimum of 0.65 percent to a maximum of 12 percent on employees' earnings, up to $890 per month. Depending on the balance of the system's account, the Board may levy payroll tax surcharges.

service from Amtrak and freight railroads using the Corridor might also face hardships.

Continuation of Intercity Passenger Rail Service Could Be Limited

The current level of Amtrak's intercity passenger rail service in certain states might not continue if Amtrak were liquidated, according to department of transportation officials we talked to in three states—Colorado, Florida, and Louisiana. These states are not on the Northeast Corridor and do not provide financial support for intercity passenger rail service. They had the largest volume of intercity passenger ridership—about 650,000 intercity passengers in fiscal year 1997—of states that do not provide financial support for intercity passenger service and that are not on the Northeast Corridor.[28]

Although these officials were interested in continuing intercity service, they doubted service would continue for a number of reasons: the potentially high cost of continuing service, possible difficulties in negotiating access to tracks with freight railroads, and the lack of an incentive to keep such service going if Amtrak's national route network were ended. Regarding the latter, officials from all three states said their states depend, at least to some degree, on Amtrak's national route network to bring in tourists and others. Although intercity rail service might face an uncertain future in these states, these officials said they would continue to pursue more localized efforts to initiate or continue passenger rail service.

States that financially support intercity passenger rail service, on the other hand, might have a greater interest in continuing this service. Three states that we talked to—California, Illinois, and Wisconsin—provide financial support for intercity passenger rail service and indicated more interest in continuing such service. These states represented about 5.6 million intercity passengers in fiscal year 1997. One state—Illinois—had even begun efforts to take over a portion of state-supported Amtrak service about 2 years ago, when Amtrak requested more money for the service. Although this effort ended when Amtrak signed a fixed-price contract to continue service, state officials indicated they would continue to be interested in arranging for this service should Amtrak go out of business. As with the states not currently providing financial support, factors cited as potentially hindering these states' ability to maintain service included cost and uncertain access to freight railroads' tracks. A California official told us these issues would be critical in his state for continuing intercity passenger rail service. There may be other hindrances as well. For

[28]Intercity passenger ridership may include some passengers who use Amtrak's Thruway bus service.

example, a California official said his state might have difficulty arranging insurance because state law prevents the state from indemnifying third parties (such as freight railroads) in the event of accidents.[29]

Officials we spoke with in some states were concerned about access to tracks because they felt such access might be lost if Amtrak were liquidated. Amtrak is guaranteed by law access to freight railroads' tracks to provide intercity passenger rail service. If Amtrak were liquidated and access to these tracks were lost, states and others might have to rely on other means to continue intercity passenger rail service. One means might be compacts between two or more states to provide intercity passenger rail service, as allowed under the Amtrak Reform and Accountability Act of 1997.

Although the use of compacts may not guarantee either access to tracks or a specified cost, it could be a means to maintaining intercity passenger rail service. However, successfully implementing such compacts might be difficult. Among the potential problems cited by the states we talked to are reaching agreements on the allocation of costs, establishing train schedules, and determining station stops. Illinois and Florida officials said they had direct experience in trying to work with other states to establish a long-distance intercity passenger rail route. In both instances, the route was not established because of too many disputes among the participating states over cost and operational matters. In addition, these officials mentioned potential financial and/or operational problems that could be created if one or more states decided not to participate in a route. An Illinois official said interstate compacts might be feasible. However, the route would have to be relatively short—in the range of 3- to 4-hour trips, for example.

Access to Tracks and Stations and Cost Could Also Influence Continuation of Commuter Rail Service

As with intercity service, the extent of commuter rail service provided would depend in part on access to tracks and stations. Such access is a particularly critical issue for the Northeast Corridor.[30] The Corridor serves over 100 million rail passengers per year and is a critical part of the transportation infrastructure for eight states and the District of Columbia. Officials at two commuter railroads operating on the Corridor—New

[29]A Colorado official also said that state law prohibits the state from indemnifying third parties and that this might hinder the state's ability to pursue intercity passenger rail service without Amtrak.

[30]One commuter railroad we spoke with—Metro-North Railroad—does not expect that its operation would be significantly affected if Amtrak were to be liquidated. Metro-North officials said Amtrak pays to use the railroad's tracks, and Metro-North does not need to access Amtrak's tracks to provide service.

Jersey Transit and the Southeastern Pennsylvania Transportation Authority—told us they would basically shut down if they were unable to use the Corridor to provide service. These railroads carried about 70 million passengers in 1996.[31] A third commuter railroad—the Long Island Rail Road—told us its operations would be "devastated" if it were denied access to Amtrak's Pennsylvania Station in New York City. According to Long Island Rail Road officials, although the Long Island Rail Road accounts for only about one-third of the track capacity at this station, it accounts for about 70 percent of the passengers—approximately 260,000 passenger trips per day. These officials were concerned about access even though they have easements to operate along the Northeast Corridor. Some commuter authorities expressed concern that these easements might be extinguished in a liquidation.[32]

After a liquidation, infrastructure costs would be a factor in maintaining commuter rail service. Amtrak estimates that current and future infrastructure costs of $5.4 billion might have to be absorbed by states and commuter rail authorities over a 6-year period if it were liquidated. The ability of states and commuter authorities to absorb this level of cost is uncertain. Officials in each of the three Northeast Corridor states we talked to—New Jersey, New York, and Pennsylvania—said they would have a difficult time providing additional money for passenger rail service if Amtrak went out of business. If funds were not available, states and commuter rail authorities might look to the federal government to help pay any additional costs. One state we talked to—New York—told us it would expect the federal government to pay for any costs the states would have to absorb if Amtrak were liquidated.

Given the critical role of the Northeast Corridor and the 100 million passengers served annually, the states' inability to absorb costs could dramatically affect the continuation of service along the Corridor. However, two commuter authorities—New Jersey Transit and Southeastern Pennsylvania Transportation Authority—told us that they would not need all of the tracks and other infrastructure currently in place on the Corridor. In addition, their trains are not as fast as Amtrak's (traveling about 80 miles per hour compared with Amtrak's 125 miles per hour on some portions of the Corridor) and would not need an infrastructure that supports high-speed service. Consequently, they believe

[31]This represents separate (unlinked) passenger trips in calendar year 1996. All trips may not have been on the Northeast Corridor.

[32]Access to tracks and stations is also important outside of the Northeast Corridor. For example, Metra, a commuter rail operator in the Chicago area, told us that access to Amtrak's Chicago Union Station would be critical to its operation and that, if required, it would be willing to take over this station to ensure continued service.

the physical plant could be pared back to reduce costs. While the commuter authorities' infrastructure needs might be reduced, they might have additional costs to use the facilities and/or to perform such services as dispatching trains (which Amtrak currently provides) if Amtrak were liquidated.

Commuter Rail Agencies That Contract With Amtrak and Freight Railroads Could Face Hardships

Amtrak's liquidation could create some degree of hardship for commuter rail agencies that contract with Amtrak to provide service. In fiscal year 1997, Amtrak was the contract operator for seven commuter rail agencies and was paid about $242 million for its services. These services account for about 179,000 passenger trips, on average, per weekday.

If Amtrak were liquidated, the commuter rail agencies that contract their service to Amtrak would have to find new operators. However, these agencies could have difficultly in doing this. According to the American Public Transit Association, currently only a handful of operators manage commuter rail service. These operators are commuter rail agencies that provide the service themselves, contract with Amtrak, or contract with freight railroads to provide the service. As of December 1997, only one nonrailroad, noncommuter rail agency commercial firm (Herzog Transit Services, Inc.) provided commuter rail service under contract. Two of the three commuter rail agencies that we spoke with that have contracted their service to Amtrak—Caltrain and Metrolink—said finding new operators could take time and ultimately be more expensive than their current arrangements. Metrolink estimated that it could take up to 12 months to find a new operator and that costs could be between 10 and 15 percent higher. The third agency—the Maryland Rail Commuter Service—was less concerned about finding a new operator than losing its entire Northeast Corridor service if Amtrak were liquidated.

Freight railroads that operate on the Northeast Corridor could also face severe problems if Amtrak were liquidated. In particular, a liquidation would raise questions about whether freight railroads could continue to use the Corridor to provide service. For the two freight railroads we talked to (Conrail and the Providence and Worcester Railroad), access to the Corridor is integral to their operations. Both said the loss of this access could substantially impair their business. For example, Conrail operates 56 trains a day on the Northeast Corridor, with roughly 35,000 carloads of freight monthly and $37 million in monthly revenues. According to the Providence and Worcester Railroad, the use of the Corridor represents about 40 percent of its business and about 25 percent of its annual revenue. The loss of this business would cause both the railroad and its customers economic damage. Like the commuter railroads, freight railroads operate on the Northeast Corridor under an easement. Officials from both railroads said they would take action as necessary to continue service and to ensure they could continue to exercise their easement to provide freight service.

Agency Comments and Our Evaluation

We provided Amtrak and FRA with a draft of this report for review and comment. We met with Amtrak's Vice President for Government Affairs and its Vice President and General Counsel. Amtrak agreed with the contents of the draft report and offered several technical and clarifying comments, which we incorporated where appropriate. We also met with FRA's Chief Counsel, Deputy Chief Counsel, and Associate Administrator for Railroad Development. As with Amtrak, FRA agreed with the contents of the draft report and offered technical comments, which we incorporated where appropriate.

Scope and Methodology

To identify the financial issues associated with a possible liquidation of Amtrak, we reviewed Amtrak's September 1997 analysis in a draft paper entitled "Budget Implications of a Zero Federal Grant: Why Zero Isn't Zero." This analysis identifies Amtrak's estimate of the various costs associated with a possible liquidation. To understand how it was prepared, we discussed this analysis, including assumptions, methodology, and data sources, with Amtrak officials. However, we did not verify the estimates in Amtrak's analysis. To identify other issues associated with a potential liquidation, we met with a variety of officials from federal and state governments, commuter and freight railroads, and individuals with experience in railroad reorganizations and restructurings. We discussed the potential operational, financial, and legal implications of Amtrak's liquidation with these individuals and organizations. A list of the persons and organizations that we contacted is contained in appendix II.

We did not develop an independent estimate of the costs associated with a liquidation nor of the costs and implications associated with other scenarios, such as a reorganization of Amtrak. Finally, we did not attempt to quantify indirect effects, if any, resulting from a possible Amtrak liquidation, such as effects on highway and aviation congestion, air quality, and energy consumption. We performed our work from July 1997 through February 1998 in accordance with generally accepted government auditing standards.

We are sending copies of this report to congressional committees with responsibilities for transportation issues; the Secretary of Transportation; the Administrator, Federal Railroad Administration; and the Director, Office of Management and Budget. We will also make copies available to others upon request.

If you or your staff have any questions about this report, please contact me at (202) 512-3650. Major contributors to this report were Helen Desaulniers, Richard Jorgenson, James Ratzenberger, and Carol Ruchala.

Phyllis F. Scheinberg
Associate Director, Transportation Issues

Contents

Abbreviations

GAO	General Accounting Office
FRA	Federal Railroad Administration

Significant Aspects of the Railroad Bankruptcy Process

Chapter 11 of the Bankruptcy Code, which generally sets out procedures for reorganization, would govern an Amtrak bankruptcy. For the most part, the provisions of chapter 11 applicable to corporate reorganizations would apply to Amtrak, as would several additional provisions applicable only to railroads. Because of the historical importance of railroads to the economy and the public, bankruptcy law seeks, among other things, to protect the public interest in continued rail service. In applying certain sections of the Bankruptcy Code, the court and an appointed trustee of Amtrak's estate would be required to consider the public interest as well as the interests of Amtrak, its creditors, and its stockholders. A trustee must be appointed in all railroad cases.

Amtrak could initiate a bankruptcy proceeding by filing a voluntary petition for bankruptcy when authorized by its board of directors. In addition, three or more of Amtrak's creditors whose unsecured claims[33] totaled at least $10,000 could file an involuntary petition. After a petition was filed, a trustee would be appointed. This individual would be chosen from a list of five disinterested persons willing and qualified to serve. This list is submitted by the Secretary of Transportation to the U.S. Trustee (an official in the Department of Justice) for the region in which a petition was filed. The trustee becomes the administrator of the debtor's estate and, with court approval, would likely hire attorneys, accountants, appraisers, and other professionals to assist with the administration of the estate.

Once appointed, the trustee, with court oversight, rather than Amtrak's board of directors, would make decisions about the railroad's operations and financial commitments.[34] The trustee would have to decide quickly whether Amtrak could continue to maintain adequate staff for operations. In addition, the trustee would have to decide whether Amtrak would need rolling stock equipment, such as passenger cars and locomotives, subject to creditors' interests for its operations and, if so, obtain any financing necessary to maintain possession of such equipment. Unless the trustee "cured" any default—that is, continued payments—and agreed to perform obligations associated with Amtrak's rolling stock equipment within 60

[33]An unsecured claim is one not supported or backed by collateral.

[34]With limited exceptions, Amtrak would continue to be subject to otherwise applicable federal, state, and local regulation. For example, the Federal Railroad Administration's safety regulations would continue to apply to Amtrak. However, any order of a federal, state, or local regulatory body that would result in a financial obligation or expenditure from the estate would have to be approved by the court.

days of the bankruptcy petition, creditors with an interest in the equipment, such as lessors and secured lenders, could repossess it.[35]

Furthermore, the trustee would have to decide whether to assume or reject Amtrak's obligations under executory contracts[36] and unexpired leases. To assume a contract or lease on which Amtrak was in default, the trustee would have to (1) cure the default or provide adequate assurance that it would be cured,[37] (2) compensate the other party or assure the other party of compensation for actual pecuniary losses resulting from the default, and (3) provide adequate assurance of future performance.[38] In this context, a trustee could try to negotiate more favorable terms than under Amtrak's existing contracts and leases. However, the availability of cash for the costs associated with contracts and leases would again be a critical element in the trustee's decisionmaking. While payments on assumed contracts or leases would be expenses of the estate, payments due on rejected contracts and leases, as well as any damages and penalties, would give rise to general unsecured claims.

In addition, the trustee would have to decide whether to avoid—that is, set aside—certain transactions between Amtrak and its creditors. Generally, the trustee could set aside Amtrak's transfers of money or property for pre-existing debts made within 90 days of the bankruptcy petition, as long as Amtrak was insolvent at the time of the transfer and the creditor received more as a result of the transfer than it would receive in a bankruptcy proceeding. However, the trustee would not have unlimited authority in this area. For example, the trustee could not set aside a transfer that was intended by Amtrak and a creditor to be a contemporaneous exchange for new value and that was in fact a substantially contemporaneous exchange.

[35]In most chapter 11 cases, the filing of a bankruptcy petition prevents creditors from enforcing claims, foreclosing or repossessing collateral, or otherwise exercising control over the debtor's property. However, in railroad cases, the Bankruptcy Code provides an exception for rolling stock equipment or accessories used on rolling stock equipment.

[36]An executory contract is one in which substantially unperformed obligations remain on both sides such that one party's failure to perform would be a breach of contract excusing performance by the other party.

[37]The trustee would not be required to cure a default attributable solely to a contract or lease provision that provides that the commencement of a bankruptcy case constitutes a default.

[38]In general, the trustee could assume or reject such contracts or leases at any time prior to the confirmation of a reorganization plan, unless the court ordered otherwise. However, the trustee would have to assume or reject real estate leases within 60 days of the bankruptcy petition. If the trustee failed to do so, the leases would be considered rejected, and the leased property would have to be immediately surrendered to the lessor.

Although the trustee would have considerable authority over Amtrak's operations and financial commitments, neither the trustee nor the court could unilaterally impose changes in the wages or working conditions of Amtrak's employees. The employees could voluntarily agree to such changes, perhaps in an effort to avoid or forestall liquidation. Otherwise, the trustee would have to seek changes in wages and working conditions by following procedures specified in the Railway Labor Act, including those for notice, mediation, and binding arbitration with the consent of the parties.

Perhaps the trustee's most significant responsibility would be to develop a plan of reorganization. The provisions of chapter 11 applicable to reorganization plans would, for the most part, apply to Amtrak. Therefore, among other things, a reorganization plan would have to (1) designate classes of claims[39] (other than certain priority claims) and interests; (2) specify the unimpaired classes of claims or interests; (3) explain how the plan would treat impaired classes of claims or interests;[40] and (4) provide adequate means for its implementation. Furthermore, the plan would have to indicate whether and how rail service would be continued or terminated and could provide for the transfer or abandonment of operating lines. Notably, the trustee could propose a plan to liquidate all or substantially all of Amtrak's assets.

Certain unsecured claims would have to be accorded priority in an Amtrak reorganization plan, as in any corporate reorganization plan. For example, administrative claims, such as those for post-petition expenses of the estate and reasonable compensation for the trustee and professionals engaged by the trustee, would have to be paid in full on the effective date of the plan, unless the holder of a claim agreed to an alternative arrangement. Other priority unsecured claims, such as those for wages and contributions to employee benefit plans,[41] would also have to be paid in full on the effective date of the plan, unless each class of claimants accepted a plan providing for deferred payments. In addition, under

[39]Classes of claims would include secured claims, administrative claims, priority unsecured claims, and general unsecured claims. Substantially similar claims and interests could be classified together and treated similarly; typically, each secured claim is classified separately.

[40]A class of claims or interests would be considered "impaired" under a plan if the plan altered the legal, equitable, or contractual rights of the holders of the claims or interests. Among other things, a plan could provide for payment of a claim in full over time or partial payment in satisfaction of a claim.

[41]The Bankruptcy Code provides priority status for (1) employees' claims for wages (including labor protection) accrued within 90 days of the bankruptcy petition, up to $4,000 per claimant, and (2) employees' claims for contributions to employee benefit plans, such as pension, health insurance, and life insurance plans, for services rendered within 180 days of the bankruptcy petition, up to a statutory maximum.

Bankruptcy Code provisions specifically applicable to railroads, claims for personal injury or wrongful death arising out of Amtrak's operations, either before or after the filing of a bankruptcy petition, would have to be treated as administrative claims. Furthermore, certain trade claims[42] arising no more than 6 months prior to the bankruptcy petition would also have priority. Finally, the court could require the payment of amounts due other railroads for the shared use of lines or cars, known as interline service.

After full disclosure of its contents, Amtrak's creditors and shareholders would vote on the plan of reorganization.[43] Because the United States is a creditor and stockholder of Amtrak, the Secretary of the Treasury would accept or reject the plan on behalf of the United States. According to the Federal Railroad Administration, the Attorney General and the Secretary of Transportation would be consulted. However, a plan of reorganization could not be implemented unless confirmed by the court. To confirm the plan, the court would have to find, among other things, either that each class of impaired claims or interests had accepted it, or that the plan did not discriminate unfairly, and was fair and equitable, with respect to each class of impaired claims or interests that had not accepted it.

In addition, under provisions of the Bankruptcy Code specifically applicable to railroad cases, the court would have to find that each Amtrak creditor or shareholder would receive or retain no less under the plan than it would receive or retain if all of Amtrak's operating lines were sold and the proceeds of such sale, and other estate property, were distributed under a chapter 7 liquidation. Finally, the court would have to find that Amtrak's prospective earnings would adequately cover any fixed charges and that the plan was consistent with the public interest. If more than one reorganization plan met these requirements, the court would be required to confirm the plan most likely to maintain adequate rail service in the public interest. Following confirmation of a reorganization plan, Amtrak would be discharged from its debts.

If an Amtrak reorganization plan were not confirmed within 5 years of the bankruptcy petition, the court would have to order liquidation. However,

[42]The claims must be for materials or services used in the ordinary course of business; the claimant must have expected payment out of Amtrak's current operating receipts; and a current debt fund must exist.

[43]A class of claims accepts a reorganization plan if more than half of the creditors in that class and those holding two-thirds in the amount of the claims in the class vote in its favor. A class of interests accepts a plan if those holding two-thirds in the amount of the interests in the class vote in its favor. Classes of claims and interests that are not impaired under plan, and the members of such classes, are presumed to have accepted it.

the court could order liquidation earlier upon the request of a party in interest, after notice and hearing, if it determined liquidation to be in the public interest. Under such circumstances, the trustee would distribute the assets of the estate as though the case were a liquidation under chapter 7. Because the case would not be converted to a proceeding under chapter 7, relevant provisions of chapter 11 applicable to railroads would continue to apply.

In a liquidation, the trustee would turn over collateral or make payments to the proper secured creditors,[44] convert remaining property to cash, and distribute the proceeds to the unsecured creditors in accordance with the distribution scheme contained in chapter 7. Proceeds would be distributed in the following order: priority unsecured claims, including those discussed above, in specified order; general unsecured claims, timely and tardily filed; fines, penalties, and damages that are not compensation for pecuniary loss; and post-petition interest on claims previously paid. Claims of a higher priority would have to be provided for before claims of a lower priority. In addition, in most cases, if the holders of claims in a class could not be paid in full, claims would have to be paid on a pro rata basis.

[44]An oversecured creditor has a security interest whose value exceeds the amount of the underlying debt. Such a creditor would generally be entitled to the full amount of its claim, including interest, not to exceed the value of its interest. An undersecured creditor has an interest that is less than the amount of the underlying debt. Such a creditor would have a secured claim to the extent of the value of its interest and an unsecured claim for the remainder.

Organizations Contacted

Federal Agencies

Federal Railroad Administration
Railroad Retirement Board

State Departments of Transportation

California Department of Transportation
Colorado Department of Transportation
Florida Department of Transportation
Illinois Department of Transportation
Louisiana Department of Transportation and Development
New York State Department of Transportation
Pennsylvania Department of Transportation
Wisconsin Department of Transportation

Intercity and Commuter Rail Agencies

Amtrak
Caltrain (California)
Long Island Rail Road (New York)
Maryland Rail Commuter Service (Maryland)
Metra (Illinois)
Metrolink (California)
Metro-North Railroad (New York)
New Jersey Transit
Southeastern Pennsylvania Transportation Authority

Freight Railroads

Conrail
Providence and Worcester Railroad

Labor Unions

Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employees
Brotherhood of Railway Signalmen
Transportation Communications International Union
Transport Workers Union of America

Amtrak Lenders

Kreditanstalt für Wiederaufbau (Germany)
Export Development Corporation (Canada)

Legal and Railroad Reorganization Experts

Robert Blanchette, Retired
John Broadley, Jenner and Block

Charles Hoppe, Charles W. Hoppe, Inc.
Daniel Murray, Jenner and Block

Auditing Firm

Price Waterhouse

Associations

American Bankruptcy Institute
American Public Transit Association
American Short Line and Regional Railroad Association

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000
or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

http://www.gao.gov

PRINTED ON RECYCLED PAPER

United States
General Accounting Office
Washington, D.C. 20548-0001

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use $300

Address Correction Requested