

**DEPARTMENT OF TRANSPORTATION'S IMPLEMEN-  
TATION OF THE AMERICAN RECOVERY AND  
REINVESTMENT ACT (ARRA)**

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**HEARING**

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

**SPECIAL HEARING**

APRIL 30, 2009—WASHINGTON, DC

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**DEPARTMENT OF TRANSPORTATION'S IMPLEMENTATION OF THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

THURSDAY, APRIL 30, 2009

U.S. SENATE,  
SUBCOMMITTEE ON TRANSPORTATION AND HOUSING  
AND URBAN DEVELOPMENT, AND RELATED AGENCIES,  
COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 9:14 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Patty Murray (chairman) presiding.

Present: Senators Murray, Feinstein, Lautenberg, Bond, and Alexander.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. This subcommittee will come to order.

We are on a tight timeframe this morning as there is a full Appropriations Committee going this morning as well on the supplemental. So we have a number of members who want to get to both. So we are going to get started.

Senator Bond is going to be here shortly. He is running a little bit late. So I am going to go ahead and begin, and we will have him join us as soon as he arrives.

I want to welcome Secretary LaHood and Inspector General Calvin Scovel from the Department of Transportation to this hearing this morning. We look forward to your testimony and to learning more about the challenges and successes facing the Department as you work to implement your slice of the American Recovery and Reinvestment Act.

And this subcommittee is committed to working with you in your efforts. I look forward to a continued partnership with the Department of Transportation as we work to monitor the spending of taxpayer dollars.

In total, the U.S. Department of Transportation received over \$48 billion from the Recovery Act to invest in every part of our transportation system—our roads and bridges, airports and railroads, public transportation, ports and maritime communities. This funding should go to projects that reduce congestion, improve safety, enhance freight mobility, and make our Nation stronger long term—projects that put people to work today and keep businesses moving.

In my home State of Washington, unemployment has now risen to 9.2 percent, well above the national average. Businesses are

forced to cut back. Families have lost their homes to foreclosure. Our State government is facing a \$9 billion deficit, which has left a lot of our worthy transportation projects in doubt.

But the release of Federal recovery dollars means that 180 transportation projects in Washington State will be able to move forward, creating and sustaining thousands of jobs. I recently, in fact, toured a project on Interstate 405 in Bellevue that received recovery funds, which is going to create about 560 new family-wage jobs.

Washington, like other States, will also receive millions to support much-needed capital investment in our transit systems, which are struggling as well. But the true promise of the Recovery Act will be realized only if DOT, and every other agency that has been charged with its implementation, does its job effectively, responsibly, and efficiently.

Now those are not words typically associated with large bureaucracies. But so far, the Department has met its deadlines for distributing highway and transit funds, for collecting certifications from each Governor on its transportation plans, and publishing a strategy for high-speed rail.

DOT has also created a Department-wide team to oversee and coordinate its workload and created a risk management plan to identify areas of concern and develop a course of action for each one. But how will the Department oversee the funds on a daily basis so that we avoid wasteful spending, we do create jobs, and improve our Nation's infrastructure? The challenges are significant.

The Recovery Act calls for frequent and detailed reports, and the Department has only just started to prepare for those requirements. DOT still needs to make key decisions about how to allocate over \$10 billion provided in the Recovery Act for discretionary programs. That leaves a lot of unanswered questions.

What criteria will the Department use to evaluate applications for the \$1.5 billion competitive program? What guidance will the Department issue for applicants interested in intercity and high-speed rail grants? What is the best use of funding provided under the New Starts program?

Although the Department has distributed over \$34 billion in highway and transit formula grants, overseeing the use of this funding presents its own challenges to the Department. How will the Department ensure the funds are used correctly by State and local jurisdictions at the same time that the Department must oversee the regular highway and transit programs?

The inspector general recently identified unresolved challenges for the Department that could interfere with the best use of recovery funds. As an example, the Department still needs to move quickly to suspend people that have engaged in fraud so that they do not receive any additional Federal contracts. It will be particularly important for the Department to resolve this issue in order to avoid the kind of wasteful spending that undermines the public's confidence.

So, as I said, the challenges are significant, and as the Department continues to implement the Recovery Act, this subcommittee will continue to monitor its progress. I hope the information gathered today is the start of an ongoing dialogue with the Department. There is too much at stake to not get this right.

With that, we are joined by Senator Bond. Sorry we started without you, but I am delighted you are here, and you can go ahead and do your opening statement.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you, Madam Chair.

And welcome, Mr. Secretary. I apologize. I had to make a speech downtown this morning, and I had a roomful of people I had to shake and howdy with on the way in. And I am delighted you started because we have got a tough morning schedule ahead, but it is important that we have this oversight hearing.

I hope that in the months and years ahead, we will continue to monitor how these funds are being administered through our States and localities and that the Recovery Act will have its intended effect on our Nation's economy.

I did not support passage of the Recovery Act, but I have always supported investment in transportation because I do believe that these are the types of investments that should be included in any economic stimulus. Infrastructure spending works to preserve and create jobs, promote the kind of economic recovery that is necessary during these difficult times, and lays the groundwork that is absolutely essential for continued progress and development of our economy.

I would have preferred more spending be included in the Recovery Act for crumbling highway and bridge infrastructure, as well as water infrastructure and transit. I was one of only two Republican Senators who supported our distinguished chair on the Senate floor when she sponsored an amendment to increase the level of investment for actual infrastructure spending.

I am disappointed that the overall total for transportation was only \$48.1 billion, and of that total, only \$27.5 billion was included for our States to address their ever-growing highway and bridge needs. Additional funding for infrastructure is what stimulus should be about.

We can already see that our aviation funding, highway funding, and transit funding were the first of the funds to hit the ground in sustaining and supporting jobs. And I applaud you, Mr. Secretary, and the DOT employees for their ability to meet all the deadlines thus far contained in your section of the Recovery Act.

Funds are being announced, and we will see actual obligations and outlays of funds to the States in the coming weeks. And I understand, as expected, that the bids are coming in significantly lower. We are getting good, particularly good value for our spending now.

While progress has been good, however, and over 2,000 projects have been awarded, there are a number of new accounts and activities that we need to monitor in the future. Of particular interest to me and a number of Senators are two new grant programs to be administered within the Department—\$8 billion for high-speed rail and \$1.5 billion for a new discretionary grant program for surface infrastructure projects.

We are awaiting the interim guidance and Federal Register notices on the specifics of these new programs. I understand that the GAO and the DOT IG will be auditing and reviewing these new

areas. It is my hope that we will have a follow-up hearing in the future where we can expect the results of these reviews.

And with that, Mr. Secretary, I look forward to hearing your comments.

And I thank you, Madam Chair.

Senator MURRAY. Thank you very much, Senator Bond.

Mr. Secretary, welcome to our subcommittee. Your statement will be printed in full in the record, but we would appreciate some opening remarks from you.

**STATEMENT OF HON. RAY LAHOOD, SECRETARY OF TRANSPORTATION, DEPARTMENT OF TRANSPORTATION**

Secretary LAHOOD. Well, Madam Chair, first of all, this is my first opportunity to personally thank you for your leadership in supporting the President's economic recovery plan. Without your leadership and the leadership of others here in the Senate, we wouldn't be sitting here today talking about our opportunity to put people to work. So I thank you very much for all your leadership.

And to you, Senator Bond, thank you for your leadership over the years in transportation. You have been a strong advocate for almost everything we do at the Department, and we are grateful for your support, sir.

And I am enormously proud of the men and women at the Department who have worked extraordinarily hard to implement this groundbreaking legislation in record time while fully embracing the letter and spirit of the Recovery Act commitment to accountability and transparency.

Our people have been working 24-7, and of the roughly \$48 billion provided to the Department by the Recovery Act, we have announced nearly \$45 billion for roughly 2,800 surface and aviation improvement projects. And as of this week, more than \$9 billion of these funds have been obligated in nearly every State and territory. All 50 Governors have accepted our portion of the Recovery Act funding because they know that they can put their people to work in their States in well-paid jobs.

The FAA has been very effective in soliciting and reviewing project proposals and awarding discretionary funds so that ready-to-go airport improvement projects could begin.

Within 2 weeks of passage, the Federal Highway Administration apportioned its funds and has been working aggressively to move projects through the approval process.

The Federal Transit Administration now has 136 transit agency grant proposals totaling nearly \$1.5 billion that are ready to be obligated.

And the Maritime Administration will soon award \$100 million in grants to hundreds of small shipyards.

The Recovery Act also makes historic investments intended to jump-start a new high-speed passenger rail service for the Nation. Later this summer, we will begin awarding a portion of the \$8 billion in recovery funds to deserving rail corridor projects all over the country.

I intend to invite all of the high-speed rail corridor folks from around the country, folks that have been dreaming about high-speed rail, to Washington so I can listen to their proposals, talk to



them, and begin working with them. We want to establish the kind of relationships with them that we have had with others. And so, we will listen to what they have been doing and then figure out how we can apportion the \$8 billion to jump-start opportunities all over America.

I have traveled around the country to New Hampshire, Vermont, Arizona, Texas, and a number of other States, and we have been out meeting with Governors and other officials to make sure that the projects that we are funding are on track and the money is being well spent.

We put together the TIGER team, which works every day, with all the modes coming together, talking to one another about how the money is being spent and making sure that it is spent correctly.

There are several checks on what we are doing. Recovery.gov, the Web site established by the White House which we give information to, lists the projects, the States that funds are going to, and will eventually list what projects are being funded, and how many jobs are being created.

There are two Inspector Generals looking at what we are doing. The first is the Government-wide IG that was appointed by the President, Mr. Devaney and his staff. And then, of course, there is our own IG, from whom you will be hearing today.

So transparency and making sure that every dollar is spent correctly are the watchwords. No earmarks, no boondoggles, and no sweetheart deals. These hard-earned dollars will be spent the way that you all intended for it to be spent.

#### PREPARED STATEMENT

So we are working hard at this. We think we have got it right. And we think very soon thousands of people will be working around America in well-paid jobs, rebuilding America's infrastructure.

I look forward to your questions, Madam Chair.  
[The statement follows:]

#### PREPARED STATEMENT OF HON. RAY LAHOOD

Chairman Murray, Ranking Member Bond, and members of the subcommittee, thank you for the opportunity to appear before you today to discuss the U.S. Department of Transportation's (DOT) progress in implementing the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act is an extraordinary response to a crisis unlike any since the Great Depression. The act is an unprecedented effort to jumpstart our economy, create or save millions of jobs, and put a down payment on addressing long-neglected challenges so our country can thrive in the 21st century. In the 10 short weeks since this hallmark legislation was enacted, the Department has been working hard to ensure that the Recovery Act is being implemented quickly, wisely, and with unprecedented transparency and accountability to finance transportation projects throughout America. Today, I want to share with you our accomplishments and our plans for the future.

Even before the Recovery Act was enacted, DOT had prepared an implementation strategy to ensure that the agency would be prepared to implement our elements of the legislation as quickly and effectively as possible. We brought together an intermodal team of experts from our policy, legal, financial, and information technology disciplines to work along side programmatic experts in our operating administrations to anticipate the requirements in the new legislation. This new team—termed the Transportation Investments Generating Economic Recovery, or TIGER, Team—was tasked with coordinating and overseeing the Department's responsibilities and reporting regularly to me on their progress.

The work of the TIGER Team has been instrumental in keeping our implementation on track and I am pleased to report that the efforts of our TIGER Team and many others throughout our Department are achieving success. Of the \$48.1 billion of overall resources provided to DOT in the Recovery Act, we have already announced the availability of \$44.8 billion. And \$8.1 billion of these funds have already been obligated on specific projects in 48 States and Territories, and the figures are increasing every day.

To keep the funds flowing and to ensure that accountability and transparency are maintained, our DOT TIGER Team is tasked with a broad range of responsibilities. We have established separate stewardship working groups to coordinate issues such as data reporting, financial management, procurement and grants, job creation, information technology, and accountability. The reporting requirements in the legislation are extraordinary and have required the Department to establish guidance on data and financial reporting to ensure that information provided to the public is accurate and easy to understand. Just recently, we posted maps of the United States on DOT's Recovery Act Web site showing the number of projects by State and the amount of funds that have been obligated. We are working to refine these helpful depictions of the progress being made in fulfilling the President's objectives for the Recovery Act.

While implementation of the Recovery Act presents significant management challenges, DOT has already taken steps through the TIGER Team to provide effective oversight to ensure that the funds provided by Congress are used efficiently, effectively, and provide maximum benefit to the public.

For example, DOT has developed a systematic and comprehensive approach to risk assessment and management. The risk management tool developed by DOT was so well regarded by the Office of Management and Budget that it subsequently adopted the tool for Government-wide use. The tool uses a four-step approach, which is built upon the sound foundation of internal controls assessments:

- Formal assessment of potential programmatic risks;
- Risk profile that categorizes the level of risk;
- Risk management and mitigation plan; and
- Validation and testing.

As a further check on the extent and validity of our validation work, DOT will be reaching out to partner with another Federal agency to share risk management best practices and to leverage resources for cross validation and testing. At this point, the Department has completed the first two phases of this approach for all Recovery Act programs. We will be continuously updating our risk management efforts due to the nature and sensitivity of risk management for Recovery Act programs.

We are also creating new business processes that make better use of the work done by both the Office of Inspector General (OIG) and the Government Accountability Office (GAO). Early on, we established an Accountability Executive Board that includes top officials from throughout the Department. This group approached OIG and GAO seeking to better ensure that audit findings are thoroughly considered in our Recovery Act programs. First, we broadened the avenues of communication to make certain we had a clear understanding of their concerns as rapidly as possible. We created new mechanisms, including an Accountability Stewardship Group to bring management and the auditors together frequently for a frank, two-way exchange of information. Together with the Inspector General, I have convened a fraud awareness session broadcast throughout DOT to ensure everyone gets the message that we have zero tolerance for waste or fraud. Simply put, I have asked our people to say something if they see something. The Accountability Executive Board continues working with the auditors to identify new and innovative ways that will better enable DOT to anticipate challenges and incorporate the changes necessary to provide the public with meaningful and effective programmatic results.

President Obama, Vice President Biden and you, the Members of Congress, have entrusted me with billions of dollars to help create jobs and improve our Nation's infrastructure. I have just visited several States where Recovery Act investments are making a real difference in people's lives. In New Hampshire, for example, I met 35 construction workers hired to make highway repairs. Many of these individuals had been laid off and were called back to work. They are back on the payroll, supporting their families, and contributing to their local economies. Similar stories are playing out in States all over the country. This effort not only puts people to work, but it gets people to work in a way that moves us towards our long-term goals of energy security, a cleaner environment, and more livable communities.

The Federal Highway Administration (FHWA) has been moving at rapid speed and on March 3, just 2 weeks after the legislation was passed, FHWA announced the apportionment of funds to Maryland Route 650—the first Recovery Act highway

project in Maryland. Within 6 weeks DOT had announced more than 2,000 transportation projects in nearly every State in the Nation. Of the 2,000 projects, 1,860 were FHWA projects and 300 were Federal Aviation Administration (FAA) projects.

Projects are not only being approved ahead of schedule, but they are also coming in under budget. State departments of transportation around the country have reported intense competition by contractors for Recovery Act projects. Some bids have been roughly 15 to 20 percent lower, and some as much as 30 percent lower, than engineers anticipated. For example, in Colorado, the State's bids for the first five Recovery Act transportation projects announced on April 2, were 12 percent lower than anticipated. In Maine, the low bid for one bridge project was 20 percent lower than estimated. In Oregon, during February and March 2009, bids have averaged 30 percent lower than expected. Just last week I sent a letter to our Nation's Governors and State Secretaries of Transportation, reminding them that any money they save as a result of Recovery Act projects bids coming in lower than anticipated must be used for additional transportation projects.

FAA has been working hard to get Grants-in-Aid for Airports funding distributed to eligible projects. To date, FAA has announced more than \$1 billion—or 94 percent—of its airport improvement funding for 301 projects. Of the \$200 million provided for Facilities and Equipment projects, FAA has been working on contract awards for air traffic control facility improvements, power system upgrades, new airport runway lighting, and navigation systems and other infrastructure projects.

In the area of transit, the Federal Transit Administration (FTA) has a total of 109 grants totaling \$1.47 billion in the pipeline to be obligated. FTA has engaged in significant outreach with stakeholders to inform them of the requirements in the legislation. On March 5, FTA announced \$6.7 billion in formula funding under two transit capital assistance programs and the Fixed Guideway Infrastructure Investment program. FTA is in the midst of receiving grant applications under the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) Program. When implemented, the TIGGER grants will reduce greenhouse gas emissions and energy use for decades into the future. FTA has also requested applications for the Tribal Transit Program.

The Federal Railroad Administration (FRA) was given \$8 billion in Recovery Act funds to support the development of a High-Speed Passenger Rail initiative. On April 16, 57 days after the Recovery Act was enacted, President Obama announced the release of the new High-Speed Rail plan at a well-attended event at the White House. The strategic plan outlines the administration's vision for high speed rail in America. This administration believes that high-speed rail can transform travel in America, reduce dependence on cars and airplanes, and spur economic development. We would like States and local communities to put together plans for a network of 100-mile to 600-mile corridors, which will compete for the Federal dollars. The merit-driven process will result in Federal grants as soon as late summer 2009.

President Obama's vision for high-speed rail mirrors that of President Eisenhower, the father of the interstate highway system, which revolutionized the way Americans traveled. Now, high-speed rail has the potential to reduce U.S. dependence on oil, lower harmful carbon emissions, foster new economic development, and give travelers more choices when it comes to moving around the country.

The Recovery Act also includes \$1.3 billion for capital grants to the National Railroad Passenger Corporation (Amtrak), of which \$450 million is to be used for capital security grants, including life safety projects. Priority for the use of non-security funds is to be given to projects for the repair, rehabilitation, or upgrade of railroad assets or infrastructure, and for capital projects that expand passenger rail capacity, including the rehabilitation of rolling stock. Funding was also to be awarded within 30 days after enactment. Amtrak and FRA personnel have worked diligently and expeditiously to identify rail passenger capital projects that meet the Recovery Act requirements, both in terms of their contribution to improving intercity rail passenger service and in terms of prompt initiation of new or expanded projects that will create or retain jobs and support economic development. Consistent with the act's requirements, FRA and Amtrak executed the American Recovery and Reinvestment Act of 2009 Grant Agreement on March 19, and Amtrak is moving aggressively to implement Recovery Act funded projects.

The Maritime Administration is also implementing a new shipyard assistance grants program under the Recovery Act. The \$100 million provided in Assistance to Small Shipyards will be used to award grants in this area. As of April 20, more than 400 individual grant applications had been received.

Finally, the Recovery Act includes a \$1.5 billion discretionary grant program for surface transportation to be administered under my direction. These TIGER grants will be awarded based upon the criteria specified in the legislation after an extensive review process. The criteria for the TIGER Grants are currently in the review

process within the Department. There is lots of excitement about this new grant program, and I welcome the opportunity to update you and other members of the subcommittee at a later date on our progress.

I again want to thank Chairman Murray and the subcommittee for inviting me here today. I can tell you that we are making real progress in achieving the goals of the Recovery Act. I have had the privilege of standing along side the President and the Vice President at events marking the arrival of Recovery Act funds in cities throughout America. I have seen first hand the excitement on the faces of newly hired workers who now have a job. These people have families to care for and communities that are counting on them. In turn, they are helping to rebuild and refurbish our transportation infrastructure so we can together keep America moving. I will be happy to answer your questions.

#### COMPETITIVE GRANTS

Senator MURRAY. Thank you very much, Mr. Secretary. I appreciate your being here.

Let me start with the \$1.5 billion in competitive grants for transportation projects that will have a significant impact on the Nation and the metropolitan area, or region. This is a new program for the Department, and it is unique because it involves almost every mode of transportation.

The competitive program was included in the Recovery Act to make sure that billions of dollars that we are investing will result in some meaningful legacy projects so that we can see some real improvements to transportation infrastructure. And I believe strongly that we can't invest more than \$48 billion in supplemental funds in transportation without making sure that we get some real, measurable improvements for communities.

So I wanted to ask you today what kind of criteria you are considering that will make sure that this program creates a legacy of significant transportation improvements.

Secretary LAHOOD. We have submitted our criteria to the White House and to OMB. We are waiting for guidance from them. We believe that as early as next week the criteria will be made public.

But I will tell you this, you all, in your bill that the President signed, put in \$28 billion for roads and bridges, \$8 billion for transit, \$1 billion for airports, and \$8 billion for high-speed rail. So we think the discretionary money ought to look at some other modes that didn't get the kind of attention that these did.

And so, we are thinking in terms of ports and multi-modal opportunities that really weren't considered as much as maybe some of you would have wished. And I know that that is one of the reasons that these dollars were put in there. That is what we are looking at, but the actual criteria will be made public next week.

Senator MURRAY. Okay, and do States and local governments understand when they apply for these grants, that we are looking for long-term priorities?

Secretary LAHOOD. Absolutely, sustainable transportation opportunities.

Senator MURRAY. Okay. What kind of outreach are you doing to make sure people understand what these projects are, or are you just waiting for people to apply to you?

Secretary LAHOOD. For the \$1.5 billion?

Senator MURRAY. Right.

Secretary LAHOOD. Well, we need to get the criteria out. It has not been made public. We are waiting for a little guidance from the

White House and OMB. And once we get that, we will put it out publicly, and then we will begin working with folks around the country that want to make application.

It will become very clear that we want some innovative approaches. We want some approaches that were not covered under the other portions of the Economic Recovery Act.

Senator MURRAY. And since you are looking toward making sure port and freight rail and other improvements are part of this, are you going to do some outreach to some of those communities, States, and local governments to make sure they understand that is what you are looking for?

Secretary LAHOOD. Absolutely. I think we may use the model that we used for the highway money, where we invited all the State DOT secretaries to Washington, even before the bill was signed, and talked to them about how we wanted to get the money to them. We are doing that again with high-speed rail corridors, inviting all the folks to Washington. And we may very well invite a number of folks to the District of Columbia to talk about the \$1.5 billion so there is a good understanding of how this money should be used.

#### HIGH-SPEED RAIL

Senator MURRAY. Okay. Well, let me ask you about that high-speed rail. You released your vision for that just a couple of weeks ago and provided an overview for the high-speed rail program, which didn't offer a lot of details yet about how exactly the recovery funds are going to be used.

I think you said those were coming in June, the details for that program. But I wondered if you could give us a little bit of insight today on what you expect. Are you looking for brand-new corridors or improving the speeds on current corridors, or what are you looking for?

Secretary LAHOOD. Well, there are a number of high-speed corridors around the country. We know about the Northeast corridor, and we know that in California, they have been working on high-speed rail for over 20 years, passed a referendum, and set aside money. And they are in a much different position than maybe a corridor in the Midwest, where they have talked about it, or a corridor in the South, where maybe they need some study money.

I think what we would do is look at the \$8 billion as an opportunity to begin several corridor opportunities. In California, obviously they are way ahead of a number of other places in the country.

In the Northeast, it is the same kind of a program. If you straighten out some tracks along the Northeast corridor, you can get some of the Amtrak trains to go a little bit faster. In the Midwest, they have been dreaming about high-speed rail from Wisconsin and Minnesota, through Illinois, all the way down to St. Louis.

Senator MURRAY. Well, you could have a lot of applications. How are you going to prioritize, what will be your criteria to prioritize which of those projects?

Secretary LAHOOD. We will focus on where we really believe we can help jump-start people's opportunities. In California, they have

done all their studies. They are working on their environmental requirements. They have money set aside. That is different than perhaps another part of the country where they may need some money to begin to do a study.

It is not unlike when the interstate system was started. I am sure that when President Eisenhower signed the bill, all the lines weren't on the map. They only knew where they were going to begin.

And I believe that two decades from now, you are going to see a network of high-speed rail, and we are going to help provide some opportunities. The \$8 billion that you provided is supplemented with another \$5 billion in the President's next 5 budget years. So we have \$13 billion. But \$13 billion is not nearly enough to do everything we want to do.

Senator MURRAY. Right.

Secretary LAHOOD. But it is a very good start. It is \$13 billion more than we have ever had before.

Senator MURRAY. Well, there is no State match requirement in this.

Secretary LAHOOD. That is correct.

Senator MURRAY. But will you give priority to projects that do have a match?

Secretary LAHOOD. I think we are going to give priority to those that have been working on high-speed rail, and have been dreaming about it, and have made a commitment by having referendums passed and putting their plans in place.

But we also know that there are other corridors that could use a little bit of money to get a study going, and we don't want to short-circuit those opportunities either.

Senator MURRAY. Okay. I appreciate it. Thank you.

Senator Bond.

#### HIGHWAY RESCISSION

Senator BOND. Thank you very much, Madam Chair.

And thank you, Mr. Secretary, for mentioning ports and multimodal. For those of us in the Midwest, we know how important those ports are in taking large bulk commodities off of our highways. The rails are absolutely clogged. We have got to have those ports. I appreciate that.

I thank you for mentioning my constituents in St. Louis and high-speed. When you are talking about all those wonderful Midwest high-speed corridors, it would be helpful if one of them crossed the Mississippi River. And I have got a pretty good place to do that. So we will look forward to working with you on that.

I understand, on earmarks, people get mad at congressional earmarks. But those of us here know that we do earmarks because we listen to our State DOTs. We listen to our local leaders. And somebody has got to earmark them. Right now, it is going to be the Department of Transportation people who earmark them, and that is fine.

But I just urge you to continue, as you said you would, listening to State DOTs and the local leadership because they are the ones who really know where the priorities are. That is what we do. We

get criticized for it, but I read Article I, section 8 and 9 saying that is our responsibility. But I appreciate your willingness to listen.

I have got a big problem, something that was left out of the American Recovery Act. I was advised by leaders on the floor that they were going to deal with it. Somebody put the kibosh on it so it didn't happen. But we all know there is a looming \$8.7 billion rescission of the highway funds on September 30, if something is not done to fix it.

We are getting all this money for a recovery, to stimulate job creations. But if this rescission goes through, it is going to cancel numerous projects that are either ready to go or already underway. I would like to know what your views are on that unfortunate rescission provision and what you think can, should, and will be done to fix it?

Secretary LAHOOD. Well, we are monitoring where we are with the highway trust funds, and we realize that you all were good enough to transfer the \$8 billion out of the General Fund and into the Highway Trust Fund last year. And as a Member of the House, last year I supported that.

Senator BOND. I did, too. That was transit funds and highway funds that had previously been transferred to the General Fund.

Secretary LAHOOD. Right.

Senator BOND. But we got a little problem.

Secretary LAHOOD. So we are paying close attention to this, and I think we will give you some pretty good guidance about mid-summer where we are at and if we are going to run out of money again.

#### JOBS

Senator BOND. Well, something has got to be done on that rescission or that messes up the plans that are already underway. That one is a looming tragedy that I had hoped we could deal with in the Recovery Act, but we need to deal with it.

Now during the debate on the bill, it was stated that 3.5 million jobs would be created. The unemployment rate has gone from 8.1 percent to 8.5 percent. Do you have a good fix yet on how many jobs have been created by the Department with the funds that have been allocated, and what quantitative methods or tools will you use to determine how many jobs have been created?

Secretary LAHOOD. During the month of May, we will put out a report, Senator, that will define what the term "jobs" means here. We are trying to work with OMB, and we are trying to work with our State DOT friends on this. We want to make sure that everybody understands what a job means.

When somebody is working on a job in a certain part of Missouri, that job is completed, and then they go to another job, do you count that a second time? Or does that person continue in their employment?

And so, there are a few of these delicacies here that we are trying to work out. But very soon here, we will have a good definition that people will understand and that everybody will agree to. And once we do that, we can, I think, assess what an enormous number of jobs have been created.

And we also know that as soon as the weather breaks here, which it is now doing in the Midwest, a lot of these projects will begin in places where the weather is—

AMTRAK STRATEGIC PLAN

Senator BOND. I understand. We have had a little weather.

One quick question. Does Amtrak have a strategic plan for annual appropriations of the Recovery Act? We are worried that Amtrak needs to get its act together. What are you doing to make sure that it meets specific goals and targets?

Secretary LAHOOD. Well, we are going to work with Congress on the bill that you all passed. We think it is a good bill, and we think it really helps us work with Amtrak and keeps them meeting the standards and obligations that were set out in the legislation.

I just met with the Amtrak Board at their meeting here a week or so ago, and we talked about some of these issues. But we think the Amtrak bill is a pretty good guidepost for all of us to make sure Amtrak continues to be a very viable passenger rail service in America.

Senator BOND. Thank you, Mr. Secretary.

Thank you, Madam Chair.

Senator MURRAY. Thank you.

Senator Feinstein.

STATEMENT OF SENATOR DIANNE FEINSTEIN

Senator FEINSTEIN. Thank you very much, Madam Chairman.

Thank you very much, Mr. Secretary. I very much appreciate you coming and spending a little bit of time with me.

I wanted to concentrate on two subjects. One is the air traffic controller, and the other is the high-speed rail.

Following this hearing last year—you were not here—I asked the GAO for a study of the southern California TRACON on the belief, and that belief remains, that we have major problems with insufficiently trained air traffic controllers doing the work of a controller.

The inspector general just came out with his report, and he predicts that later this year, 40 percent of the people working at the southern California TRACON will not have full certification. I find that unacceptable.

The problems are that there really is, I think, insufficiency in the training program. I think there is a cost of living problem with respect to that area of our State. We have found it with Federal firefighters, too. Other services are more attractive to them because they pay better.

In any event, the GAO made four recommendations. One is to validate the staffing ranges for southern California and northern California TRACON to ensure that their staffing levels are sufficient to handle the volume. I would ask you to carry that out.

The second is expand the use of relocation, retention, and other incentives to entice more experienced controllers to accept positions or defer retirements at LAX and southern California TRACON.

Third, to provide LAX, southern California TRACON, and northern California TRACON with enough contract instructors, classroom space, including offsite locations, and simulators for the ex-



pected surge in new controllers. This is particularly critical, GAO says, at southern California TRACON.

And to evenly distribute the placement of new trainees through the year to avoid training bottlenecks and conduct an independent analysis of overtime scheduling practices at all three facilities.

I would like to ask you today to commit to carrying out those recommendations of the GAO.

Secretary LAHOOD. I am committed to doing that, Senator.

Senator FEINSTEIN. Good.

Secretary LAHOOD. And I thank you for your leadership. When you and I met, this was the No. 1 issue on your list.

Senator FEINSTEIN. That is right.

Secretary LAHOOD. And I take your point on this. We will have an FAA Administrator in place as soon as the Senate can confirm him. And I think he is an outstanding person, a former airline pilot, the former president of the airline pilot union. And I think he will bring extraordinary experience particular to the issues that have been recommended in this report, and we are committed to working with you to make sure these recommendations are followed.

It has everything to do with safety, and I know that is what you care about, and that is what we care about.

Senator FEINSTEIN. Yes, I am very worried about a potential serious accident.

I misspoke, Mr. Secretary. It is the IG report——

Secretary LAHOOD. Right. No, I understood.

Senator FEINSTEIN [continuing]. Not the GAO report. But thank you very much for that. You said that privately. You said it publicly.

Secretary LAHOOD. Yes.

#### HIGH-SPEED RAIL

Senator FEINSTEIN. That means a great deal to me.

The second thing is the high-speed rail. You pointed out that California has passed a \$9 billion bond for high-speed rail with another \$900,000 going into rail generally in the State. We are prepared to move on the San Francisco to San Jose line and also on Anaheim to LA.

The vision is to have a rail spine right down the center of California that can move people and goods very, very rapidly, 2½ hours between Los Angeles and San Francisco, which then should rival what is a very heavily congested air commuter pattern. So we obviously will be coming in for additional funds.

My question to you, do you find the California proposal deficient in any way, or do you believe that the State has its act together?

Secretary LAHOOD. California is far and away ahead of anyplace else in the country. They are close to having just about everything that is necessary, and I have no doubt that they will be at the top of the list just because people have been working on it, as you know, for 20-plus years. And their dream finally comes true with the \$8 billion that the President was able to include in this bill that you all passed.

And so, California is ahead of the curve.

Senator FEINSTEIN. Well, when Californians pass a financing bond—

Secretary LAHOOD. That is right.

Senator FEINSTEIN [continuing]. You can be sure it is something that people want. So I very much appreciate that.

Secretary LAHOOD. That is exactly right. It is an extraordinary commitment.

Senator FEINSTEIN. Right, it is. So that completes my questions, Madam Chairman.

And thank you, Mr. Secretary.

Secretary LAHOOD. Thank you.

Senator MURRAY. Thank you very much.

Senator Alexander.

Senator ALEXANDER. Thank you, Madam Chair.

Mr. Secretary, welcome.

Secretary LAHOOD. Good morning.

Senator ALEXANDER. Good to see you. I have got just a couple of questions I would like to ask you.

I want to ask you about the possible relationship between electricity transmission lines and railway rights of way. The President and you are talking about new high-speed rail. The President is talking a lot, as many others are, about the need for an improved method of transmitting electricity across long distances.

That raises the difficult prospect of where to put the transmission lines because the areas where the electricity needs to go is usually highly populated. So you end up with, at the very least, a lot of delay or, if you succeed, a lot of unsightly transmission lines in places where people don't want them.

I don't know very much about this. I was talking with the head of the Federal Energy Regulatory Commission about it the other day. But is there any possibility of putting the transmission lines along the railway routes, or even burying them along the railway routes, or even making them useful for electricity for trains and, in that way, provide a source of revenue for the trains and, at the same time, avoid the expensive delays and difficulties of siting transmission lines? Or is that already being done?

Secretary LAHOOD. I am not an expert on this, Senator, but I know this. In talking about really expanding our broadband capability and putting fiber down where we are building roads or building railway beds, it is possible to do that. I don't know about the electrification.

I do know that Secretary Chu at Energy has been talking about this and trying to figure out how to make it happen. And so, rather than saying something where I don't really know of what I speak, I would rather talk to him and see what his take is on this.

I have not heard that you can do this, but I know you can lay fiber down along roadways.

Senator ALEXANDER. Yes, I haven't either. And the FERC Chairman didn't either, and I am not sure you can do it. But it would be typical of Government to start out and build a lot of high-speed rail—

Secretary LAHOOD. Right.

## BRIDGES

Senator ALEXANDER [continuing]. Rights of way one place and transmission lines another place, and it might be a good idea just to explore whether there is any relationship between the two. It might actually save money, time, do two or three things at once.

The second is something I have always been intrigued with, and you may not know about this either, and maybe Senator Bond knows more about it. But a few years ago, I believe Missouri had a different way of dealing with bridges. They made a deal with the Department of Transportation and said give us the money and we will build in 5 years what we would otherwise have built in 30 years.

And they did it by the use of private contractors, and they avoided a lot of delay and expense of going through the usual Federal regulatory procedures. It sounded like that was a successful effort, and it has been a year or two since I have caught up with it.

But if it is, if I remember the bottom line well enough, Senator Bond or Mr. Secretary, I believe Missouri felt it could repair all the bridges it needed to repair within 5 years rather than 30 years, and it could do it with the money that was about to be allocated by the Federal Government over a period of time.

Did that work? And if it did work, can it be tried other places?

Senator BOND. I would say to my friend from Tennessee, it was a great idea. You think it could work, to design-build contracts. Unfortunately, FHWA didn't approve it. So it is an idea that still—

Senator ALEXANDER. They didn't?

Senator BOND. No. We are still—it is an idea out there that could save us—could do a whole lot more with a whole lot less.

Senator ALEXANDER. Well, I would like—I am raising it just to call it to your attention, Mr. Secretary. I know from my own experience as Governor, we, on a couple of occasions, experimented with buying a building from a private contractor. We said, okay, here are the specifications and here is the price. And we got it in half the time at half the cost.

And this was the same idea applied to bridges, a negotiation between the State and the Federal Government. If that is promising and if it permits States to take a certain amount of tax dollars, which are scarce—you were just talking about the trust fund and all the challenges we have there. If that is possible to do, why not pick two or three States, explore it, and see how it works?

And if you need some changes in the law to do it, I would be glad to help you with it. Again, I am not expecting you to know the answer to that. I just was very intrigued by it. And my old Governor instincts got the best of me, and I just wanted to ask whether it—

Secretary LAHOOD. Well, Senator, we have talked about thinking outside of the box on how we use the Highway Trust Fund, which is inadequate, and to do all the things we want to do. We are talking about public-private partnerships, and we are talking about these kinds of opportunities.

These are the kinds of things that we need to do if we are going to do all of the things that we want to do in America with new

bridges and new roads. And public-private partnerships certainly have to be a part of it.

Senator ALEXANDER. Thank you, Madam Chairman.

Senator MURRAY. Thank you.

Senator Lautenberg.

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Thanks, Madam Chairman.

And I apologize for the tardy arrival, and I ask unanimous consent that my full statement be included in the record.

Senator MURRAY. It will be.

[The statement follows:]

PREPARED STATEMENT OF SENATOR FRANK R. LAUTENBERG

Madame Chairman, thank you for holding today's hearing. Transportation funding is one of the most effective and efficient ways to create good-paying jobs and boost our economy. For every \$1 we invest in infrastructure, we get a \$1.59 in return. That's why, in the Recovery Act, we included \$48 billion for projects such as rebuilding bridges, repaving roads, and laying new rail tracks.

Today, I look forward to hearing from Secretary LaHood about how these funds are being spent to create jobs, stimulate our economy, and move us toward the goals of reducing congestion and greenhouse gas emissions.

In New Jersey, we have a project that embodies all of these goals of the Recovery Act. The new rail tunnel under the Hudson River is shovel-ready. It will create 6,000 construction jobs each year, 44,000 permanent jobs from the economic development it generates, and get 22,000 cars off the road daily as more New Jersey commuters take the train.

Transit projects like the Tunnel boost our economy in the short-term and help transform our economy in the long-term. Like transit, passenger rail creates jobs, reduces congestion and cuts carbon emissions and our dependence on foreign oil. And more Americans than ever are taking Amtrak, even as our investment in passenger rail in recent years has not kept up with demand.

That's why I wrote my Amtrak law last year: to help Amtrak be ready for the next generation of travel. And the Recovery Act makes an important down payment on the future of travel with \$8 billion for high-speed rail. The reality is, travelers will choose convenient rail options if they are available—Amtrak's record ridership proves that. In this tough economy, transportation investments are smart investments.

The Recovery Act is a critical first step when it comes to investing in our transportation infrastructure—but we must do more. As we reauthorize our surface transportation programs this year, I look forward to working with the administration and my colleagues to craft a transportation policy that meets the needs of our country for generations to come.

Senator LAUTENBERG. The focus here—and I welcome Secretary LaHood. We are getting to know each other fairly well.

Secretary LAHOOD. Yes, sir.

Senator LAUTENBERG. Yes, and I think we are on a good track.

Secretary LAHOOD. I agree with that.

DISCRETIONARY GRANT PROGRAM

Senator LAUTENBERG. Yes. Okay. Well, as long as you agree with my track, we are going to do well.

The thing that I like here is that we are really focusing on the transportation picture in total. Whether, as Senator Feinstein discussed, getting the relationships in FAA squared away, making sure that we have our highway improvement funding, that is critical.

But finally, finally, Mr. Secretary, I think it is fair to say that the position that the rail elements are coming into play. And when

I look and see that the kinds of spending that we are looking at, the Recovery Act, for instance, includes a new \$1.5 billion grant program to fund nationally and regionally significant transportation improvements for highway, transit, rail, and port initiatives.

What is the yardstick by which the administration will make judgments to determine which of the projects are truly national or are of regional benefit?

Secretary LAHOOD. Well, as I indicated, we have the criteria. We are waiting for guidance from OMB and the White House, and we think we will have that very, very soon, maybe as soon as next week. And we will publish the criteria so that everybody around the country knows what they are, and then we will begin to look at opportunities that really can provide the kind of jobs that I know all of you want to create, but also support projects that have national significance.

Senator LAUTENBERG. We have a target that touches several objectives, and one of the things that we are being asked for by the President is to make sure that we get to the quickest way for value investment but to create jobs. And one of those places that I see, and you know we have talked a lot about it, is in the high-speed rail area, \$8 billion in the Recovery Act and the \$1 billion in the President's 2010 budget. This is a critical step forward, but there is still more that we need to do to build a strong, high-speed passenger rail network in the country.

And is it fair to say that the administration does support a dedicated source of funding for high-speed rail?

Secretary LAHOOD. Well, I think there is no question about that, Senator, given the fact that the President has included \$1 billion each year for the next 5 years in addition to the \$8 billion that you all passed in the economic recovery. I believe that is true.

#### NEW STARTS

Senator LAUTENBERG. All right. I just want to confirm these things.

The New Starts process, the Federal program to fund major transit projects, can take over a decade before the project even begins construction. Now what can DOT do to speed up the New Starts process without compromising environmental standards or wasting any money in haste?

Secretary LAHOOD. We have proven at the Department that when Congress gives us a deadline, which was 120 days in the bill that you all passed, we can get \$48 billion out the door. And the way we did it was by creating what we call the TIGER team, where we put all the modes together in a room every day, talking to one another, trying to figure out if there are problems or issues.

And in doing that, we eliminated a lot of bureaucracy and a lot of redtape, and that is the kind of process we need to put in place for these New Starts. It takes way too long. We don't want to short-circuit anything. We want to make sure everything is done by the book. But it should not take a decade to get a New Start. It just shouldn't.

And we are going to work very hard to improve the system so that we can really cut down the time that it takes for these New Starts to be awarded.

Senator LAUTENBERG. Well, running the risk that repetition doesn't carry the load that we would like to see it carry, I want to talk for a moment about the tunnel, the ARC tunnel, and the fact that New Jersey and the Port Authority have put \$5.7 billion up for this tunnel and are looking to the Federal Government to give just that extra push.

And I know that you have been committed to seeing this get going, and I am hoping that next week, when we see the President—is it next week that we are going to the President?

Secretary LAHOOD. I believe so, yes.

Senator LAUTENBERG. That we will get confirmation that everybody is in the loop on this and that we will be able to get shovel-ready, people standing at attention, holding their shovels. That includes Jon Corzine and Frank Lautenberg, ready to start digging.

Senator MURRAY. I can't wait to see that.

Senator LAUTENBERG. And we hope that the budget will—huh?

Senator MURRAY. You will have a hardhat on?

Senator LAUTENBERG. I could start off with one.

So thanks very much, Secretary LaHood. I think that you are passing the elementary grades very rapidly and getting into the full swing, and we are proud to see it happen.

Secretary LAHOOD. Thank you, sir.

#### HIGH-SPEED RAIL

Senator MURRAY. Thank you, Senator Lautenberg.

I just have a couple of quick questions, and then we want to turn to the IG. The IG did identify the funding for intercity and high-speed rail as a challenge for the Department because the Federal Railroad Administration doesn't have the experience in running a grant program of that size. We set aside \$80 million for that program. What can we know to ensure that the FRA does have the expertise to oversee—

Secretary LAHOOD. Well, I think one thing you should know is we hired one of the best rail people in the country in the rail administration. She is doing a great job. She knows all of the folks all over the country that have been working on high-speed rail. She has been in place, and she is working very hard.

We will have a rail Administrator, that the Senate just approved last night, in place as soon as he is sworn in. So we are staffing up with people that we think are the experts and can really help us. If we need additional staff, we obviously will come back and talk to you about that, Madam Chair.

#### DEADLINE FOR OBLIGATING HIGHWAY AND TRANSIT FUNDS

Senator MURRAY. Okay. I appreciate that, and we will be following that closely.

And also I wanted to ask you about the tight deadlines for the use of highway and transit programs in the recovery package. Half of the States' highway grants have to be obligated within 120 days or they are going to be redistributed. The same with transit grants, I think they are 180 days.

Do you see any significant problems coming at us that we need to correct?

Secretary LAHOOD. I don't at this point and mainly because of the good relationships we have with transit districts and with highway administrators. They get it. They want the money. A lot of these projects have been sitting on shelves, and they are going to do everything in their power to make sure that it is done.

Senator MURRAY. We will be following that closely, too.

And finally, I just wanted to mention that Senator Bond and I both were very concerned about ensuring that a fair share of the transit funding was distributed to rural communities. I am hearing reports now that the requirement that those funds be used for capital expenses and not operating expenses is posing some problems for our rural transit systems.

Do you have any reason to believe that transit funding will be left unused because of that requirement?

Secretary LAHOOD. Well, we are just starting. That money hasn't gone out the door. But we will keep you posted on how that is going. We know the highway money is going to be on time, and people are going to start to go back to work. We are just starting to get the transit money out the door.

Senator MURRAY. If you can keep an eye on that because we are hearing that many of the transit agencies, because of budget cuts elsewhere, are laying off workers and cutting services because of a shortage of operating funds. And if that—no sense buying buses that sit there because they can't be run. So if you can keep an eye on that?

Secretary LAHOOD. Sure. I would just recommend this, Madam Chair. I think Congress needs to consider allowing transit districts to use part of their money for operations. We are very open-minded about that at the Department. I hope Congress will be, too.

This is a real issue. It does no good to buy all these new buses if you don't have people to drive them. So I hope Congress will be open-minded about that.

Senator MURRAY. Okay. I appreciate it.

Mr. Secretary, you survived your first hearing here.

Secretary LAHOOD. Thank you.

Senator MURRAY. Well, actually, your second. We appreciate your being here today and look forward to working with you as we monitor this. And thank you for the great job you and your folks are doing.

Secretary LAHOOD. Thank you very much.

Senator MURRAY. So thank you.

We will now turn to the IG. As I said earlier, we have a full committee hearing now. So most of our members are having to attend that.

But, Mr. Scovel, your input is extremely important to this subcommittee. I know some members have questions that they will be submitting that we can hope we can get an answer on. This is not the only hearing we are going to have following this, and I appreciate the opportunity to have you in front of us today.

So if you want to go ahead with your testimony?

**STATEMENT OF HON. CALVIN L. SCOVEL III, INSPECTOR GENERAL,  
OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION**

Mr. SCOVEL. Thank you very much.

Chairman Murray, Ranking Member Bond, and members of the subcommittee, I welcome the opportunity to testify today on the challenges facing DOT's implementation of the Recovery Act and our related audit and investigative initiatives.

We are working with DOT officials in support of their related efforts, and we have assembled a team of auditors, investigators, and attorneys to review DOT's implementation of the recovery program. To that end, we appreciate the additional funding you provided to us, and we intend to make the most of it. This funding will help us maintain staff, travel budgets, information technology, and other resources that we need.

My statement today focuses on the challenges facing DOT and our strategy to advance the effective and efficient use of these funds. First, DOT must continue to address the significant oversight challenges posed by the Recovery Act.

Last month, we issued a comprehensive report that identified actions DOT should take now to address known challenges and support Recovery Act requirements. These challenges fall into three areas—first, overseeing grantees receiving funding; second, implementing new programs and reporting requirements in an effective manner; and third, combating fraud, waste, and abuse.

The specific actions we noted in our report include acquiring sufficient staff with relevant expertise; ensuring that grantees use appropriate contract types; addressing internal control weaknesses, such as identifying any unused funds for use on other eligible projects; developing plans and criteria for more than \$9 billion in new programs; and finally, taking timely action to suspend or debar contractors who defraud the Government.

Next, I want to focus on what our office is doing to promote accountability in the recovery program. Our audits and investigations will continue to examine areas that present the greatest risks, and we are committed to promptly notifying DOT and Congress of actions needed to prevent fraud, waste, and abuse and achieve program goals.

In anticipation of the act's passage, we initiated a risk-based, three-part strategy. We completed phase one last month by issuing our comprehensive report on DOT's oversight challenges.

Phase two of our strategy is now underway. We are conducting a series of structured reviews, or scans, of the DOT agencies that received recovery funding. Specifically, we are examining vulnerabilities in program management and planning that could impede DOT's ability to effectively oversee projects and meet new statutory and OMB requirements.

We will be reporting the results of phase two through a series of advisories to the Department and Congress as events warrant, and I would like to emphasize that these may not take the form of full-blown audit reports. But our intent is to fast-track our initial observations, confirm the results, and bring them to the attention of the Congress and the Secretary at the earliest opportunity.

Our investigators are also being proactive in supporting DOT and its grantees. They are reaching out to officials in all modes of transportation to conduct fraud awareness and prevention briefings and training at all levels of Government so those involved in car-



rying out the recovery program know how to recognize, prevent, and report suspected fraud.

To date, we have made personal contact with FHWA officials in all 50 States and the District of Columbia, FTA officials in 24 States; FAA officials in 20 States and the District of Columbia; and State and local officials in 45 States and the District of Columbia.

PREPARED STATEMENT

I assure you that we are strongly committed to meeting our increased audit and investigative workload. And in conclusion, it is critical that we do everything possible to maximize this opportunity to make needed investments in our Nation's infrastructure while protecting taxpayer dollars.

That concludes my statement, Madam Chairman. I would be happy to answer your questions.

[The statement follows:]

PREPARED STATEMENT OF HON. CALVIN L. SCOVEL III

Chairman Murray and Ranking Member Bond, thank you for the opportunity to testify today on the challenges facing the Department of Transportation's (DOT) implementation of the American Recovery and Reinvestment Act (ARRA) of 2009<sup>1</sup> and our office's related audit and investigative initiatives. We appreciate the \$20 million in additional funding that the subcommittee provided to our office to conduct audits and investigations of DOT projects and activities funded by ARRA. This additional funding will go a long way in ensuring that we have the staff, travel budget, information technology, and other resources that we need to help achieve new, ARRA-related goals, meet our increased workload and protect the Federal investment over the long term. Since the passage of ARRA, we have been working with DOT officials to support and oversee their efforts and have assembled a cross-modal team of auditors, analysts, investigators, and attorneys to review DOT's management of recovery program funds.

ARRA designates an unprecedented \$48 billion for DOT programs, adding new challenges on top of the longstanding ones we have highlighted in past reports to the Secretary of Transportation and Congress. These include overseeing numerous grantees and projects across the country as the recovery funding is infused into the economy. In addition to significantly increasing funding for certain DOT programs, ARRA directs DOT to create several new programs and establishes tight timeframes for distributing and expending funds and reporting results, such as the number of jobs created. The Office of Management and Budget (OMB) also mandated additional requirements, including weekly financial reports, which will test DOT's capacity as it strives to effectively implement these changes.

Both the President and Congress have emphasized the need for accountability, efficiency, and transparency in the allocation and expenditure of ARRA funds and have recognized the role of Inspectors General and the Government Accountability Office (GAO) in accomplishing these objectives. For example, ARRA created the Recovery Accountability and Transparency Board, consisting of our office and nine other Inspectors General, and added substantial funding to help address the increased workload. We want to acknowledge this subcommittee's strong interest in vigilant oversight of the recovery program, with this hearing as just one of the many indicators of that support.

We realize the enormity of the challenges facing DOT and note the commitment of the Secretary of Transportation and his staff to the success of DOT's recovery initiatives. DOT's leadership has been proactive on several fronts. For example, the Department has established the DOT-wide Transportation Investment Generating Economic Recovery (TIGER) team to coordinate DOT's role in the recovery program, ensure accountability, and develop a risk management and financial reporting plan. In addition, DOT officials are working with grantees so they can quickly submit proposals that will meet Federal requirements. DOT is also evaluating how to redeploy current agency employees or use "rehired annuitants" to meet the increased workload and conducting outreach to field staff and grantees through frequently-asked-

<sup>1</sup>Public Law 111-5, (2009).

questions and guidance posted on DOT's recovery Internet sites. Sustained leadership will be a prerequisite for continuing to meet the numerous issues facing DOT.

Our statement today focuses on the specific challenges DOT faces as it implements ARRA and our strategy to promote effective and efficient use of funds. Specifically:

—*DOT Must Continue to Address the Significant Oversight Challenges Posed by ARRA.*—Last month, we reported on the major challenges facing DOT in ensuring that ARRA funds are spent properly and identified actions DOT should take now to support ARRA requirements (see attachment for the full report).<sup>2</sup> This report was based on a comprehensive review of our prior reports and other relevant work. Based on our analysis, we concluded that DOT must exhibit sustained and effective actions to oversee grantees receiving ARRA funding; implement significant new reporting requirements and programs mandated by ARRA; and prevent fraud, waste, and abuse. Actions needed to address these challenges include acquiring sufficient staff with relevant expertise to oversee grantees; developing comprehensive plans and sound criteria for the more than \$9 billion in new programs created by ARRA; and enhancing understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud to the appropriate authorities.

In addition to serving as “one-stop shopping” for actions DOT must take now to achieve ARRA-related goals, our report set out a roadmap for our future audit and investigative initiatives. In response to our recommendation to develop a plan to address the issues in our report, DOT committed to providing us with a document by April 30, 2009, that will outline its specific actions taken or planned.

—*Our Audit and Investigative Initiatives Must Continue to Examine Areas That Present the Greatest Risks and Promptly Notify DOT and Congress of Actions Needed To Minimize Fraud, Waste, and Abuse and Achieve ARRA Goals.*—We have begun working aggressively to position our office to handle the increased workload. In anticipation of ARRA's passage, we initiated a three-phase approach to conducting related work. We completed Phase 1 last month with the issuance of our report on key oversight challenges facing DOT. We also identified several audits that, although started prior to ARRA's passage, have a direct connection to the programs funded under ARRA and related requirements. We plan to fast-track the most time-sensitive results of our work on these audits to ensure we provide DOT, Congress, and taxpayers with timely and relevant information.

Phase 2 of our strategy is underway and involves a systematic scan, or structured survey, of the DOT agencies that received funding in ARRA, based on 10 focus areas identified in our report. These scans will examine vulnerabilities in program management and planning that could impede DOT's ability to provide effective oversight of ARRA-funded projects and meet new statutory and OMB requirements. We plan to begin reporting the results of Phase 2 this summer through a series of ARRA advisories to the Department. Phase 3 is a long-term initiative in which we will drill down on high-risk areas that emerge as a result of our agency scans.

I will now discuss these issues in further detail.

#### DOT MUST CONTINUE TO ADDRESS THE SIGNIFICANT OVERSIGHT CHALLENGES POSED BY ARRA

In anticipation of ARRA's passage, we initiated a comprehensive review of our prior audit and investigative work—as well as the relevant work of other accountability organizations—to identify the major challenges facing DOT as it implements such a large infusion of new funding and program requirements. We reported the results of our review last month: American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation. Our report linked the challenges identified to 10 specific focus areas where DOT must exhibit sustained and effective actions and oversight; these areas are shown in table 1 on the next page. (The full report is presented as an attachment to this statement.)

Based on our analysis of past findings, we see three major ARRA oversight challenges facing DOT:

—Ensuring that DOT's grantees properly spend ARRA funds;

<sup>2</sup>OIG Report Number MH-2009-046, “American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation,” March 31, 2009. OIG reports and testimonies are available on our Web site: [www.oig.dot.gov](http://www.oig.dot.gov).

—Implementing new accountability requirements and programs mandated by ARRA in an effective manner; and  
 —Combating fraud, waste, and abuse.  
 To ensure sufficient consideration of the potential risks discussed in this report, we also recommended that the Secretary of Transportation, through the DOT TIGER team, develop an oversight implementation plan that outlines the key actions DOT has underway or will take to address these issues. DOT agreed to provide us with a document by April 30, 2009, outlining actions taken or planned in these areas.

TABLE 1.—MAJOR ARRA CHALLENGES AND RELATED FOCUS AREAS FOR DOT

Ensuring that DOT’s grantees properly spend ARRA funds.	Acquire sufficient personnel with relevant expertise to oversee grantees. Adhere to existing Federal requirements for programs funded under ARRA. Evaluate the credibility and completeness of cost and schedule estimates. Oversee grantees’ contracting management activities and ensure selection of appropriate contract types. Address internal control weaknesses and identify unused funds for use on other eligible projects.
Implementing new accountability requirements and programs mandated by ARRA in an effective manner.	Implement new ARRA tracking and reporting requirements that are designed to promote accountability and transparency. Develop comprehensive plans and sound criteria for the new discretionary grant and passenger rail programs within statutory deadlines. Develop appropriate oversight strategies for the new discretionary grant and passenger rail programs.
Combating fraud, waste, and abuse .....	Enhance understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud to the appropriate authorities. Take timely and effective action to suspend or debar individuals or firms that have defrauded the Department so they do not receive future Federal contracts.

Today, I will highlight a few of the key areas where action is needed.

*Ensuring That DOT’s Grantees Properly Spend ARRA Funds*

The large amounts of funding that DOT is responsible for under ARRA and the accelerated timeframes to use those funds will place great demands on DOT’s workforce, oversight processes, and financial management systems. Some of the more significant challenges relate to ensuring that DOT’s Operating Administrations oversee grantees’ contract management activities; addressing internal weaknesses that could lead to ineffective use of ARRA dollars; and having sufficient staff with relevant expertise to monitor grantees’ planning and execution of ARRA-funded projects. We are encouraged by Secretary LaHood’s statement that DOT is committed to do things “by the book,” follow established policies and procedures, and employ sound business practices.

*Overseeing Grantees’ Contracting Management Activities and Ensuring Selection of Appropriate Contract Types*

Oversight of grantees’ contracting management practices warrants particular attention as the ARRA program is quickly rolled out. Actions needed are (1) specifying contract requirements early; (2) maximizing competition; (3) using appropriate contract types; and (4) preventing unallowable costs, improper payments, and excessive overhead charges during contract execution. The magnitude and the accelerated pace for spending ARRA dollars could exacerbate contract award problems we previously identified, which include inappropriate contract types, inadequate competition, and failure to ensure contract prices are fair and reasonable.

Our basis for these concerns resides in several examples. Specifically, audits of DOT and State contracts used to respond to the Hurricane Katrina emergency found instances in which DOT money was spent inefficiently. This occurred because grantees used risky contracting methods in spending Federal funds, such as sole-sourced contracts, which resulted in significantly higher costs.<sup>3</sup> For example, we found that a State department of transportation awarded two sole-source contracts without as-

<sup>3</sup> OIG Report Number MH-2006-065, “Audit of the Mississippi Department of Transportation’s Award of Selected Hurricane Katrina Emergency Repair Contracts,” September 6, 2006.

surance of fair and reasonable prices, which resulted in the State paying about \$1.7 million more than necessary for bridge repairs. Our review of controls over DOT's contract for Hurricane Katrina emergency disaster relief transportation, also found that a Federal Aviation Administration (FAA) contracting officer routinely authorized invoices for payment without any documentation from the contractor showing that the services had actually been provided.<sup>4</sup> In one instance, this lack of controls resulted in a \$33 million overpayment to the contractor for emergency bus transportation and chartered aircraft services; the overpayment was later recovered.

*Addressing Internal Control Weaknesses and Identifying Unused Funds for Other Eligible Projects*

DOT needs to assess risks and identify and mitigate any internal control<sup>5</sup> weaknesses to ensure that ARRA funding is spent effectively in accordance with Federal regulations and OMB's new requirements. Specifically, OMB is requiring that agencies ensure the prompt award and outlay of ARRA dollars and minimize improper payments. Going forward, DOT must ensure that its risk mitigation plans prevent new and recurrent internal control weaknesses, identify unused funds promptly, ensure timely action to free up unused funds for use on other projects, and detect and prevent improper payments. Our prior and ongoing audit work shows that DOT has experienced problems in these areas.

In particular, we have found that DOT must improve its controls for identifying unused funds in its financial management systems and take appropriate action to release them on completed, cancelled, and reduced-scope projects. For example, in fiscal year 2008, auditors found idle funds at the Federal Highway Administration (FHWA) estimated at about \$300 million. Similarly, we found that in 2007 FAA allowed numerous Airport Improvement Program grants to remain inactive and obligations to remain on closed grants, both for excessive periods of time.<sup>6</sup> Without sufficient controls going forward, any unused ARRA funds could remain idle for long periods of time. This in turn could prevent other worthy projects from receiving Federal funds and potentially undermine ARRA's ability to stimulate the U.S. economy by quickly spurring construction activity across the country.

Avoiding improper payments also presents a continuing challenge to DOT. For example, our prior work at FHWA identified oversight weaknesses that led to such payments, which DOT must avoid in the ARRA program. Specifically, we examined FHWA's oversight of design and engineering (D&E) firms' indirect costs claimed on Federal-aid grants and found that Federal funds were used to reimburse unallowable costs totaling nearly \$16 million.<sup>7</sup> This occurred in part due to ineffective oversight by FHWA and State transportation departments of the certified public accounting firms hired by the D&E firms. As OMB stipulated in its implementation guidance,<sup>8</sup> it is critical to mitigate the risks of improper payments in the recovery program to ensure that DOT maximizes the return on the Federal investment.

*Acquiring Sufficient Personnel With Relevant Expertise To Oversee Grantees*

DOT must ensure that it has sufficient personnel with relevant expertise to meet the increased workload, new requirements, and accelerated timeframes associated with recovery spending. A sufficient and trained workforce is critical to hold grantees accountable for contract actions and realistic cost and schedule estimates and to ensure that State or local recipients can effectively manage their projects and the risks associated with the recovery program.

DOT officials expressed concerns about their ability to provide sufficient oversight with limited time and staff, particularly in regional and division offices, and noted actions under consideration. For instance, some Operating Administrations may detail staff from each of their headquarters to their regional and division offices and rehire retired Federal employees on a temporary basis. These efforts were supported when the Office of Personnel Management granted DOT direct-hire authority and delegated to it dual compensation waiver authority. These hiring flexibilities should help enable DOT to meet critical hiring needs. The key will be to utilize these flexi-

<sup>4</sup> OIG Report Number AV-2006-032, "Internal Controls Over the Emergency Disaster Relief Transportation Services Contract," January 20, 2006.

<sup>5</sup> Internal controls provide reasonable assurance of the effectiveness and efficiency of an agency's use of financial resources, the reliability of financial reporting, and compliance with applicable laws and regulations.

<sup>6</sup> OIG Report Number AV-2007-073, "FAA's Oversight of Inactive Airport Improvement Program Grant Obligations," September 13, 2007.

<sup>7</sup> OIG Report Number ZA-2009-033, "Oversight of Design and Engineering Firms' Indirect Costs Claimed on Federal-Aid Grants," February 5, 2009.

<sup>8</sup> OMB, "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," April 3, 2009.

bilities effectively to augment other staffing actions. We plan to evaluate the adequacy of DOT's workforce as part of our future audits on DOT's oversight of ARRA projects.

*Implementing New Reporting Requirements and Programs Mandated by ARRA in an Effective Manner*

In addition to increasing the funding levels of existing programs, ARRA presents new goals for DOT. First, ARRA mandates several new reporting requirements that are designed to promote accountability and transparency, which OMB enhanced in its recent implementation guidance. Second, ARRA creates two new, large programs that provide \$1.5 billion in supplementary discretionary grants to improve the Nation's transportation infrastructure and \$8 billion in grants for high-speed rail corridors and intercity passenger rail service.<sup>9</sup> These programs are being designed from the ground up and, therefore, pose particular vulnerabilities for DOT.

*Implementing New ARRA Tracking and Reporting Requirements Designed To Promote Accountability and Transparency*

To meet ARRA accountability and transparency requirements, DOT must ensure that its financial management systems can track ARRA spending and produce reliable information to report results in a meaningful way. Specifically, DOT must ensure that its financial management systems can clearly and reliably track recovery funds separately from other program funds, as required by OMB. This will be important as OMB's guidance requires agencies to submit regular reports, and the information to generate these reports will come largely from DOT's financial management systems.

For example, OMB's final implementation guidance requires DOT to provide weekly Financial and Activity Reports that provide, by Treasury Account, total obligations and total outlays as recorded in agency financial systems on a cumulative basis. These reports will also provide a bulleted list of the major actions taken or planned. In addition, DOT will need to develop processes for meeting OMB requirements to report on the number of jobs created or preserved. Some ARRA information will be available publicly on the administration's Web site, [www.recovery.gov](http://www.recovery.gov),<sup>10</sup> and therefore must meet DOT and OMB data quality requirements. These requirements underscore the need for DOT to adjust its financial management systems so that they provide reliable and complete management reports that DOT staff can use to effectively guide and oversee grantees.

In the past, DOT has experienced challenges in this area. For example, in September 2007 we testified that FHWA was unable to determine how much of the billions of dollars in Highway Bridge Program funding were actually spent on structurally deficient bridges, because its financial management system did not differentiate between spending on structurally deficient bridges and other bridge-related expenditures.<sup>11</sup> In this case, the absence of sufficient management-level information inhibited FHWA's ability to assess the impact of Federal dollars on bridge conditions. We are working on a follow-up audit to assess FHWA's bridge funding and oversight activities in greater detail.

*Developing Comprehensive Plans and Sound Criteria for the New Discretionary Grant and Passenger Rail Programs Within Statutory Deadlines*

Creating and executing the new programs called for by ARRA presents a huge challenge for DOT. Meeting statutory deadlines will be difficult due to the number of tasks that must be completed in short timeframes, including quickly producing planning documentation and guidance. ARRA directs the Office of the Secretary of Transportation (OST) to publish criteria for its grant program within 90 days of ARRA enactment, accept applications for grants within 180 days after the criteria are published, and announce all projects selected within 1 year of ARRA enactment. Further, ARRA requires the Federal Railroad Administration (FRA) to produce a strategic plan for the passenger rail program within 60 days of ARRA enactment and interim implementation guidance to applicants within 120 days.

We have reviewed the strategic plan FRA released on April 16. We are cognizant that FRA had a limited timeframe in which to prepare the plan and believe the plan provides a meaningful, broad vision for the program and recognizes many of the

<sup>9</sup>ARRA stipulates that the discretionary grant program can be used for a variety of projects, including highway, bridge, public transportation, passenger and freight rail, or port infrastructure projects.

<sup>10</sup>The administration created this Web site to provide information to the public on the planning and implementation of ARRA.

<sup>11</sup>OIG Testimony Number CC-2007-095, "Federal Highway Administration's Oversight of Structurally Deficient Bridges," September 5, 2007.

risks inherent in implementing this program. However, the plan lacks detailed strategies for achieving its goals and performance measures to evaluate progress towards those goals. The interim performance guidance will provide an additional near-term opportunity for FRA to address these issues.

To meet deadlines for the discretionary grant program, the Secretary established a working group within OST to develop criteria and determine the best administrative structure. OST also has an advisory task force comprised of staff from the Operating Administrations. According to DOT officials, a central issue for the task force is determining the most appropriate place to administer the grants—within OST or the Operating Administration that would normally be responsible for a particular type of project. For example, if OST delegates administrative responsibility for a bridge replacement project to FHWA, it would need to monitor how this delegation of authority is effectively achieving the established goals and requirements of ARRA.

FRA also faces daunting challenges because it has not previously implemented a program like the large-scale, high-speed passenger rail program called for in ARRA. FRA has begun establishing specific plans for this program. These include determining how to allocate the funds among the eligible purposes<sup>12</sup> and developing program guidance within the statutory timeframes. Because FRA is a small agency that had few grant programs before ARRA was passed, it is critical for FRA staff to leverage the in-house expertise throughout DOT and determine what additional resources it may need. To design and implement this program, FRA must, for example, establish sufficient controls to ensure that Federal investments do not simply supplant investments the freight railroads already planned to undertake on their rail lines.

#### *Combating Fraud, Waste, and Abuse*

DOT needs to tailor its counter-fraud efforts to adapt to the increase in capital funding associated with the recovery program and the expected surge in construction activity throughout the country. OMB's guidance for ARRA implementation directs Federal agencies to be aggressive in preventing fraud, waste, and abuse. This requires sustained action in two key areas, discussed below.

##### *Enhancing Understanding Among DOT Staff, Grantees, and Their Contractors on How To Recognize, Prevent, and Report Potential Fraud*

DOT must target its outreach efforts at deterring fraud schemes that we have seen with past DOT projects and must be avoided with projects receiving funding under ARRA. These include false claims for materials and labor, bribes related to contracts for materials or labor, and product substitution.<sup>13</sup> An important way to deter fraud is for DOT staff and grantees to be aware of certain "red flag" indicators typically associated with fraud schemes. For example, a contractor regularly taking or labeling quality control samples away from inspector oversight or insisting on transporting these samples from the construction site to a lab might indicate quality control testing fraud.

One significant case we were involved with illustrates this type of fraud. In this case, an Indiana contractor agreed to pay more than \$8.2 million to settle Federal and State claims alleging that a contractor fraudulently swapped samples of asphalt to inflate the amount paid on road projects by FHWA, the Commonwealth of Kentucky, and the State of Indiana. This joint investigation, conducted with FHWA and the U.S. Attorney's Office for the Western District of Kentucky, revealed that the contractor's employees fraudulently swapped "good" cores for "bad" cores (i.e., cores with failing density).

The best way to make individuals aware of fraud schemes and their indicators is to conduct systematic fraud prevention education. DOT and the Operating Administrations receiving ARRA funds will need to enhance their outreach efforts to ensure recipients of Federal grants and contracts—and their contractors—have meaningful ethics programs and sound internal controls to recognize, prevent, and report fraud.

##### *Taking Timely and Effective Action To Suspend or Debar Individuals and Firms That Have Defrauded the Department*

DOT will need to ensure timely and effective action is taken on suspension and debarment cases against those individuals or firms that have defrauded the Department. Federal regulations prohibit firms and individuals without satisfactory

<sup>12</sup>According to FRA, the \$8 billion can be used for three programs: (1) high-speed corridor program, (2) intercity passenger rail service grants, and (3) congestion grants.

<sup>13</sup>Our March 2009 report, which is attached to this statement, contains a list of common fraud schemes and fraud indicators.

records of integrity and business ethics from receiving Federal contracts. Our work has shown that the Operating Administrations do not consistently take suspension and debarment actions in a timely manner, even though the DOT Order requires that such decisions be made within 45 days.<sup>14</sup> Taking action to address these deficiencies is critical as DOT implements ARRA. We plan to issue the results of our ongoing audit in the near future as part of our effort to fast-track the release of information that is pertinent to the effective implementation of ARRA.

THE OFFICE OF INSPECTOR GENERAL WILL CONTINUE TO EXAMINE AREAS THAT PRESENT THE GREATEST RISKS AND PROMPTLY NOTIFY DOT AND CONGRESS OF ACTIONS NEEDED TO MINIMIZE FRAUD, WASTE, AND ABUSE AND ACHIEVE ARRA GOALS

Our office supports DOT in its oversight initiatives, and we have developed a risk-based strategy in response to the new challenges presented by ARRA that will target the highest risk areas and emphasize timely reporting of results. To that end, we will evaluate DOT's management of the ARRA programs and its oversight of grantees and contractors receiving recovery funding. Our work is being coordinated with the Government Accountability Office to avoid duplication of effort and maximize accountability coverage. In addition, we have a number of ongoing audits—undertaken before passage of ARRA—that directly relate to the DOT programs that received additional funding in ARRA. We have also begun several actions to enhance our capacity to assist DOT in ensuring accountability; these include hiring new staff to handle our increased audit and investigations workload.

*The Office of Inspector General is Using a Three-Phase Approach To Emphasize High-Risk Areas and Promptly Report Results*

In anticipation of ARRA's passage, we initiated Phase 1 of our planned audit and investigative strategy. This phase involved a comprehensive review of prior reports and testimonies to identify major challenges facing DOT as it implements ARRA. We analyzed this work and reported our results last month. As part of this effort, we identified a number of ongoing audits and investigative activities that directly relate to the challenges facing DOT under ARRA. For the most part, ARRA provided an infusion of new money to existing DOT programs, such as FHWA's Surface Transportation Program, the Federal Transit Administration's (FTA) Urbanized Area Formula Grant and New Starts programs, and FAA's Airport Improvement Program. We were already conducting work on issues related to many of these programs before the passage of ARRA. Any actions that DOT takes to improve these programs based on our findings and recommendations may increase the likelihood that ARRA dollars will be spent efficiently and effectively.

For example, our ongoing, follow-up audit of structurally deficient bridges indicates that while FHWA could account for the overall amount of Highway Bridge Program funding (in billions of dollars) apportioned to States for deficient bridges, its project-based accounting system lacks sufficiently detailed data. Therefore, the system could not evaluate whether the money was used to effectively improve the conditions of deficient bridges, as required by statute and FHWA policy. As a result, FHWA could not determine whether Highway Bridge Program funding improved the conditions of deficient bridges nationwide.

We will place priority on issuing ARRA-related reports as quickly as we can with compliance of generally accepted Government auditing standards to provide timely information to DOT and Congress. To bolster this effort, we will also issue interim ARRA advisories to highlight key results of these audits that may warrant immediate attention by DOT agencies.

*Phase 2: Conducting Agency Scans To Identify Vulnerabilities in ARRA Implementation*

Currently, we are in Phase 2 of our strategy, which involves conducting structured surveys, or scans, of each DOT agency's implementation of ARRA. Our objective in these agency scans is to evaluate vulnerabilities that could impede DOT's ability to (1) provide effective oversight to ARRA-funded projects and (2) meet new requirements mandated by ARRA and OMB, including financial and job creation reporting.

We will conduct a scan at each DOT office or Operating Administration that received funding in ARRA: FHWA, FRA, FTA, OST, FAA, and the Maritime Administration (MARAD). Table 2 below shows the agencies that received ARRA funds and the amount allotted to each agency. In addition, once DOT provides us with its plan for addressing the key challenges it faces under ARRA—in response to our March

<sup>14</sup>DOT Order 4200.5D, "Governmentwide Debarment, Suspension, and Ineligibility," June 7, 2005.

2009 recommendation—we will assess the actions taken or planned as part of our agency scans.

Each scan will be conducted using a standardized methodology, including questions that probe what actions DOT has taken or planned to address the 10 focus areas we reported. As with our ongoing, ARRA-related audits, we plan to expedite our reporting to ensure that DOT, Congress, and taxpayers have real-time information related to these scans. That is, if we identify any issues during the scans that warrant immediate attention, we will issue a series of ARRA advisories to highlight those issues. Earlier this week, we issued an announcement letter to formally initiate our Phase 2 work.

TABLE 2.—DISTRIBUTION OF ARRA FUNDS WITHIN DOT  
[Dollars in millions]

DOT Component	ARRA Funds	Percent of Total <sup>1</sup>
FHWA .....	\$27,500	57.15
FRA .....	9,300	19.33
FTA .....	8,400	17.46
OST .....	1,500	3.12
FAA .....	1,300	2.70
MARAD .....	100	0.21
OIG .....	20	0.04
Total .....	48,120	100.00

<sup>1</sup> Percentages do not add up exactly due to rounding.

Source: ARRA.

### *Phase 3: Examining High-Risk Areas*

Phase 3 of our strategy involves using the results of our agency scans to identify areas that warrant additional work and reporting based on potential risks. We will use this information to develop a long-term plan outlining our ARRA audit and investigative initiatives. In addition to our near-term phased approach, we remain committed to protecting the Federal investment over the long term.

### *Other Investigative Initiatives*

Our investigators have been proactive in their fraud deterrence efforts, recognizing that risks of fraud will increase as the recovery funds are poured into the economy in the coming months. To help mitigate these risks, we are:

- Conducting fraud awareness and prevention activities to alert DOT staff and grantees, including contractors, at all levels of government so they know how to recognize, prevent, and report suspected fraud. They must also know that fraudulent misrepresentation for personal or corporate gain is unacceptable under any circumstance. As part of this effort, our special agents facilitated fraud, waste, and abuse workshops for oversight officials within DOT's Operating Administrations and State and local agencies receiving ARRA funds, and we will continue these efforts. In addition, the Secretary of Transportation and I hosted a web cast last month for DOT staff that focused on how to prevent fraud, waste, and abuse involving common fraud schemes.<sup>15</sup>
- Distributing materials such as hotline posters and “red flag” fraud indicator cards to Federal, State, and local agencies to support their oversight efforts.

Our strategy also involves investigating allegations of fraud on DOT-funded projects. We will be vigilant in presenting cases to the Department of Justice (DOJ) for prosecution and participating in resulting prosecutions. We will also focus on ensuring that DOT's Operating Administrations and States take appropriate suspension and debarment actions. For example, we have already met with various DOJ personnel, including senior members of the National Procurement Fraud Task Force and the Antitrust Division in Washington, DC. We also met with Federal Bureau of Investigation fraud and public corruption agents to discuss how we can best leverage scarce investigative resources. Further, we are reaching out to our investigative counterparts at the State and local levels.

<sup>15</sup>This web cast can be viewed at: [www.oig.dot.gov/recovery/](http://www.oig.dot.gov/recovery/).



*The Office of Inspector General is Taking Action To Best Position Itself To Meet the Increased Workload Under ARRA*

ARRA also presented our office with resource challenges. Even before ARRA's passage, we were already a small Inspector General office in relation to DOT's large budget. Accordingly, we intend to make the most of the \$20 million in additional funding that ARRA provided to our office. This additional funding will go a long way in ensuring that we have the staff, travel budget, information technology, and other resources that we need to help achieve new, ARRA-related goals.

I can assure you that we are maximizing the new funding and program flexibilities we received in recent months. For instance, we are working aggressively to hire new auditors and investigators. Our fiscal year 2009 appropriation supports a base of approximately 414 full-time equivalents (FTE), and we employed 397 FTEs as of April 7, 2009. By this summer, we plan to have a new group of ARRA-focused auditors and investigators on board to supplement our existing staff. We plan to hire approximately 17 FTEs to reach our base and 37 new FTEs to perform recovery work.

We have issued numerous vacancy announcements at all levels and have begun selecting qualified applicants. Further, the Office of Personnel Management gave us authority to utilize "rehired annuitants" to supplement our staff. The ability to expeditiously hire high-caliber staff is critical so we can deploy them to track the influx of ARRA funds and deal with the increased workload of hotline complaints that are likely to occur as ARRA projects begin construction.

We are also conducting systematic outreach with congressional and other stakeholders, including staff of our authorization and appropriations committees in the House and Senate and major transportation associations. For example, earlier this month we met with various congressional staff directors and industry representatives to listen to their concerns about ARRA's implementation.

Moreover, in response to the new challenges presented by ARRA, our office is updating its comprehensive strategic plan so that our ARRA audits and investigations are tied to an overarching strategy. This strategy will recognize the connection of ARRA to other key transportation issues and reflect the cross-cutting nature of DOT's strategic goals, such as reducing congestion and improving safety. To expedite this planning effort and target resources more effectively going forward, we convened a daylong session earlier this month with our Senior Executive Service staff and audit Program Directors.

Finally, we are developing new reporting formats that will allow us to expeditiously issue the results of our work when we determine that action can be taken in a timely manner. We are also focused on presenting our ARRA work in a user-friendly, understandable manner to maximize the impact of our findings and recommendations.

#### CONCLUSION

DOT will need sustained efforts to ensure that accountability, efficiency, and effectiveness are maintained in its portion of the recovery program. To that end, we acknowledge the TIGER team-led efforts that DOT has underway to successfully implement the ARRA program. We are focused on assisting DOT officials in their efforts by identifying vulnerabilities and making recommendations for program improvements. Further, we recognize the importance of collaboration across the accountability community, which is necessary to best protect taxpayer interests and promote achievement of ARRA's goals.

It is important that we ensure accountability to help restore Americans' trust in Government and to maximize the return on the \$48 billion in transportation investments provided by the recovery program. ARRA presents a unique opportunity for DOT to make needed or neglected investments in the repair, rehabilitation, and modernization of the Nation's aging transportation infrastructure; to fund projects to reduce congestion; and to improve the overall safety of the transportation system. It is critical that we do everything possible to maximize this opportunity. We are committed to doing just that.

That concludes my statement, Madam Chairman. Once again, I would like to thank the subcommittee for its tremendous support of our oversight efforts related to ARRA. I will be happy to answer any questions you or other members of the subcommittee may have.

## MEMORANDUM—U.S. DEPARTMENT OF TRANSPORTATION, OFFICE OF THE SECRETARY OF TRANSPORTATION, OFFICE OF INSPECTOR GENERAL

Subject: ACTION: American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation Report Number MH-2009-046

From: Calvin L. Scovel III, Inspector General  
To: All Secretarial Officers, Heads of All Operating Administrations

On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act (ARRA), which designated over \$48 billion to the Department of Transportation (DOT).<sup>1</sup> This audit report represents the second product in the Office of Inspector General's (OIG) review of DOT's implementation of ARRA.<sup>2</sup> The objective of this audit was to highlight key DOT oversight challenges—based on prior OIG reports and other agencies' relevant audit work—and identify actions DOT should take now in support of ARRA requirements.

According to the Secretary of Transportation, ARRA represents “the largest investment in America's roads, bridges, transit lines, and rail systems since the creation of the interstate highway system.” Key provisions of ARRA are preserving and creating jobs, promoting economic recovery, and investing in transportation infrastructure that will provide long-term economic benefits. In addition to providing funding for a number of existing DOT programs, ARRA directs DOT to create several new programs and establishes tight timeframes for distributing and expending funds and for reporting results (for example, the number of jobs created).

The vast majority of ARRA funding goes to the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for the construction and/or maintenance of highway, road, bridge, transit, and rail projects. The remaining ARRA funds are distributed among the Office of the Secretary of Transportation (OST), the Federal Aviation Administration (FAA), the Maritime Administration (MARAD), and OIG. Table 1 shows the distribution of ARRA funding within DOT.

TABLE 1.—DISTRIBUTION OF ARRA FUNDS WITHIN DOT  
[Dollars in millions]

DOT Component	Stimulus Funds	Percent of Total <sup>1</sup>
FHWA .....	\$27,500	57.15
FRA .....	9,300	19.33
FTA .....	8,400	17.46
OST .....	1,500	3.12
FAA .....	1,300	2.70
MARAD .....	100	0.21
OIG .....	20	0.04
<b>Total .....</b>	<b>48,120</b>	<b>100.00</b>

<sup>1</sup> Percents do not add up due to rounding.

Source: ARRA.

Both the President and Congress have emphasized the need for accountability, efficiency, and transparency in the allocation and expenditure of ARRA funds. Accordingly, the Office of Management and Budget (OMB) has called on Federal agencies to: (1) award and distribute funds in a prompt, fair, and reasonable manner; (2) ensure the recipients and uses of the funds are transparent to the public, and the resulting benefits are reported clearly, accurately, and promptly; (3) ensure funds are used for authorized purposes and to mitigate instances of fraud, waste, and abuse; (4) avoid unnecessary project delays and cost overruns; and (5) achieve specific program outcomes and improve results on economic indicators.<sup>3</sup>

To achieve these goals, DOT's leadership has been proactive on several fronts, including the establishment of the DOT-wide Transportation Investment Generating Economic Recovery (TIGER) team to coordinate the Department's role and ensure accountability. DOT's Operating Administrations are also working with senior De-

<sup>1</sup> Public Law 111-5, February 17, 2009.

<sup>2</sup> OIG Testimony CC-2009-045, “Top Management Challenges Facing the Department of Transportation,” March 10, 2009. OIG reports and testimonies are available on our Web site: [www.oig.dot.gov](http://www.oig.dot.gov).

<sup>3</sup> OMB “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” February 18, 2009.

partment officials in developing methods for tracking and reporting expenditures, job creation, and results; working with potential grantees to quickly identify and process proposals; and considering strategies for strengthening their existing oversight processes. OIG supports DOT in its oversight initiatives and has developed an audit strategy in response to the new challenges presented by ARRA.

Exhibit A presents our scope and methodology. We discussed our work and recommendations with DOT representatives, including the TIGER team, and appreciate their courtesies and cooperation during this audit. Exhibit B is a list of the relevant reports and testimonies issued by OIG. Exhibit C provides additional information on the specific DOT programs that received funding in ARRA and the statutory deadlines for spending the money.

RESULTS—OVERSIGHT CHALLENGES FACING DOT

Based on our analysis of ongoing and prior audit work and observations of DOT's efforts to implement ARRA, we see three major oversight challenges facing DOT:

- Ensuring that DOT's grantees properly spend ARRA funds;
- Implementing new accountability requirements and programs mandated by ARRA; and
- Combating fraud, waste, and abuse.

The challenges and 10 focus areas associated with them are shown in table 2.

TABLE 2.—MAJOR ARRA CHALLENGES AND RELATED FOCUS AREAS FOR DOT

Challenges	Focus Areas
Ensuring that DOT's grantees properly spend ARRA funds.	Acquire sufficient personnel with relevant expertise to oversee grantees. Adhere to existing Federal requirements for programs funded under ARRA. Evaluate the credibility and completeness of cost and schedule estimates. Oversee grantees' contracting management activities and ensure selection of appropriate contract types. Address internal control weaknesses and identify unused funds for use elsewhere.
Implementing new accountability requirements and programs mandated by ARRA.	Implement new ARRA tracking and reporting requirements that are designed to promote accountability and transparency. Develop comprehensive plans and sound criteria for the new discretionary grant and passenger rail programs within statutory deadlines. Develop appropriate oversight strategies for the new discretionary grant and passenger rail programs.
Combating fraud, waste, and abuse .....	Enhance understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud to the appropriate authorities. Take timely and effective action to suspend and/or debar individuals or firms that have defrauded the Department so they do not receive Federal contracts in the future.

ENSURING THAT DOT'S GRANTEEES PROPERLY SPEND ARRA FUNDS

The large amounts of funding that DOT is responsible for under ARRA and the accelerated timeframes to use those funds will place great demands on DOT's workforce, oversight processes, business practices, and financial management systems. Accordingly, to meet these demands and provide effective oversight, DOT will need to:

- Acquire sufficient personnel with relevant expertise to oversee grantees;
- Adhere to existing Federal requirements for programs funded under ARRA;
- Evaluate the credibility and completeness of cost and schedule estimates;
- Oversee grantees' contracting management activities and ensure selection of appropriate contract types; and
- Address internal control weaknesses and identify unused funds for use on other eligible projects.

*Acquire Sufficient Staff With Relevant Expertise*

DOT must ensure that it has sufficient personnel with relevant expertise to meet the increased workload, new requirements, and accelerated timeframes associated with recovery spending. A sufficient and trained workforce is key to holding grantees accountable for contract actions and realistic cost and schedule estimates, and

ensuring that State or local recipients can effectively manage their projects and the risks associated with the recovery program.

DOT officials expressed concerns about their ability to provide sufficient oversight with limited time and staff, particularly in regional and division offices, and noted actions under consideration. Some Operating Administrations are considering detailing staff from each of their Headquarters to their regional and division offices and rehiring retired Federal employees (often referred to as “rehired annuitants”) on a temporary basis. DOT officials informed us that, earlier this month, the Office of Personnel Management granted DOT direct-hire authority and delegated to it dual compensation waiver authority. These hiring flexibilities should help enable DOT meet critical hiring needs. The key will be to utilize these flexibilities effectively to augment other staffing actions.

These temporary efforts are laudable; but the difficult tasks will be to implement them promptly, evaluate their workability, and make any course corrections, as needed. Additional options may also merit consideration in addressing the increased workload. One is to use private consultants to supplement—but not substitute for—DOT staff, such as FTA’s use of project management oversight contractors (PMOCs).<sup>4</sup> As we previously reported, the PMOC approach can provide early warnings of cost, schedule, and quality problems, but does not preclude them. Follow-through by DOT staff is critical to the success of this approach. For example, on FTA’s Lower Manhattan Recovery Projects (totaling \$4.55 billion), the PMOCs identified key risks early on that were not sufficiently addressed, such as the insufficient management and technical capabilities exhibited by some grantees.<sup>5</sup> These issues contributed to significant cost increases and schedule delays and an inability to stay within an overall Federal funding cap. In the past year, FTA has enhanced its oversight of these projects and is working with grantees to address issues the PMOCs identified.

However, a key requirement for evaluating staffing shortfalls for ARRA work and other DOT demands is good information on DOT’s workforce, including up-to-date plans. Our work has shown that more needs to be done in certain key areas. For example, DOT continues to face challenges in developing a comprehensive strategic plan for its entire acquisition workforce that oversees the direct award and administration of DOT contracts. DOT officials said they are having difficulty determining the total number of key acquisition workforce positions, such as contracting officer technical representatives and program managers. This is a result of the lack of critical information on these positions, including workforce size, knowledge and skills requirements, and attrition and retirement rates. Without such data, DOT is unable to identify employment trends and assess the current condition of the acquisition workforce, which are needed to determine the ideal composition, skill mix, and talent for its future.

In February 2009, DOT officials compiled a succession plan for the acquisition workforce. It includes a competency assessment for the entire acquisition workforce, some retirement information, hiring plans, and training strategies for contracting positions. As the Operating Administrations design strategies to address weaknesses identified in the plan, they will need to consider the impact of ARRA on the acquisition workforce. We plan to evaluate the adequacy of DOT’s workforce as part of our future audit work evaluating the effectiveness of the Department’s oversight of ARRA projects.

#### *Adhere to Existing Federal Requirements for Programs Funded Under ARRA*

DOT must avoid waiving or expediting existing requirements for the programs funded in ARRA and make sure that any required programmatic, financial, or engineering reviews are conducted in a rigorous and systematic manner. We have learned that when DOT’s processes and procedures are short cut or bypassed, the potential for inefficient spending increases. Accordingly, DOT needs to carefully follow requirements in these areas by: (1) ensuring that planning requirements are met, including proper accounting for projects in a Statewide Transportation Improvement Program (STIP) and (2) following policies and procedures for the grant programs that received ARRA funding. These requirements exist to increase the likelihood that funds will be effectively planned and spent. As Secretary LaHood stated, DOT has committed to do things “by the book” by following established policies and procedures.

<sup>4</sup>A project management oversight contractor is retained by FTA to evaluate a grantee’s technical capacity to build, operate, and maintain a project and to monitor the grantee’s implementation of a project. This is done in accordance with FTA guidance.

<sup>5</sup>OIG Report Number MH-2008-086, “Baseline Report on the Lower Manhattan Recovery Projects,” September 26, 2008.

*Follow Project Planning Requirements*

The Federal Government has a number of key planning requirements, including reviews related to environmental, financial, and project management issues, which must be met before projects can receive Federal funding. DOT will need to ensure that any ARRA projects meet them, even though the Department will be under great pressure to get shovels in the ground. Particular attention must be focused on reviews of required STIPs for highway and transit projects, as well as Airport Improvement Program (AIP) grant applications for aviation projects.

*Review of STIPs for Highway and Transit Projects.*—STIPs lay out how States intend to use taxpayers' money to meet their transportation needs, and they are to identify which projects will be funded and the cost and funding sources for those projects. DOT requires that STIPs be fiscally realistic and present truthful and credible information. Having a realistic STIP is critical for transportation and budget planning purposes.

DOT must make sure that FHWA and FTA ARRA-funded projects are included in a STIP; and that they review each State's STIP for fiscal constraint and compliance with statutory requirements, particularly in light of the deteriorating budget situation that State and local governments are experiencing. Further, States must also ensure that the STIPs they submit to DOT have all the required assurances and certifications at the State level. Going forward, we will be assessing States' compliance with the STIP process as part of our planned audit work.

*AIP Grant Planning.*—FAA must ensure that all ARRA-funded aviation construction projects go through its AIP planning and programming processes. By doing so, FAA and its airport sponsors will be assured that only shovel-ready, high-priority construction projects are approved for ARRA funding. FAA's processes include developing airport layout plans, assessing environmental impacts, completing preliminary designs, and determining project costs based on bids. Because these processes normally take several years to complete, FAA plans to fund only those projects that have already been through its grant review process and are ready to move to the construction phase. FAA must follow through on these plans and not circumvent any established AIP procedures as it evaluates AIP grant applications.

*Follow Grant Policies and Procedures*

Once projects are approved, DOT's Operating Administrations must ensure adherence to existing oversight requirements related to the grant programs receiving ARRA funds, including FHWA's Surface Transportation Program, FTA's Urbanized Area Formula Program, and FAA's AIP. Failure to follow existing Federal requirements could result in inefficient expenditure of scarce tax payer dollars.

FAA's experience in awarding airport grants in the aftermath of Hurricanes Katrina and Rita is an example of what can happen when speed trumps sound business practices. FAA expedited the award of 10 airport grants totaling \$40.5 million under AIP, without completing steps in its grant award process. After bypassing controls to prevent duplicate payments and basing grant awards on bids rather than estimates, FAA issued grants for work that was later determined to be unneeded. Ultimately, FAA withdrew 7 of the 10 grants until oversight was improved and bids for hurricane-related projects were obtained.<sup>6</sup> Having learned important lessons through these hurricane relief efforts, FAA officials told us they intend to follow all AIP grant policies and procedures during implementation of ARRA. Additionally, FAA issued new ARRA grant guidance this month. In our discussions with FHWA and FTA, they also assured us they will not undermine any established policies and procedures in the rush to approve ARRA-funded projects.

*Evaluate the Credibility and Completeness of Cost and Schedule Estimates*

DOT must target its oversight efforts at ensuring that cost and schedule estimates are examined and deemed credible and complete, particularly the risks posed by larger and more complicated projects. Cost estimates that are too high could lead to excess and idle funds, while estimates that are too low could force grantees to find other sources of funding to cover overruns. Having realistic estimates and staying on-time and on-budget are even more critical now, considering the tight fiscal environment in which State and local governments are operating.

Our prior audit work points to the need for an early and more rigorous evaluation of cost and schedule estimates for ARRA projects. We have seen projects where earlier and more rigorous evaluation of estimates would have been beneficial. For example, in 2008, after assessing cost estimates for the Dulles Corridor Metrorail

<sup>6</sup> OIG Report Number AV-2007-014, "Oversight of Airport Improvement Program Hurricane Grants," December 13, 2006.

Project,<sup>7</sup> two independent consultants for FTA determined that the project sponsor underestimated the impact of schedule delays. These delays, in turn, increased the overall cost estimate for this project to almost \$3 billion—doubling an earlier estimate. Earlier scrutiny of the impact of schedule delays on cost estimates might have helped FTA avoid this situation and provide decisionmakers with more realistic information up front.

*Oversee Grantees' Contracting Management Activities*

To manage its portion of the economic recovery program, DOT and its grantees must ensure that effective contracting and financial practices are in place to make sound decisions under the tight timeframes and quick roll out of the program. Actions needed are: (1) specifying contract requirements early, maximizing competition, and using appropriate contract types and (2) preventing unallowable costs, improper payments, and excessive overhead charges during contract execution.

The magnitude and the accelerated pace for spending ARRA dollars could exacerbate contract award problems we previously identified, such as use of inappropriate contract types, inadequate competition, and failure to ensure contract prices are fair and reasonable. Audits of DOT and State contracts used to respond to the Hurricane Katrina emergency found instances in which DOT money was spent inefficiently because grantees used risky contracting methods in spending Federal funds, such as sole-sourced contracts, which resulted in significantly higher costs.<sup>8</sup> For example, we found a State department of transportation awarded two sole-sourced contracts without assurance of fair and reasonable prices, which resulted in the State paying about \$1.7 million more than necessary for bridge repairs.

DOT is taking steps to avoid a repeat of the problems it experienced in response to Hurricane Katrina. For example, it is stepping up its oversight of ARRA funding through outreach to grantees and posting frequently asked questions on the Web sites of DOT's Operating Administrations; and it has implemented a "help desk" e-mail site. Further, DOT's Office of the Senior Procurement Executive (OSPE) revised its Financial Assistance Guidance Manual in March 2009 to reflect the increased demands posed by ARRA. The manual sets a standardized process for grant processing and management. It will be important to widely disseminate this information down to the local grantee level, particularly to those grantees that have little or no experience in managing Federal dollars.

*Address Internal Control Weaknesses and Identify Unused Funds for Use on Other Eligible Projects*

DOT needs to identify and mitigate any internal control<sup>9</sup> weaknesses to be assured that ARRA funding is spent in an efficient and effective manner, and in accordance with Federal laws and regulations. OMB is requiring agencies to immediately assess risk and develop mitigation strategies to prevent internal control weaknesses in areas such as ensuring the prompt award and expenditure of ARRA dollars and minimizing improper payments. Our prior audit work shows that DOT has experienced problems in some of these areas. To comply with OMB's requirements and provide effective oversight of ARRA funding, DOT must: ensure that its risk mitigation plans address internal control weaknesses and actions to prevent them from recurring; identify unused funds promptly and take timely action to free them up for use on other projects; and detect and prevent improper payments.

*Develop Risk Mitigation Plans That Address Internal Control Weaknesses*

DOT and its Operating Administrations need to work with their grantees to correct internal control weaknesses that auditors have identified during DOT's financial statement audits and Single Audit Act reviews.<sup>10</sup> It is critical that DOT use the OMB-required risk assessment process as a way to identify strategies to prevent similar issues with ARRA funds. Taking action to prevent internal control lapses is particularly important for FHWA, which received more than half of DOT's total funding allocation under ARRA. DOT's Single Audit Act reviews related to FHWA

<sup>7</sup> OIG Report Number MH-2007-060, "Baseline Report on Major Project Monitoring of the Dulles Corridor Metrorail Project," July 27, 2007.

<sup>8</sup> OIG Report Number MH-2006-065, "Audit of the Mississippi Department of Transportation's Award of Selected Hurricane Katrina Emergency Repair Contracts," September 6, 2006.

<sup>9</sup> Internal controls provide reasonable assurance of the effectiveness and efficiency of an agency's use of financial resources, the reliability of financial reporting, and compliance with applicable laws and regulations.

<sup>10</sup> The Single Audit Act requires State or local grantees to maintain a system of internal control over all Federal programs in order to demonstrate compliance with pertinent laws and regulations. Single Audit Act reviews are conducted to determine whether grantees are complying with these requirements.

grantees identified internal control weaknesses and instances of noncompliance with grant requirements at State DOTs across the country. For example, in the past year and a half, auditors issued qualified opinions on eight State DOTs' administration of Federal-aid grants because of problems identified during the Single Audit Act reviews.

DOT has been identifying internal control risks and developing a consistent risk management tool to ensure the successful implementation of ARRA. For example, FHWA Headquarters recently issued a memorandum directing its 52 Division Offices to implement a risk management program to identify primary risks in successfully implementing ARRA. First, FHWA directed its Division Offices to assess risks, prioritize them, and report the assessments to Headquarters. Second, the memorandum directed Division Offices to develop a risk management plan that involves "visual monitoring" of items, such as State financial transactions and consultant procurement and administration, enhanced financial oversight of States, and communications and outreach to assist States in mitigating risks. These are good first steps, but FHWA needs to make sure these efforts are conducted consistently and effectively across its 52 Division Offices, which are located in every State, the District of Columbia, and Puerto Rico.

Providing consistent oversight across field locations has presented a challenge in the past, particularly at FHWA. Our prior audit work indicates that FHWA had not always ensured consistency in oversight activities among its Division Offices. For example, our 2009 report on FHWA's oversight of the National Bridge Inspection Program showed that bridge engineers in the 10 States we reviewed did not perform Headquarters-recommended risk assessments of bridge conditions in a consistent or systematic manner.<sup>11</sup> This inhibited FHWA's ability to assess bridge-related risks nationwide, prioritize them, and target those higher priority risks for remediation in coordination with States.

#### *Identify Unused Funds Promptly*

To maximize the impact of ARRA funds on the economy, DOT must improve its controls for identifying unused funds in its financial management systems and taking appropriate action to release them on completed, canceled, and reduced-scope projects. Without sufficient controls, it is possible for unused funds to remain idle for long periods of time. This could prevent other worthy projects from receiving Federal funds and potentially undermine ARRA's ability to stimulate the U.S. economy by spurring construction activity across the country.

In particular, DOT needs to ensure that it is addressing control weaknesses we have identified in the past regarding unused funds. For example, FHWA implemented the Financial Integrity Review and Evaluation (FIRE) in fiscal year 2005 to improve oversight of Federal highway funds, including its ability to identify idle funds that could be freed up for use elsewhere. FIRE has improved FHWA's stewardship of Federal funds, but problems related to idle funds persist. This is evidenced by the fact that, in fiscal year 2008, auditors again found idle funds at FHWA estimated at about \$300 million. Similarly, we found that in 2007 FAA allowed numerous AIP grants to remain inactive and obligations to remain on closed grants, both for excessive periods of time.<sup>12</sup> These examples indicate that further management attention is needed to make sure that DOT's controls are effective at identifying unused funds that could be freed up for use on other eligible projects.

#### *Detect and Prevent Improper Payments*

In its guidance on implementing ARRA, OMB emphasized the need for Federal agencies, including DOT, to prevent improper payments. Improper payments are those made to an ineligible recipient or for an ineligible service, duplicate payments, and payments for services not received. Avoiding improper payments presents a challenge to DOT.

For example, during our review of controls over DOT's contract for Hurricane Katrina emergency disaster relief transportation, we found that an FAA contracting officer routinely authorized invoices for payment without any documentation from the contractor showing that the services had actually been provided.<sup>13</sup> In one instance, this lack of controls resulted in a \$33 million overpayment to the contractor

<sup>11</sup> OIG Report Number MH-2009-013, "National Bridge Inspection Program: Assessment of FHWA's Implementation of Data-Driven, Risk-Based Oversight," January 12, 2009.

<sup>12</sup> OIG Report Number AV-2007-073, "FAA's Oversight of Inactive Airport Improvement Program Grant Obligations," September 13, 2007.

<sup>13</sup> OIG Report Number AV-2006-032, "Report on Internal Controls Over the Emergency Disaster Relief Services Contract," January 20, 2006.

for emergency bus transportation services and chartered aircraft services, which was later recovered.

At FHWA, we have identified oversight weaknesses that led to improper payments, which must be avoided in the ARRA program. For example, in a recent audit of deficiencies in FHWA's oversight of design and engineering (D&E) firms' indirect costs claimed on Federal-aid grants, we reported that Federal funds were used to reimburse unallowable costs totaling nearly \$16 million.<sup>14</sup> This occurred in part due to ineffective oversight by FHWA, State departments of transportation, and the certified public accounting firms hired by the D&E firms.

IMPLEMENTING NEW ACCOUNTABILITY REQUIREMENTS AND PROGRAMS MANDATED BY  
ARRA

In addition to increasing the funding levels of existing programs, ARRA placed additional challenges on DOT by (1) mandating several new reporting requirements that are designed to enhance accountability and transparency and (2) creating two new large programs that provide for \$1.5 billion in supplementary discretionary grants to improve the Nation's transportation infrastructure and \$8 billion in grants for high-speed rail corridors and intercity passenger rail service.<sup>15</sup> To meet these new demands, DOT will need to:

- Implement new ARRA tracking and reporting requirements that are designed to promote accountability and transparency;
- Develop comprehensive plans and sound criteria for the new discretionary grant and passenger rail programs created by ARRA; and
- Develop appropriate oversight strategies for the new programs created by ARRA by drawing lessons learned from DOT's Operating Administrations.

*Implement New Tracking and Reporting Requirements Designed To Promote Accountability and Transparency*

To meet ARRA requirements, DOT must ensure that its financial management systems are able to track ARRA spending and produce reliable information to report on results in a meaningful way. These new requirements are spelled out in OMB's February 2009 implementation guidance. To carry out these requirements, DOT must ensure that its financial management systems are able to clearly and reliably track recovery funds separately from other program funds. Beginning in February 2009, OMB directed DOT and other agencies to distinguish ARRA funds from non-ARRA funds in all agency financial systems, business systems, and reporting systems. Further, OMB's guidance requires agencies to submit regular reports and the information to generate these reports will come largely from DOT's financial management systems. We met with officials in DOT's Operating Administrations to discuss these issues and they informed us they have been working to modify their financial management systems to meet the new ARRA-related requirements. The key will be following through with these plans and making any needed adjustments to DOT's financial management systems as ARRA is implemented.

DOT will need to stay focused on ensuring that its financial management systems are programmed to enable officials to meet ARRA requirements related to the tracking of funds. It will also need to report on the impact of the ARRA investment promptly (such as the number of jobs created) and provide meaningful information in these required reports. For example, beginning on May 8, 2009, current OMB guidance would require DOT to provide monthly financial reports citing obligations, expenditures, and other financial data by Treasury Account, vendor, and award number, and information on allocations of mandatory and entitlement programs by State or other appropriate geographical unit.

DOT also needs to aggressively enforce the new reporting requirements and ensure that grantees are reporting accurate and complete information. Further, DOT would face an even greater challenge if OMB decides to expand current contractor reporting requirements, which is under consideration.

Obtaining accurate information from DOT grantees has been an issue in the safety arena. For example, we previously reported on inaccuracies in FRA's national grade crossing inventory database<sup>16</sup> and significant weaknesses in the data reported by States and motor carriers to the Motor Carrier Safety Status Measure-

<sup>14</sup> OIG Report Number ZA-2009-033, "Oversight of Design and Engineering Firms' Indirect Costs Claimed on Federal-Aid Grants," February 5, 2009.

<sup>15</sup> ARRA stipulates that the discretionary grant program can be used for a variety of projects, including highway, bridge, public transportation, passenger and freight rail, or port infrastructure projects.

<sup>16</sup> OIG Report Number MH-2004-065, "Audit of the Highway Rail-Grade Crossing Safety Program," June 16, 2004.



ment System.<sup>17</sup> Some ARRA information will be available publicly on [www.recovery.gov](http://www.recovery.gov)<sup>18</sup> and, therefore, must meet DOT and OMB data quality requirements. This underscores the need to make sure DOT's financial systems are reporting reliable and complete information. Actions taken in the past to promote complete State reporting of data in the safety arena have included public disclosure of States with reporting problems by means of a data quality map, and individual State reviews to assess data quality issues.<sup>19</sup>

Our prior audit work highlights the need for DOT to focus attention on meeting the new tracking and reporting requirements. In the past, DOT has not always been able to use its financial management systems to ensure accountability for Federal dollars or report on results. For example, in the wake of the 2007 collapse of the I-35W bridge in Minnesota, we testified that FHWA must improve accountability by enhancing its ability to track States' use of Highway Bridge Program funding.<sup>20</sup> FHWA was unable to determine how much of this funding was actually spent on structurally deficient bridges, because its financial management system did not differentiate between spending on structurally deficient bridges and other bridge-related expenditures. This inhibited FHWA's ability to assess the impact of Federal dollars on bridge conditions.

*Develop Comprehensive Plans and Sound Criteria for OST's Discretionary Grant Program and FRA's Passenger Rail Program*

To design these new programs, DOT will need to accomplish a variety of tasks in a short time. First, it must develop a comprehensive plan for each program, including goals and objectives, to ensure that the capital improvements are integrated into a national system. Second, it must develop criteria and a transparent process for selecting projects within the timeframes Congress specified. Third, it must issue clear guidance for program implementation.

DOT is planning for these programs, but meeting statutory deadlines will be difficult due to the number of tasks that must be completed in short timeframes. Although DOT does not face the same deadlines for spending the money that ARRA mandated for existing programs, it is still required to quickly produce planning documentation and guidance. ARRA directs OST to publish criteria for its grant program within 90 days of ARRA enactment, accept applications for grants within 180 days after the criteria are published, and announce all projects selected within 1 year of ARRA enactment. Further, ARRA requires FRA to produce a strategic plan for the passenger rail program within 60 days of ARRA enactment and interim implementation guidance to applicants within 120 days.

*OST's New Discretionary Grant Program*

To meet these deadlines, the Secretary established a working group within OST to develop criteria for the discretionary grant program and determine the best administrative structure. OST also has a task force providing advice, consisting of staff from the Operating Administrations. According to DOT officials, a central issue for the group is determining the most appropriate place to administer the grants—within OST or the Operating Administration that would normally be responsible for a particular type of project. For example, OST could delegate administrative responsibility for a bridge replacement project to FHWA. If the Secretary decides to delegate authority over projects to the Operating Administrations, the Department would need to decide how this delegation of authority would work within the established goals and requirements of ARRA.

*FRA's New Passenger Rail Program*

DOT has not previously implemented the large-scale high-speed passenger rail program called for in the ARRA. It lacks recent experience overseeing the design and construction of a new high-speed rail system—in particular a new, stand-alone high-speed rail system. FRA has allocated staff to plan the high-speed rail and intercity rail service program, determine how to allocate the funds among the three

<sup>17</sup> OIG Report Number MH-2004-034, "Improvements Needed in the Motor Carrier Safety Status Measurement System," February 13, 2004.

<sup>18</sup> The administration created a Web site, [www.recovery.gov](http://www.recovery.gov), to provide information to the public on the planning and implementation of ARRA.

<sup>19</sup> OIG Correspondence Control No. 2006-041, Correspondence to Representative Petri Regarding SafeStat Data Quality, May 7, 2007.

<sup>20</sup> OIG Testimony CC-2007-095, "Federal Highway Administration's Oversight of Structurally Deficient Bridges," September 5, 2007.

eligible purposes,<sup>21</sup> and develop program guidance within the statutory timeframes. Because FRA is a small agency that had few grant programs before ARRA was passed, it is critical for FRA staff to leverage the in-house expertise throughout DOT and determine what additional resources it may need. According to FRA officials, they have consulted with other Operating Administrations for advice and are considering a variety of options to overcome staffing shortfalls and insufficient expertise, such as borrowing staff from FTA or FHWA and hiring consultants.

To design and implement this program, FRA will need to develop strategies to address several tough issues prior to implementation. Those key issues include:

- Ensuring that grantees obtain enforceable and meaningful capital investment agreements with private freight railroads so that users of intercity passenger rail receive benefits from these investments.
- Establishing sufficient controls to be assured that Federal investments do not simply supplant investments the freight railroads already planned to undertake on their rail lines.
- Integrating the capital improvements and associated service enhancements into a national intercity rail system that is tied to an overall strategic plan.
- Acquiring the financial and economic modeling expertise needed to evaluate a project's financing plans and revenue and ridership projections. This is important because most grantees will likely finance their projects through a mix of self-generated revenues (such as through the farebox), and Federal, State, and private investments. Equally important is conducting appropriate analysis of the viability of a high-speed rail project's long-term operating plan to ensure adequate resources are identified up-front that would allow these systems to continue operating over the long run.

*Develop Appropriate Oversight Strategies for New Programs by Drawing Lessons From DOT's Operating Administrations*

Not all of the challenges facing FRA and OST are unique. Like the other DOT Operating Administrations receiving ARRA funds, they will need to eventually focus on deploying sufficient staff to implement these new programs and provide oversight to construction projects to ensure they are properly managed by grantees. However, the oversight challenges facing FRA and OST are exacerbated by the fact that they have limited experience managing large grant programs.

Because both FRA and OST have some time before projects will be under construction, they need to use this period to evaluate the experiences of other Operating Administrations for lessons learned on what has worked well in the past. Then, they will need to decide what type and level of oversight to provide to projects. For example, FRA and OST could use a data-driven, risk-based approach to target their oversight efforts at projects that pose the highest risk due to certain factors, such as those projects with the largest dollar amounts committed or grantees with less experience in managing Federal grants. Along these lines, FHWA is implementing a data-driven, risk-based approach to overseeing the National Bridge Inspection Program, based on our recommendations.

Similarly, FRA and OST could learn from FTA's experience in standing up its Lower Manhattan Recovery Projects program. FTA created a separate Recovery Office to oversee the \$4.55 billion Federal investment.<sup>22</sup> This office included re-assigned FTA staff and consultants to help provide oversight and advice on engineering, financial, environmental, security, and other issues. An approach like this could enable FRA and OST to quickly implement their new programs.

COMBATING FRAUD, WASTE, AND ABUSE

DOT needs to tailor its counter-fraud efforts to adapt to the increase in capital funding associated with the recovery program and the expected surge in construction activity throughout the country. OMB's ARRA implementation guidance directs Federal agencies to be aggressive in preventing fraud, waste, and abuse. Accordingly, DOT will need to:

- Enhance understanding among DOT staff, grantees, and their contractors on how to detect, prevent, and report potential fraud; and
- Take timely and effective action to suspend and/or debar individuals or firms that have defrauded DOT so they do not receive future Federal contracts.

<sup>21</sup>According to FRA, the \$8 billion can be used for three programs: (1) high-speed corridor program, (2) intercity passenger rail service grants, and (3) congestion grants.

<sup>22</sup>OIG Testimony C-2006-056, "Lower Manhattan Reconstruction Lessons Learned from Large Transportation Projects," July 13, 2006.

*Enhance Understanding Among DOT Staff, Grantees, and Their Contractors on How To Detect, Prevent, and Report Potential Fraud*

DOT must target its outreach efforts at deterring fraud schemes that have occurred on past DOT projects and could occur on projects that receive funding under the recovery program. They include false claims for materials and labor, bribes related to contracts for materials or labor, product substitution, and disadvantaged business enterprises fraud. Table 3 on the next page presents a list of common fraud schemes that must be prevented under ARRA. DOT will need to make sure that State and local grantees, and their contractors, understand how to detect, deter, and report these types of transportation-related fraud to the appropriate authorities.

An important way to deter fraud is for DOT staff and grantees to be aware of certain “red flag” indicators typically associated with fraud schemes. For example, any mismarking or mislabeling on products and materials might indicate product substitution fraud. The best way to make individuals aware of these indicators is to conduct systematic fraud prevention education in the field. A description of fraud indicators is presented in exhibit D.

TABLE 3.—COMMON FRAUD SCHEMES FOUND ON DOT-FUNDED PROJECTS

Fraud Scheme	Description
Bid Rigging and Collusion .....	Contractors misrepresent that they are competing against each other when they actually agree to cooperate on the winning bid to increase job profit.
Materials Overcharging .....	A contractor misrepresents how much construction material was used on a job and is paid for excess material to increase job profit.
Time Overcharging .....	A consultant misrepresents the distribution of employee labor to charge for more work hours, or a higher overhead rate to increase profit.
Product Substitution .....	A contractor misrepresents the product used in order to reduce costs for construction materials.
Disadvantaged Business Enterprises Fraud .....	A contractor misrepresents who performed the work in order to appear to be in compliance with contract goals for involvement of minority/women-owned businesses.
Quality-Control Testing Fraud .....	A contractor misrepresents the results of quality control tests to earn contract incentives falsely or to avoid production shutdown in order to increase profits or limit costs.
Bribery .....	A contractor compensates a government official in order to obtain contracts or permit overcharges.
Kickbacks .....	A contractor or subcontractor misrepresents the cost of performing work by secretly paying a fee for being awarded the contract and, therefore, inflating the cost to the government.
Conflicts of Interest .....	A contracting or oversight official has an undisclosed financial interest in a contractor or consultant, resulting in improper contract award or inflated costs.

Source: DOT OIG.

DOT has taken action to strengthen its fraud awareness and outreach efforts to more aggressively combat fraud, but continued vigilance and follow-through at all levels of the Department are needed to be assured that ARRA dollars are spent appropriately. DOT is taking action on fraud prevention in two key areas. First, DOT and the Operating Administrations receiving ARRA funds will need to increase outreach efforts to recipients of Federal grants and contracts to ensure they have meaningful ethics programs and sound internal controls to recognize, prevent, and report fraud. OIG has been working constructively with DOT officials to assist them in their counter-fraud outreach efforts. For example, earlier this month, the Secretary of Transportation and the Inspector General hosted a web cast to DOT staff that focused on how to prevent fraud, waste, and abuse involving common fraud schemes. Our special agents have also been and will continue providing fraud awareness briefings to DOT staff and grantees at the State and local levels throughout the Nation.

Second, DOT must continue to follow through to fully implement its ethics program. Last year, we reported that DOT needed to develop and maintain a robust ethics program to promote integrity across transportation programs. In response, in June 2008, the Department instituted an enhanced annual ethics training program for all acquisition and grants management personnel Department-wide. The implementation of ARRA underscores the need to follow through and fully implement this important annual training requirement.

*Take Timely and Effective Action To Suspend and/or Debar Individuals or Firms That Have Defrauded DOT so They do not Receive Future Federal Contracts*

DOT will need to ensure timely and effective action is taken on suspension and debarment cases against those individuals or firms that have defrauded the Department. Federal regulations prohibit firms and individuals without satisfactory records of integrity and business ethics from receiving Federal contracts or assistance agreements. DOT revised its policy in June 2005, in part, to improve timely decisionmaking of suspension and debarment actions. However, our ongoing work shows that the Department needs to improve the policy—and its implementation—to provide for more timely processing and reporting of suspension and debarment actions.

Our work has shown that the Operating Administrations do not consistently take suspension and debarment actions in a timely manner, even though the DOT order requires such decisions be made within 45 days. Taking action to address these deficiencies is critical as DOT embarks on the implementation of ARRA. For example, over half of the 45 actions we reviewed (56 percent) were not processed within the required 45 days. For 19 of these actions, the Operating Administrations took from 10 days to more than 2½ years longer than the 45-day standard to render final decisions. The remaining six debarment actions we reviewed are still awaiting a decision from the debarring officials, which currently takes between 165 and 945 days.

Further, in February 2009, the Government Accountability Office (GAO) testified that it had confirmed allegations that businesses and individuals suspended or debarred for egregious offenses were continuing to receive Federal contracts.<sup>23</sup> Our work did not find any DOT contracts or assistance agreements awarded to suspended or debarred firms or individuals. However, deficiencies in DOT's suspension and debarment policy and implementation leave DOT, as well as other Federal agencies, vulnerable to doing business with fraudulent or unethical firms or individuals. This risk will increase significantly under the recovery program.

#### CONCLUSIONS AND RECOMMENDATIONS

The significant increase in funding for transportation projects associated with ARRA adds new challenges on top of the longstanding ones we have highlighted in past reports to the Secretary of Transportation and Congress. At the same time, ARRA presents an opportunity for DOT to make needed or neglected investments in the repair, rehabilitation, and modernization of our aging transportation infrastructure; to fund projects to reduce congestion; and to improve the safety of our Nation's transportation system.

We recognize the TIGER team-led efforts that the Department has underway to successfully implement the ARRA program. To assist in these efforts, our report condensed the challenges into 10 areas where DOT must exhibit sustained and effective actions and oversight. To that end, our future audit work will use a risk-based strategy, carried out in coordination with the Government Accountability Office, to evaluate DOT's management of the ARRA programs and its oversight over grantees and contractors receiving recovery funding.

To ensure sufficient consideration of the potential risks discussed in this report, we recommend that the Secretary of Transportation, through the DOT TIGER team, develop an oversight implementation plan that outlines the key actions DOT already has underway or will take to:

- Acquire sufficient personnel with relevant expertise to oversee grantees;
- Adhere to existing Federal requirements for programs funded under ARRA;
- Evaluate the credibility and completeness of cost and schedule estimates;
- Oversee grantees' contracting management activities and ensure selection of appropriate contract types;
- Address internal control weaknesses and identify unused funds for use on other eligible projects;
- Implement new ARRA tracking and reporting requirements that are designed to promote accountability and transparency;
- Develop comprehensive plans and sound criteria for the new discretionary grant and passenger rail programs created by ARRA;
- Develop appropriate oversight strategies for the new programs created by ARRA by drawing lessons from DOT's Operating Administrations;
- Enhance understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud; and

<sup>23</sup> GAO Testimony GAO-09-419T, "Excluded Parties List System: Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds," February 26, 2009.

—Take timely and effective action to suspend and/or debar individuals or firms that have defrauded the Department so they do not receive Federal contracts in the future.

In addition, the plan should prioritize the greatest risks for DOT and address open OIG recommendations from prior audit reports that have relevance to the implementation of ARRA.

#### AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided a draft of this report to DOT for review and comment on March 18, 2009. DOT provided us its formal comments on March 26, 2009, which we incorporated into this report, as appropriate. DOT's complete comments are included as the appendix to this report. DOT also provided informal technical clarifications, which we incorporated into this report, as appropriate. In its formal comments, DOT agreed that vigilant oversight of ARRA funding is critical to the successful implementation of ARRA and described some of the efforts it has underway, including the work of the DOT TIGER team. We have included highlights of DOT's key efforts in our report and recognize the ongoing commitment and actions of the Department's leadership to ensuring the efficient and effective use of ARRA funds. DOT also concurred with our recommendation and agreed to provide us with a document outlining actions taken and planned to address our 10 focus areas.

#### ACTIONS REQUIRED

We consider DOT's planned actions to be reasonable. However, in accordance with Department of Transportation Order 8000.1C, we request that DOT provide us with the plan called for in our recommendation within 30 days of the date of this report.

If you have any questions, please call me at (202) 366-1959, or Ann Calvaresi-Barr, Principal Assistant Inspector General for Auditing and Evaluation at (202) 366-1427.

#### EXHIBIT A.—SCOPE AND METHODOLOGY

The objective of this audit was to highlight key ARRA oversight challenges—based on prior OIG reports and other agencies' relevant audit work—and identify actions DOT should take now in support of ARRA requirements. To address our audit objective, we conducted a comprehensive review of our prior work on relevant surface transportation and aviation oversight issues, including: work on major highway and transit projects, Hurricanes Katrina and Rita recovery projects, and AIP grant oversight projects. We also reviewed the relevant work of other organizations that have reported on transportation-related oversight issues, including GAO.

Specifically, we:

- Reviewed the existing body of OIG, GAO, and others' work (for example, Single Audits) to identify past challenges that are likely to apply to projects funded under ARRA.
- Held discussions with OST, FHWA, FRA, FTA, FAA, and MARAD officials; DOT's TIGER Team; and representatives of surface transportation groups and an aviation constituency group to identify what they believe are the oversight challenges to the economic stimulus projects and obtain information on DOT's preliminary efforts to prepare for the implementation of ARRA.
- Identified and analyzed internal DOT Operating Administration reports to identify challenges previously known within DOT.
- Coordinated with OIG's investigative offices to identify other work that was relevant to oversight challenges facing DOT.

We conducted this performance audit from January through March 2009 in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### EXHIBIT B.—RELEVANT OIG REPORTS AND TESTIMONIES

OIG Testimony Number CC-2009-045, "Top Management Challenges Facing the Department of Transportation," March 10, 2009.

OIG Report Number ZA-2009-033, "Oversight of Design and Engineering Firms' Indirect Costs Claimed on Federal-Aid Grants," February 5, 2009.

OIG Report Number MH-2009-013, "National Bridge Inspection Program: Assessment of FHWA's Implementation of Data-Driven, Risk-Based Oversight," January 12, 2009.

OIG Report Number AV-2009-012, "FAA's Management and Maintenance of Air Traffic Control Facilities," December 15, 2008.

OIG Report Number PT-2009-005, "Fiscal Year 2009 Top Management Challenges," November 17, 2008.

OIG Report Number MH-2008-086, "Baseline Report on the Lower Manhattan Recovery Projects," September 26, 2008.

OIG Report Number AV-2008-002, "Prioritization of Airport Improvement Program Funding," October 26, 2007.

OIG Report Number CR-2007-079, "Growth in Highway Construction and Maintenance Costs," September 26, 2007.

OIG Report Number AV-2007-073, "FAA's Oversight of Inactive Airport Improvement Program Grant Obligations," September 13, 2007.

OIG Report Number AV-2007-066, "Review of Congressional Earmarks Within Department of Transportation Programs," September 7, 2007.

OIG Testimony Number CC-2007-095, "Federal Highway Administration's Oversight of Structurally Deficient Bridges," September 5, 2007.

OIG Report Number MH-2007-060, "Baseline Report on Major Project Monitoring of the Dulles Corridor Metrorail Project," July 27, 2007.

OIG Report Number AV-2007-014, "Oversight of Airport Improvement Program Hurricane Grants," December 13, 2006.

OIG Report Number MH-2006-065, "Audit of the Mississippi Department of Transportation's Award of Selected Hurricane Katrina Emergency Repair Contracts," September 6, 2006.

OIG Testimony Number CC-2006-056, Before the Committee on Homeland Security Subcommittee on Management, Integration, and Oversight, U.S. House of Representatives, "Lower Manhattan Reconstruction: Lessons Learned from Large Transportation Projects," July 13, 2006.

OIG Report Number AV-2006-051, "Internal Controls over Payments for Emergency Disaster Relief Transportation Services," June 30, 2006.

OIG Report Number AV-2006-032, "Internal Controls over the Emergency Disaster Relief Transportation Services Contract," January 20, 2006.

OIG Report Number FI-2006-011, "Inactive Obligations," November 14, 2005.

OIG Report Number AV-2005-062, "Safety Oversight of an Air Carrier Industry in Transition," June 3, 2005.

OIG Report Number MH-2005-046, "FHWA Needs to Capture Basic Aggregate Cost and Schedule Data to Improve Its Oversight of Federal-Aid Funds," February 15, 2005.

OIG Report Number FI-2005-044, "FAA Inactive Obligations," January 31, 2005.

OIG Report Number MH-2005-012, "Managing Risk in the Federal-Aid Highway Program," November 19, 2004.

OIG Report Number MH-2004-098, "Audit of the Tren Urbano Rail Transit Project," September 29, 2004.

OIG Report Number AV-2004-094, "FAA's Administration and Oversight of Regionally Issued Contracts," September 28, 2004.

OIG Report Number IN-2003-003, "Audit of the Springfield Interchange Project," November 22, 2002.

OIG Report Number FI-2002-092, "Oversight of Cost-Reimbursable Contracts," May 8, 2002.

EXHIBIT C.—ARRA ALLOCATION AND EXPENDITURE DEADLINES AND REDISTRIBUTION REQUIREMENTS

Funding Type	Amount	Available Through	Deadlines
FAA Infrastructure .....	\$200 million .....	9/30/2010	N/A.
FAA Airport Improvement Program .....	\$1.1 billion .....	9/30/2010	50 percent of total to be awarded within 120 days of enactment. 100 percent of total within 1 year of enactment.
FHWA Infrastructure .....	\$27.5 billion .....	9/30/2010	50 percent of total to be obligated within 120 days from the apportionment or forfeit the unobligated portion of that 50 percent to redistribution process. 100 percent of remainder within 1 year from the apportionment or forfeit 100 percent of unobligated funds to redistribution process.
FRA Rail .....	\$8 billion .....	9/30/2012	N/A.

Funding Type	Amount	Available Through	Deadlines
FRA Amtrak .....	\$1.3 billion .....	9/30/2010	N/A.
FTA Transit Capital Assistance .....	\$6.9 billion .....	9/30/2010	50 percent of total to be obligated within 180 days from the apportionment or forfeit the unobligated portion of that 50 percent to redistribution process. 100 percent of remainder within 1 year from the apportionment or forfeit 100 percent of unobligated funds to redistribution process.
FTA Transit Capital Investment Grants	\$750 million .....	9/30/2010	Priority for projects currently in construction or projects that can obligate funds within 150 days of enactment of Act.
FTA Fixed Guideway Infrastructure Investment.	\$750 million .....	9/30/2010	50 percent of total to be obligated within 180 days from the apportionment or forfeit the unobligated portion of that 50 percent to redistribution process. 100 percent of remainder within 1 year from the apportionment or forfeit 100 percent of unobligated funds to redistribution process.
MARAD .....	\$100 million .....	9/30/2010	100 percent of total to be obligated within 180 days of the date of distribution.
OST Discretionary .....	\$1.5 billion .....	9/30/2011	N/A.
OIG .....	\$20 million .....	9/30/2013	N/A.

**EXHIBIT D.—“RED FLAG” INDICATORS FOR COMMON FRAUD SCHEMES AND HOW TO REPORT SUSPECTED FRAUD**

The following are brief descriptions of selected fraud schemes commonly seen on transportation projects, along with sample “Red Flag” indicators for each scheme. It is important to note that the presence of one or more indicators does not prove fraud, nor are the indicators shown all inclusive for each of the schemes described.

*Bid Rigging and Collusion*

In bid rigging and collusion schemes, contractors misrepresent the competition against each other when, in fact, they agree to cooperate on the winning bid to increase job profit. Watch for:

- Unusual bid patterns: too close, too high, rounded numbers, or identical winning margins or percentages.
- Different contractors making identical errors in contract bids.
- Bid prices dropping when a new bidder enters the competition.
- Rotation of winning bidders by job, type of work, or geographic area.
- Losing bidders hired as subcontractors.
- Apparent connections between bidders: common addresses, personnel, or phone numbers.
- Losing bidders submitting identical line item bid amounts on nonstandard items.

*Materials Overcharging*

In materials overcharging schemes, a contractor misrepresents how much construction material was used on the job and is then paid for excess material to increase job profit. Watch for:

- Discrepancies between contractor-provided quantity documentation and observed data, including yield calculations.
- Refusal or inability to provide supporting documentation.
- Contractor consistently loading job materials into equipment away from inspector oversight.
- Truck weight tickets or plant production records with altered or missing information.
- Photocopies of quantity documentation where originals are expected.
- Irregularities in color or content of weight slips or other contractor documents used to calculate pay quantities.

*Time Overcharging*

In a time overcharging scheme, a consultant misrepresents the distribution of employee labor on jobs in order to charge for more work hours or a higher overhead rate, to increase profit. Watch for:

- Unauthorized alterations to time cards and other source records.

- Billed hours and dollars consistently at or near budgeted amounts.
- Time cards filled out by supervisors, not by employees.
- Photocopies of timecards where originals are expected.
- Inconsistencies between a consultant's labor distribution records and employee timecards.

*Product Substitution*

In product substitution schemes, a contractor misrepresents the product used in order to reduce costs for construction materials. Watch for:

- Any mismarking or mislabeling of products and materials.
- Contractor restricting or avoiding inspection of goods or service upon delivery.
- Contractor refusing to provide supporting documentation regarding production or manufacturing.
- Photocopies of necessary certification, delivery, and production records where originals are expected.
- Irregularities in signatures, dates, or quantities on delivery documents.
- High rate of rejections, returns, or failures.
- Test records reflect no failures or a high failure rate but contract is on time and profitable.
- Unsigned certifications.

*Disadvantaged Business Enterprises (DBE) Fraud*

In disadvantaged business enterprises schemes, a contractor misrepresents who performed contract work in order to appear to be in compliance with contract goals for involvement of minority or women-owned businesses. Watch for:

- Minority owner lacking background, expertise, or equipment to perform sub-contract work.
- Employees shuttling back and forth between prime contractor and minority-owned business payrolls.
- Business names on equipment and vehicles covered with paint or magnetic signs.
- Orders and payment for necessary supplies made by individuals not employed by minority-owned business.
- Prime contractor facilitated purchase of minority-owned business.
- Minority-owned business owner never present at job site.
- Prime contractor always uses the same minority-owned business.

*Quality-Control Testing Fraud*

In quality-control testing schemes, a contractor misrepresents the results of quality control (QC) tests to falsely earn contract incentives or to avoid production shut-down in order to increase profits or limit costs. Watch for:

- Contractor employees regularly taking or labeling QC samples away from inspector oversight.
- Contractor insisting on transporting QC samples from the construction site to the lab.
- Contractor not maintaining QC samples for later quality assurance (QA) testing.
- Contractor challenging results, or attempting to intimidate QA inspectors who obtain conflicting results.
- Photocopies of QC test results where originals are expected.
- Alterations or missing signatures on QC test results.

*Bribery*

In bribery schemes, a contractor compensates a Government official to obtain a contract or permit contract overcharges. Watch for:

- Other Government inspectors at the job site noticing a pattern of preferential contractor treatment.
- Government official having a lifestyle exceeding his/her salary.
- Contract change orders lacking sufficient justification.
- Oversight officials socializing with or having business relationships with contractors or their families.

*Kickbacks*

In kickback schemes, a contractor or subcontractor misrepresents the cost of performing work by secretly paying a fee for being awarded the contract and therefore inflating job costs to the Government. Watch for:

- Unexplained or unreasonable limitations on the number of potential subcontractors contracted for bid or offer.
- Continuing awards to subcontractors with poor performance records.



- Non-award of subcontract to lowest bidder.
- “No-value-added” technical specifications that dictate contract awards to particular companies.

*Conflicts of Interest*

In conflict of interest schemes, a contracting or oversight official has an undisclosed financial interest in a contractor or consultant, resulting in improper contract award or inflated costs. Watch for:

- Unexplained or unusual favoritism shown to a particular contractor or consultant.
- Government official disclosing confidential bid information to a contractor or assisting the contractor in preparing the bid.
- Employee having discussions about employment with a current or prospective contractor or consultant.
- Close socialization with and acceptance of inappropriate gifts, travel, or entertainment from a contractor.
- Vendor or consultant address is incomplete or matching employee’s address.
- Government official leasing or renting equipment to a contractor for performing contract work.

*Reporting Concerns About Fraud, Waste, or Abuse*

OIG maintains a Hotline to report allegations of fraud, waste, and abuse in DOT programs or operations. Allegations may be reported by DOT employees, contractors, or the public. The OIG Hotline is available 24 hours a day, 7 days a week. Individuals who contact the Hotline, via telephone or letter, are not required to identify themselves. However, persons who report allegations are encouraged to identify themselves in the event additional questions arise as the OIG evaluates or pursues their allegations.

Report suspicions and allegations of fraud, waste, and abuse to OIG by using one of the following methods:

- Online complaint form: [www.oig.dot.gov/hotlineform.jsp](http://www.oig.dot.gov/hotlineform.jsp)
- Telephone: (800) 424-9071
- Fax: (540) 373-2090
- E-mail: [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov)
- Mail: DOT Inspector General, P.O. Box 708, Fredericksburg, VA 22404-0708

APPENDIX—MANAGEMENT COMMENTS

MEMORANDUM TO: Calvin L. Scovel, III, Inspector General; Joel Szabat, Deputy Assistant Secretary for Transportation Policy  
 FROM: Lana Hurdle, Acting Assistant Secretary for Budget and Programs; Linda J. Washington Assistant Secretary for Administration  
 SUBJECT: Departmental Comments on Office of Inspector General (OIG) Draft Report, “American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation”

The Department of Transportation is committed to performing an outstanding job implementing the President’s initiative to enhance economic growth through the American Recovery and Reinvestment Act (ARRA). This commitment to excellence started well in advance of the act being signed into law. In January, the Department assembled a leadership team to provide oversight and serve as a conduit for coordinated and consistent intermodal implementation of the act. Under the auspices of this overall Transportation Investment Generating Economic Recovery (TIGER) Team, the leadership created a dynamic forum for exchanging information and provided guidance for consistent action throughout the Department. The benefits of the Department’s fast response in anticipation of ARRA are already becoming apparent. For example, these efforts positioned DOT to rapidly obtain direct hire and rehired annuitant authority from OPM. Further, a DOT risk management tool was developed early to strengthen internal DOT controls and the tool was subsequently adopted verbatim by OMB for Government-wide application. In addition, the TIGER Team is using leading edge, web-based interactive technology to enable expedited information sharing and data tracking. For example, it developed a web-based interactive master planning document that tracks progress and assigns responsibility for each of the Department’s major actions. We also created a web-based capability for tracking action and responsibility on recommendations made by the OIG and the Government Accountability Office (GAO) pertaining to ARRA implementation.

In addition to the overall perspective provided by the TIGER Team, it also created the capabilities to provide detailed guidance and leadership in key areas affecting ARRA implementation. Individual stewardship groups were established to gather

expertise from across the Department to address common issues and identify coordinated and appropriate actions. These groups provide leadership in the areas of financial stewardship, data collection, procurement, and grant management, job measurement, information technology and communication. Finally, an Accountability Stewardship group has been established with the participation of TIGER leadership, the OIG and GAO. The purpose of this group is to achieve the type of transparency envisioned by ARRA, and provide an efficient forum for sharing information between management and the audit entities.

We appreciate the information provided in the OIG's draft report and will provide detailed information to the OIG on actions taken and planned in each of the 10 emphasis areas identified in the report. We intend to provide this information within 30 days of the final report's issuance. Finally, please note that we shared with your staff, a separate listing of technical and specific comments from throughout DOT to correct errors in your report and for your consideration in finalizing the report. Please contact Martin Gertel at (202) 366-5145 with any questions or if you require further information.

Senator MURRAY. Thank you very much for that.

What is your biggest concern regarding the Department's implementation of the Recovery Act?

Mr. SCOVEL. Our scan that we have underway, phase two of our risk-based strategy will identify across every mode the extent to which 10 individual focus areas, previously identified, are being addressed in each mode. Frankly, that doesn't concern me too, too much.

Our audit plan will subject every mode to what amounts to a full-body scan. We are putting them under an MRI to see the extent to which these focus areas' potential problems are present in all the modes. We will know within about 90 days, and we will be reporting to you and the Secretary.

What does keep me awake at night—and frankly, it is unknowable—is the extent to which fraud and waste will infiltrate the program. The commonly used figure of 7 percent lost to fraud would mean the equivalent of 1.5 Wilson Bridges right down the Potomac, and that is far too important a sum and far too much potential infrastructure to be lost. Our investigators will be doing everything they can to stem that.

Senator MURRAY. Have you given any specific recommendations to the Department about how to deal with that?

Mr. SCOVEL. Yes, we have. And our specific recommendations so far include our very proactive approach to briefing throughout the Department, to State and local officials, and to contractors at all levels.

I would like to give great credit to Secretary LaHood. He has been very supportive in this effort, and he and I cohosted a web cast that was broadcast throughout the Department back in March. He has committed himself and the entire Department to doing it by the book. And I am, frankly, very encouraged by that because it speaks to his commitment to both program integrity and to the fraud prevention effort.

Senator MURRAY. Okay. We would like you to keep this subcommittee fully aware of any potential problems that you see out there.

Mr. SCOVEL. We certainly will.

Senator MURRAY. Okay. And I understand that a number of inspectors general from across the Federal Government are meeting and communicating regularly about their experiences as well with the Recovery Act. Are you participating in that network?

Mr. SCOVEL. Madam Chairman, yes, I am. I am a statutory member of the Recovery Accountability and Transparency Board, headed by Earl Devaney, a former IG.

In addition, I was asked to co-chair a special working group composed of all 28 IGs whose agencies are receiving recovery funding. The idea is to communicate best practices, coordinate efforts, and reach out to State and local officials so that we can coordinate with them on how to best protect taxpayer dollars.

Senator MURRAY. Any lessons learned from your participation in that?

Mr. SCOVEL. We are just starting. On the RAT Board, we are focusing on the transparency element, the recovery.gov piece. The accountability program emphasis will be satisfied by this special working group that I am co-chairing along with a member of Mr. Devaney's staff, Jack Higgins, a distinguished former IG in his own right.

Senator MURRAY. Okay, very good.

Well, as I said, there is a full supplemental Appropriations Committee hearing that most of our members, including myself, need to be at. So we will have to cut it short at this point.

#### ADDITIONAL COMMITTEE QUESTIONS

I do have some questions I would like to submit for answers in writing. I know other subcommittee members do as well. But I really appreciate your staying on top of this and staying with us.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED TO HON. RAY LAHOOD

##### QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

###### IMPLEMENTATION OF THE RECOVERY ACT

*Question.* At the end of March, the Inspector General issued a report on the challenges that your Department faces in implementing the Recovery Act.

As I mentioned in my opening statement, one of the challenges that the Inspector General identified in his report is that the Department must be able to take timely action in suspending or debaring people who have defrauded the Department from receiving any more Federal contracts. I believe that the Department must address this issue if it wants to avoid the kind of waste, fraud, and abuse that undermines the public's confidence.

What response have you given the Inspector General on how the Department will combat the waste, fraud and abuse of Recovery funds?

*Answer.* In response to your inquiry, I have attached the Deputy Secretary of Transportation's May 19, 2009, response to the Inspector General concerning our actions to improve the suspension and debarment program across the Department and thereby combat potential waste, fraud, and abuse of Recovery Act funds.

###### OVERSIGHT OF THE FORMULA GRANTS FOR HIGHWAYS AND TRANSIT

*Question.* The Department has distributed over \$34 billion in formula grants provided through the Recovery Act for highway and public transportation investments. As I discussed in my opening statement, these formula grants present a unique challenge to DOT. The Department will have to oversee the use of these funds in addition to the regular highway and transit formula grants. It must track the two different kinds of formula grants separately, and fulfill special reporting requirements on the use of Recovery funds.

How will the Department target its resources so that it can oversee the use of Recovery funds at the same time that it must run the regular formula grants programs?

Answer. Both FHWA and FTA have staffing plans to ensure sufficient workforce resources are available to oversee both regular formula grants and ARRA formula grants. Existing oversight procedures have been replicated to address ARRA activities but with more robust features to accommodate the added scrutiny expected for Recovery Act programs, such as stewardship agreements with States, risk management assessments and mitigation plans, and cooperation with the Department's Inspector General to review suspension/debarment referrals. Applying unique Treasury Account Fund Symbols and specific ARRA codes for all reporting will help ensure that the funds and resultant program implementation elements are tracked appropriately using existing systems that have been appropriately modified to accommodate ARRA reporting requirements in addition to regular reporting requirements. Further, recipients have been issued clear ARRA-specific reporting forms and corresponding guidance, such as instructions not to mix program funds in a single grant. Staff are aware of the challenges and, although systems, guidance and other preventative measures have been put in place to avoid discrepancies, these staff will also actively work to monitor and validate reporting under both regular and ARRA reporting deadlines.

#### PROJECTS BEING BUILT WITH RECOVERY ACT FUNDS

*Question.* Under the regular highway program, States may spend some of their traditional highway funds on transit projects. For the funds provided in the Recovery Act, we expanded this feature of the highway program to include port and railroad investments. Ports and railroads are an essential part of the Nation's transportation system, and this provision provides States with another option for investing in transportation without imposing any new requirements on them.

To date, however, the vast majority of highway Recovery funds have been obligated for traditional highway projects, and a good portion of these projects are for resurfacing.

As States have more time to develop their highway grant applications, do you believe that they will invest in some more complex projects or do you believe they will continue to invest heavily in road resurfacing?

Answer. Since the States are also in the process of obligating their regular Federal-aid highway funds, looking at the Recovery Act projects alone does not provide a complete picture. The emphasis on quickly obligating the first half of the Recovery Act funds to get the fastest economic impact necessitated States' using their Recovery Act funds for projects that were ready for immediate obligation. These would have been projects, including complex projects, already at the end of the project development pipeline and those that could be advanced through the pipeline quickly. Of course, many of those that can be advanced quickly are resurfacing projects. We are also seeing investment in technology, such as intelligent transportation systems, that often takes second place behind necessary road preservation projects. States continue to add projects to their lists for Recovery Act funding and only time will tell which projects they will advance with the Recovery Act funds.

#### GRANTS FOR ENERGY EFFICIENCY

*Question.* Public transportation is an important way to reduce the impact of daily transportation on the environment. Even so, transit agencies themselves can make improvements in reducing their own impact on the environment.

Working with Senator Dodd, we included \$100 million for a competitive program for transit agencies to make capital investments that will reduce their energy use and greenhouse gas emissions.

Mr. Secretary, what level of interest are you getting in this program?

Answer. We have experienced a significant level of interest in the TIGGER program. We are about halfway through cataloguing and databasing all of submissions received by the May 22, 2009 deadline, and if current trends continue, we will have reviewed approximately 240 proposals containing over 400 individual projects, whose combined total approximates \$1.6 billion in funding requests. Given that only \$100 million was appropriated under ARRA, we do not expect to be able to fund every meritorious project.

*Question.* Do you believe Congress should do even more in reauthorization in terms of pushing Federal assistance for highways and transit to promote clean fuels?

Answer. Based on the number of applications we expect, I think I can say there is already a strong interest among America's transit agencies for additional funding for worthwhile projects that reduce energy usage and greenhouse gas emissions. I think it's premature to assess the effectiveness or impact of the TIGGER program

at this stage, but this is something I'm willing to address with you and your colleagues as we work on developing the next surface transportation authorization bill.

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QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

*Question.* Secretary LaHood, at the hearing, I asked you what you saw as the shortcomings of the California plan for high speed rail. You assured me that California was far ahead of other High Speed Rail Corridors in the United States and that you had no doubt that California would be at the top of the list of projects funded. However, you stated that there were some "little things" that would improve California's proposal.

Please identify specifically the items that concern you about the California High Speed Rail Authority's plan to develop high speed rail.

*Answer.* California's high-speed rail plan is very ambitious and will take a decade to complete. Phase 1 of the California system is estimated to cost approximately \$35 billion and stretches from San Francisco to Los Angeles and Anaheim. Our High-Speed Intercity Passenger Rail program as funded with \$8 billion from the Recovery Act represents a down payment on the long-term vision to bring high speed rail to this country. Even this significant investment is enough only to make a contribution toward a section of the phase 1 for the California high-speed rail system and we expect to receive other applications as well. It will be important for California to identify achievable goals in its application that meet the requirements for the use of recovery funds.

*Question.* It is my understanding that high speed rail systems operating in other parts of the world would all fail to comply with current FRA regulations, making it impossible for American high speed rail to adopt some systems that have proven safe in other parts of the world.

What progress is being made to update and adapt Federal regulations so that high speed rail systems proven from around the world may be used in the United States?

*Answer.* FRA's safety regulations for railroad passenger equipment have grown out of an operating environment in which passenger trains generally operate commingled with heavier freight trains and over highway-rail grade crossings used by heavier highway vehicles than in Europe or Asia. As a result, passenger equipment built for operation in those continents would likely not be designed in the same way and would not meet FRA's safety standards. Nevertheless, there are procedures currently in place to request FRA approval to allow the safe use of such equipment in the United States, and FRA is engaged in discussions and reviews of several draft proposals for California alone: the California High-Speed Train Project, Caltrain's next generation equipment, and DesertXpress.

Looking forward, FRA has been considering ways to amend our regulations to facilitate the introduction of high speed rail systems with proven safety records elsewhere in the world. A comprehensive review is ongoing of international crashworthiness standards as well as the differences in the operating environments for which those standards are based. In certain countries, the risk associated with high speed transport is addressed using complimentary measures for risk reduction, including collision avoidance and post-accident mitigation, together with crashworthiness requirements. Gaps in crashworthiness performance are mitigated by efforts to reduce the exposure to harm, such as by implementing advanced train control systems, separating freight from passenger operations, and maintaining sealed corridors without any highway-rail grade crossings.

FRA will continue its close examination of international approaches to high speed rail safety for their application to the United States, and will continue to work with the industry, States, and other stakeholders to develop appropriate strategies for the safe introduction in the United States of high speed rail systems operating elsewhere in the world.

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QUESTION SUBMITTED BY SENATOR SUSAN COLLINS

*Question.* The American Recovery and Reinvestment Act was an important step forward in efforts to rehabilitate and improve our Nation's transportation infrastructure system, but there is more that can be done.

Maine has struggled for years with the Federal truck weight limit. Under current law, trucks weighing 100,000 pounds are allowed to travel on Interstate 95 from the border of Maine with New Hampshire, to Augusta, Maine. At that point, trucks weighing more than 80,000 pounds are forced off Interstate 95, which proceeds north to Houlton, a distance of more than 200 miles. As a result, heavy trucks are

forced onto smaller, secondary roads that pass through our cities, towns, and villages, creating safety concerns.

Raising the Federal truck weight limit for Maine to 100,000 pounds would keep heavy trucks on the interstates, which are designed to carry more weight than the rural roads. This change is widely supported by public officials throughout Maine, including the Governor, Maine Department of Transportation, the Maine Secretary of State, and the Maine State Police.

Trucks weighing up to 100,000 pounds are permitted on interstate highways in New Hampshire, Massachusetts, and New York as well as the Canadian provinces of New Brunswick and Quebec. The weight limit disparity on various segments of Maine's Interstate Highway System is a significant impediment to commerce, increases wear-and-tear on our secondary roads, and puts our people needlessly at risk. Will the Department of Transportation work with the State of Maine in its efforts to secure an exemption from the 80,000 pound Federal truck weight limit, similar to the limit in New Hampshire and other States?

Answer. The Federal Government has a sizable investment in the Interstate System, and Congress balanced many parameters, including commerce, safety, and system preservation, to establish the current Federal truck size and weight limits.

As you know, Congress has granted a variety of statutory exceptions to the 80,000 lbs. weight limit. These exceptions are generally restricted by commodity or vehicle configuration. In addition, States that had higher axle and gross weights when Congress established the weight limits and bridge formula were given "grandfather rights" and were allowed to retain the existing weight limits. Off the Interstate System, States may allow heavier weights than are allowed under Federal law on the Interstate System. Maine exercised this authority, and raised its weight limits off the Interstate System to 100,000 lbs., which resulted in the weight limit disparity you described in your question.

Truck size and weight limits are critically important to maintaining our roadways. Heavy axle loads have a significant effect on the Interstate system, as well as on secondary roads. Research indicates that as axle weights increase, the level of infrastructure damage rises significantly. A consistent national standard for vehicle dimensions on the Interstate System is of primary importance to facilitating interstate commerce.

As you know, Congress must enact into law any exceptions to the current truck size and weight limits. Although the Department does not have the authority to permit such exceptions, I would be pleased to hear more about your concerns.

#### QUESTIONS SUBMITTED BY SENATOR GEORGE V. VOINOVICH

*Question.* In your letters to the State departments of transportation (DOT), you spoke about wanting States to keep their stimulus funding if projects came in below estimate or if the State DOT's management of a project saved money. Essentially, a State DOT would non-perform work on a project, which in turn would release stimulus funds. If this occurs after September 30, 2010, would the State DOT still be able to keep the funds, or would they be required to return the funds to U.S. DOT?

Answer. No, States are not able to obligate or reobligate funds after September 30, 2010. The Recovery Act specified a period of availability (September 30, 2010) for Highway Infrastructure Investment funds. Deobligated funds are available for reobligation to another Recovery Act eligible activity within the State during the period of availability, which in this instance ends on September 30, 2010, but are also subject to 120-day and 1-year redistribution if deobligated and not timely reobligated within those periods. Once the period of availability for obligation has expired, funds will not be permitted to be reobligated.

The letters to the State DOTs were sent to encourage them to rapidly adjust project obligations to contract amounts in order to maximize the impact of the Recovery Act on transportation infrastructure and discourage/prevent inactive obligations. The letters are in keeping with FHWA regulations (23 CFR § 630.106(a)(4)-(6)), which requires States to make a downward adjustment in the amount obligated to the project, if the project comes in below estimate and has decreased by \$250,000. Additionally, FHWA is actively working with State DOTs to ensure that States meet the 120-day and 1-year obligation requirements.

*Question.* The Dayton International Airport has submitted two projects to the FAA seeking stimulus funding. The first project would provide for the replacement of the Airport's existing Security Systems. The second project would provide for the replacement of lighting infrastructure along T/W R at the Dayton International Airport. The airport worked with the FAA on both of these projects, and was led to

believe that they had a high probability of success. At this point, however, the Dayton Airport has yet to receive any stimulus dollars. Can you please comment on the status of these requests?

Answer. Statutory language in the American Recovery and Reinvestment Act of 2009 (ARRA) requires FAA to identify and award ARRA funds quickly. Accordingly, FAA has identified and announced proposed grants for nearly all ARRA airport grant funding. In the case of the Dayton International Airport, ARRA funding was announced on May 29, 2009 for the completion of Taxiway R lighting improvements. The Federal Aviation Administration (FAA) has been working with the airport sponsor on the required application materials and plans to extend a grant offer by June 17, 2009.

As to the security system project, the airport has been working with the FAA regarding the potential funding of this project. Because ARRA funds are otherwise allocated, the security system project will be considered for funding under the normal Airport Improvement Program relative to other competing projects as additional funds may become available in fiscal year 2009. The airport sponsor has also added the project to its fiscal year 2010 Airport Capital Improvement Program for consideration in case funds are not available in fiscal year 2009 to complete the project.

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QUESTIONS SUBMITTED TO HON. CALVIN L. SCOVEL III

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

OFFICES THAT AREN'T WORKING ON THE RECOVERY ACT

*Question.* I understand that to meet its immediate workload, the Department has borrowed people from offices that do not have any responsibility over the implementation of the Recovery Act. While this strategy certainly makes sense as an emergency measure, I am concerned about what this strategy might mean if it is continued over a longer period of time.

Do you worry about the work that isn't getting done in the other offices that donated staff to work on the Recovery Act? Is other important regulatory or safety work suffering because the staff has been moved to work on the Recovery Act?

Answer. We are currently examining vulnerabilities in program management and planning that could impede DOT's ability to provide effective oversight of American Recovery and Reinvestment Act (ARRA) funded projects and meet new statutory and OMB requirements. As part of this review, we are also obtaining information on the impact of staffing demands on other Departmental programs. We will report on the results of our review in late summer 2009.

BALANCING RESPONSIVENESS WITH OBJECTIVITY

*Question.* Mr. Scovel, you have developed a strategy for identifying the risks that the Department faces in implementing the Recovery Act, evaluating the Department's efforts, and providing recommendations based on these observations.

Your strategy also involves an unprecedented level of coordination between your office and the Department. Your staff will be meeting with the Department every 2 weeks to monitor its progress. But this constant and regular interaction may also increase the pressure to direct or participate in the Department's efforts, rather than monitoring them.

What actions are you taking to protect the objectivity of your office?

Answer. The coordination between OIG and the Department as a result of ARRA has not changed how we safeguard our independence. Specifically, we do not participate in the Department's management decisionmaking process nor do we perform management functions, such as making specific recommendations for solutions to the issues addressed. However, we can and do provide suggestions to management, based on our prior work and good business practices. We also expect that the Department will be sharing timely information with us as it implements the ARRA requirements.

DOT OIG continues to take all measures to ensure its work remains independent, objective and non-partisan. Our policy includes avoiding to the greatest extent possible performing non-audit services, such as participating on commissions, panels, and committees, etc. Since providing non-audit services could limit our independence to perform future audits of DOT programs and operations, all staff also must routinely certify as to their personal independence.

## PROVIDING QUICK FEEDBACK TO DOT

*Question.* Mr. Scovel, you usually have the luxury of being able to spend more time evaluating how the Department is managing a program before publishing recommendations. And usually your recommendations are still relevant even a year or more after they are issued.

But the Recovery Act is different. This will not be an ongoing program, and if the Department is to make use of your recommendations they will have to be provided in real time—even before much of the money goes out.

Your office will begin issuing a new kind of advisory that will be used to provide the Department with feedback more quickly.

Mr. Scovel, how quickly will you be able to issue these advisories?

Are you going to be establishing a goal for the amount of time between the initial identification of a problem and the issuance of an advisory?

What are some of the other ways in which you can communicate your concerns to the Department earlier in the process?

*Answer.* We have established criteria for determining if an issue warrants an ARRA Advisory. For example, does the issue address the effective and efficient use of ARRA funds, involve a long-standing or systematic vulnerability, or has agency-wide, Department-wide or Government-wide implications, etc? Although we have not established specific timeframes for issuing an Advisory, we have procedures in place to ensure that OIG staff timely communicates potential risks to Department officials. We use multiple means of communication—briefings, meetings, and, weekly reports to the Secretary—the ARRA Advisory, a written product, serves as the last line of communication not the first.

As of June 23, we have issued two ARRA Advisories—Department’s Suspension and Debarment Program and Sampling of Improper Payments in Major DOT Grants Programs—to promptly alert the Department of potential management and funding risks that emerge during an audit consistent with ARRA and Office of Management and Budget guidance. As a result of our ongoing ARRA review, some other issues that may lend themselves to an ARRA Advisory have been identified and are currently being reviewed for relevancy.

Senator MURRAY. We want to make sure that the considerable amount of money that we put out there is spent wisely, and that we earn the trust of America by doing it right. So I appreciate the work you and your office are doing, and we will continue to support that.

Mr. SCOVEL. Chairman Murray, thank you very much for your support and your confidence.

## CONCLUSION OF HEARING

Senator MURRAY. Thank you very much.

And this subcommittee is recessed, subject to the call of the Chair.

[Whereupon, at 10:08 a.m., Thursday, April 30, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]