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STIMULUS STATUS: TWO YEARS AND COUNTING

(112–28)

HEARING

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MAY 4, 2011

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April 29, 2011

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SUMMARY OF SUBJECT MATTER

TO: Members of the Committee on Transportation and Infrastructure

FROM: Committee on Transportation and Infrastructure Staff

SUBJECT: Hearing on "Stimulus Status: Two Years and Counting"

PURPOSE OF HEARING

The Committee on Transportation and Infrastructure will meet on Wednesday, May 4, 2011, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to examine the audit work performed by the General Accountability Office (GAO), the Department of Transportation Inspector General (DOT IG), and the Environmental Protection Agency Inspector General (EPA IG) on implementation the American Recovery and Reinvestment Act (P.L. 111-5) (the "Stimulus Bill"). GAO and the two IGs have performed extensive audit work on the implementation of funded programs from the Department of Transportation (DOT), including the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA), and the Federal Railroad Administration (FRA), and the Environmental Protection Agency (EPA). The audits have uncovered significant lapses in oversight by the implementing agencies, mismanagement of grants and funds, and lack of transparency.

THE STIMULUS BILL

On February 17, 2009, the Stimulus Bill was signed into law in response to the struggling U.S. economy. The stated purpose of the Stimulus was to:

- Preserve and create jobs and promote economic recovery;
- Assist those most impacted by the recession;
- Provide investments needed to increase economic efficiency by spurring technological advances in science and health;
- Invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and

- Stabilize state and local government budgets in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

Further, the Obama Administration promised the Stimulus bill would create new jobs and save existing ones, spur economic activity and invest in long-term growth, and foster unprecedented levels of accountability and transparency in government spending.[1]

The legislation contained numerous spending and revenue provisions that can be grouped in several categories:

- Providing funds to states and localities—for example, by raising federal matching rates under Medicaid, providing aid for higher education, and increasing financial support for some transportation projects;
- Supporting people in need—such as by extending and expanding unemployment benefits and increasing benefits under the Supplemental Nutrition Assistance Program (formerly the Food Stamp program);
- Purchasing goods and services—for instance, by funding construction or investment activities that could take several years to complete; and
- Providing temporary tax relief for individuals and businesses—such as by raising exemption amounts for the alternative minimum tax, adding a new Making Work Pay tax credit, and creating enhanced deductions for depreciation of business equipment

The Congressional Budget Office (CBO) originally estimated the total cost of the Stimulus Bill to be $787 billion, and has since revised that figure in January 2011 to $812 billion.[2]

The law provided $64.1 billion of infrastructure investment for programs within the jurisdiction of the Committee on Transportation and Infrastructure, including:

- $27.5 billion for highways and bridges;
- $8.4 billion for transit;
- $9.3 billion for passenger rail;
- $1.5 billion for competitive surface transportation grants;
- $1.3 billion for aviation;
- $5.26 billion for environmental infrastructure;
- $4.6 billion for the U.S. Army Corps of Engineers (Corps);
- $5.575 billion for Federal buildings;
- $150 million for the Economic Development Administration (EDA);
- $210 million for Firefighter Assistance Grants;
- $240 million for Coast Guard facilities and bridge alterations; and
- $100 million for Maritime Administration Small Shipyard Grants.

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[1] http://www.recovery.gov/About/Pages/The_Act.aspx

[2] http://www.cbo.gov/ftpdocs/99xx/doc9989/hr1conference.pdf (original); http://www.cbo.gov/ftpdocs/120xx/doc12039/01-26_FY2011Outlook.pdf (updated in January 2011, page 13).

STATE OF THE ECONOMY

According to the Bureau of Labor Statistics (BLS), unemployment in February 2011 remains above the Obama Administration promised 8.0%, if the Stimulus Bill passed, at 8.8% for the Nation. However, the percentage of part-time workers who want full-time work was 9.7% in mid-March, essentially unchanged from the 9.6% in both February measurements and higher than the 9.1% at the end of January, and underemployment, a measure that combines the percentage of part-time workers wanting full-time work with the percentage who are unemployed, was 19.9% in mid-March.[3]

DEPARTMENT OF TRANSPORTATION

Highway ($27.5 billion) - The Federal Highway Administration (FHWA) has obligated for states to use $26.3 billion on the improvement of roads and bridges. FHWA has reimbursed to states $18.9 billion. This amount represents 68% of appropriated funds available to highway projects.

Stimulus funded highway obligations were used primarily for pavement improvement projects, such as resurfacing, reconstruction, and rehabilitation of existing roadways.

Pavement improvement: reconstruction/rehabilitation (25%)
Pavement improvement/resurface (22%)
Pavement widening (16%)
New road construction (6%)
Bridge replacement (5%)
Bridge improvement (5%)
New bridge construction (3%)
Other (18%)

Transit ($8.8 billion) - The Federal Transit Administration (FTA) has obligated $8.7 billion for the purchase or rehabilitation of buses and other transit vehicles, construction or rehabilitation of passenger and maintenance facilities. FTA has reimbursed to transit authorities $5.6 billion, or 63% of its appropriation.

Stimulus public transportation funds were used primarily for upgrading transit facilities and improving bus fleets

Rail ($9.3 billion) –

Amtrak ($1.3 billion): Amtrak has obligated $1.3 billion all in Washington, DC, and outlaid $1.1 billion or 84% of its appropriation.

High-Speed Rail and Intercity Passenger Rail Grants (HSIPR) ($8 billion): The Stimulus Bill provided $8 billion for HSIPR grants. Of this, a total of only $109.1 million was awarded to

[3] http://www.gallup.com/poll/146666/Gallup-Finds-Unemployment-Mid-March.aspx

projects on the Northeast Corridor: $60 million to complete engineering and environmental work for a new tunnel in Baltimore; $9.4 million for station and track improvements at Baltimore-Washington International station; $38.5 million for the final design of a new bridge to replace the Portal Bridge in New Jersey; and $1.2 million for track design work in Rhode Island.

Aviation ($1.3 billion) – The Federal Aviation Administration (FAA) has obligated $1.08 billion for the Airport Improvement Program (AIP) and Facilities and Equipment (F&E) projects. So far, the FAA has reimbursed to grant recipients $1.04 billion, or 80% of the appropriation. Projects included runway improvements, taxiway improvements, apron improvements, terminal buildings, and aircraft rescue and firefighting buildings improvements.

Transportation Investment Generating Economic Recovery (TIGER Grants) ($1.5 billion) – The Stimulus Bill provided a discretionary grant for a National Surface Transportation System. These grants were to be awarded on a competitive basis for capital investment in surface transportation projects that will have a significant impact on the Nation, a metropolitan area or a region. As with the other programs in the Stimulus, the Administration promised an unprecedented level of transparency. However, DOT has yet to explain the reasoning and basis behind project selections for TIGER Grants, as will be discussed by the GAO report on TIGER and HSIPR grants. Thus far, DOT has obligated $1.4 billion and has reimbursed $64 million to grant recipients.

THE ENVIRONMENTAL PROTECTION AGENCY

The EPA has obligated $4.6 billion of the $4.7 billion appropriated for the Clean Water State Revolving Fund, Brownfields, and Superfund programs. The EPA has only outlaid and reimbursed $978 million (or 20% of the appropriated Stimulus funds).

Clean Water State Revolving Fund ($4 billion) - Titles II and VI of the Clean Water Act provide for grants to States and municipalities and the establishment of clean water state revolving loan funds (SRFs) , respectively, for the construction of treatment works. The SRFs are available to make low interest loans, buy or refinance local debt, subsidize or insure local bonds, make loan guarantees, act as security or guarantee of state debt, earn interest, and pay administrative expenses. All projects must be those that will assure maintenance of progress towards the goals of the Act and meet the standards and enforceable requirements of the Act. SRF monies also may be used to implement other water pollution control programs such as nonpoint source pollution management and national estuary programs. EPA has approved 57 states and territories for funding under the SRF program. According to the EPA, currently, nearly $5 billion is available from the SRFs for new loans each year. Cumulatively, SRFs have provided over $74 billion in loans for wastewater projects.

Brownfields ($100 million) - Brownfields are properties with no viable responsible owner where the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant. Types of brownfields include inactive factories, gas stations, salvage yards, or abandoned warehouses. These sites drive down property values, provide little or no tax revenue, and contribute to community blight.

There are estimated to be 450,000 to one million brownfields sites in the United States. Redevelopment of these abandoned sites can promote economic development, revitalize neighborhoods, enable the creation of public parks and open space, or preserve existing properties, including undeveloped green spaces. The Brownfields Program was authorized under the Brownfields Revitalization and Environmental Restoration Act. The authorization of appropriations for brownfield grants expired in 2006. The program supports State and local brownfields assessment and cleanup activities and State voluntary cleanup programs, and protects many parties engaged in voluntary brownfields cleanups from Superfund liability.

Superfund ($600 million) – The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly referred to as "Superfund," was enacted to develop a comprehensive program to clean up the nation's worst abandoned or uncontrolled hazardous waste sites. The EPA has the major responsibility for carrying out this Act. The law makes designated responsible parties pay for hazardous waste cleanups wherever possible and provides for a hazardous substances trust fund, the Superfund, to pay for remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable. Superfund is also available for responding to emergency situations involving hazardous substances. In addition, the law was intended to advance scientific and technological capabilities in all aspects of hazardous waste management, treatment, and disposal. Superfund imposes liability on certain persons that generated hazardous substances found at a site, present and certain former owners and operators of a site, and certain transporters who disposed of hazardous substances at a site. As interpreted by the courts, liability under Superfund is strict, joint and several, and retroactive.

GOVERNMENT ACCOUNTABILITY OFFICE AUDIT WORK

Lack of Transparency

SURFACE TRANSPORTATION: Competitive Grant Programs Could Benefit from Increased Performance Focus and Better Documentation of Key Decisions (GAO-11-234)
March 30, 2011
INTERCITY PASSENGER RAIL: Recording Clearer Reasons for Awards Decisions Would Improve Otherwise Good Grantmaking Practices (GAO-11-283)
March 10, 2011

Background – On February 24, 2010, then-Ranking Member Mica sent two separate letters to the Secretary of Transportation, Ray LaHood, asking for the Department to provide all records relating to the selection of high-speed rail grant and TIGER grant recipients awarded under the Stimulus Bill. The Secretary never provided responses to now-Chairman Mica with answers to his request.

As a result, on May 13, 2010, Chairman Mica joined Senator Bond in requesting GAO review DOT's evaluation and selection process for the HSIPR and TIGER grants and the extent to which information that process was made public. Senator Inhofe joined the request on September 23, 2010.

Findings – The GAO concluded there was a lack of transparency in the grant evaluation and selection process for both the HSIPR and TIGER grant determinations. DOT could improve their processes for awarding grants by providing better documentation of each agencies' decision-making.

Both reports found insufficient documentation for DOT's and the Federal Railroad Administration's (FRA) selections of rail projects for $8 billion in stimulus funding and $1.5 billion in Transportation Investment Generating Economic Recovery (TIGER) grants. In both cases, GAO says there was insufficient public information about decisions that led to grant awards, although auditors do not criticize the overall process.

HSIPR - The FRA had "vague" rationales for its final selection criteria when deciding where to send $8 billion in high-speed rail grants funded by the stimulus law, GAO said. Often, stated criteria were repeats of demands listed in the funding announcement. While GAO said FRA was able to provide reasons for selection criteria when asked and that the projects with higher technical scores were overwhelmingly chosen over those that did not fare as well, the rail-grant report recommends that selection information be available as part of a comprehensive record. That, GAO says, would shield FRA from "criticism over the integrity of those decisions," especially for a program that has a "very public profile."

TIGER grants - The GAO report found of the 51 applications that received grants, 26 were in a pool of highly recommended applications from an evaluation team, while the other 25 were recommended by another team. That meant some projects, particularly those in the central and western United States, did not get funding because the second team was examining geographic representation.

"Because no internal documentation from Review Team meetings exists in which final decisions to recommend or reject projects for award were made, DOT cannot definitively demonstrate the basis for its award selections, particularly the reasons why recommended projects were selected for half the awards over highly recommended ones," the report states.

The report recommends that DOT better document its decisions and work with Congress to provide more information on its merit-based selections, especially because the Obama administration has both expressed a desire to move forward with this type of multimodal grant project. More transparency, the report says, would protect DOT from "criticism that projects were selected for reasons other than merit."

Overall Mismanagement of the Stimulus Bill Implementation

RECOVERY ACT: Opportunities to Improve Management and Strengthen Accountability over States' and Localities' Uses of Funds (GAO-10-999)
September 2010

Findings –
Contract Data from FHWA's Stimulus Bill Data System Continues to Be Inaccurate

In May 2010, GAO reported that while progress has been made in awarding Stimulus contracts and initiating work, the accuracy of contract data in FHWA's Recovery Act Data System (RADS) is of concern. Among other information, the Stimulus requires the DOT to report to Congress on the number of projects for which contracts have been awarded, for which work has begun, and for which work had been completed, and the amount of federal funds associated with these contracts. DOT established RADS because it had not previously collected and reported such information for the regular federal highway formula program. DOT relies on states to enter data into RADS and uses automated data checks and rules, as well as periodic reviews by FHWA Division office officials located in every state, to improve the accuracy of state-reported data.

GAO continued to find problems with the accuracy of RADS contract data. For example, more than 3,100 contracts were shown as having been awarded on the same date the funds were obligated. GAO also found that about 1,400 contracts were reported as awarded before FHWA obligated the funds. Because contracts are normally awarded several weeks or months after funds are obligated by FHWA, the numbers and amounts of contracts awarded and work begun is likely overstated. Because FHWA does not have accurate data from states in RADS, it is not able to use RADS to meet the Stimulus reporting requirements for contracts.

FHWA officials acknowledged that they cannot use data from RADS to provide information on contract award amounts. Officials said they instead use data from FHWA's financial management system to meet the Stimulus reporting requirements for contracts because this system receives more checks for data accuracy. However, using FHWA's financial management system can also overstate the amount of funds under contract. FHWA reports data at the project level, not at the contract level; this is important because one project can include several contracts. When reporting at the project level, FHWA reports the entire project as being under contract once one contract is awarded, even if several more remain to be awarded.

As noted above, the Stimulus requires DOT to report not only the number of projects, but also the total amount of federal funds associated with contracts that have been awarded, work has begun, and work is completed. FHWA has taken some steps to improve data accuracy in RADS, but officials said that there was no date for when they would implement changes. These officials said they have assembled a state advisory group to look at the challenges that exist in RADS and make recommendations on improvements. FHWA officials said they have not had sufficient resources to incorporate additional data checks into the software that would check for errors. Such checks could ensure that milestones are sequentially entered, thereby improving the accuracy of these data.

Obligation and Reimbursement of Regular FHWA Formula Funds Slowed during the Stimulus Bill, Raising Questions about Whether Stimulus Funds Had the Full Economic Stimulative Effect Intended

While states have been working to have FHWA obligate funds for constructing Stimulus projects, GAO found that, compared with previous years, many states were slower in obligating and expending regular federal highway formula funds. FHWA officials stated that with the emphasis placed on the economic benefits to be gained, the obligation of Stimulus funds and meeting the act's statutory deadlines have taken priority. States are facing drastic fiscal

conditions, and FHWA officials.

Nationally, as of June 30, 2010 (the end of the third quarter of the fiscal year), states had $19.7 billion remaining to be obligated, 63 percent more funds than they did at the same time for the 3 previous years.

In addition, while funding available to states for highways has increased in each of the last 3 fiscal years, GAO found that as of July 31, 2010, the reimbursement of regular federal highway formula program funds were lower compared with the reimbursement at the same point in the 3 previous fiscal years. This trend was also true on a monthly average basis. Specifically, the reimbursement of regular federal highway formula funds for the first 10 months of fiscal year 2010 has been almost 18 percent (or about $4.3 billion) less than the average reimbursement in the previous 3 fiscal years.

In the last 3 months of fiscal year 2010, state highway agencies not only have to request FHWA obligate over $500 million in remaining Stimulus funds, but also $19.7 billion of regular federal highway formula funds. Nationally, GAO found 16 states with over twice the amount of unobligated funds, while 5 states had fewer unobligated funds than in the past. Some state officials told us they had not been obligating regular federal highway formula funds as quickly because they had been focusing on meeting the Stimulus obligation deadlines and did not have the resources to do both.

Because states did not spend regular federal highway formula funds at the same pace as in previous years, while also spending Stimulus funds, the full economic benefits of Stimulus funds are likely to be delayed. Specifically, if states had awarded contracts and begun expending those regular federal highway formula funds at the same rate as in previous years and in conjunction with spending Stimulus funds, states would have experienced an earlier stimulus effect. Funding being obligated now for projects will need up to several months to award contracts and initiate construction, and the effect on the economy comes when construction is initiated and workers are employed.

DOT Is Developing Plans to Assess the Impact of the Stimulus but Has Not Committed to Assessing Long-Term Benefits

The goals of the Stimulus were not only to promote economic recovery and to preserve and create jobs but also to make investments in transportation and other infrastructure that would provide long-term economic benefits. However, the Stimulus did not include requirements that DOT or states measure the impact of funding on highway and transit projects to assess whether these projects ultimately produced long-term benefits. In GAO's May 2010 report, they noted that, although DOT developed performance plans to measure the impact of Stimulus transportation programs, these plans generally did not contain an extensive discussion of specific goals and measures needed to assess the impact of Stimulus projects. As GAO has reported, it is important for organizations to measure performance to understand the progress they are making toward their goals.

Publicly Available Information Continues to Overstate the Extent to Which Stimulus Funds Were Directed to Economically Distressed Areas

In July 2009, GAO reported substantial variation in the extent to which states prioritized projects in economically distressed areas and how they identified these areas. Many states based their project selections on other factors and only later identified whether these projects were in economically distressed areas. GAO also found instances of states developing their own eligibility requirements for economically distressed areas using data or criteria not specified in the Public Works and Economic Development Act of 1965, as amended. In response to GAO's recommendation, FHWA, in consultation with the Department of Commerce, issued guidance to the states in August 2009 that defined "priority," and directed states to give priority to projects that were located in an economically distressed area and could be FHWA's guidance set out criteria for states to use to identify economically distressed areas based on "special need." Three states—Arizona, California, and Illinois—developed their own eligibility requirements or applied a special-need criterion that overstated the number of counties, and thus the amount of funds, directed to economically distressed areas. For example, California designated all counties as economically distressed, and GAO identified 219 projects with an estimated cost of $1.1 billion coded as being in economically distressed areas that should not have been so coded

In May 2010, GAO recommended FHWA advise these states to correct the designations, and in July 2010, FHWA instructed its division offices to advise the states to revise their designations and to report these projects as being in non-economically distressed areas. In December 2009, DOT testified to the House Committee on Transportation and Infrastructure that 57 percent of projects were in economically distressed areas—including 99 percent and 100 percent of Stimulus highway funding in California and Arizona, respectively. However, as noted above, this data had not yet been corrected by DOT and therefore overstated the amount of funding, and this testimony is DOT's only public accounting of how states implemented this provision of the Stimulus. Because FHWA's July guidance did not direct states other than Arizona, California, and Illinois to correct existing entries, GAO reviewed RADS data on projects in economically distressed areas and found about 2,300 projects that did not appear to meet FHWA's guidance for classifying projects in economically distressed areas and thus appeared to contain errors that would result in an overstating of the funds directed to these areas. For instance, over 2,100 of these entries did not include an explanation justifying the designation of an area as economically distressed.

DOT stated it does not intend to correct this information because the Stimulus Bill does not contain a specific requirement that DOT report on the extent to which distressed areas prioritized and directed funds to economically distressed areas. However, without accurate publicly available information, it is difficult to determine the extent to which Stimulus funds were directed to areas most severely impacted by the recession or to know the extent to which states prioritized these areas in selecting projects for funding.

DEPARTMENT OF TRANSPORTATION INSPECTOR GENERAL AUDIT WORK

Overall Mismanagement of the Stimulus Bill Implementation

ACTIONS NEEDED TO STRENGTHEN THE FEDERAL HIGHWAY ADMINISTRATION'S NATIONAL REVIEW TEAMS (Report Number: MH-2011-027)

January 6, 2011

Background - As with other Federal-aid highway programs, FHWA is relying on its 52 Division Offices to provide oversight of Stimulus projects. FHWA created national review teams (NRT) to independently assess states' management of Stimulus funds. FHWA expected NRTs to conduct quick reviews to help meet the Stimulus' tight time frames, including a requirement that all funds be obligated by September 30, 2010, and expended by September 30, 2015. Through these NRT assessments, FHWA aims to identify problems requiring corrective actions as well as national trends and potential new risks.

NRTs conduct reviews using standard guides and enter results directly into RADS. As a review progresses, the NRT discusses findings with Division Office and state transportation staff. To close a review, the NRT provides a report to the Division Office that summarizes the results, provides a rating for each review area, and lists observations and recommendations. The summary report forms the basis of a corrective action plan, which the Division Office enters into RADS to track the status of each corrective action. The Directors of Field Services receive a monthly status report on each Division Office.

Based on a review of NRT data as of May 2010, DOT IG identified vulnerabilities that demonstrated the need for increased management oversight. For example:

• Approximately 12% of NRT observations were not included in summary reports that Division Offices use to identify instances where corrective actions are needed.

• A significant number of corrective actions were not properly recorded in FHWA's Recovery Act Database System (RADS), including nearly 17 percent that had no target action date recorded.

Without comprehensive summary reports and target action dates, FHWA could not be certain that all corrective actions were taken, or fully assess its Stimulus risk management efforts.

FHWA HAD NOT TAKEN SUFFICIENT STEPS TO ENSURE TIMELY AND EFFECTIVE IMPLEMENTATION OF CORRECTIVE ACTION PLANS

Without complete and accurate data, FHWA cannot fully assess its Stimulus risk management efforts. FHWA Division Offices are working with states to implement corrective actions addressing NRT findings, but several vulnerabilities could reduce the NRTs' effectiveness unless they are addressed. Specifically, DOT IG identified NRT findings that were not included in NRT review summary reports and instances where Division Offices did not correctly report corrective action plan data.

DOT IG identified a high number of observations with valid recommendations that had not been included in NRT summary reports completed by May 21, 2010. Based on DOT IG's

analysis, FHWA did not include over 100 observations with valid recommendations—about 12 percent of all observations with recommendations. In addition, the NRTs did not include information in RADS on how states addressed these issues—providing less assurance that they implemented corrective actions.

Since January 2010, Division Offices have been required to enter complete corrective action plans in RADS within 4 weeks of the start of an NRT review and update them on a monthly basis. However, of the 637 observations requiring actions in the NRT summary reports that DOT IG reviewed as of May 2010, nearly 107 observations (about 17 percent) had no target action date recorded, and over 60 (about 9 percent) had no status recorded. The absence of complete reporting diminishes FHWA's ability to measure the effectiveness of the NRT oversight approach and ensure that states take timely corrective action.

DOT IG also identified instances where Division Offices changed target action dates in RADS because states delayed corrective actions, instead of reporting them as behind schedule. As a result, the number of actions behind schedule may be higher than RADS indicates. These data vulnerabilities could impact FHWA's ability to oversee the status of corrective actions and inhibit FHWA's efforts to measure the effectiveness of the NRT oversight approach and ensure timely corrective action.

LACK OF CLEAR ROLES COULD HINDER FHWA'S EFFORTS TO ADDRESS IDENTIFIED PROBLEMS

The Directors of Field Services are key to the ultimate success of the NRT approach because they are responsible for monitoring Division Offices' oversight, including Stimulus-funded projects, and report directly to FHWA Headquarters. However, the NRT charter is silent on the role that Directors of Field Services should play in ensuring corrective actions are appropriate, implemented in a timely manner, and address all findings. Further, DOT IG interviewed the Directors who revealed they each viewed their roles differently. Establishing clear roles would not only benefit STIMULUS implementation, but could also lead to lasting improvements in states' management of the Federal-aid highway program.

INSUFFICIENT DATA AND RADS LIMITATIONS IMPEDED FHWA EFFORTS TO ANALYZE NRT RESULTS AND IDENTIFY NATIONAL TRENDS AND EMERGING RISKS

For each project reviewed, the NRT provides a "yes," "no," or "not applicable" response to standard checklist items, with optional comments. DOT IG found that more than 17,000 or nearly 35 percent of all responses across the six STIMULUS risk areas we reviewed were answered "not applicable." FHWA officials told DOT IG that the system default was set to "not applicable." Further, only about 27 percent of the "not applicable" responses included explanatory comments and NRTs were not required to add explanatory comments.

In setting up RADS, FHWA did not incorporate features to facilitate quick analysis of NRT data. At the time of DOT IG audit, FHWA was using a time-consuming manual process to categorize NRT observations by program area. FHWA officials stated that

team members manually reviewed (about 1,000) NRT observations and slotted them into 1 of 59 categories. Because the process was subjective, similar observations may have been categorized across different risk areas—potentially distorting or obscuring trends.

FAA FULFILLED MOST ARRA REQUIREMENTS IN AWARDING AIRPORT GRANTS
(AV-2011-053)
Date Issued: February 17, 2011

Background – The Stimulus provided $1.1 billion for the FAA to invest in Airport Improvement Program (AIP) projects. These funds were intended for airport projects that could achieve several key goals, including investing in transportation infrastructure to provide long-term economic benefits, create jobs, and promote economic recovery. The Stimulus established tight timeframes for distributing and expending funds and emphasized preference for projects that could be completed in 2 years.

In August 2009, DOT IG issued an advisory to the Office of the Secretary outlining our concerns with FAA's process for awarding Stimulus grants. DOT IG questioned the economic merit of some lower scoring projects and highlighted several Stimulus recipients with grant management problems identified in prior single audit reports. Based on these preliminary findings, DOT IG initiated this audit to determine the extent to which FAA's process for awarding Stimulus grants complied with Stimulus requirements and other associated guidance.

DOT IG found the FAA was not fully transparent in its grant selection process and the FAA did not pick the best projects to enhance economic impact but rather used other, non-economic factors in their selection.

FAA's Selection Process Was Not Fully Transparent

FAA should have and could have been more transparent about the results of its selection process. FAA emphasized in public testimony its goal to select the highest priority projects, defined by FAA as an NPR score of at least 62. Yet, FAA awarded over 80 grants to lower-scoring projects.

Overall, lower-scoring projects comprised $289 million, or almost 26 percent of total Stimulus dollars. Until FAA is more transparent about its reasons for selecting each low scoring project—as required by the President's direction—concerns will remain that it did not maximize efforts to ensure that only the highest priority projects received Stimulus funding.

Further, FAA was not transparent in the process used to select the 24 non-hub terminal projects that were included in the 80 low-scorers. Terminal projects are not normally funded due to their low NPR scores (i.e., less than 40). Yet, FAA did not provide justifications for selecting the 24 terminal projects for Stimulus funding even though it required regional officials to document their justification of all other low scoring projects. Instead, for Stimulus purposes, FAA classified terminal projects as "special focus area initiatives" with an NPR equivalent rating of 62—noting that many of the older facilities no longer meet current building standards.

Finally, FAA was not fully transparent in reporting the grant amounts it awarded. Rather than reporting actual amounts, FAA only reported estimated amounts on its public website, which is in keeping with FAA's normal AIP process. FAA should have modified this process to meet the President's direction to be fully transparent in reporting Stimulus grant award amounts.

FAA Did Not Enhance Its Selection Process To Optimize Economic Activity

FAA did not enhance its normal AIP process to consider projects on the basis of their potential to optimize economic activity, as required by Presidential direction. According to FAA, no additional steps were needed because long-term economic benefits are inherent in its AIP selection and planning process.

Nevertheless, the Agency did not consider economic factors or the results of economic studies in prioritizing and selecting projects for Stimulus funding. Such economic information should have been considered given the Presidential direction that agencies design selection processes and affirmatively determine in advance that each project could optimize economic activity.

Consequently, FAA selected some projects that do not appear, without supporting analysis, to optimize economic activity. For example, DOT IG identified 14 airports receiving Stimulus funding that serve communities with limited demand for flight services. Overall, these 14 airports received a total of about $72 million in Stimulus grants. Of these 14 airports, FAA awarded $59 million to 5 village airfields in Alaska serving a total population of less than 1,800 residents. These five airfields received as much as all Stimulus airport recipients in the State of Texas and more than any other state except California.

FAA's Selection Process Limited the Candidate Pool by Overemphasizing Geography and Adopting an Accelerated Timeline

FAA's ability to optimize economic activity was further limited because FAA applied restrictions not required by the Stimulus or Presidential direction. These restrictions include (1) allocating Stimulus funds geographically according to their historical AIP funding distribution, (2) setting an internal goal to have all funds obligated by the end of FY 2009 (5 months ahead of the February 2010 Stimulus deadline), and (3) establishing caps of $15 million per project/$20 million per sponsor. Although these restrictions served several FAA purposes, they worked against optimizing economic activity and the purpose of the Stimulus Bill.

WEAKNESSES IN DOT'S SUSPENSION AND DEBARMENT PROGRAM LIMIT ITS PROTECTION OF GOVERNMENT FUNDS (CC-2010-036)
March 18, 2010

Background - Significant delays in DOT's suspension and debarment decisionmaking process have given unscrupulous contractors ample opportunity to bid for and receive contracts.

Findings –

Delays in Decisionmaking
On average, it took over 300 days to reach a suspension decision and over 400 days to reach a debarment decision. About 70 percent of DOT's suspensions DOT IG reviewed took more than the required 45 days, and the average processing time was 301 days. These delays are largely due to lengthy and unnecessary reviews conducted before deciding cases and a lack of priority assigned to DOT's S&D workload.

Lack of DOT Management Controls
DOT's management controls are not adequate to safeguard the DOT's efforts to exclude prohibited parties that agencies must suspend or to propose debarment. A weakness surrounding DOT's main S&D policy is its inability to clearly define that DOT needs to suspend—or propose debarment—of parties within a required 45-day limit.

DOT's S&D Program is also limited by the absence of strong program oversight. Delegation of S&D program management to OST and the nine operating administrations has created gaps in DOT's knowledge of program weaknesses that warrant corrective actions. While DOT has taken measures to close these gaps, they have proven ineffective.

The cumulative effect of these weaknesses increases the risk that DOT and other agencies will award Stimulus contracts and grants to parties that DOT will ultimately suspend or debar.

RECOVERY ACT DATA QUALITY: ERRORS IN RECIPIENTS' REPORTS OBSCURE TRANSPARENCY (Recovery Funds Working Group Committee, Chairman Calvin L. Scovel, III)
Date Issued: February 23, 2010

Background - The Stimulus requires certain recipients of funds to provide quarterly reports, beginning in October 2009, with specific details about the funds they received. The reports are to include the total amount of funds received, a list of projects for which the funds are being used, and information about the number of jobs created or saved as a result of the funds received. On June 22, 2009, OMB issued guidance to Federal agencies and funding recipients with information to effectively implement reporting requirements on the use of Stimulus funds. The guidance requires that within 22 to 29 days after each quarter Federal agencies are to perform a limited data quality review of the information submitted and notify recipients if two key data problems are found—material omissions and significant reporting errors.

In September 2009, as part of the multi-phased reviews being conducted by the Recovery Board in conjunction with OIGs responsible for Stimulus Bill oversight, 21 Offices of Inspector General assessed whether their agencies had processes for conducting limited data quality reviews of recipient award reports. The OIGs found that 17 of the 21 agencies had designed processes to identify significant errors and material omissions.

Errors in Key Award and Job Elements Were the Most Prevalent

The most common inaccuracies in recipients' first quarterly reports were in key award identification and job elements. Agencies identified numerous instances of incorrect award identification and job data. For example, DOT officials identified 1,200 jobs that were erroneously listed under the Veterans Administration because the Iowa Department of Transportation entered the wrong funding agency code.

Federal Agencies Identified Several Factors that Contributed to Report Errors

Agencies identified several factors that contributed to errors discovered in recipient award reports. The most common factors were (1) recipients misinterpreting OMB and agency guidance, (2) technical challenges, (3) recipients not knowing or having incorrect codes or numbers, and (4) human error.

ENVIRONMENTAL PROTECTION AGENCY INSPECTOR GENERAL AUDIT WORK

Overall Mismanagement of the Stimulus Bill Implementation

EPA FACE MULTIPLE CONSTRAINTS TO TARGETING RECOVERY ACT FUNDS
(Report No. 11-R-0208)
April 11, 2011

Background – Stimulus funding for EPA programs was designed to protect and increase "green" jobs, sustain communities, restore and preserve the economic viability of property, promote scientific advances and technological innovation, and ensure a safer, healthier environment. In its Stimulus Plan, EPA stated these programs were "chosen carefully both for their ability to put people to work now and for their environmental value." The plan further explains that the Agency sought to address location-specific, community-based public health and environmental needs using Stimulus dollars, because investing in these needs would assure that job creation, economic growth, and environmental benefits accrue at the local level as well as nationwide.

The Stimulus did not define "those most impacted by the recession." However, Congress specified in the joint conference report they expected the states, as much as possible, to target the additional subsidized monies to communities that could not otherwise afford State Revolving Fund loan. This provision applied to the funds disbursed through the State Revolving Fund (SRF) programs, which accounted for approximately 83 percent of EPA's Stimulus funds. A March 2009 EPA Office of Water memorandum to Regional Water Management Division Directors provided "disadvantaged communities, environmental justice communities," as examples of those that could not otherwise afford an SRF loan.

Findings – After obligating over $7 billion in Stimulus funds, EPA is unable, both on a programmatic and national basis, to assess the overall impacted by the recession. Stimulus funds were intended to create or save jobs, address environmental and other challenges, and assist those most impacted by the recession. EPA specifically sought to address location-specific,

community-based public health and environmental needs with its Stimulus dollars. While EPA was able to track financial expenditures, it considered but could not execute an effort to track the distribution of its Stimulus funds to economically disadvantaged communities. The effort was hindered by the absence of the definitions, data, and measures.

Without Tracking, Impact of Stimulus Funds on Economically Disadvantaged Communities Unknown - The Stimulus included goals related to creating jobs and reaching those most impacted by the recession. EPA did not have a plan or strategy in place to integrate these goals into program operations and funding decisions. EPA did not systematically identify or seek to direct program funds to those projects or communities that are, for socioeconomic reasons, more in need than others. Although EPA has an Office of Environmental Justice and several tools to help identify potential environmental justice communities, it does not have baseline assessment data on a nationwide basis for socioeconomic factors or unemployment.

EPA's Ability to Target Stimulus Funds Was Limited - The Office of Management and Budget (OMB) issued multiple guidance memoranda addressing, among other topics, how to report the numbers of Stimulus Act jobs created or retained. Short timeframes and the resulting emphasis on "shovel ready" projects also contributed to targeting challenges. The development and funding of potential new projects in disadvantaged communities was also hampered by a lack of time and resources to prepare applications, as well as a lack of priority for those economically disadvantaged areas that have environmental needs. Moreover, among the Stimulus-funded programs at EPA, the states made the funding decisions for 86 percent of the funds.

Variations Existed Among EPA Guidance, Documents, Public Outreach Materials, and Stimulus Goals - Overall, there was an absence of actionable EPA guidance or overall strategy on how to achieve Stimulus goals and Agency priorities beyond environmental protection. Some managers stated that the Agency was only responsible for the environmental protection and infrastructure purposes of the Stimulus Bill, with job creation as a secondary consideration. Of the five Stimulus Bill purposes, only one (to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits) is directly related to EPA's mission. Guidance from OMB to EPA as well as guidance from EPA to states generally focused on achieving funding obligation deadlines and reporting jobs created and retained.

Stimulus Bill Funding Decisions Not Driven by Job Creation - Prior to the passage of the Stimulus, EPA was not required to, and did not set targets for, job creation. With passage of the Stimulus, EPA did not establish guidance on how this priority could be incorporated in Stimulus Bill project selections. Per OMB guidance, job creation data were reported by fund recipients to a national database. EPA did not independently track the numbers or locations of new or retained jobs.

Emphasis on Shovel-Ready Projects Adversely Impacted EPA's Ability to Address Some Environmental and Economic Needs - The challenges included the lack of time to prepare applications, lack of priority for areas with both economic and environmental needs, and the inability of these communities to prepare timely and complete proposals. EPA programs require all applicants (regardless of environmental or health conditions) to meet program criteria. For

Superfund eligibility, the community must have already been on the National Priorities List. For water and wastewater projects, applicants must demonstrate a level of preparedness to include making sure that permits and design plans are obtained and complete.

Conclusions - The extent to which EPA's Stimulus Bill funds were targeted and spent, jobs created, and results achieved in economically disadvantaged communities are unknown. EPA's contributions under the Stimulus Bill emphasized environmental protection and remediation. These benefits were achieved through supplemental funding of existing programs. EPA was able to meet Stimulus Bill funding obligation deadlines; however, it was unable to systematically target or track funds to fully address the Stimulus' intent. EPA's Stimulus-funded projects were selected primarily by states.

Lack of Oversight

EPA MUST IMPLEMENT CONTROL TO ENSURE PROPER INVESTIGATIONS ARE CONDUCTED AT BROWNFIELDS SITES (Report No. 11-P-0107)
February 14, 2011

Background – Parties awarded federal Brownfield grants must conduct all appropriate inquiries (AAI) in accordance with federal law and regulations to obtain certain landowner liability protections. EPA Brownfields project officers (POs) have responsibility for oversight and monitoring compliance with Brownfields grant terms and conditions awarded to grantees in their jurisdiction.

Findings - EPA does not review AAI reports to assure the reports meet EPA's AAI final rule requirements. None of the 35 AAI reports EPA IG reviewed, generated from $2.14 million in grant awards, contained the required elements to document that AAI was done in compliance with federal requirements. This occurred because the Agency does not have management controls requiring EPA POs to conduct oversight of AAI reports to assure they meet federal documentation requirements. EPA relies on grant recipients to self-certify compliance with federal AAI requirements. According to EPA, grantees who do not comply with federal requirements for proper AAI investigations may be ineligible for future grants. Improper AAI investigations create risk that the environmental conditions of a property have not been properly or adequately assessed. Consequently, decisions about uses of redeveloped or reused brownfields properties may be based on improper assessments. Ultimately, threats to human health and the environment could go unrecognized.

EPA Lacks Controls to Ensure AAI Requirements Are Met for ARRA Work - In fiscal year 2009, EPA's Brownfields Program awarded 89 Assessment grants, totaling $25.8 million, from Stimulus funds. Stimulus guidance directs that funds are spent and accounted for properly and efficiently, and that some results and outcomes are timely and accurately documented. However, EPA does not have guidance, and has not implemented new controls, to assure that deliverables from STIMULUS-funded Brownfields grants, such as AAI reports, adhere to federal requirements.

EPA Should Improve Its Contractor Performance Evaluation Process for Contractors Receiving Recovery Act Funds (Report No. 10-R-0113)
April 26, 2010

Findings - EPA had not completed in a timely manner 30 of 36 (83 percent) of the required contractor performance evaluations for contractors awarded Stimulus funds. Contracting officers (COs) are required to complete and document the evaluation within 95 business days after each 12 months of contract performance. On average, EPA completed the evaluations 109 business days late, generally because there was no system in place to monitor evaluation timeliness. Consequently, contractor past performance evaluation information was not available to EPA when it awarded a new Stimulus contract totaling $5.4 million. Consideration of contractor performance prior to award reduces the risk of providing funds to a contractor with a history of poor performance.

Further, COs did not consider all available sources of information when preparing performance evaluations for contractors to which they awarded Stimulus funding. When preparing the performance evaluation of a contractor, the CO is required to use information from the technical and contracting offices. EPA did not always provide the Financial Monitoring Review, Defense Contract Audit Agency, and Office of Inspector General report directly to COs. COs found the database in which the Office of Acquisition Management houses this information difficult to access. As a result, EPA awarded $109 million in Stimulus funds to contractors with cost control and other performance issues.

EPA NEEDS DEFINITIVE GUIDANCE FOR RECOVERY ACT AND FUTURE GREEN RESERVE PROJECTS (Report No. 10-R-0057)
February 1, 2010

Findings - EPA has not provided clear and comprehensive guidance to States for how to determine the eligibility of green reserve projects. EPA was promoting a green approach to wastewater and drinking water programs for at least a year prior to the STIMULUS's enactment. Despite that experience, EPA did not develop and issue clear and comprehensive guidance in time to meet many of the States' needs. For example, EPA did not provide guidance on how to solicit and select green projects until after many States had finished doing so, and some States felt the need to resolicit for green projects while others did not. EPA's guidance and subsequent updates have not addressed important aspects of project selection. At the time of this review, EPA had not established water and energy efficiency threshold ranges for many types of green projects. Also, the Agency still had not provided sufficient information to States on how to develop business case justifications for non-categorical projects. Moreover, changes over time in EPA's guidance for how to determine project eligibility resulted in EPA regions applying different standards for approving States' green project proposals. EPA cannot provide a reasonable assurance that its green reserve projects will meet Congress' objectives without issuing guidance that sets definitive expectations. Additionally, future green funding may face similar issues.

WITNESSES

Department of Transportation Inspector General
Calvin L. Scovel, III

Environmental Protection Agency Inspector General
Arthur A. Elkins, Jr.

Government Accountability Office
Phillip Herr
David Trimble

Department of Transportation
Undersecretary for Policy
Roy Kienitz

STIMULUS STATUS: TWO YEARS AND COUNTING

WEDNESDAY, MAY 4, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
WASHINGTON, DC.

The committee met, pursuant to notice, at 10:04 a.m., in Room 2167, Rayburn House Office Building, Hon. John L. Mica (Chairman of the committee) presiding.

Mr. MICA. Good morning. I would like to call this hearing of the House Transportation and Infrastructure Committee to order.

The purpose of today's hearing is to review the status of stimulus legislation. The title is, "Stimulus Status: Two Years and Counting." And today we will have an opportunity to hear from some of the officials who have performed an audit, have reviewed the work performed under the stimulus program. And we have had the General Accounting Office, the Department of Transportation, the inspector general of DOT, IG, the Environmental Protection—inspector of EPA, and others who have looked at the implementation of the American Recovery and Investment Act. And we will hear from them as our witnesses today.

This hearing is a continuation of a series that began under the leadership of our former chair, and we have attempted to be diligent in our oversight responsibilities to review the progress of that legislation and efforts to improve the economy and create jobs in a very difficult time in our economy.

The order of business this morning is we will start with—I will give an opening statement, then I will recognize our Ranking Member, Mr. Rahall. We will turn to other Members and allow them the opportunity for comments this morning, and then we will turn to our witnesses. And I appreciate, again, their participation and contribution to this important review.

Well, let me say that I probably couldn't be more frustrated over anything than the situation we find ourselves in right now with the economy of the United States. There are still millions of people unemployed. The unemployment level is at record levels. We are 2 years now into the economic downturn, and we are a little over 2 years into having in place the American Recovery Act, known as the Stimulus Bill. And again, I just could not be more frustrated by the results that I see.

To put this in perspective, I spoke to a group just an hour or so ago, and we were talking about stimulus. And I reminded them that the total stimulus package was $787 billion. And I think that has been even re-evaluated to up over $800 billion. The current

debt that we find ourselves in in just the last 24 to 30 months is some $5.3 trillion. And still we have a stagnating economy. We have seen mediocre results from government attempts to improve the economy. And unfortunately, the stimulus has not been that effective, particularly in the small realm in which we were provided funds and authorization.

Again, to put this into perspective, $787 billion in stimulus money—Mr. Oberstar and I were asked to come back in December before we drafted—in the January timeframe—stimulus legislation, and put together a package for infrastructure. At that time we were told the total stimulus package would be some $250 billion to $300 billion. That would be for the entire stimulus package that Congress was to consider. We worked under the assumption that 50 percent of that $250 billion to $300 billion total package—50 percent—would be infrastructure.

What happened is now history. And you know that only $63 billion ended up in the account that we are responsible for, infrastructure—not even all of it—in our realm of responsibility. About $48 billion of the $63 billion went to the Department of Transportation. And we have monitored the progress, periodically, of those funds.

What an incredible disaster, to spend $787 billion, have $63 billion for infrastructure, of which today we will hear reports that still a good deal of that money is still not out. Much of it is in the Treasury. Many of the jobs that were created were very temporary jobs, and very few people had long-term employment as a result of that effort. I can't think of anything that is more frustrating.

When you stop and think of the enormity of the dollars that were spent, $787 billion, I just saw an account to rebuild the entire northeast corridor that was hit by unprecedented tsunami and natural disaster in Japan. The entire amount to rebuild that is $230 billion. Put this in perspective.

So, we spent the money to underwrite unemployment. We spent the money to underwrite some States. We spent the money on a whole array of social programs, and we spent very little money on infrastructure—which actually, for every billion dollars, we are told, in appropriate infrastructure spending you get 25,000 to 35,000 jobs. $787 billion. And then we get back down to our $63 billion, and how little of that actually got out in a hurry.

So, I cannot tell you how frustrated I am, and particularly in the construction area. We are running 20 percent, nationally, in unemployment and construction. And almost every one of these jobs, if the money had been properly expended, and an appropriate amount for infrastructure, would be putting people to work in the most hard-hit area.

This will go down in history as one of the greatest failures of a government program to stimulate the economy that mankind has ever created. So I cannot tell you how frustrated I am. I know Mr. Oberstar was frustrated when we got whacked to $63 billion. It was a very sad day for the American people.

Lesson learned, in closing. Even if you have the money, you have got to make certain that you have an expedited means of getting that money out. And it is my hope in the successor to TEA–LU that we can expedite the process. I stood on the floor of the House of Representatives and begged them to double the money for infra-

structure, and then condense the amount of time to get the projects out. I think I had 23 or 24 votes from the Democrat side of the aisle, but we failed then. We cannot fail again.

This is a very expensive—almost $1 trillion—lesson that we should learn from the failure of what has taken place here.

Now, I know there are many temporary jobs. So we had two failures. We had, first, the Stimulus Bill for infrastructure and we couldn't get the money out in a timely fashion; and secondly, not passing a long-term transportation bill. I know Mr. Rahall, the Ranking Member, and both sides of the aisle are committed to a 6-year bill. If we had done a 6-year bill, fully funded at the level Mr. Oberstar and I had committed to, we would have millions and millions of people working. If we had stimulus money to properly direct it and then expedite it to get out for good infrastructure projects, we would have millions more working. We wouldn't find ourselves in the situation that we are in today.

So, I cannot be more disappointed. You stop and think about this. I go back to the district—I know you have, too—and you cannot help but meet people who have lost their homes, their jobs, their savings. And I think so much of that could have been avoided if Congress had done the right thing.

But again, historically, people will look back on the incredible amount of money that was spent, thinking that much of this was supposed to be directed towards infrastructure, and it was only a very minuscule amount. And now we see the results of that.

And then, finally, I do want to look at some of the specific transportation money on rail, and how that was expended, and the failure we had in that area, because I am a strong advocate of mass and fixed transportation and high-speed rail, and we had a very dismal start to that program, which is also a substantial part of that stimulus transportation dollars, even though they were small dollars. That did not move forward in a successful manner, and has set us back in that regard.

So, not here to pick on anybody today. We want to get an honest assessment. But I couldn't be more frustrated in not having a better success, both in the amount of money, getting the money out, and better infrastructure projects to build this country's crumbling infrastructure.

So, with that opening statement, pleased to yield to the very capable, honorable, distinguished gentleman who had—what did you have, the Vice President in your district Monday?

Mr. RAHALL. Just the Secretary of Transportation.

Mr. MICA. Oh, Secretary of Transportation.

Mr. RAHALL. Yes.

Mr. MICA. That's right.

Mr. RAHALL. More important.

Mr. MICA. That's right, more important.

[Laughter.]

Mr. MICA. And we had a great discussion with the Secretary of Transportation—and hosted very generously by the President—on Monday night, a very productive session with some of the Senate leadership and——

Mr. RAHALL. Bipartisan.

Mr. MICA. Mr. Rahall continues to do an outstanding job in trying to move us forward in a positive direction on infrastructure. So, pleased to yield to him.

Mr. RAHALL. Thank you very much, Mr. Chairman. I appreciate those kind words. And, believe you me, it is mutual. And I salute your leadership of this committee, as well.

Listening to your opening statement, there is a lot of which I totally agree with you. There are other points that I disagree that will come out during today's hearing, I am sure. But I know that this is a very important hearing to discuss the millions of American jobs that have either been created or saved—or saved—as a result of the Recovery Act.

This hearing is billed as an opportunity to examine oversight lapses of the Recovery Act. And I certainly want to remind my good friends on the other side of the aisle, especially those 19 new members of this committee, that this is not the first such oversight hearing, that we did have about 18—no, 19—oversight hearings in the last Congress by this committee on the Recovery Act alone. So we have been very studious in our responsibilities to conduct oversight, and you are continuing that today, Mr. Chairman, and I salute you for it.

Mr. MICA. I won't do 18, though.

Mr. RAHALL. Oh, you won't do 18? Oh, Chairman Oberstar would hate to hear that.

On the other hand, probably the other things that we have spent more time on this Congress—not this committee, and I stress, and not this chairman, I stress—but the other things, as a body, that we spent more time on in this Congress is whether or not we are going to end Medicare as we know it, whether we are going to continue the ill-conceived witch hunt for President Obama's birth certificate, or whether we are going to talk about the need for creating jobs while bringing a budget to the floor that destroys hundreds of thousands of transportation jobs in America, jobs lost in every single State of the Union.

So, I am proud of this committee, of its chairman, and of the oversight work that we have conducted. And I commend the chairman for his extensive Recovery Act oversight work, initiated, as I have said, in the previous Congress under our distinguished Chairman, Mr. Oberstar. And we will have to go quite a bit to keep pace with him, but I understand you won't do that.

Whether measured by the millions of American jobs created or saved, the half-billion dollars in unemployment benefits that have been avoided, or the tremendous progress that has been made to repair and rebuild our crumbling infrastructure, the transportation and infrastructure investments provided by the Recovery Act have been a success. It has helped stem the tide of job losses from the worst economic crisis facing our Nation since the Great Depression. These are investments in America's future. They are creating economic opportunities for us today.

The Recovery Act did provide some $64 billion for transportation and infrastructure needs coming within this committee's jurisdiction. Federal agencies, States, and their local partners have obligated $60.7 billion for 19,784 transportation and other infrastructure projects, representing about 95 percent of the funds available.

Across the Nation, work has begun on nearly all of these projects, producing badly needed family-wage jobs today. Direct job creation from these projects has resulted in paychecks for thousands of Americans, which in turn prevents the need for those Americans to collect unemployment checks and instead allows them to pay taxes.

For example, direct job creation from highway projects alone has resulted in payroll expenditures of $2.8 billion. And using this data we can calculate that $543 million in unemployment checks have been avoided as a result of this direct job creation. And, furthermore, these direct jobs have caused nearly $571 million to be paid in Federal taxes.

Is the unemployment rate still too high? Absolutely. Do we have more work to do to create more American jobs? Absolutely. But would we be worse off today without the Recovery Act? Absolutely.

I will close by thanking today's witnesses. I look forward to hearing their testimony and learning more about how we can build upon the success of the Recovery Act and continue to put our Americans back to work. We must grow past ideological differences and work together to keep America's economy on the road to recovery. The price of not investing in America's future is simply too high.

I thank you, Mr. Chairman.

Mr. MICA. I thank you. Other Members seek recognition? Ms. Norton?

Ms. NORTON. Mr. Chairman, I want to thank you for continuing these hearings. I don't know, you might even agree that we ought to, in memory of a man who spent so much of his life here, call these—dedicate these hearings to Jim Oberstar. But you were his good partner for many years, and it is very important that we continue to do the kind of oversight you are doing today.

I do want to say that everyone shares your frustration with the fact that the stimulus package didn't cure all of the recession. I am not sure many of us thought it would. The majority, of course, took power here in the House on the theme of jobs. So I just want to remind us that whatever the Stimulus Bill did or did not do, cutting Federal programs that mostly go to the States does not stimulate jobs. And I do believe that it has something to do, to say the very least, with why States are in the midst of collapsing now.

I agree with the chairman that we wanted more of the money to go to infrastructure. We were competing with our own States. And I am not sure there is a single Member of this committee or of the Congress who would have cut off his own State from some of the funds that came there. And what we see now is the collapse of the States.

The chairman said that many of these jobs were temporary. I believe the record should be corrected in that regard, because, according to the CBO, which is the only objective source we have, the Recovery Act increased the number of Americans employed by between 1.3 million and 3.5 million, compared with what would have occurred, had Congress—and increased the number of full-time equivalent jobs by 1.8 million to 5 million, compared with what would have occurred had Congress not passed the Recovery Act. So,

whatever you think of the Recovery Act, there is no case to be made that we would have been better off without out.

Finally, I would like to say that I think that the chairman's announcement before we left, that he intends to bring a surface transportation bill to the floor, is the best hope for new infrastructure money, and it does provide an opportunity for both sides to work together as we have always done so amicably in this committee.

Thank you very much, Mr. Chairman.

Mr. MICA. Thank you. Other Members that seek recognition? Ms. Brown?

Ms. BROWN. Yes, Mr. Mica. And Ranking Member, thank you.

You know what? I am going to be very brief, I am going to put my statement in the record. But I just want to be clear that you can put lipstick on a pig, it is still a pig. And the fact is in December we spent $700 billion in tax cuts for the millionaires and billionaires. So, I have a problem—and to me it was reverse Robin Hood, robbing from the poor and working people to give tax breaks to the rich.

So, I wanted 100 percent of the tax cuts to go into infrastructure and transportation. But you know we live in a climate that you have to get 218 votes in the House and 60 votes in the Senate, and that was the problem in trying to make sure that we got as much as we can into transportation. And we know for every billion dollars we spend it generates 44,000 permanent jobs.

And to say that they are temporary jobs, let me tell you something. People who cannot pay their foreclosure, cannot pay their mortgage, they would welcome temporary jobs or any other kind of jobs. And in Florida we could have gotten close to $3 billion for high-speed rail, and that would have generated over 60,000 jobs. All of them would not have been permanent jobs, but they were good-paying jobs.

And you mentioned earlier about the Federal Railroad Administration, and how they issued the dollars. Let's be clear that no State received a dime that they did not request, and the FRA set up a committee that reviewed all of the applications. And I was very grateful—and you also—that Florida received such a large percentage of it. But clearly there is a great interest in rail. I understand that we received over 90 applications for a total of $10 billion from 24 States and Amtrak for the money that Florida has turned back.

So, you know, we have some differences of opinions on how we should spend taxpayers' dollars to generate the economy. We, of course, are in a tank, and we need to do all we can. And we both agree that infrastructure investment is the best way to go about it. So, I am looking forward to the future dialogue, as we move forward.

Mr. MICA. I thank the gentlelady. As an addendum to my opening statement, I just—I should have said this, but I feel too that the thing that has actually motivated any slight increase in economic activity is some definition of tax policy which the Congress did do, and which is now taking effect and has given some stability and ability for people who have the funds to employ to move forward on some sort of defined——

Ms. BROWN. Mr. Chairman?

Mr. MICA. Yes, just quickly.

Ms. BROWN. Mr. Chairman?

Mr. MICA. Yes.

Ms. BROWN. And that is where we disagree.

Mr. MICA. Yes, ma'am. Yes, ma'am. OK, thank you. Ms. Richardson, you are recognized.

Ms. RICHARDSON. Thank you, Mr. Chairman and Ranking Member Rahall, and our witnesses who are here to testify with us today.

As I watched the rollout of the stimulus program, I was encouraged when I would watch the Sunday morning programs. And often times, when people would reference how the stimulus dollars were used, they would very often times refer to the transportation section. So, although we would have all liked to have seen it been done better—and maybe never having had to have done it at all—I would say, though, of everything that was done, I think this was the most successful part of the program.

In particular, though, I would like to point out a couple things. During this recession, the construction section in particular was hard hit, with nearly losing 2 million jobs. Unemployment rates in this sector were higher than in any other sector, even with all the funds we have subsequently invested. The unemployment rate in this sector still remains at 20 percent. And so, what I would urge is not only as we continue to fund the projects and get the projects completed, but we work together on this committee to figure out how to get more funds there, so we can continue this progress.

The transportation sector has been particularly effective in getting money out of the door, and getting people back to work. Federal agencies, State and local partners, have obligated $60.7 billion for nearly 20,000 projects. That is amazing. Representing 95 percent of the total transportation funds. Almost 20 percent of these funds have gone to projects that have already been completed.

I can submit for the record that in every single city that I represent, we currently have a project. In Compton, at 205 South Willow Brook, also in Signal Hill, at 2175 Cherry Avenue, at 1963 East Anaheim in Long Beach, and 701 East Carson Street in Carson.

So, when we consider the success of this program, certainly we would like to do better. But I can tell you for the people in my district who are finally seeing projects come to fruition, this has been a benefit.

I would like to stress the importance, though, as we move forward, for the witnesses here, the importance of unbundling contracts, and to expand the reach of our funds beyond the standard companies that traditionally receive the funds. I remember when we took those tough votes. And one of the reasons why we took it was for the people who were currently not working, that they were going to have an opportunity. And, unfortunately, I think we did fall short in that area. Companies, businesses that were already in the queue, already working with State and local governments, they were able to save their jobs. But what new jobs did we create? I think that debate is still open.

I would also urge that we would continue, as we move forward, to use project or labor agreements that would facilitate local hiring and fair wage practices.

Finally, I want to talk a little bit about the information, the data that we have. And I want to join with Mr. Rahall that in the subsequent hearings that we had over the last 2 years, my only issue with this document is that it does not differentiate—and it is my understanding when the rules were sent out for the money it did not differentiate—between save jobs and new jobs. And I think, for that, we are unable to communicate to the American public how well we really did fulfill the objective. And that is a very critical point for me.

But I thank all the witnesses for being here. I thank you for your work. And we look forward to your testimony. I yield back.

Mr. MICA. Thank you. Pleased to recognize the gentleman from New Jersey, Mr. Sires.

Mr. SIRES. Thank you, Mr. Chairman, and thank you for being here today, and thank you for having this meeting.

I certainly agree with you that we needed a lot more money for infrastructure. I would like to have seen a greater amount, because I certainly see in my district—I come from a district that has a very old infrastructure—I see what this money has done in some of this, whether it was paving a road, whether it was building a bridge.

But when you look at the situation the way it was, we were losing millions of jobs a month. The financial sector was ready to crumble. Everything around us was crumbling. So we moved on a stimulus. And I agree with my colleague, Laura Richardson. The most successful part of this stimulus has been the infrastructure money. And, unfortunately, we just didn't put enough money in there.

So, we have created a ton of jobs at a time where we were losing millions of jobs a month. And I wish that we are able to do the same thing in the upcoming ratification of the transportation bill. Hopefully we can put a lot of money—put people to work.

So, I thank the chairman for holding this meeting, and I yield back.

Mr. MICA. Thank you. Any other Members seek recognition? Yes, Ms. Hirono?

Ms. HIRONO. Thank you, Mr. Chairman and Ranking Member Rahall and our witnesses today.

There is no question that the Stimulus Act has been good for Hawaii. The members of this committee in particular know the importance of infrastructure spending. It's job creation, long-term benefits. And the chairman's leadership and Ranking Member Rahall's leadership, as we move forward with the surface transportation bill, will be very critical. And I thank them for that leadership.

I just want to focus a little bit on Hawaii, and what the Stimulus Act did for Hawaii. The Council of Economic Advisors said that 13,000 jobs were retained or created in Hawaii, and over $125 million went to highway infrastructure funding, and some $40 million has been obligated, $70 million went directly to paychecks for Hawaii workers and their families.

And in Hawaii they created a very transparent way of tracking this money, the recovery money. They created a recovery website. There is an office of economic reinvestment and recovery. And they established a legislative oversight committee. And, of course, the work o this committee, the Transportation and Infrastructure Committee, is a model of congressional oversight over the Recovery Act funding.

I also want to mention that the State of Hawaii received $24.5 million in TIGER transportation investment, generating economic recovery money. And this went to the rehabilitation and construction of Pier 29 in Honolulu Harbor, which is the 15th busiest port in the country. So when Secretary LaHood was visiting Hawaii a little while ago, he was particularly interested in seeing Recovery Act projects, and he—we took him to see the pier, and what was happening there.

So, once again, it is of critical importance that we continue to support infrastructure investment. All of us on this committee know that.

Thank you, Mr. Chairman.

Mr. MICA. Thank you. And thank all the Members who have provided opening statements. And there being no further opening statements, let us turn now to our witnesses. And we have a number of witnesses. I will introduce them briefly: Calvin Scovel, inspector general of the Department of Transportation; Arthur Elkins, inspector general of EPA; Phillip Herr and David Trimble, who is accompanied by Susan Flemming of the General Accounting Office; and Roy Kienitz, who is with the Department of Transportation as under secretary for policy.

So, we welcome our witnesses. And, as is normal, we—if you have a lengthy statement, it can be submitted to the record. And we hope you can summarize in approximately 5 minutes.

We will go through all the witnesses, and then we will turn to questions. So let me first welcome the inspector general back, Calvin Scovel, with the Department of Transportation. Welcome, sir, and you are recognized.

TESTIMONY OF CALVIN L. SCOVEL III, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION; ARTHUR A. ELKINS, JR., INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY; PHILLIP R. HERR, DIRECTOR, PHYSICAL INFRASTRUCTURE, GOVERNMENT ACCOUNTABILITY OFFICE; DAVID C. TRIMBLE, ACTING DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE; ROY KIENITZ, UNDER SECRETARY FOR POLICY, DEPARTMENT OF TRANSPORTATION

Mr. SCOVEL. Chairman Mica, Ranking Member Rahall, members of the committee, thank you for inviting me here today to discuss DOT's ARRA spending.

As you know, ARRA designated $48 billion for new and existing DOT programs to create and save jobs, invest in long-term growth, and improve the Nation's Transportation system. DOT has been working hard to administer the large infusion of funds and comply with ARRA requirements. However, more difficult work lies ahead, as a significant portion of ARRA funds remains to be spent.

Our completed and ongoing ARRA audits point to challenges DOT must address as it moves forward, ensuring transparency on job reporting, strengthening project and financial oversight, maintaining measures to combat fraud, waste, and abuse, and finally, effectively implementing its new TIGER and high-speed rail programs. Failure to address these challenges could have significant cost and schedule implications in the future.

Our ongoing audit of FAA's jobs reporting found problems in the accuracy of the data, such as one airport that received funds through FAA's $1.1 billion airport improvement program, reporting over 100,000 more job hours than actually occurred. This work also identified weaknesses that relate to DOT's process for estimating and reporting jobs information to Congress under section 1201. DOT did not report an estimate of indirect jobs or how it calculated the total number of jobs funded. Providing this information would enhance transparency, and more fully satisfy congressional requirements.

Strengthening DOT's project and financial oversight is also important. The Federal Highway Administration, which accounts for more than half of DOT's recovery budget, is taking action to address weaknesses we identified in its national review teams, actions that should help FHWA remove known vulnerabilities, identify emerging risks, and assess States' corrective measures.

FHWA is also updating its regulations to help ensure States conduct value engineering studies to objectively review design alternatives on highway and bridge projects.

FHWA has other opportunities to improve project performance. It has acknowledged the risks associated with local public agencies, and our ongoing work indicates that some LPA projects continue to fall short in complying with Federal requirements for quality assurance and processing of contract changes.

Promoting fuller competition could also help achieve cost savings in FHWA's ARRA-funded contracts, as well as its other Federal aid contracts.

Ensuring rigorous financial oversight of grantees has also been a challenge for the Department. In a review of AIP payments commissioned by FAA, consultants determined that 14 of 24 airports did not have adequate support to justify their ARRA payment requests, consistent with findings we reported on FAA's oversight of non-ARRA-funded AIP grants.

Across the Department, full compliance with OMB's single audit requirements for ensuring grantees implement corrective action plans would help prevent improper payments and provide timely action on questioned costs. Over the past year, we have issued 66 single-audit action memos on deficiencies in grantees' oversight of ARRA funds. Our ongoing work identified 16 questioned cost findings, totaling $3.7 million, with final decisions or repayments pending for an average of 20 months.

The surge in ARRA funding and construction activity also demands continued aggressive pursuit of counterfraud efforts. As of March 2011 we have 51 open ARRA investigations, 45 of which the Department of Justice is reviewing for potential prosecution. One of the strongest deterrents against contract fraud is DOT's ability to make timely suspension and debarment decisions. However, last

year we reported that many of the Department's S&D decisions had been pending for a year or longer. DOT has issued a revised S&D policy, but sustained focus is needed to ensure S&D decisions are timely, and prevent unethical parties from bidding for and receiving contracts.

Tackling all the challenges I have outlined will be critical for DOT to effectively implement its TIGER and high-speed rail programs. Standing up these programs requires direct oversight of large infrastructure projects, a role OST and FRA have not previously performed. Based on our work to date, OST is on track to meet its ARRA-required deadline to fully obligate funds for all TIGER contracts. However, effective oversight and management of the TIGER program will be highly dependent on OST's coordination with the operating administration administering those TIGER grants.

Our high-speed rail work indicates that FRA has not issued sufficient guidance for forecasting benefits, and establishing access agreements between States and the freight railroads.

In addition, FRA has yet to finalize policies and procedures that would ensure a core set of grant management responsibilities are carried out. With the majority of program implementation and construction ahead, FRA has an opportunity and an obligation to build in oversight controls before a significant amount of ARRA funding is spent. We will continue to assist the Department in its efforts to ensure all ARRA funds are spent wisely, and we remain committed to promptly notifying Congress and DOT of actions needed to achieve ARRA goals.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions you or other members of the committee may have.

Mr. MICA. Thank you, and we will hold those questions until we have heard from the other panelists. And next I recognize Arthur Elkins, inspector general of EPA.

Welcome. You are recognized, sir.

Mr. ELKINS. Thank you. Good morning, Chairman Mica, Ranking Member Rahall, and members of the committee. I am Arthur Elkins, Jr., EPA Inspector General. I am pleased to appear before you today for the first time since becoming IG in June 2010 to discuss our Recovery Act activities.

The Act was intended to create jobs, stimulate economic recovery as quickly as possible, and invest in infrastructure. The Act's purpose, as it applies to EPA, is to promote economic recovery by creating jobs, while also promoting a healthier environment. Toward that end, EPA received over $7 billion for 6 EPA programs, $6 billion of which went to the Clean Water and Drinking Water State Revolving Funds.

EPA has some noteworthy accomplishments. For example, EPA has obligated over 99 percent of its Recovery Act funds. All of its State Revolving Funds awarded to States were under contract or construction by the statutory deadline. We expressed concerns about EPA being able to meet this deadline. And, to their credit, they accomplished this task.

Also, the OIG has detected limited fraud of EPA funds so far. Recipient reporting requirements and greater transparency seem to

have made a positive impact. However, experience shows that complex fraud schemes take time to surface, so sustained vigilance is necessary.

While EPA quickly obligated its Recovery Act money, we have seen some implementation issues. I would like to highlight three issues this morning.

First, EPA is unable to assess the overall impact of its Recovery Act funds on disadvantaged or environmental justice communities. The goals of the Recovery Act, which, as you know, is to create and retain jobs, promote economic recovery, and assist those most impacted by the recession, are outside of EPA's mission to protect human health and the environment. The Act's intended results are not traditionally tracked by EPA.

As a result, our work shows that EPA has had difficulty in identifying and targeting economically disadvantaged communities. Their effort was hindered by the absence of definitions, data, and measures. Multiple constraints limited EPA's ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession.

Of note was the "shovel-ready" requirement and the short timeframes to allocate funds. EPA programs require all applicants to meet program criteria. For water and wastewater projects, applicants had to demonstrate some preparedness, including completion of design plans and permitting processes. However, communities most in need often lacked the financial resources to develop the necessary design plans or to prepare applications. Those communities who did not have the necessary materials prepared in advance were unable to compete for funds.

In addition, among the Recovery Act-funded programs at EPA, States made the funding decisions for 86 percent of the funds. Whether and how socioeconomic conditions influence project selection was at their discretion. The result was that EPA's ability to target economically disadvantaged areas that have environmental needs was adversely impacted.

Second, EPA did not always develop clear, comprehensive, and timely guidance for recipients. One example was how to determine the eligibility of green reserve projects. Specifically, EPA did not provide guidance on how to solicit and select green projects until after many States had finished doing so. Moreover, EPA's guidance and subsequent updates have not addressed important aspects of project selection. As a result, EPA could not provide a reasonable assurance that its green reserve projects will meet Congress' objectives.

Finally, EPA should ensure that it has sufficient contracts and grants staff to perform both Recovery Act and non-Recovery Act activities. While EPA made the Recovery Act a top priority by shifting its existing contract and grant administration staff to those activities, the process was not always based on workforce analyses of the actual resources needed. As a result, this left less time for staff to focus on non-Recovery Act administration, monitoring, and oversight. This leaves EPA contracts and grants susceptible to undetected errors.

In closing, while we have noted implementation issues, we have not seen significant problems with Recovery Act funds at EPA so

far. However, I must stress that the story is still unfolding. As I mentioned earlier, complex fraud schemes often take time to surface so EPA must not take its eye off the ball. Also, we have concerns that there may be insufficient EPA oversight to ensure that projects are completed on time, and environmental objectives achieved. EPA's oversight funds must be obligated by the end of fiscal year 2011, yet many Recovery Act projects will not be completed by that date.

The OIG will continue to monitor and assess EPA's Recovery Act activities in these and other areas. I want to thank you for the opportunity to testify before you today. I would be pleased to answer any questions the committee may have. Thank you.

Mr. MICA. Again, we will defer for questions.

And I will recognize first Phillip Herr, and then we will go to David Trimble.

Mr. HERR. Thank you. Chairman Mica, Ranking Member Rahall, and members of the committee, I am pleased to be here today to discuss GAO's work on Recovery Act transportation programs. Drawing on prior and ongoing work, I will discuss the status, use, outcomes, and lessons learned across several programs, including the TIGER and high-speed rail efforts.

In terms of funding status, of the $48 billion available for transportation programs, about 95 percent has been obligated for over 15,000 projects. Expenditures total about $26 billion, about 59 percent of available funds.

Highway funds have been primarily used for pavement improvement, and transit funds have been used to upgrade facilities and purchase new vehicles. Recovery Act transportation projects are reported to have supported about 50,000 full-time equivalent jobs from October through December of 2010. Highway projects accounted for approximately two-thirds of these jobs, with transit and other projects making up the rest.

We recommended that DOT determine the data needed to assess Recovery Act transportation impacts, but it has not committed to doing so. We continue to believe that effort is important.

Several lessons learned from Recovery Act programs may be relevant to reauthorization decisions. States were required to certify they would maintain planned transportation spending from February 2009 through September 2010, referred to as "maintenance of effort" in the law. Available data indicate that 21 States did not meet planned spending levels during this period. This provision was also administratively challenging, with seven iterations of DOT guidance being issued to States.

Federal and State officials stated that more flexibility is needed to implement this provision, in light of unexpected changes in economic conditions. Going forward, we believe DOT is well-positioned to understand how this provision could be improved and implemented.

Another unique feature of the Recovery Act was targeting economically distressed areas. This also proved challenging due to variation in how some States prioritize projects. DOT also had ongoing challenges maintaining data on this aspect of the Recovery Act, and we are continuing to monitor that.

The high-speed rail and TIGER programs represented important steps toward investing in projects of regional and national significance through merit-based competitive processes, and using cost benefit analysis to inform decisions. While generally following recommended grantmaking practices, both could have better documented award decisions. In our view, the absence of documentation can give rise to challenges to the decisions, making DOT vulnerable to criticism that projects were selected for reasons other than merit.

Chairman Mica, Ranking Member Rahall, and members of the committee, this concludes my statement, and I am pleased to answer questions. And my colleague, Susan Flemming, is here to answer questions on GAO's high-speed rail work as well, should those arise.

Mr. MICA. We will hear from Mr. Trimble next.

Mr. TRIMBLE. I am pleased to be here today to discuss our work examining States' use of Recovery Act funds for clean water projects. My statement is based on GAO's ongoing work examining the Clean Water and Drinking Water State Revolving Fund programs.

As part of this review, we examined the national data, as well as specific implementation issues in nine States. Nationally, all of the Recovery Act SRF funding has been awarded and obligated, and almost 80 percent has been drawn down by the States. This money was used to address water quality problems, and help fund nearly 1,900 clean water projects, with roughly one-quarter of these classified as green.

Clean water projects included secondary and advance treatment facilities, storm and sanitary sewers, and projects intended to address nonpoint source pollution. About three-quarters of clean water Recovery Act funds were provided as grants or other subsidies. As projects are completed and funds spent, the number of full-time equivalent jobs has begun to decline from their peak last summer of over 9,000 to just over 4,000 for the quarter closing in March.

For the nine States in our current review, the States told us that about 20 percent of their clean water SRF funds went to projects that served disadvantaged communities, and over 80 percent of this money was provided in the forms of grants or other subsidies.

State officials did face some challenges in meeting Recovery Act requirements. Some officials noted that the requirement to have projects under contract within 1 year, as well as the requirement for green projects, changed which projects they funded. While the Buy American and Davis-Bacon provisions generally did not affect project selection, some potential sub-recipients declined funding, as they did not want to meet the requirements, or were concerned the requirements would increase the project's cost.

Our current work is showing that EPA, EPA IG, and State program and oversight and audit staffs continue to conduct oversight, and the EPA has taken action on our recommendation from last year to improve oversight over Recovery Act funds.

States' experiences implementing the Recovery Act requirements highlight potential future challenges for the SRF program, where the green and the additional subsidization requirement have been

continued. Officials in four of the nine States we examined noted that the 20 percent green target was difficult to achieve, with one suggesting such goals should be encouraged, but without a fixed target.

Officials in other States noted that requirements to provide grants or other subsidies preclude the re-use of this money in the revolving loan fund, which means that less money will be available to fund future water infrastructure projects. The policy tradeoff is that additional subsidization funds enable but do not require States to give money to disadvantaged communities, if they choose to do so.

Mr. Chairman, this concludes my prepared statement.

Mr. MICA. Thank you.

And now we will turn to Under Secretary Kienitz, and I recognize him.

Thank you.

Mr. KIENITZ. Thank you, Mr. Chairman, Mr. Rahall, and members of the committee. Obviously, the staff at DOT from top to bottom and in every State have spent hundreds of thousands of hours working on implementation of Recovery Act projects. And so we are glad to have an opportunity to come talk to you about what we have been doing. It has been a very big project for us, and we hope the results have been good.

More than 15,000 transportation projects in all 50 States have received Recovery Act funding from our agency. And 9,000 of these projects have already been completed. And that ends up being thousands of new bridges and buses, new runways and railways serving the traveling public in communities all over the country.

As of the end of April, DOT has obligated almost 100 percent of funding in most funding categories. Among the projects funded: for highways we were given $27.6 billion, that's 13,300 individual projects, including 41,800 miles of highway receiving improvements and 2,700 individual bridges; for transit we got $8.8 billion, that's 11,400 buses and vans that were purchased, and 637 rail vehicles, and more than 10,000 individual other projects for transit; on high-speed rail we have dedicated funding to 738 miles of new routes.

The TIGER discretionary program mentioned here funded 51 regionally or nationally significant projects for roads, rail, ports, transit, multimodal and other things. Amtrak, which has not been mentioned here yet, did get $1.3 billion. They have worked on 190 miles of track, 10 individual bridges, 79 rail stations, as well as passenger cars and locomotives.

On the airport side, we did 157 individual runway projects, 25 air traffic control facilities, and many other smaller projects. And there was even a small shipyards program, where we purchased cranes, equipment, and machinery for 53 shipyards.

As of the end of January, these projects have provided more than 280,000 job years of work in the overall economy, creating both direct transportation jobs, as well as jobs in manufacturing and supplier industries. For example, hundreds of workers are expanding Highway 24 in California from six lanes to eight, to alleviate congestion for the 160,000 commuters from Contra Costa who come into the Oakland area.

We are expanding Interstate 94 in Wisconsin from six to eight lanes, from Milwaukee down to the Illinois border. In Tampa we are linking Interstate 4 with the Lee Roy Selmon Crosstown Expressway to provide trucks with direct access to the Port of Tampa without going through downtown, just the kind of last-mile investment in intermodal transportation that both transportation experts and the members of this committee have repeatedly told us need to be a priority.

We have added enough new buses to the Nation's transit fleet that, if we line them all up, the line would be 40 miles long. We are restoring the 136-year-old Eads Bridge across the Mississippi River in St. Louis, 80-year-old subway stations in Philadelphia, and even the Brooklyn Bridge. Recovery Act funding has made it possible to repair, restore, and expand our transportation capacity all across the Nation, and we are better off, as a result.

While most of the DOT recovery money was distributed to State and local authorities using existing formulas and programs in which decisionmaking is devolved to the State and local level, Congress took some bold steps in the Recovery Act to go outside of that pattern.

First, Congress enacted a competitive surface transportation grant program that we have called the TIGER program to fund innovative projects from across all of DOT's modes. And Congress chose to add a considerable amount of funding to the previously authorized high-speed rail and intercity passenger rail programs.

We are very proud of the partnerships we have created with State and local communities as we have implemented those two popular programs, and we are pleased that we were able to use these programs to introduce the kind of competitive and merit-based approach to project selection that the President and the administration have long advocated and that the GAO has advocated for a long time, as well.

GAO recently published two reports on our Recovery Act work: one on TIGER and one on high-speed rail. And we are pleased that they generally found we did a good job in carrying out the congressional mandate and in running those programs according to good grantmaking practices. And, in fact, we did some checking. Since 1970, GAO has issued almost 169,000 individual reports and opinions. And does anyone here know how many of them use the word "good" in the title? Fourteen out of one hundred sixty-nine thousand, which is less than one in ten thousand. So we are proud that they were able to say that we used good grantmaking practices in one of the titles. Though I suspect, now that I have said this, it will be the last time that they ever do that.

[Laughter.]

Mr. KIENITZ. But in addition, we have respected particularly the GAO's work in which they have been saying for a long time that the outcomes achieved from Federal funding for transportation could be improved by having the kind of competitive programs that are embodied in TIGER and high-speed rail, and that is something that we are very much believers in, and we have worked very hard to stand those programs up from nothing.

So, thank you for the opportunity to testify today, and I am happy to answer questions.

Mr. MICA. Thank you. I think we have heard from all the witnesses now, and we will turn to questions. And I have a couple of questions.

First of all, one of my concerns—well, the stimulus was intended to provide jobs in economically depressed areas. And I think that was one of the directives included in the legislation. And, unfortunately, I have got two charts of some of the outlays for funds, particularly, I guess, in the TIGER grants, which was the discretionary funds that DOT gave out. And we had total, I think, of $2.3 billion given to States.

For example, $171 million went to North Dakota, with an unemployment rate of 3.6; $225 million went to Nebraska, with 4.2 percent unemployment; $211 million went to South Dakota, with a 4.9 percent unemployment. And then States like Florida, we had very high unemployment, and we got zero, I think, on the first round of TIGER grants.

Did you look at any of this, Mr. Scovel, about the intent of Congress, and then applying the money to States that had the greatest unemployment need?

Mr. SCOVEL. Thank you, Mr. Chairman. I must say that we did not. In coordinating our work with that of GAO, we split the workload so that GAO would function, essentially, on the first part of implementing the TIGER program, up through the grant selection decisions.

Mr. MICA. And——

Mr. SCOVEL. We are looking, in my office, at the management and oversight implications.

Mr. MICA. Mr. Herr or Mr. Trimble, did you look at the intent of Congress, and also the expenditure of money in regard to providing assistance to hard-hit economically depressed areas?

Mr. HERR. Chairman Mica, in the transportation work we did look at the focus on projects in economically distressed areas. As part of the larger body of work we did on transportation, one of the concerns that we saw was that the tracking system DOT established had some inaccuracies in it.

Mr. MICA. Had some what?

Mr. HERR. Had some inaccuracies, in terms of how the projects and EDAs were being identified by the States. But we were doing that on the broader effort.

Mr. MICA. But nobody really has an analysis of the program meeting Congress' intent?

Mr. HERR. Well, in terms of the TIGER program specifically, those grants had been made a little later in the process.

Mr. MICA. But you did not——

Mr. HERR. We did not look specifically at that piece.

Mr. MICA. OK. One of the things you did say was a significant amount of the DOT money went to paving. I was told it was about 50 percent or more. Is that correct?

Mr. HERR. It's a little higher than that. Pavement-related spending is about 70 percent, sir.

Mr. MICA. Oh, it's 70 percent. So—and most of those jobs would not be permanent jobs, would they?

Mr. HERR. Well, that would be usually a shorter term process, or projects that could be gotten underway quickly. That would be correct.

Mr. MICA. Does anyone know—we have different categories of funds, some expended out of the Treasury. Of the $63 billion—well, maybe you could take DOT, $48 billion DOT. What percentage of that has actually been spent out of the Treasury?

Mr. HERR. The data that we have is provided today in my statement, where you can see the total——

Mr. MICA. Give it to me again.

Mr. HERR. Fifty-nine percent.

Mr. MICA. Fifty-nine percent. So, 40 percent is still in the Treasury. You said allocation is a higher number. What's the allocation to date?

Mr. HERR. At this point the total obligated is $45 billion, or just about 96 percent.

Mr. MICA. Ninety-six percent. Now, one of the things that I have noticed is there has been—since the program takes so long, and there are delays in approvals and States run out of money, there has been a fair amount of reallocation. Do you have a figure on reallocation?

Mr. HERR. We had data as of last year.

Mr. MICA. I am sorry?

Mr. HERR. We had information that was current as of last year——

Mr. MICA. I cannot hear two people speaking here, I am sorry.

Mr. HERR. I can get updated information. We have a report on the Recovery Act that we are going to be issuing next month, that could discuss how funds have been reallocated.

Are you specifically asking about money that was moved from highways to transit?

Mr. MICA. No, just reallocation. Projects went south. Well, and any money that was moved from accounts. But I am told a very significant amount of money had to be reallocated. And you don't have that figure?

Mr. HERR. We had information earlier in our work. There were a lot of bid savings in contracts. And so, in some cases there were actually more contracts awarded because of bid savings.

Mr. MICA. Right, projects came in at lower cost.

Mr. HERR. At lower cost.

Mr. MICA. But that is not what I am talking about. I am talking about projects going south, or not moving forward, and then reallocation. You don't have a——

Mr. HERR. My understanding from prior work was it was a relatively low percentage.

Mr. MICA. That was what?

Mr. HERR. A relatively low percentage.

Mr. MICA. But you do not have an amount——

Mr. HERR. Not today, sir.

Mr. MICA. OK. High-speed rail. Unfortunately—well, I believe I am the most prominent advocate of high-speed rail in the Congress. I wrote some of the PRIIA Act provisions for high-speed rail, some of which were ignored in the stimulus program.

But I couldn't think of a worse start of any program—you mentioned high-speed rail—we had sort of a bait and switch operation that people thought they were getting high-speed rail. The governor of, what is it, Ohio—that project was 39 miles an hour, huge expenditure of funds. You could have taken a bus and gotten there faster, even after spending the money that Governor Kasich sent back. The system, that 39 miles an hour is not high speed. Or even if it had gotten up to 50 miles an hour is not high speed. That is correct. Isn't it, Mr. Herr?

Mr. HERR. That would be my understanding.

Mr. MICA. Yes. And then the route from Chicago to Wisconsin, that was a 78 or 80 miles an hour. That was not high-speed rail, either, was it, that came back?

Mr. HERR. That would be my understanding.

Mr. MICA. Yes. And the Florida project was 84 miles in length, and it took 1 hour to go the 84 miles. How fast would that be going, average miles per hour, Mr. Herr?

Mr. HERR. Doing the math in my head, somewhere under 60.

Mr. MICA. That would be 84 miles an hour, sir.

Mr. HERR. Oh, I——

Mr. MICA. Got to work with—we have definitely got to work with you, sir.

Mr. HERR. Well, I misunderstood your question.

Mr. MICA. In fact, we may have to recalculate all the information he gave us, on that basis.

[Laughter.]

Mr. MICA. But that was not a high-speed rail project, either. And being a strong advocate, again, it was $8 billion of stimulus money, plus another $2.5 billion through a regular appropriation we worked on with Mr. Oberstar.

And the only potential now we have of high speed—and, unfortunately, the California project is between Fresno and Bakersfield, there is mostly farmland in between, and very little population to support a high-speed rail system. We will not see high-speed rail in any of our corridors. Is that correct, Mr. Herr? Do you know? Or Mr. Kienitz, do you want to——

Mr. KIENITZ. I would be happy to respond to that line of argument. I would say that the congressional definition of high-speed rail——

Mr. MICA. Is 110 miles an hour.

Mr. KIENITZ. Is achieving peak speed——

Mr. MICA. That was watered down for Amtrak, because the international one is 120. But most high-speed rail systems are operating at 150, and some are operating at 180 miles an hour.

Mr. KIENITZ. And I have ridden them, and they are impressive. The Wisconsin——

Mr. MICA. But we won't be riding one in the United States.

Mr. KIENITZ. I have—I am confident——

Mr. MICA. Between any metropolitan areas.

Mr. KIENITZ. I am confident——

Mr. MICA. With any significant population.

Mr. KIENITZ. I am confident. I have more confidence than you, perhaps.

The Wisconsin segment you mentioned does peak at 110 miles an hour. And so, as a legal matter, it is called high-speed rail. I think we all wish it were faster.

Mr. MICA. Well, Florida would have gotten up to 150 miles an hour.

Mr. KIENITZ. Right.

Mr. MICA. In a peak. But so does Acela, it gets to 150 miles an hour on the Northeast Corridor. But its average speed is around 80 miles an hour in the southern half, and 65 miles an hour from New York to Boston.

And I am not trying to bust your chops. I spent time with the Secretary, Mr. Rahall and myself, I spent a lot of time this past weekend with the Vice President, and will continue. I want to see a success. I compliment the administration for finally—what, a month ago—designating—didn't you designate the Northeast Corridor finally as a high-speed corridor eligible for some Federal assistance?

Mr. KIENITZ. And we are hoping that bears fruit soon.

Mr. MICA. Well, when we have that announcement—when is the fruit announcement coming?

Mr. KIENITZ. Soon.

Mr. MICA. Anything you can tell the committee?

Mr. KIENITZ. Sadly, I would get in big trouble if I said——

Mr. MICA. But is it a week, 2 weeks, a month, a year? I mean my term ends next November, and——

[Laughter.]

Mr. KIENITZ. It is not a year. I will give you that. No, we have placed a high priority on getting this money out quickly. So the process by which we solicited applications and are making decisions for this will be faster than any other process that we have done.

Mr. MICA. So within the next 30 days you would anticipate that you would have some announcements?

Mr. KIENITZ. You said it, not me.

Mr. MICA. Let me yield. Maybe you could get more out of him, Mr. Rahall.

[Laughter.]

Mr. RAHALL. Let me ask Mr. Kienitz of DOT and Mr. Herr of the GAO, putting in context that this is the first time DOT ever had a plan to award and oversee two discretionary grant programs of this size, the TIGER and the high-speed rail, are you pleased with the results of GAO's audits?

Mr. HERR. Mr. Rahall, our work showed that DOT did a good job of setting up criteria. And on the technical review side they established panels that did their due diligence.

One of the concerns that we had about how TIGER came out was it was difficult for us to understand the basis for the final decisions, and the documentation for those. Our recommendation to DOT is to improve the documentation of major decisions throughout the process. And I was very pleased to see in Mr. Kienitz's statement today that DOT has agreed to move forward with that recommendation.

Mr. KIENITZ. Yes, the nature of the GAO process is very long and involved. We received in draft form a recommendation that we

could have done a better job documenting the review team level work on TIGER. So in the TIGER II process, which we completed 6 months ago, we implemented that recommendation and plan to improve it further for the TIGER III that is now upcoming. So, we took that as a responsible critique, and have attempted to do it.

Mr. RAHALL. Continuing with you, Mr. Kienitz, approximately 15,000 Recovery Act highway, transit and aviation projects, as you have referenced, have broken ground all across the country. Can you give us a little more on the economic impacts of these projects? And when these projects are completed, what will the taxpayers get in return for their money?

Mr. KIENITZ. Yes, it is a quite long and quite impressive list of tens of thousands of miles of road that have been improved. Almost 12,000 new transit buses, 157 runways, ports, airports, and 2,700 bridges have been improved. It is an impressive list.

I think the issue that we are running into now is the good news in that 9,000 of the projects are done, and many of the rest of them are close to being done. Eventually the last dollars will be paid out, as the last invoice is submitted, once the project is done. The difficulty we have there is it is true for construction projects generally that every construction job is, to some degree, a temporary job. You identify a project, you design it, you build it, and then it is built.

Hopefully, these projects are of a kind that are generating generalized improved economic performance that helps support the economy in the future. But the direct construction employment, as we complete projects, is inevitably going to wind down.

And, in fact, the numbers we have been looking at for reporting the total job numbers employed during that quarter for transportation recovery projects are less than in the quarter before. And we fear that that is part of a downward trend, where it peaked during the first and second summers of—in the construction season, and now that we are 2 years gone it is going to inevitably go down.

So, I think this is why your interest and the chairman's interest in getting a long-term reauthorization has been right on point, and we agree with that.

Mr. RAHALL. Would you not agree that Vice President Biden's leadership—that these projects and the money spent under are perhaps the most scrutinized, sanitized, and transparent spending of government—of taxpayers' money in your history?

Mr. KIENITZ. I would certainly say it is the most scrutinized thing that DOT has ever done. A lot of the reporting that we do, and the transparency that we do, is pretty routine. We normally do it. It is just that, to be quite honest, no one ever looks at it. What is happening this time is, because it was such a high-profile activity, all of the things that folks do as a matter of course are getting intense scrutiny. But we also had additional levels of reporting.

Generally, every agency receiving Recovery Act funds had a whole set of reporting that you had to do. DOT, because of the work of this committee, we have our own separate, additional layer of reporting, where we report to you on what we are doing.

So, the amount of work that has gone into documenting this stuff is massive. What we have basically found from that, though, whether it is economically distressed areas or total jobs created, the fundamental requirements of the Recovery Act were not, "DOT,

go out and count the jobs; DOT, go out and determine the Recovery Act." It was, "DOT, make sure your grantee goes out and counts the jobs and tells you; make sure your grantee tells you whether it is in a distressed area or not."

And so, we are fundamentally dependent—when you are doing 15,000 projects, we are not going to send DOT agents out to stand at the job site of all these projects. We are dependent on the reporting that we get back. And what we find is a lot of the reporting is really good, particularly from the more sophisticated—California Department of Transportation has got 100,000 employees, it is a huge, professional organization. But we also have some tiny, little shipyard somewhere that got a new crane, it has got six employees, they have never been involved in this any more, they do not know how to do it.

So, I think, as a whole, the numbers we got were valid in their totals, but there are some people who are not very experienced in this work that were involved for the first time.

Mr. RAHALL. Would any other member of the panel wish to comment on that point?

Mr. SCOVEL. Thank you, Mr. Rahall. Our work shows that the Department can increase its transparency, and ultimately the utility of the data that it provides to Congress and to the taxpayer by paying more attention to the job data.

Mr. Kienitz referred to the Department's requirement under section 1201 to report direct jobs, indirect jobs, and total jobs. Our work has shown that, with greater attention, the Department could, especially with respect to indirect jobs and total jobs, provide data of greater utility to the committee and to the taxpayer.

Mr. RAHALL. Thank you.

Mr. KIENITZ. And I might just respond on that point. Theoretically, you can count direct jobs. It is up to our grantees to do that. But you cannot count indirect jobs. An indirect job is, if the workers are going and buying sandwiches, and there is a guy making sandwiches at the shop around the corner, then he has a job. There is no way to count those.

So, the only question of indirect jobs is which Ph.D. do you listen to who says he knows the answer. And we have got a lot of Ph.D.'s and they all—you know, what do they say? When you get five economists and you ask them a question you get six opinions.

Mr. RAHALL. Right.

Mr. KIENITZ. And we had a lot of those meetings. So I am sympathetic with the point the gentleman made, but I am not sure it is a perfectible science.

Mr. RAHALL. Thank you. Thank you, Mr. Chairman.

Mr. MICA. Thank you. Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman, and thank you for calling this hearing.

The main concern that people on our side had about this stimulus package, first of all, was the tremendous cost. Most of us thought we just could not afford it. Today there is tremendous concern over this—reaching this $14.3 trillion debt limit. I suppose at the time we passed this Stimulus Bill, the debt was probably around $12 trillion. And I have always been convinced the reason that more people do not get upset about that is that those are fig-

ures that nobody can humanly comprehend, not me or anybody else.

But there also was some concern because most of us on this side of the aisle felt that the bill was sold to the country on the—as being almost completely or totally an infrastructure package, when only 7 percent, roughly, went to infrastructure.

But the biggest question I have is one that probably none of you can answer. But maybe somebody can enlighten me some. I spend many hours each day reading everything I can about these bills, and the legislation before us. And when the stimulus package was acted on it was referred to in article after article as a $787 billion bill. Well, within probably less than a year—but I have seen many, many articles since that time that have referred to the bill as an $862 billion bill. Now, that is a lot of difference, that is $75 billion difference.

The Congressional Budget Office apparently issued a revised estimate of $812 billion in January, but said it is likely to go up from that figure.

Can somebody give me an explanation as to how a $787 billion bill, which is what we were told at the time we voted on it, turned into an $862 billion bill, or some figure in between there?

Mr. KIENITZ. I am obviously not an expert in this area.

Mr. DUNCAN. Yes.

Mr. KIENITZ. But I think I know the answer, which is it is on the tax provisions, not any of the spending or infrastructure money. We get a very exact amount of money, and we spend that exact amount.

On the tax side, if you are giving tax cuts, you have to make an estimate of how much taxes people will pay in the coming years, and then how much less they will pay if you give them a rate cut. But the actual amount that people end up paying and the amount they would have paid depends on what employment is in the economy, economic growth, and income tax, and they never get the number right.

I think the answer is they underestimated the amount of income that would have been earned, that was going to be earned. And so, the tax cuts actually ended up being of greater value, because people got more tax cuts than they would have, which means the cost of the bill is higher. I think that is the answer.

Mr. DUNCAN. So——

Mr. HERR. Mr. Duncan, there were also some credits for energy efficiency, and things of that nature. So if somebody opted to, say, upgrade a particular kind of system for their home, they could get a tax credit for that, as well. That would be along the lines of what Mr. Kienitz was just describing.

Mr. DUNCAN. I don't think that was made clear to us. I thought that, at the time, it was sold to us as being at least a maximum of $787 billion, because I have read many, many articles about it. But at least that is somewhat of an explanation, I suppose.

What—there are several other things that questions have been raised about. For instance, it says the—in one of the memos it says the FAA emphasized in public testimony its goal to select the highest priority projects defined by the FAA as having a score of 62, yet the FAA awarded over 80 grants to lower scoring projects.

Does anyone know why the FAA awarded those grants to projects that did not meet their own qualifications?

Mr. SCOVEL. Mr. Duncan, we have some information on that particular point. FAA was funneling its ARRA money through its airport improvement program, and set initially a score of 62 in the national priority rating as the cut-off point for projects that would be considered for ARRA funding.

In addition to the criteria that were established by the Act and by the President for ARRA funding, FAA also established geographic distribution requirements and also put limits on the sizes of individual awards. By the time all of those factors were considered and folded in together, some lower priority projects ended up being funded with ARRA dollars.

In February, we issued a report that indicates, for instance, five very small village air fields in Alaska received a total of $59 million, equivalent to what the entire State of Texas received, and more than Florida, Illinois, or New York.

We concluded that FAA ultimately did not pay sufficient attention to the required guidance, the criterion to optimize economic activity with regard to the Federal expenditure of these ARRA dollars. In fact, they considered that that would be accomplished through their normal AIP program. But when they layered on these additional geographic requirements and size limits, it ended up creating anomalies like those of the small Alaska air fields that I just described.

My office does not wish to take issue with the fact that improvements were needed to those individual air fields, or that they did not belong on the priority listing for the airport improvement program in general. However, it does raise the reasonable question, we think, that with regard to ARRA dollars specifically, the creation of these anomalies showed that there were unintended consequences by FAA's decision to layer on additional requirements to those of ARRA.

Mr. KIENITZ. And if I might comment on that?

Mr. DUNCAN. Yes, sir.

Mr. KIENITZ. The only thing that I would say is that, as I have spent the last several years working at the Department, we have a myriad of programs which have geographic diversity requirements layered on to them. And most of those are congressionally mandated. And that has everything to do with people who represent small communities that think the Federal Government is never going to see them, or care about their projects, and so Congress writes it as a rural minimum, or it is a requirement for geographic diversity, and so we have lots and lots of programs.

And we end up, often, with this type of criticism that says if you had provided a rigorous cost benefit analysis, you would not have funded the project in rural Idaho or Oklahoma or somewhere. And I think our view of reasonable geographic diversity is actually a policy goal that the country has adopted for a long time. And as long as Congress tells us to keep doing that, I think it is our job to do it.

Mr. SCOVEL. Mr. Duncan, if I may?

Mr. DUNCAN. Yes.

Mr. SCOVEL. One of the points we also made in regard to your question has to do with this. FAA funded 360 projects with ARRA dollars under the airport improvement program. It published data on those projects, and the rationales for their selection in the cases of 280; 80 projects were left to the speculation of those who were viewing the results of FAA's AIP/ARRA-funded selection process.

When transparency is stated as one of the goals of this program, and when, as the under secretary correctly points out, the geographic distribution is a key goal of congressional programs like this, certainly the agency—in this case, FAA—ought to undertake greater transparency with regard to explaining its decisions.

We were notified last week, as we prepared for the hearing, that, in fact, FAA, by the end of this month, will publish data now on those 80 low-priority airports that it selected for ARRA funding.

Mr. DUNCAN. All right. Thank you very much.

Mr. MICA. Other Members seek recognition? Ms. Norton?

Ms. NORTON. Thank you very much, Mr. Chairman. Part of what occurred in this quite extraordinary process could form the basis for best practices, and part of it probably could not. The transparency, unprecedented in such projects, the way in which we kept track of such projects online and in the Congress.

But in a real sense I have a question about the competing criteria. When you are in the middle of a recession, and you have got to get the money out on the streets—or at least that is what you want to do quickly to make jobs—if you compare the agency that came under my jurisdiction when I chaired the Economic Development Subcommittee, the GSA, you were dealing with one of the few Federal agencies that could, in fact, make the contract themselves—compete, put out the contracts themselves. So there was no pass-through. And thus, GSA was able to get its money out quicker than the States.

And, of course, they found, as the States did, that bids were coming in lower, because we were in a recession. And they were able to do 17 additional projects beyond those that were authorized. So we haven't had any trouble with them. But it was interesting to see the difference.

Now, flip to the States, where they too have to compete. And we have got to get to a pass-through to get to them, and through our processes to get to them. Then we say, "Be shovel-ready, no fraud and abuse, and high quality" at the same time.

So, I want to know two things: one, whether you found any more fraud, waste, and abuse in the Recovery Act projects than would typically be found in such projects; and I would like your views on, given the competing criteria, whether you thought the States, for the most part, were able to handle this mixed message of what was required of them.

So, first, was there any more fraud, waste, and abuse than you normally find in such projects?

Mr. SCOVEL. Ms. Norton, I can speak from the basis of our investigative work in the Department of Transportation's office of inspector general.

In fact, we have been very pleasantly surprised that we have not found more fraud than we have. And we have also been pleasantly surprised that we haven't found any remarkable variations on the

types of fraud that we have found in the past. Bottom line, fraud is fraud. It depends on what pot of money the fraudster is trying to reap his benefits from.

We have—I think I mentioned earlier we currently have open 51 investigative cases. Frankly, that number is a little bit high, and it is because we have lowered our investigative threshold in order for us to pay more attention to ARRA cases that may come to our attention, as well as meet the requests of the Department of Justice, who have indicated that they want to pay more attention in their prosecutive efforts, too, to ARRA cases.

But I think, speaking from my vantage point as a member of the recovery, accountability, and transparency board, many of us in the inspector general community have been pleasantly surprised that the level of fraud has not been higher. Much of that is due to the remarkable oversight, the attention that is being paid by the Congress, by our respective agency heads, by offices such as mine. We do worry that the fraudsters may be looking to other pots of money, so that is why they are not dipping into stimulus funds right now, but we are keeping a very, very close eye on it.

Ms. NORTON. Mr. Elkins?

Mr. ELKINS. Yes. Ms. Norton, I would concur with Mr. Scovel. Our findings at the EPA, with our work, is that we have also seen very little fraud activity, as well.

However, I want to caution you. We have only been in this for 2 years now, and—the amount of money that has been invested at EPA, for instance—we are looking at $7 billion. I mean that is the amount of money that pretty much mirrors what the EPA's budget was back in 2006, 2007 or so. So we are talking a very large amount of money.

Ms. NORTON. Yes, I am aware of that. I am just trying to track where we are now, because we are going to be having these hearings, and it is important to note because, frankly, the press did the right thing in going around the country and looking to see whether, with all this haste, you would see fraud. And there were not a lot of big stories. So I wondered what those of you who look more closely have found.

The chairman talks about temporary jobs. Now, I just want to say on behalf of the million construction workers who were out of work since construction work is always temporary until you can get the next job, these are precisely the kind of jobs that infrastructure seeks to fill. These are jobs that have the best effect on reverberating throughout the economy, because they stimulate other parts of the economy, as well.

Now, the criticism that there had been a lot of paving and the rest, here we get into my original question about competing criteria. We had hearings in this committee: "Have you gotten the money out"; "How much of it is obligated"; "How much of it is on the street?" If you are in the States with that kind of pressure on you, is the Congress not in effect saying, "Do not target this money, get this money on the streets the old-fashioned way, we are making jobs, we are stimulating the economy, and yes, we are fixing your infrastructure, but you have got to do all of these things at the same time"?

So, was the paving of the streets or similar work that the States might not have done almost inevitable to do, in light of the mandate of the Congress?

Mr. KIENITZ. I might respond to that, if you don't mind, ma'am. I will respond from our work at USDOT, which is we have seen a lot of small and medium-sized projects, and it is paving, it is guard rail, it is buying transit buses, which you can just easily order, it is simply runway projects. What we have not seen a lot of is the big, complicated bridge project, the big, complicated transit project, the big, complicated road reconstruction. They just take too long. They have to sit in the pipeline. Even the construction, once you are go, the construction could take 3 or 4 years.

I was in State government in Pennsylvania up until March. We started preparing 2 months before the bill passed, because we saw that it was going to pass, started putting our list together so we would be ready the moment the money showed up. And once we started looking, what can we actually get done, it was all about small and medium-sized stuff. It really needed to be done.

But what that means—well, for example, in transit right now the average age of the bus fleet in the United States is getting better. Buses are in much better condition than they were. The average condition of old track infrastructure and transit systems, where the projects are much, much harder to do and more expensive, is still not nearly as good. And not a lot of recovery money went into that, because the projects take too long.

Mr. MICA. I thank the gentleman. Time has expired. Mr. Shuster?

Mr. SHUSTER. Thanks, Mr. Chairman. And thank all of you for being here today. My question is to Mr. Kienitz. And I understand that USDOT has issued guidance to States regarding obligations to the—to comply with the certification reporting requirements contained in the maintenance of effort, or the MOE, in section 201 of the Recovery Act.

It is my understanding, under current guidance, that even if a State met its cumulative State-certified level effort expenditures, that they would still be subject to being penalized by a prohibition on participating in this August highway redistribution if they failed to meet the requirements on a program-by-program basis. Is that correct?

Mr. KIENITZ. That is how the current guidance reads, correct.

Mr. SHUSTER. I further understand that, under that guidance, 14 States would be subject to a penalty.

Mr. KIENITZ. What I would say is we got an initial set of data in the fall, indicating a somewhat larger number of States would be subject to penalty. We have just recently gotten in the new final data, and we are still in the process of compiling that. That is a number that I have heard, as well, but I would not take it as the final answer. I think we are still in the process of making those assessments and decisions.

Mr. SHUSTER. Well, are there any actions currently under review on this guidance? I understand that you have had some conversations and you may be looking differently—looking at the cumulative totals, because when you do that you reduce it from the 14 States down to just several States under current—currently, if you

look at program by program, Arkansas, Florida, Indiana, Kansas, Missouri, New Hampshire, Pennsylvania, Rhode Island have all met the cumulative expenditures.

So, are you in discussions right now trying to review that and look at cumulative, instead of program by program?

Mr. KIENITZ. Yes. I think as you point out, there are a number of States that, no matter how any of this works, clearly did not meet the maintenance of effort requirement.

Mr. SHUSTER. Correct.

Mr. KIENITZ. But there is somewhere—depending on how it is interpreted—the issue we are facing is that the language of the statute can be easily read to have two different meanings.

And so, that is something we are looking at. Our goal is not to withhold funds from States, but we do have a congressional mandate to do that. And that was something that this committee wanted to make sure that when the recovery money went out to States, States did not just pull back their own dollars.

Mr. SHUSTER. Right.

Mr. KIENITZ. And in some cases, I think States are suffering from the fact that they have a dedicated tax that pays for transportation.

Mr. SHUSTER. Right.

Mr. KIENITZ. Economy goes down, tax revenues goes down, their spending goes down. There was no affirmative step they took to reduce spending.

Mr. SHUSTER. Right.

Mr. KIENITZ. It just was reduced. In other cases, there are States that——

Mr. SHUSTER. Currently didn't—sure.

Mr. KIENITZ [continuing]. Made affirmative decisions to take money out of transportation, spend it on things——

Mr. SHUSTER. Right.

Mr. KIENITZ [continuing]. And I think that was the intention of Congress, to——

Mr. SHUSTER. So my understanding, from what you said, is you are going to look at the rule and——

Mr. KIENITZ. We——

Mr. SHUSTER [continuing]. Maybe look at cumulative? Because that is—again, I—when I read the legislative language, it looks like there is some flexibility in there, and I think that is the key to this, is flexibility. One size fits all—I mean Pennsylvania, for instance, missed its—in aviation missed its number, but overall it exceeded.

Mr. KIENITZ. Right.

Mr. SHUSTER. So, again, they made the effort. And I think that that one size fits all, I mean, that is the problem with the Federal Government. Too many times we do one size fits all, instead of leaving these States some flexibility to decide, OK, it is better for Pennsylvania to spend more money on road projects than maybe aviation.

So, is that something—again, I want to make sure I am clear—you are going to consider that? You are going to look at that and maybe make some changes to the rule?

Mr. KIENITZ. There is certainly discussion going on with this question, and I will take your concern back. I know there are a cou-

ple of other States, for example, where just the aviation number was——

Mr. SHUSTER. Right.

Mr. KIENITZ [continuing]. The number that is not working. So we are—I will take that back, and—as we have these discussions.

Mr. SHUSTER. Oh, I appreciate that greatly.

Next question to Mr. Herr. Why do you believe that DOT did not comply with the President's directive to be completely transparent when they provided the grants for high-speed rail and TIGER grants?

Mr. HERR. In terms of why they did not do that, I am not sure I could get behind and understand the reason why. Some of it, I think, would be protecting the deliberative process that went on in the Department, in terms of the folks that were doing the technical reviews.

We had some questions, which we outlined in our report.

Mr. SHUSTER. Right. But your report was—I think was pretty clear that you were—you had great concerns of why they were not more transparent. And, according to the report, "Decision rationales provided little insight into selections." You found several instances in which, without documentation, it was difficult to determine the reason why some projects were selected and others were not.

Mr. HERR. That is correct.

Mr. SHUSTER. That is something that we have been talking about here in Congress——

Mr. HERR. Right.

Mr. SHUSTER [continuing]. Asking for that transparency.

Mr. HERR. Right. We certainly agree that transparency is important, sir.

Mr. SHUSTER. So, Mr. Kienitz, why haven't we received that—those documents? And the transparency—here in Congress, most of our—almost all of what we do is online. The President is—ran for—came into office and said he was going to be transparent, and yet the Department of Transportation has stumbled badly on these things. These are billions of dollars.

So, can you give me an answer why we have not received those documents and the criteria and the reasoning why you delivered money to various projects?

Mr. KIENITZ. Well, I will answer that question in several parts. The first thing that I will say is that, also in the GAO's testimony, they found that out of these six grantmaking practices that they track—generally for Federal agencies—we scored doing a good job on five of them, and on half of the sixth. So five-and-a-half out of six is pretty good to begin with.

Second thing I will say is their particular criticism was mostly that the documentation of what went on in those final discussions was not what it could have been. And as I said earlier, we have accepted that as a reasonable criticism, and the documentation that we have been providing on subsequent rounds of both TIGER and high-speed rail is much more robust.

As to the third matter of providing documentation, we have turned over basically every single document that exists that we have on the high-speed rail program to GAO. GAO is the investiga-

tive arm of Congress. It was set up for exactly that purpose. They are professionals, and that is their job, and we are following the longstanding practice of giving our material to them, let the professionals look at it, and decide what they think.

Mr. SHUSTER. But according to GAO it is incomplete. Is that correct, Mr. Herr?

Mr. HERR. The information that we have received for TIGER was incomplete, yes, in terms of one of the last meetings that they had, where some final decisions were made.

Mr. SHUSTER. I am sorry, it was incomplete?

Mr. HERR. Yes, for the final decisions that were made on the TIGER grants.

Mr. SHUSTER. And that is, again——

Mr. KIENITZ. I believe we provided the information. I think that they found that the documentation of what actually happened in those final meetings was not what it should have been.

Mr. SHUSTER. Right. Well, that is the point.

Mr. KIENITZ. We provided them everything that we have.

Mr. SHUSTER. That is the point. We want to know why you made the decisions, why the money went where it went. And was it fairness? And again, they are skeptical if the process, overall, was fair or not. And that is what we want to get to the bottom of——

Mr. KIENITZ. That is a misstatement. They are not skeptical that the process was fair. They said that the documentation could have been better. You may be skeptical that the process was not fair, but that is not what they said.

Mr. SHUSTER. Well, according to some of their conclusions, "by not establishing this record, invites skepticism by the overall fairness of decision."

So, again, that is what we are trying to get at, why the money was done. You know, maybe we need to get the folks that made those final decisions and get them before the committee to determine why they did it. I know you are—I think the GAO said they are trying to protect the process, but that is the problem. We do not know why it went, and there is—in our mind there is some great doubt as to why it went certain places.

So, again, I would encourage you to continue to bring that information forward to GAO, but to Congress, so that we know that things are done in a fair and transparent way.

So thank you very much, and I yield back.

Mr. MICA. Ms. Brown?

Ms. BROWN. Yes. I just want to let you know that I feel it was very fair. Florida got the money, and that is what I wanted to happen.

[Laughter.]

Mr. KIENITZ. We wish they would have kept it.

Ms. BROWN. I wish we could have kept it, too. But quickly, let me just ask you a couple of quick questions.

The chairman often talks about—my friend, Mr. Mica—high-speed rail. And he forgets an intercity passenger rail. And he thinks all—and his definition of high speed is different from the international definition, because we do not have the infrastructure in place.

Can you clarify that for me, sir?

Mr. KIENITZ. As a general matter, I have to say I agree with the chairman's fundamental underlying point, which is high-speed rail is the goal.

Ms. BROWN. It is the goal.

Mr. KIENITZ. What we found in trying to spend $8 billion of Recovery Act funding to create jobs as quickly as possible is that the state of readiness of grantees to accept funds to have fully designed and ready projects to go from what is, frankly, a pathetic rail system that we have in a lot of America to high-speed rail in one step, it just was not there.

Ms. BROWN. And $8 billion won't——

Mr. KIENITZ. In a couple of places——

Ms. BROWN [continuing]. Take us there, either.

Mr. KIENITZ. Yes. California and Florida, where it had stuff that was pretty much ready, and everyone else was back behind that.

And so, we looked to the European experience. And in very few places did they go from nothing to high-speed rail in one step.

Ms. BROWN. Yes, sir.

Mr. KIENITZ. They went from slow rail to medium rail, medium rail to faster rail, faster rail to high-speed rail. And I think, over the long term, our country is mostly going to have to follow that path. So we are taking a lot of service that is 70 miles an hour and upgrading it to 110. Some places where there is 110 it is going to be upgraded to 130. The Northeast Corridor, they can go faster. California is the one place where they are literally starting at nothing and building it capable of 220. That is high-speed rail.

Now, unfortunately, that is going to take 10 years. So a lot of the criticism we get about California is, "Well, where is the results?" Well, in California we are doing what people have said that we should have done in other places, and then the criticism we get is, "Well, we cannot—there is nothing to see." So it is a damned if you do, damned if you don't situation a little bit.

Ms. BROWN. Yes, sir. Mr. Herr, you indicated that some of the funds was turned back because of Davis-Bacon or Buy American provision. What kind of projects are you talking about, and how many was turned back?

Mr. TRIMBLE. I believe that was——

Ms. BROWN. I mean who said that? Yes, sir.

Mr. TRIMBLE. That's me. Yes, that was in reference to the clean water infrastructure projects. And that was—for the nine States that we went out and visited, generally the States were able to move forward with those requirements. Where that came up is in each of those States they mentioned that certain projects declined the funding, or were not in——

Ms. BROWN. OK. How many? How many?

Mr. TRIMBLE. It was anecdotal. They did not track, so we do not have numbers on it.

Generally, this was happening with projects that were already under contract. So the applicants did not want to go back and revise all their contract documentation.

Ms. BROWN. OK. On the clean water, who was that? Was that you, with the water, also? Because basically, the funds went into the Revolving Fund, and the States already had the projects.

Mr. TRIMBLE. Right.

Ms. BROWN. So the question was—as we move forward, we are trying to learn something from this—is it a conflict, when we want to try to get the projects to the most needy area and it may be that the States do not—did not take this into consideration with their Revolving Fund?

Mr. TRIMBLE. Well, I think—and I think Mr. Elkins will have some work on this, as well, with the targeting to disadvantaged communities, the challenge in that, in terms of the Revolving Fund for the water projects, is there was no requirement to target those monies to disadvantaged communities.

I think the EPA IG has work indicating that EPA does not have the data to track what money went to which community. We had data, because we had done field work in nine States, and we found that about—I believe it was around 25 percent had gone to disadvantaged communities.

Ms. BROWN. Well, I am confused because I thought, in the overall project, it was to say that so much should go to disadvantaged communities.

Mr. TRIMBLE. I believe that is for transportation. Not on the water side. There is a requirement for—a 20 percent green requirement, and then there was a requirement for 50 percent of the money to be given out as additional subsidization, which is grants and things. But that additional subsidization was not linked to disadvantaged communities.

Ms. BROWN. OK. I am confused about that.

Can you tell me the percentage of the stimulus dollars that went to tax cuts, and not to, per se, projects or generating jobs, just directly to tax cuts?

Mr. TRIMBLE. I do not have that number.

Ms. BROWN. Does anyone have that information? I think it is one-third, but——

[No response.]

Ms. BROWN. All right, thank you.

Mr. MICA. Other Members seek recognition? Our side? Mr.—OK, Mr. Lankford, you are recognized.

Mr. Lankford? Oh, we need to provide the new Members with communications.

Mr. LANKFORD. That is right. Freshman Members do not get electricity at their station. Keep them in their place.

I appreciate you all coming in and getting a chance to talk about this. I want to further that conversation about some communities or States initially having a conversation about getting stimulus dollars and then withdrawing on that. Finish out that conversation that you had begun. Why do you think that is? It sounded like it was paperwork requirements, or other things that were going into it, that they would initiate that and then step away and say no.

Mr. TRIMBLE. Yes. Some of the projects, in the majority of the examples that we had it was the communities that had those projects did not want to go back and amend existing contract documents for an ongoing project, to include the Buy America requirements, the Davis-Bacon requirements, as well as the reporting requirements. So they——

Mr. LANKFORD. It was the assumption that it would drive up the cost of the project?

Mr. TRIMBLE. In some cases.

Mr. LANKFORD. If they got the Federal dollars, it would actually be more expensive than if they just did it locally and made local decisions, or——

Mr. TRIMBLE. Or they would go and get base SRF funds to fund that part of the project, or use the bond money for that portion.

So, for example, I believe in Connecticut there was a project, it is about an $11 million project. The stimulus money was going to be about $1.2 million of that. And rather than take on those additional requirements, they went elsewhere for that portion of the funding.

Mr. LANKFORD. OK. Let me ask a couple questions. Just—the State decisionmaking process on the whole—and anyone can respond to this—as the States were choosing which projects to be able to take on, mostly positive, you would say, as far as their decisions on what projects to take, as you look back on it now in retrospect, and say, "They made good decisions on those projects"?

I know the stipulations have had to be quick. We talked about the small to medium-sized projects. But on the whole, we look at their decisionmaking and say, "These seem to be positive"?

Mr. KIENITZ. I would say, from my point of view, sir, on the transportation side we actually had a pretty wide variety of strategies that States followed. Some States went to their State priority list, went to the first project that was not getting money, and went down until the money ran out. Other States adopted a very specific strategy to say, "I am going to pick the quickest projects I can possibly get."

Other States—I know in Pennsylvania we said bridges are a big problem, we are going to put this into bridges. I know Kansas, for example, decided to do three or four big highway projects, and not spread it around to a bunch of little things.

So, every single one of them followed the correct procedures. Which of those is better? I am not sure I really know.

Mr. LANKFORD. Not necessarily good or bad——

Mr. KIENITZ. Yes.

Mr. LANKFORD [continuing]. But you are saying that they seem to be consistently good in making the decisions on that, the different strategies——

Mr. KIENITZ. Exactly. But it was all very by-the-book.

Mr. LANKFORD. OK.

Mr. HERR. We looked at the expenditure rates for the highway funding and five States are now over 95 percent in terms of their expenditures: Oklahoma, Wyoming, South Dakota, Iowa, and Maine. And there are two States that have spent about one-third: Virginia and Hawaii.

Three others States are around 50 percent. Virginia pursued some bigger ticket projects. But they had different strategies to do that, and there were some tight obligation deadlines, as well.

Mr. LANKFORD. Great. Mr. Elkins, I think you were going to try to jump in, as well.

Mr. ELKINS. Yes. Actually, I was just going to comment that within EPA OIG we just have not looked at that particular area as yet.

Mr. LANKFORD. OK. Well, there has been ongoing conversation about how much flexibility States should have in making decisions about their own transportation dollars and how that is handled, and this is a unique experiment for us, to see a very rapid decisionmaking process to see how States handle flexibility in making decisions on what are the best projects they see in their State, rather than from a Federal side stepping in and us evaluating for them what we see is the best State. So it is just an interesting analogy.

I do want to be able to follow up, as well, on an initial comment that was made about suspension and debarment. Three hundred days from making a decision on suspension, 400 days on making a decision on debarment. Now, my understanding is that has been in the process of changing, which is great. And I want to be able to follow up on that. But talk me through the process on that, and where things are, from your side.

Mr. SCOVEL. Thank you, sir. It was my office that did the report——

Mr. LANKFORD. Yes.

Mr. SCOVEL [continuing]. About a year-and-a-half ago at this point, and we testified last year before House Oversight and Government Reform on it.

We examined the Department's suspension and debarment process. As you mentioned, 300 days, on average, to reach a decision on suspension; 400 days, on average, to reach a debarment decision. We found that there was insufficient oversight and prioritization and resources allocated within the Department to those efforts.

We also found, frankly, that a couple of the operating administrations were imposing their own unnecessary and redundant review processes on top of what was stipulated by the Department itself. And that created a lot of the delay. The risk, of course, when there is that kind of delay, is that not only the Department of Transportation, but other Federal agencies may award Federal contracts to contractors or others whose reliability or responsibility is subject to question or, in fact, has been decided through adjudication in the case of a conviction.

Mr. LANKFORD. Two quick statements. What do you think is a reasonable period of time for making that decision?

Mr. SCOVEL. The Department has set 45 days.

Mr. LANKFORD. All right. That is significantly shorter than 400 days.

Mr. SCOVEL. Absolutely. And the Department has recognized the validity of that number, and we would acknowledge that as a very worthwhile goal.

Mr. LANKFORD. OK. And then, once someone is awarded the contract, even if they—you know, let's say they have been awarded a contract during that time period of the decisionmaking process, then later they are debarred. Does that contract then finish out, or is that contract then null and void?

Mr. SCOVEL. It is my understanding that they have the contract at that point.

Mr. LANKFORD. Love to be able to follow up with you on that one——

Mr. KIENITZ. The only thing I will——

Mr. LANKFORD [continuing]. Taking corrective actions, that is great. Just talk us through where things are now.

Mr. KIENITZ. Yes, sir. Thank you. The only thing I would say is that I think we have recognized this, once again, as value added that we have gotten out of the inspector general. I mean they are an independent entity and when they do not like what we are doing, they certainly tell us. This has been a valuable area, and we actually sent our counsel's office up to testify in front of the committee about this. This is something that is getting the Secretary's personal attention. We have established this goal for a 45-day turnaround.

But I think, as you find in a lot of DOT programs, you know, we talk about 1 DOT but we really actually have 10 independent operating administrations. And so we have a great variability in how they have been handling things. So that is part of what we are trying to do, is impose a little bit more structure on everybody, so there is consistency.

Mr. MICA. Thank you. The gentleman's time has expired. Mr. Holden?

Mr. HOLDEN. Thank you, Mr. Chairman. Secretary Kienitz, it is good to see you again.

In 2005 in SAFETEA–LU, Congress enacted a $1.7 billion program somewhat similar to the stimulus program, the TIGER grant program, called the Projects of National and Regional Significance program. Unlike the TIGER grant program, however, all the projects that were awarded funding in the PNRS program were selected by Congress through earmarks. Could you compare these two programs, and tell us how the two programs have done so far in getting their funds obligated? And could you also compare the transparency of the two programs, and tell us how much information was provided by Congress on why specific projects were selected?

Mr. KIENITZ. As to the obligation rate, I think I can talk about that. A number of those programs from SAFETEA–LU, the regional and national significance, zero funds have been outlaid because the direction to fund a specific project was put in for a project that ended up not being viable or not being ready, for whatever reason.

So, I think after 6 years, the obligation rate is in the 50 to 60 percent range for that program. In 2 years, the TIGER grant program, we have obligated, I think, 99 percent of that money.

That is because one of the levels of staff review that we do is a fairly intense scrub of the readiness of the project, such that we got submissions for a bunch of projects that were interesting and valuable and not ready, and basically mostly we did not select them, not because they were not valuable, but because they were not ready.

On the question of transparency, I know that our process is intensely transparent, and a huge amount of effort has gone into that, and we have accepted the critiques that we have gotten on that point, and are trying to improve. I think you all know more about the process of selecting earmarks than I do, so I will just leave it at that.

Mr. HOLDEN. Well, we happen to like them. At least I do.

[Laughter.]

Mr. HOLDEN. I believe in your opening statement—I hate to have you repeat it; this hearing has been going on for a while—but you talked about the GAO report, particularly on intercity passenger rail, when the report referred to "good grantmaking practices." I believe you mentioned how often GAO uses that term, "good." What percentage——

Mr. KIENITZ. Yes, it is 14 times out of 169,000 individual opinions. So it is a rarity.

Mr. HOLDEN. Very, very rare.

Mr. KIENITZ. Let's just say that.

Mr. HOLDEN. Thank you. Thank you, Mr. Chairman.

Mr. KIENITZ. Thank you, sir.

Mr. MICA. Other Members seek recognition? Mr. Capuano?

Mr. CAPUANO. Thank you, Mr. Chairman. To begin, on the high-speed rail, I want to echo the chairman's comments. But I would suggest very strongly that one of the reasons we do not have real high-speed rail in this country is because you get too many projects going on. Pick one, make it work, and others will desire it. Simple. Stop trying to create 50 different projects, half of which will never work, and you will make a lot more progress, just like we did with subways. Years ago, nobody——

Mr. MICA. Would the gentleman yield? Could I associate myself with the remarks of the gentleman? Just for the record, so we insert right there that I associate——

Mr. CAPUANO. Well, that is—I am just following up on——

Mr. MICA. Thank you, yield back.

Mr. CAPUANO [continuing]. Your comments, Mr. Chairman.

I guess, first of all, does anybody here know who the genius was that, after a year-and-a-half of me and my friends getting the living heck beat out of us because of a stimulus, some genius decided to stop calling it stimulus and call it ARRA? Are any of you the geniuses? Because if you are, we are going to have a problem.

Mr. KIENITZ. I am a genius, but I am not that genius.

Mr. CAPUANO. Good. Thank you for that one. And, Mr. Elkins, I just want to congratulate you. You actually used the word "stimulus" in your title. Thank you for that, because I kind of figure if I am going to take the grief for something, when it starts working people should know where it comes from. And I will tell you nobody knows.

And I would ask any of you. When we were debating stimulus, did any of you call it ARRA?

[No response.]

Mr. CAPUANO. You got that directive after the fact. If you find the genius who changed the terminology, please let me know.

I would like to ask the members up here. Any of you have permanent jobs?

Mr. KIENITZ. So far.

Mr. CAPUANO. Is it permanent?

Mr. KIENITZ. Oh, no. It is at the pleasure of the President, actually.

Mr. CAPUANO. Anybody here have a permanent job? Anybody in the audience have a permanent job?

[No response.]

Mr. CAPUANO. I have the closest to permanent. I am here until next January or—if the voters do not decide to change me after that. So there is no such thing as a permanent job, that I am aware of. If there is, I do not know anybody who has one. The concept of creating a job is always temporary, always temporary.

And Secretary Kienitz—you are the only one, I think, to use numbers—280,000 job years of work. What the hell is a job year?

Mr. KIENITZ. What we are trying to do is, rather than count individual people—some have worked 1 hour and some have worked every hour of every year——

Mr. CAPUANO. But you do realize that nobody has a clue what you are talking about.

Mr. KIENITZ. Right. And I can explain——

Mr. CAPUANO. When I go home and I say "job years," they look at me like I have three heads. How many jobs did we create in the Department of Transportation through the stimulus?

Mr. KIENITZ. In the third quarter of last year there were 65,000 people at work on stimulus projects. But the number of areas depended on which month——

Mr. CAPUANO. Yes, I understand the number of areas. I am looking to be—a legitimate answer—when I get asked at home, "How many jobs did we create with the stimulus?" you are going to tell me 65,000 is a fair number?

Mr. KIENITZ. That was the number in the fall, correct. In the summer, the number tends to be higher. In the winter, it tends to be lower.

Mr. CAPUANO. So if I say 75,000 jobs, that is a reasonable number——

Mr. KIENITZ. Sure.

Mr. CAPUANO [continuing]. That would be hard to debate?

Mr. KIENITZ. I think so. I don't know. These guys might——

Mr. CAPUANO. Does everybody agree with that general number?

Mr. HERR. We also have some data in our testimony, too, that shows the quarterly variation. It is in that ballpark, 50,000 to 75,000——

Mr. CAPUANO. In that ballpark. And that is just DOT. Does that include EPA and others, or just DOT?

Mr. ELKINS. We have not done work in that area, so I really couldn't——

Mr. CAPUANO. So it is an absolutely minimum of 75,000 jobs, and that is only on 7 percent of the stimulus.

Mr. KIENITZ. Right, and that is only the direct actual people employed, rather than the follow-on——

Mr. CAPUANO. I understand.

Mr. KIENITZ. Yes.

Mr. CAPUANO. So—but again, I am trying to come up with something that we can absolutely agree on. Not looking for debate.

So—and everybody here—as I heard the testimony, everybody here pretty much said that there is very little or virtually no waste, fraud, and abuse in the monies out there. Did I hear this correctly?

[No response.]

Mr. CAPUANO. There is very little waste, fraud, and abuse in the whole program, is that a fair——

Mr. SCOVEL. So far. Sir, I would not characterize it as very little. I would say surprisingly—I surprising low level.

Mr. CAPUANO. Surprising?

Mr. SCOVEL. Yes.

Mr. CAPUANO. Surprising is not necessarily, my term, and objective term.

Mr. SCOVEL. It is not.

Mr. CAPUANO. It is either a lot or not a lot.

Mr. SCOVEL. Right.

Mr. CAPUANO. And it is not a lot.

Mr. SCOVEL. It is not a lot.

Mr. CAPUANO. You may be surprised by that, but somehow I am not.

Mr. SCOVEL. I am.

Mr. CAPUANO. So that we have a program that is only 7 percent of the total expenditures that created a minimum of 75,000 jobs with very little waste, fraud, and abuse. Does anybody here not call a program with that record an incredible success? Maybe even a surprising success? I would call that a massive success, one that I am proud to have been associated with, one that I am proud to have voted for, one that I am proud to have voted for. So, with all the grief that we took for a year-and-a-half on the stimulus, turned out pretty good. With some bumps, but pretty good.

I just want to make sure I heard all this testimony the same, because we talk a lot in terms that the average American—and that includes me—have a hard time following. I do not think I have a hard time following that. We created a lot of jobs. We ended up with infrastructure improvements that will help the economy in a long-term situation. We made life in this country better, and we did it with very little waste, fraud, and abuse.

Thank you, gentlemen. I am very proud to have voted for this bill. I yield back.

Mr. MICA. I thank the gentleman. Other Members seek recognition? Mr. Southerland?

Mr. SOUTHERLAND. Thank you, Mr. Chairman. As far as the—I am curious on the jobs issue. How many—and I just—I am asking for clarification. I know you just were asked the number of jobs in the Department. I think you said 65,000.

Mr. KIENITZ. That was in the fall.

Mr. SOUTHERLAND. In the fall. Were those added jobs to DOT to oversee the stimulus projects, or were those existing jobs that were already there that were given oversight over the stimulus funds?

Mr. KIENITZ. No, these are actually people working at construction sites on transportation projects, building them.

Mr. SOUTHERLAND. OK. So those were both private and Federal——

Mr. KIENITZ. Almost—99 percent private sector. This is all bid out to the private sector.

Mr. SOUTHERLAND. OK. As far as the—how many—so, obviously, we do not know those jobs, since they are private sector—we have no idea whether those jobs are obviously going to exist after the stimulus dollars——

Mr. KIENITZ. Mm-hmm, mm-hmm.

Mr. SOUTHERLAND. OK. I am just curious. How do you—what have we learned here—and I wasn't here, I know I just arrived about 20, 30 minutes ago—what is the greatest—where did the American people get the biggest bang for their buck?

And I know that is a very difficult question, because you addressed how each State made their own decisions on—and I like that very much, I think you are the best ones positioned to do that.

Just real quick, though, I mean when you look back over your career, you know, when you are retired and you say, "Hey, let's talk about the stimulus dollars," what did we do great?

Mr. KIENITZ. I will answer it and then the gentleman can answer. I think for transportation, the most obvious lasting legacy of the stimulus will be improved road and pavement condition.

Mr. SOUTHERLAND. OK.

Mr. KIENITZ. And that is something that we track according to an international standard about tracking pavement conditions. You are supposed to replace pavement surface every 7 years and underlayment every 15 years, according to a schedule that is well known by engineers.

And, for much of the last 40 or 50 years we just do not do that on the schedule that we should, and that is why roads are in bad shape. And we just got a huge amount of backlog out of the system. And that is all stuff that in 7 years from now and 15 years from now is all going to have to be done again, because that is the way it works. But at least for this upcoming period, that stuff is going to be in way better shape.

And on the transit side, 12,000 new buses to replace 15- and 20-year-old buses that break down all the time and have to be fixed, that is going to be a big legacy.

Mr. HERR. I think it is a very fair question, and it is something that we have recommended the DOT take steps to do, to provide an assessment that looks across the $48 billion. I think that timeframe is going to come up in about a year or so. As Mr. Kienitz mentioned, certainly with regard to pavement, buses, things of that nature. We have laid out what some of those are at this point.

At some point you can also look at bridge rehabilitation as well, and there are databases that would allow someone to look back and determine whether a structurally deficient bridge was improved or if a bridge that needed to be repaired that was in a queue has been repaired. So there is an opportunity to do that, and we certainly encourage the Department to take that step, too.

Mr. SOUTHERLAND. I know, because time is precious, let me ask my follow-up question for those who did not get a chance at that one.

When you are retired and you are back and you are looking back over the stimulus dollars and the last 2 years, where will you be honest and say, "Man, the American people got the shaft on this one"?

[No response.]

Mr. SOUTHERLAND. I mean—and that is not a leading question, I am just being fair. I have asked you where our successes were, and I think it is fair—I am a small business owner, OK? To say that, hey, you know, the—I mean what did we learn?

Mr. TRIMBLE. I mean, from our perspective, the work we did early on, in terms of providing oversight on the process, I think it did a lot to prevent any sort of disaster stories from happening. We and the IGs have been out there making sort of day-to-day or bimonthly reports on this issue to try to improve the oversight. So I do not think we have seen those kind of sort of big derailments of the process.

Mr. HERR. As you think about things like this in the future, there is a tension between doing things quickly, getting half the money obligated in 120 days and the other half within a year——

Mr. SOUTHERLAND. Right.

Mr. HERR. And then coming back later and asking, "How many big ticket projects got underway?" There are trade-offs in that respect.

Mr. SCOVEL. Sir, if I may cite one point.

Mr. SOUTHERLAND. Sure.

Mr. SCOVEL. And this is a question mark that we have, and it remains over the next number of years to be resolved. But it has to do with high-speed rail.

Our statement points out that FRA has not yet issued detailed guidance for forecasting processes that would help determine sustainability and sustained award decisions. Neither has FRA yet issued guidance on core management responsibilities to provide the oversight that only the agency can do.

At the end of the process, if that is not a success, then high-speed rail may well be marked a deficiency in the eyes of the American public——

Mr. SOUTHERLAND. Well, and I think this. You know, I tell people that everything I learned to be a Member of Congress I learned in our home by the age of 10. It is really not complicated, OK? My father would make sure that we, as children—that he gave us a little bit before he gave us a whole lot. He wanted us to mess up with just a little bit before we messed up with a whole lot. That is good parenting. Now that we perpetuate our family's 60-year business, it is good that that principle is followed.

The only thing that I can look—when we talk about high-speed rail, what is the definition of a little bit before we bite off a lot? I would say Amtrak. How have we managed? For every dollar of revenue that we sell and that we generate, we generate $2 in expenses. My father would have a little meeting of the minds if, at the age of 10, I wasted $2 for every dollar he gave me. And he would stop and say, "You know what, son? This was $5 here. I am not about to give you $50." Let's understand the process.

You know, we talked to America that this is complicated up here. I have to tell you it is not. I go back to the lessons of my youth. And thankfully, at the end of the week, I get to thank my parents for the lessons that they gave me as a child in their home. I hope that you—because you are decisionmakers, and your decisions affect hundreds upon hundreds of thousands—millions of people, we must prove able with a little bit before we force the American people to give us a lot.

I would say, over the stimulus, how many times did we feed a man a fish, where what we really should have done is taught that

man how to fish, because we have then taken care of him for the rest of his life?

I know this was a difficult challenge. But unless we say, "Where did we screw up, what do we know, what have we learned, and what are our options going forward," I would say you have got to spend your time focusing on where did the American people not get their biggest bang for their buck. If we claimed we were going to freeze unemployment at 8 percent and we jumped to 20—I mean jumped to 10, excuse me—we got to 10, what should we have done to prevent that?

I am not accusing anyone. I am saying that you gentlemen are in the position—the American people demand and deserve us answering those questions. So thank you for testifying today. Mr. Chair, I yield back.

Mr. MICA. Thank the gentleman.

Mr. SOUTHERLAND. I probably exceeded my 5 minutes; I apologize.

Mr. MICA. I thank the gentleman for his questions. And any others seek recognition?

[No response.]

Mr. MICA. If not, let me just conclude this hearing by saying that I have tried to follow up again, I think, in a responsible oversight manner. Mr. Oberstar, the former chair, and myself had committed to do this. For the most part, the funds that were spent, we have had a partial success story.

My concern has been that we did not put even more money into infrastructure, get it out faster and put more people to work, rather than paying unemployment benefits for social programs, for artificial subsidization of a whole host of things that turned out to be—and the best possible description would be a total failure. We did put some people to work, and not enough people. There are not permanent jobs for anyone, but we can do longer term jobs, and we can also wisely invest the limited tax dollars that we have available.

Unfortunately, the stimulus dollars too—every dollar we spent, 42¢ was borrowed money, and at a very expensive premium for the future.

So, I am disappointed overall in the stimulus, again, $787 billion. We have tried to be good stewards over the limited amount—some $48 billion in the Department of Transportation, and some $63 billion total. I would like to continue our discussion of the expenditure of the money, particularly in the rail area.

We do need a successful program in this country of high-speed rail. I associate myself with the remarks of the gentleman from Massachusetts, Mr. Capuano, that we should focus—we have a corridor that we own that is a national asset, an asset to Amtrak, and would be the perfect model for us, and have the highest value of return for the entire Nation.

What's a guy from Florida saying, "Put the money in the Northeast Corridor" for? Because 75 percent of the chronically delayed flights in the Nation start from the Northeast Corridor, because we have the fixed transit systems to interconnect like they did in Europe, which I don't have in Florida. Orlando still doesn't have any

fixed transit, Tampa does not. And trying to make that work is not going to happen.

And now we face the same thing with the California project between Bakersfield and Fresno, neither, again, that have the population or the transit systems to connect into. And I know you start with a small segment, but what we need is a successful segment.

And we have a corridor in which that can happen. So I look forward to working with the members of this panel, with the administration, Secretary LaHood, with the Vice President and the President to try to have a success, not a failure, in that regard.

I appreciate, again, the work of the inspectors general, the General Accountability Office, and the under secretary for policy of the Department of Transportation. We will have additional questions which we will submit and be made part of the record, and we will leave the record open for a period of 2 weeks to request that information, also receive answers.

There being no further business today before the House Transportation and Infrastructure Committee, this meeting is adjourned.

[Whereupon, at 12:12 p.m., the committee was adjourned.]

Corrine Brown
M.C.

Statement of the Honorable Corrine Brown, Ranking Member
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Full Committee hearing on
May 4, 2011

I want to thank Chairman Mica and Ranking Member Rahall for holding today's hearing on the stimulus bill that was passed by the Democrats two years ago. By all accounts, the stimulus was definitely a success, and has played a major role in starting to turn our economy around. The Congressional Budget Office (CBO) estimates that the Recovery Act lowered the unemployment rate as much as 1.9 percent and increased the number of people employed in the U.S. by as many as 3.5 million individuals.

With Chairman Oberstar's leadership we followed every cent of transportation funding and ensured it was spent on critical infrastructure projects. Today nearly 10,000 infrastructure projects have been completed, improving communities and putting people back to work.

Unfortunately, Republicans refuse to take this great news sitting down and have chosen instead to waste both time and money attacking the Recovery Act. In fact, it seems the Republicans gave less scrutiny to going to war in Iraq than they have to the decision making process for high speed rail. Even the GAO study commissioned at the behest of Chairman Mica concluded that "The Federal Railroad Administration (FRA) established a fair and objective approach for distributing these funds and substantially followed discretionary grant award practices used throughout the government".

Let me make it clear that no one was given funding that they didn't request. Every entity that received rail funding through the stimulus was subject to the same rigorous application process. To review the final applications, FRA created merit review panels that included career staff from FRA, FTA, and the Volpe

Center. In addition, FRA established a technical review panel to ensure consistency of its evaluations. After review of the applications, the technical review panels submitted evaluations and recommendations to FRA and DOT senior leadership who in turn applied four additional selection criteria to make the final selection.

We are experiencing a renaissance in passenger rail in this country, and if we want to keep up with our international competitors, we need to make a significant investment in passenger and high-speed rail. I've advocated for and support a dedicated source of funding for rail and would encourage the committee to include a minimum of $50 billion dollars for high-speed and intercity passenger rail over the life of the bill. Compared to the funding levels in the overall bill and the money being spent in other countries on rail, $50 billion is a drop in the bucket.

Although we have some very small thinking Governors, support for high-speed rail is still high. The FRA received more than 90 applications totally nearly $10 billion dollars from 24 states, the District of Columbia, and Amtrak for the $2.4 billion that Florida just gave up. This included an application from the state of Wisconsin, whose governor foolishly returned the rail money it had already received from FRA.

The stimulus bill has proven that transportation infrastructure funding provides a benefit to the community and puts people back to work. For every billion dollars in infrastructure funding, 44,000 good-paying, permanent jobs are created. And that is exactly what our country needs.

With that, I want to welcome our panelists, and I look forward to hearing their testimony.

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Congress of the United States
House of Representatives
Washington, DC 20515

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HOUSE DEMOCRACY PARTNERSHIP

WHIP AT LARGE

Statement of the Honorable Mazie K. Hirono
House Committee on Transportation and Infrastructure
Full Committee Hearing: "Stimulus Status: Two Years and Counting"

May 4, 2011 Mazie K Hirono

[Remarks as Prepared for Delivery]

Thank you Chairman Mica, and Ranking Member Rahall, for holding this hearing, and thank you to all of our witnesses for being here today.

The American people lost a great deal during the Great Recession. Millions of jobs have been lost, millions of families lost their homes, and trillions of dollars in accumulated wealth—wealth being saved for retirement and for sending children to college—vanished.

These have been trying times that have caused a lot of pain in every community.

The American Recovery and Reinvestment Act--what we're calling "the stimulus" today--was an unprecedented response to an unprecedented set of circumstances.

Given its size, scope, and cost, it was a difficult step for many of us to take—but it was a necessary one. Things would have gotten worse without it, and it has been a benefit to our states and our economy.

The Congressional Budget Office (CBO) estimates that because of the Recovery Act between 1.2 and 3.5 million jobs were saved or created. We have seen positive job growth for six straight months. The Act also helped contribute between 1.1 and 3.5 percent to our national GDP.

There's no question the Recovery Act has been good for Hawaii. According to the President's Council of Economic Advisors, Recovery Act funds created or saved 13,000 jobs in Hawaii.

According to the report on funds under this Committee's jurisdiction released by Ranking Member Rahall on Tuesday, over $125 million was designated for highway infrastructure in Hawaii. Of that, $40 million has been spent—of which $7 million has gone directly to payroll for Hawaii workers and their families—and the balance is still being put to use, which will mean more paychecks in the future.

Hawaii also received a $24.5 million Transportation Investment Generating Economic Recovery (TIGER) grant that is being used to reconstruct Honolulu Harbor's Pier 29. This project will help

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to expand the capacity of the 15th busiest port in the United States, which will benefit Hawaii's economy in the long-term.

When Secretary LaHood visited Hawaii in March, he was particularly interested in seeing Recovery Act projects, and I was pleased that he was able to visit the harbor to see the progress being made.

Those are some of the benefits provided to Hawaii by funds allocated to programs under just this Committee's jurisdiction.

Of course, with so much money being allocated for so many different uses, it has been our job as stewards of taxpayer money to be diligent in our oversight of these funds.

This Committee has been a model of Congressional oversight. We have held 19 hearings to date just since this law was enacted. The Committee has also released periodic reports on the status of implementation, including the most recent one which contained many of the statistics I just cited.

The law also required unprecedented commitment from both states and recipients to help monitor the use of these funds. I'm proud to say that Hawaii has worked hard to oversee the funds we have received by launching a State Recovery website, establishing an Office of Reinvestment and Economic Recovery, and creating a state Legislative Oversight Committee.

While there is always room for improvement, it is clear that as an unprecedented response to unprecedented circumstances, the Recovery Act has worked for our communities and states.

I look forward to hearing from our witnesses and continuing our diligent oversight of the programs under this Committee's jurisdiction.

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U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Congressional Testimony

Stimulus Status: Two Years and Counting

Statement of Arthur A. Elkins, Jr.
Inspector General

Before the Committee on
Transportation and Infrastructure
U.S. House of Representatives

May 4, 2011

Good morning Chairman Mica, Ranking Member Rahall, and Members of the Committee. I am Arthur Elkins, Jr., Inspector General at the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). I also serve as the Inspector General of the U.S. Chemical Safety and Hazard Investigation Board. I am pleased to appear before you today for the first time since becoming Inspector General in June 2010 to discuss the OIG's American Recovery and Reinvestment Act (Recovery Act) activities. While EPA has successfully awarded and obligated its Recovery Act funds, OIG work has shown that improvement is needed in monitoring and assessing projects to ensure they meet stated environmental goals and are not subject to fraud, waste and abuse.

EPA Recovery Act Funding

The Recovery Act was signed into law on February 17, 2009. The Recovery Act provided funding for a wide range of federal programs intended to create jobs, stimulate economic recovery as quickly as possible, and invest in infrastructure. The Recovery Act's purpose as it applies to EPA is to promote economic recovery by creating jobs while also promoting a healthier environment. Toward that end, the Recovery Act provided EPA with $7.2 billion, roughly equal to its fiscal year 2009 appropriation, for the following six EPA programs:

- $4 billion for the Clean Water State Revolving Fund (CWSRF) to provide funds to upgrade wastewater treatment systems.
- $2 billion for the Drinking Water State Revolving Fund (DWSRF) to provide funds to upgrade drinking water infrastructure.
- $600 million for the Superfund Program to initiate and accelerate clean-up at National Priorities List sites.
- $300 million for the Diesel Emissions Reduction Act Program to accelerate emission reductions from diesel engines.
- $200 million for the Leaking Underground Storage Tank Program to clean up contamination from underground storage tank petroleum leaks.
- $100 million for the Brownfields Program to carry out revitalization projects at brownfields sites.

A percentage of these funds were allocated to oversee Recovery Act activities. In total, EPA retained $71.5 million for management and oversight activities.

OIG Recovery Act Funding and Activities

The Recovery Act also created a vital oversight role for Inspectors General within those agencies or departments that received Recovery Act funds to ensure that those funds were properly expended. The EPA OIG received $20 million for oversight activities, which are available through September 2012. As of April 26, 2011, the OIG has spent over $10.8 million of its oversight funds, and is on track to expend all remaining funds by September 2012.

The OIG developed an oversight plan soon after the Recovery Act's enactment. The initial focus was on whether EPA used its funds in accordance with applicable requirements and met the accountability objectives defined by the Office of Management and Budget (OMB). The OIG also implemented a three-pronged approach—education, outreach, and investigations—to spread the word about the requirements of the Recovery Act and to deter and detect fraud schemes. As of April 2011, the OIG has:

- Issued 32 audits, evaluations and other special reports.
- Opened 65 cases and closed 26.
- Identified $5.21 million in questioned costs, cost efficiencies, settlements, fines, penalties, and recoveries.
- Received 61 complaints of potential fraud, waste or abuse.
- Conducted 143 fraud awareness/outreach briefings and training sessions for over 4000 individuals at the federal, state and local levels.

OIG briefings, outreach and training have produced tangible results. For example, a City of Sacramento engineer who attended an OIG fraud training session contacted the OIG when allegations of fraud related to a water meter retrofit project came to the engineer's attention. Upon further investigation, the city terminated the contract and avoided expending approximately $3.4 million in Recovery Act funds. A federal grand jury returned a 13 count indictment against the company owner and his nephew in July 2010, representing one of the first indictments for a Recovery Act case. The company and two employees were debarred from government contracting, thereby avoiding any additional participation in Recovery Act-funded projects. Additionally, an EPA employee, who also attended an OIG training session, contacted the OIG to report information about potential fraud involving the awarding of Recovery Act grants in Saipan, Commonwealth of the Northern Mariana Islands. The commonwealth is in political union with the United States. While the allegations pertaining to the fraudulent award were unsubstantiated, we discovered during the course of our investigation that the company owner had previously been convicted for bankruptcy fraud. We notified and submitted documentation to EPA. As a result, the principal and his company were debarred from government contracting for four years.

Noteworthy EPA Achievements

EPA's senior leadership has demonstrated a strong commitment to meeting the requirements of the Recovery Act. As of April 2011, EPA reported that it has obligated over 99 percent of its Recovery Act funds. For the State Revolving Fund (SRF) programs, which account for $6 billion of its $7.2 billion Recovery Act funds, EPA stated that all of its SRF funds awarded to states were under contract or construction by the February 17, 2010, statutory deadline. We expressed concerns about EPA being able to meet this deadline, and to their credit, they accomplished this task. Additionally, EPA reported that all of its funds for Superfund projects have been obligated.

Related to the CWSRF program, EPA Region 6 identified over $1 million in unallowable grant costs charged by seven subrecipients that will be reprogrammed by the

Texas Water Development Board (TWDB) for other eligible state water projects. According to EPA Region 6, OIG involvement in this matter based on a hotline complaint, helped to ensure that these funds are put to better use. Region 6 believes the OIG's involvement helped to expedite the TWDB's recognition that bond counsel and financial advisory fees are not allowable costs.

Despite the billions EPA received under the Recovery Act, the OIG has detected limited fraud of EPA funds expended so far. The OIG has received fewer Recovery Act-related hotline complaints than anticipated. Recipient reporting requirements and greater transparency seem to have made a positive impact. In addition, EPA regional staff conducted training for recipients, contractors, and vendors on Recovery Act requirements and preventing fraud, waste, and abuse that supplement OIG efforts. Moreover, the Recovery Act's emphasis on awarding funds to "shovel ready" projects may have influenced the low incidents of fraud in this effort because "shovel ready" recipients tend to be better organized. However, experience shows that complex fraud schemes take time to surface, so sustained vigilance is necessary.

Recovery Act Issues Facing EPA

OIG work assessing EPA's progress in implementing and monitoring Recovery Act projects has raised several issues, including: targeting of Recovery Act funds; Buy American and Davis-Bacon provisions; Brownfields assessment grants; contractor performance evaluations; and grants and contracts workforce and workload.

Targeting of Recovery Act Funds

The Recovery Act was expected to achieve results not traditionally tracked by EPA. Anticipated results were to include creating and retaining jobs, promoting economic recovery, and assisting those most impacted by the recession. Moreover, EPA sought to address location-specific, community-based public health and environmental needs of its own volition, and it cited environmental justice as a factor in Recovery Act implementation.

Despite obligating over $7 billion, EPA is unable, both on a programmatic and national basis, to assess the overall impact of its Recovery Act funds on disadvantaged or environmental justice communities. EPA considered but could not execute an effort to track the distribution of its Recovery Act funds to economically disadvantaged communities. The effort was hindered by the absence of definitions, data, and measures. Rather, EPA collected success stories that some Recovery Act projects reached economically disadvantaged communities, which provide only anecdotal evidence. EPA needs to include and use targeting data in allocating funds so that it can effectively describe the impact its funds had on economically disadvantaged communities and explain how it helped achieve the purposes of the Recovery Act.

Multiple constraints limited EPA's ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession. Of note was the "shovel

ready" requirement and the short timeframes to allocate funds. EPA programs require all applicants to meet program criteria. For Superfund eligibility, the community must have already been on the National Priorities List. For water and wastewater projects, applicants had to demonstrate some preparedness, including completion of design plans and permitting processes. However, communities most in need often lacked the financial resources to develop the necessary design plans or to prepare applications. The pressure to meet the short timeframes to allocate funds under the Recovery Act meant that communities who did not have the necessary materials prepared in advance were unable to compete for Recovery Act funds. In addition, among the Recovery Act-funded programs at EPA, states made the funding decisions for 86 percent of the funds. Whether and how socioeconomic conditions influenced project selection was at their discretion. The result was that EPA's ability to target economically disadvantaged areas that have environmental needs was adversely impacted.

Buy American and Davis-Bacon Provisions

The Recovery Act includes Buy American and Davis-Bacon provisions. Specifically, section 1605 prohibits the use of Recovery Act funds for a project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The regulation requires that this prohibition be consistent with U.S. obligations under international agreements, and provides for a waiver under certain circumstances. A manufactured good that consists in whole or in part of materials from another country may be considered domestic if it meets the substantial transformation test. Section 1606 of the Recovery Act requires all laborers and mechanics employed on projects that are funded in whole or in part by the Recovery Act be paid Davis-Bacon Act rates. These are rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The OIG has been conducting unannounced site visits as part of our responsibility under the Recovery Act. The purpose of these site visits is to determine project compliance with selected requirements of the Recovery Act, including Buy American and Davis-Bacon provisions. We have issued 10 reports to date with others ongoing or planned. While we found no compliance issues at most of these sites, OIG auditors have found potential violations at other sites that warranted referrals to our investigators. Those cases are ongoing. The lack of Buy American violations at the sites we visited may be attributed to the fact that the projects were less complex, such as the installation of pipes. As we visit sites with more extensive projects, such as plant rehabilitation, the likelihood of violations occurring increases. We did find during a site visit that a CWSRF project in Long Beach, California, was not fully complying with Davis-Bacon requirements and recommended that EPA Region 9 verify that the city implement controls to ensure compliance with wage requirements. Region 9 and the California State Water Resources Control Board have since verified that the city has implemented the controls necessary to comply with the Davis-Bacon Act.

From an investigative perspective, Buy American cases make up the majority of the OIG's Recovery Act caseload. Of the 65 cases opened since the Recovery Act was

enacted, 39 relate to Buy American. In one case, a foreign based manufacturer and its U.S. subsidiary were awarded numerous Recovery Act-funded contracts to provide equipment used in wastewater treatment facilities across the country. The company received these contracts after falsely certifying that their equipment met the Buy American provision through substantial transformation at their U.S. facility. The investigation to date, including the execution of a search warrant, has determined that the equipment did not meet the substantial transformation requirements. Equipment valued in excess of $1.1 million has been seized and additional seizures are expected. Additionally, OIG auditors observed and photographed during a site visit foreign-made steel piping in a Recovery Act-funded project at a Superfund site. OIG investigators confirmed that foreign pipe was used in the project and as a result, a stop work order was issued by EPA. Additional administrative actions have occurred. Both investigations are ongoing.

Brownfields Assessment Grants

EPA's Brownfields Program awards grants for the assessment and cleanup of potentially contaminated properties that are being considered for reuse or redevelopment. Assessment grants provide funding to inventory, characterize, assess, and conduct planning and community involvement activities related to brownfields properties. All appropriate inquiries (AAI), also called "environmental due diligence," is the process of evaluating a property for potential environmental contamination. Grantees must ensure that AAIs are conducted by environmental professionals in accordance with federal law and regulations, and that reports are issued on their findings. The Recovery Act provided $25.8 million for assessment grants.

EPA does not review AAI reports submitted by grantees to assure that they comply with federal requirements. Rather, EPA has relied on the environmental professional conducting the AAI to self-certify that requirements are met. Of the 35 AAI reports we reviewed from three EPA regions, none contained all the required documentation elements. This occurred because EPA does not have management controls requiring project officers to conduct oversight of AAI reports. These shortcomings also can be applied to Recovery Act-funded Brownfields grants. EPA has issued guidance and implemented management controls for Recovery Act grant funds. However, it lacks guidance and controls to assure that deliverables from Recovery Act-funded Brownfields grants, such as AAI reports, adhere to federal requirements.

Due to EPA's lack of oversight and reliance on self-certifications by environmental professionals, AAI investigations not meeting federal requirements may go undetected by EPA staff. The OIG found instances of noncompliance that were not detected. Improper AAI investigations introduce risk that the environmental conditions of a property have not been properly or adequately assessed, which may lead to improper decisions about appropriate uses of brownfields properties. Ultimately, threats to human health and the environment could go unrecognized.

Contractor Performance Evaluations

In 2009, EPA decided to obligate approximately $211 million in Recovery Act funds to Superfund contractors. Considering contractor performance evaluations for prior contracts reduces the risk that EPA will award Recovery Act funds to contractors with a history of poor performance.

Contracting officers (COs) are required to complete and document performance evaluations for contractors awarded Recovery Act funds within 95 business days after each 12 months of contract performance. EPA had not completed in a timely manner 83 percent of the required contractor performance evaluations for contractors awarded Recovery Act funds. On average, EPA completed the evaluations 109 business days late, generally because there was no system in place to monitor evaluation timeliness. Consequently, contractor past performance evaluation information was not available to EPA when it awarded a new Recovery Act contract totaling $5.4 million.

Further, COs did not consider all available sources of information when preparing performance evaluations for contractors to which they awarded Recovery Act funding. For example, EPA's process did not consider Financial Monitoring Reviews, Defense Contract Audit Agency or OIG reports, which may contain performance issues that COs should be aware of. When EPA awarded funding to contractors and did not consider all sources of information, it increased the risk of fraud, waste, abuse, and mismanagement of Recovery Act funds. EPA awarded $109 million in Recovery Act funds to contractors with cost control and other performance issues.

EPA Grants and Contracts Workforce and Workload

OMB's Recovery Act implementation guidance stated that agencies are responsible for initiating risk mitigation actions. This included evaluating their current workforce needs and identifying any future skill gaps created by implementing Recovery Act requirements. Heightened attention to acquisition planning was needed to ensure agencies had the necessary contracting officers and other program managers with the skills and qualifications needed to award and monitor complex Recovery Act contracts.

EPA made the Recovery Act a top priority by shifting its existing contract and grant administration staff to Recovery Act activities. However, EPA's process for distributing the $71.5 million in management and oversight funds to regional offices was not always based on workforce analyses of the actual staffing levels needed to accomplish Recovery Act activities or of the impact those activities would have on staff workloads. Such analyses would have identified regions and divisions that were over- or understaffed. In addition, EPA lacks agency-wide performance measures for contract functions that could provide valuable information to help EPA effectively and efficiently manage its workforce and workload, and quickly address emerging issues such as impacts from Recovery Act work. Non-Recovery Act resources were devoted to Recovery Act activities, leaving less time for staff to focus on non-Recovery Act

administration, monitoring, and oversight. Diminished monitoring and oversight of contract and grants leaves EPA susceptible to undetected errors.

Lessons Learned

The goals of the Recovery Act are to create and retain jobs, promote economic recovery, and assist those most impacted by the recession. However, these goals are outside of EPA's mission to protect human health and the environment and their intended results are not traditionally tracked by EPA. As a result, OIG work shows that EPA has had difficulty in identifying and targeting economically disadvantaged communities. In addition, the Recovery Act's emphasis on "shovel ready" projects in EPA's case posed an unintended barrier to funding that many of these needy communities could not overcome. In the future, there should be better alignment between legislative goals and the mission and capabilities of those who will be tasked to implement it.

The Recovery Act emphasized the need for clear, comprehensive and timely guidance for recipients. EPA did not always develop such guidance. Without it, EPA cannot provide a reasonable assurance that projects are in compliance or will meet their intended goals. For example, EPA did not provide clear and comprehensive guidance to States for how to determine the eligibility of green reserve projects. EPA was promoting a green approach to wastewater and drinking water programs for at least a year prior to the Recovery Act's enactment. Despite that experience, EPA did not develop and issue comprehensive guidance in time to meet many of the States' needs. Specifically, EPA did not provide guidance on how to solicit and select green projects until after many States had finished doing so, and some States felt the need to re-solicit for green projects while others did not. Moreover, EPA's guidance and subsequent updates have not addressed important aspects of project selection. As a result, EPA could not provide a reasonable assurance that its green reserve projects will meet Congress' objectives.

The Recovery Act emphasized that funds be awarded quickly to help spur economic recovery. However, this increases the likelihood of fraud, waste and abuse of funds. Congress recognized the need for oversight when it established the Recovery Accountability and Transparency Board and provided additional funding for selected Inspectors General, including the EPA OIG. Yet the OIG's funding for Recovery Act oversight is less than one-third of one percent of the $7.2 billion EPA received under the Recovery Act. While I believe this small investment in oversight has made a positive difference at EPA, with more funding for Inspectors General, the impact within our respective agencies could have been even greater.

Conclusion

Now that Recovery Act funds have been awarded, effective oversight by EPA is crucial. The OIG remains concerned that there may be insufficient EPA oversight to ensure that projects are completed timely and environmental objectives are achieved. As of April 25, 2011, EPA had only obligated about 73 percent of its management and oversight funds. While EPA must obligate its oversight funds before the end of fiscal

year 2011, many Recovery Act projects will not be completed by that date. Given the number and scope of projects funded by the Recovery Act, effective oversight will be a challenge for EPA and its state partners. The OIG will continue to monitor and assess EPA's Recovery Act activities in these and other areas.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions the Committee may have.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

MAY 19 2011

The Honorable John L. Mica
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses to questions for the record as requested in your letter dated May 12, 2011. I appreciate the opportunity to testify before the Committee and thank you for your interest in the work of the Office of Inspector General. If you or your staff should have any questions on this or any other matter, please contact Eileen McMahon, Assistant Inspector General for Congressional, Public Affairs and Management, at (202) 566-2391.

Sincerely,

Arthur A. Elkins, Jr.

Enclosure

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EPA Office of Inspector General (OIG) Responses to Questions for the Record

1. In your testimony, you said the Stimulus goals of creating and retaining jobs was outside the traditional mission of EPA (environmental protection); consequently, you testified it was difficult for EPA to target their Stimulus grants where communities needed it the most help. But couldn't you say that for any agency that received Stimulus funds? Also, it is unrealistic to think EPA could look at state unemployment, provided by the Bureau of Labor Statistics (online at www.bls.gov), and determine the areas hardest hit by the recession and make sure those locations would get grants? This seems simple and would have lead to a better outcome than the current nationwide unemployment of 8.8%.

EPA OIG Response

My testimony was based on the work the OIG did within EPA so I cannot speak to the legal restrictions and internal procedures of other agencies. With regard to EPA, it is bound to operate and conduct business in accordance with existing statutes. The Recovery Act provided guidance on what Congress wanted to achieve but it did not significantly alter how EPA operates. The majority of Recovery Act funds EPA received were specifically directed to the State Revolving Fund (SRF) programs, which pass funds to the states in proportions set by Congress. EPA may set some additional criteria but it is mostly the states who determine who receives the funds. That is where the intent to stimulate the economy by selecting projects ready to start, or "shovel ready," may not target those areas with high unemployment and most in need. Areas with high unemployment and hardest hit by the recession may not have such shovel ready projects on the shelf for a variety of reasons. However, it may be that Recovery Act funds–however they may have been awarded–prevented overall unemployment from rising above what was experienced.

2. You said the EPA does not have management controls in place to review the All Appropriate Inquiries (AAIs), or environmental due diligence, that brownfield grantees must certify, claiming they've complied with all federal requirements. None of the 35 AAIs you've reviewed from 3 EPA regions have contained all the required documentation. This seems like a huge oversight by EPA, considering these report would alert EPA to any risk that may be a threat to human health. What is EPA doing to remediate this situation, not only for Stimulus funded projects but for projects funded by regular appropriations?

EPA OIG Response

EPA has agreed to take action in response to our report. Specifically, EPA will:

- Develop outreach materials and conduct appropriate training for Brownfields assessment grantees and to regional Brownfields program staff to increase compliance with AAI requirements.
- Offer initial training for current and potential grantees at the Brownfields Conference in April 2011.

- Provide all fiscal year (FY) 2011 assessment grantees with a fact sheet explaining requirements.
- Develop a checklist enumerating the need for documentation requirements and committing to distributing the checklist to all assessment grantees at the time of grant award for all 2011 grants and beyond.
- Regional EPA project officers for Brownfields assessment cooperative agreements will conduct annual reviews of a random sampling of the awarded assessment grants under which AAI investigations would be completed, to ensure that AAI reports submitted to the EPA Region as deliverables include a completed and signed checklist prepared and signed by the grantee. The Office of Solid Waste and Emergency Response will initiate that process beginning with the grants awarded in 2011.

While these are important and necessary actions, the OIG is currently working with EPA to obtain their agreement to establish a mechanism for direct EPA oversight and review of the AAI reports. EPA's implementation of such a mechanism is needed to meet the full intent of our recommendations. We are working to resolve this issue by early June 2011.

3. You described EPA's inability to evaluate contractor performance on a timely basis (109 days late), putting Stimulus funds at risk of being awarded to contractors who have poor performance history. What is EPA doing to remedy this and how much money is at stake?

EPA OIG Response

On April 26, 2010, we issued a report entitled "EPA Should Improve Its Contractor Performance Evaluation Process for Contractors Receiving Recovery Act Funds" (Report No. 10-R-0113). Our objective was to determine whether EPA completed contractor performance evaluations in a timely manner and considered all sources of information during the evaluation process. At the time we conducted our work, EPA had planned to obligate $211 million of its Recovery Act funds directly to Superfund contractors. The amount EPA ultimately obligated may be greater than $211 million but we have not conducted additional work to determine the final amount.

Our report concluded that EPA contracting officers (COs) were not completing evaluations of contractor performance timely. As a result, past performance information was not available when EPA awarded a new contract using $5.4 million of Recovery Act funds. Further, COs were not considering all sources of information when preparing evaluations. The sources involved financial monitoring reviews of contractors conducted by the Office of Acquisition Management (OAM) and audits conducted by the Defense Contract Audit Agency (DCAA) and our office. As a result, EPA had awarded $109 million of Recovery Act funds to contractors with cost control and other performance issues.

In response to our report, EPA stated that in May 2010 it would begin using the Department of Defense's Contractor Performance Measurement Reporting System, which reportedly provides a more effective capability over the previous system. In addition, OAM was to: 1) expand its Quality Assurance Plans (plans developed by each EPA contracting office to

ensure its contracting processes and products are compliant with governing rules and are consistently of high quality) to include contractor performance evaluations as an oversight activity; and 2) make Financial Monitoring Reviews and DCAA and EPA OIG audit reports available to COs to aid the evaluation process. According to EPA's Audit Management Tracking System, all corrective actions will be completed by June 2011.

4. All Stimulus recipients must comply with Section 1512 and report on how many jobs they created, saved, or retained. Many Stimulus recipients are confused about how to report this information and are getting different assistance on how to report, depending on which agency they talk to. Considering your office discovered that Stimulus grant recipients were not accurately completing the All Appropriate Inquiry (AAI) documentation, how can Congress be assured the EPA is verifying the Section 1512 job reporting data is accurate? Has the IG's office been able to verify the accuracy of the "jobs created" figures?

EPA OIG Response

Our review of AAIs disclosed that EPA did not have specific management controls exclusively for oversight of Brownfields Recovery Act grants. EPA has issued specific guidance and management controls for Recovery Act grant activities. However, the guidance and controls do not address oversight of AAI reports. This, coupled with our finding that grantees failed to meet AAI requirements on non-Recovery Act grants, means AAI reports funded by the Recovery Act are also at risk of not meeting the requirements. We did not review Recovery Act AAI reports, and it is unlikely there would have been any completed at the time we initiated our review of other Brownfields AAI reports. There is a delay between the time a Brownfields assessment grant is awarded and the AAI report is completed and issued. Therefore, we do not have information regarding how limits in the Recovery Act AAI reports may or may not affect EPA's Section 1512 job reporting data.

Our September 2010 report entitled "EPA Effectively Reviewed Recovery Act Recipient Data but Opportunities for Improvement Exist" (Report No. 10-R-0234) sought to determine whether EPA's methodology for validating reports on jobs created appeared reasonable. EPA provided guidance to its program offices for reviewing information on jobs created and retained, including examining reports listing positive job creation/retention with no expenditures, and expenditures with no jobs created /retained. We concluded that EPA's methodology was reasonable.

We are reviewing the accuracy of information reported for jobs created or retained per Section 1512 during our ongoing unannounced site visits to the recipients of Clean Water and Drinking Water State Revolving Funds. Of the 12 reviews completed to date, we found that the number of jobs created or retained were incorrect (understated) for two Recovery Act projects (one site in Region 9 and one site in Region 10). State staff incorrectly interpreted Office of Management and Budget guidance for the site in Region 10, which led to the incorrect reporting.

5. 50% of the Clean Water State Revolving Fund (CWSRF) Stimulus dollars are not required to be repaid. Normally $0.75 on the dollar is repaid to the SRF over 10 years. In the case of the Recovery Act dollars that don't have to be repaid to the fund, there's no recapitalization of the

funds. Essentially, the EPA has turned the State Revolving Fund into a simple grant program. In your opinion, was that the intention of the Stimulus bill?

EPA OIG Response

With respect to principal forgiveness and other forms of financial assistance, the Recovery Act provided for it. Concerning the Clean Water and Drinking Water Revolving Funds, Title VII of the Recovery Act stated:

> "Each State shall use not less than 50 percent of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants, or a combination of these."

EPA's policy on cost allowability requirements applicable to Recovery Act funds is included in a December 2009 frequently asked questions document posted on the EPA website. In response to a question on the difference between principal forgiveness and a grant award, the document states:

> "Funding agreements that include grant assistance are considered sub grants under EPA rules, and are subject to requirements in 40 CFR Part 31. Agreements that include principal forgiveness are not subject to those requirements. States may want to consider providing additional subsidization in the form of principal forgiveness to avoid imposing those additional regulatory requirements on recipients..."

In the absence of Federal requirements for the allowability of costs, state and local requirements apply.

6. As you testified, while it does not appear that Buy American and Davis-Bacon have resulted in project delays, state and local officials have identified serious concerns about the impact of these requirements. How did EPA provide guidance or technical assistance to state or local governments to help them expedite the Buy American and Davis-Bacon process?

EPA OIG Response

This question is best addressed by EPA. However, we note that EPA has conducted a substantial amount of outreach and has made numerous guidance documents and other resources available throughout its website. For example:

- EPA hosted webinars for states and subrecipients that provided guidance on monitoring compliance with Buy American and Davis Bacon Act provisions.
- Office of Water (OW) offered contractor assistance to regions and states to conduct inspections and review project documentation. Further, representatives from at least six EPA regions accompanied OIG staff as we gave fraud briefings to states, subrecipients, and contractors.
- OW developed a special web page to implement Recovery Act requirements for Clean Water and Drinking Water programs (http://water.epa.gov/aboutow/eparecovery/). This

page includes documents, training webcasts, and waiver information related to Buy American requirements.

- EPA developed a State Revolving Fund Handbook explaining the requirements of the Recovery Act.
- EPA posted guidance explaining the basic Davis-Bacon Act requirements, its application to EPA programs, and remedies for violations (http://www.epa.gov/ogd/davis_bacon/).

In addition, EPA may provide, if directly asked, "anticipatory" oversight where it will informally assist a recipient in determining if a manufactured good complies with the Buy American requirement.

7. Your office recommended EPA work with the States to implement specific oversight procedures to monitor and ensure recipients' compliance with Recovery Act requirements. What sorts of oversight procedures did EPA implement with the States?

EPA OIG Response

This question appears to relate more to a Government Accountability Office report entitled "Recovery Act: States' and Localities' Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability" (GAO-10-604). However, we have completed one assignment on oversight. In our report entitled "EPA Needs to Better Document Project Delays for Recovery Act Diesel Emission Reduction Act Grants" (Report No. 11-R-0179), we focused on whether EPA was successfully using its project management tools to identify and mitigate delays in Diesel Emission Reduction grants. We discussed the use of baseline monitoring and advance monitoring as tools for grants management. An EPA Order explains that baseline monitoring is the periodic review of a recipient's progress in, and compliance with, a specific award's scope of work, terms and conditions, and regulatory requirements. Baseline monitoring reports specifically ask whether recipients are meeting milestones and whether project officers believe the grant should be amended. Advanced monitoring is an in-depth assessment of a recipient's (administrative and financial) or project's (programmatic and technical) progress, management, and expectations. We recommended that EPA: revise the baseline and advanced monitoring report questions and corresponding guidance; verify that project officers document delays in baseline and advanced monitoring reports; and require project officers to regularly report to management on the progress of projects and status of corrective actions. EPA agreed with our recommendations and is in the process of taking corrective actions.

We also have an ongoing assignment of Clean Water State Revolving Fund (CWSRF) projects funded by the Recovery Act. Specifically, we are looking to determine whether EPA and states performed sufficient oversight of Recovery Act CWSRF projects to ensure that project goals and Recovery Act requirements are met. We expect to issue a final report in June.

United States Government Accountability Office

GAO

Testimony

Before the Committee on Transportation and Infrastructure, House of Representatives

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RECOVERY ACT

Use of Transportation Funds, Outcomes, and Lessons Learned

Statement of Phillip R. Herr, Director
Physical Infrastructure

GAO-11-610T

GAO
Accountability • Integrity • Reliability
Highlights

Highlights of GAO-11-610T, a testimony before the Committee on Transportation and Infrastructure, House of Representatives

May 4, 2011

RECOVERY ACT

Use of Transportation Funds, Outcomes, and Lessons Learned

Why GAO Did This Study

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided more than $48 billion to the Department of Transportation (DOT) to be distributed through existing programs and through two new competitive grant programs—high speed intercity passenger rail and the Transportation Investment Generating Economic Recovery (TIGER) program. As requested, this testimony addresses the (1) status and use of Recovery Act transportation funds, (2) outcomes and long-term benefits of Recovery Act transportation investments, and (3) lessons learned from DOT's and states' experiences implementing the Recovery Act. GAO reviewed prior and ongoing work, federal legislation, and guidance. GAO also analyzed Recovery Act data and interviewed federal, state, and local officials.

What GAO Recommends

This testimony does not include new recommendations. In our past work, GAO recommended that the Secretary of Transportation take several actions, such as directing the Federal Highway and Federal Transit administrations to determine the data needed to assess the impact of Recovery Act projects; we recently recommended that the Federal Railroad Administration and DOT better document decisions regarding their competitive grant programs. DOT has addressed some GAO recommendations, but others remain open. We will continue to track them. GAO provided a draft of this statement to DOT and incorporated its comments where appropriate.

View GAO-11-610T or key components. For more information, contact Phillip R.Herr at (202) 512-2834 or herrp@gao.gov or Susan A. Fleming at (202) 512-2834 or flemings@gao.gov

What GAO Found

As of March 31, 2011, more than $45 billion (about 95 percent) of Recovery Act transportation funds had been obligated for over 15,000 projects nationwide, and more than $26 billion had been expended. States and other recipients continue to report using Recovery Act funds to improve the nation's transportation infrastructure. Highway funds have been primarily used for pavement improvement projects and transit funds have been primarily used to upgrade transit facilities and purchase new vehicles. Recovery Act funds have also been used to rehabilitate airport runways and improve Amtrak's infrastructure. DOT continues to obligate funds for its high speed intercity passenger rail and TIGER grant programs. As of March 31, 2011, DOT had obligated nearly all of the $1.5 billion in TIGER funds for 51 surface transportation projects.

The Recovery Act helped to fund transportation jobs, but long-term benefits are unclear. For example, according to available data, Recovery Act transportation projects supported about 50,000 full-time equivalents (FTE) in the three months from October through December 2010. The most recent data showed that highway projects accounted for about two-thirds of the transportation FTEs reported, and the remaining one-third of the FTEs were attributed to transit and other transportation projects. However, the impact of Recovery Act investments in transportation is unknown, and GAO has recommended that DOT determine the data needed to assess the impact of these investments. Although DOT has set broad performance goals for its high speed intercity passenger rail and TIGER programs—and is currently evaluating the best methods for measuring objectives and collecting data—it has not committed to assessing the long-term benefits of the Recovery Act investments in transportation.

Certain Recovery Act provisions meant to stimulate the economy, but not typically required under existing DOT programs, proved challenging. For example, GAO has reported on numerous challenges DOT and states faced in implementing the transportation maintenance-of-effort requirement, which required states to maintain their planned levels of spending over approximately 18 months or be ineligible to participate in the August 2011 redistribution of obligation authority under the Federal-Aid Highway Program. A January 2011 preliminary DOT report found that 29 states met the requirement while 21 states did not. In this report, DOT also discussed how the maintenance-of-effort provision could be improved. With regard to the high speed intercity passenger rail and TIGER programs, GAO found that while DOT generally followed recommended grant-making practices, DOT could have better documented its award decisions. For example, the Federal Railroad Administration could have developed clearer records for how it made award decisions. Without a clear record of selection decisions, DOT is vulnerable to criticism about the integrity of its decisions. Likewise, DOT did not clearly document its final decisions and rationale for selecting recommended TIGER projects.

Chairman Mica, Ranking Member Rahall, and Members of the Committee:

We are pleased to be here today to discuss our observations on Department of Transportation (DOT) programs funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act).[1] Congress enacted the Recovery Act in response to a serious economic crisis to, among other things, preserve and create jobs, promote economic recovery across the nation, and invest in transportation and other infrastructure to provide long-term economic benefits. We have noted that, given the nation's long-term fiscal challenges, any economic stimulus package should be timely, targeted, and temporary. The Recovery Act provided more than $48 billion for transportation investments just over a year after the onset of the recession, and stipulated that most of the funds be obligated by September 30, 2010. The Recovery Act targeted the majority of transportation funds for investments in infrastructure, including airports and air navigation facilities, roads and bridges, public transit systems, and high speed intercity passenger rail.[2]

The Recovery Act assigned several roles to GAO, including reviewing how selected states and localities used funds made available under the act. As part of those reviews, we examined how Recovery Act transportation funds are being used and whether they are achieving the act's stated purposes.[3] We also recently issued reports on two competitive grant programs funded under the Recovery Act, including the Federal Railroad Administration's (FRA) high speed intercity passenger rail program and the Transportation Investment Generating Economic Recovery (TIGER)

[1]Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

[2]Recovery Act, div. A, title XII, 123 Stat., 202.

[3]See GAO, *Recovery Act: Opportunities to Improve Management and Strengthen Accountability over States' and Localities' Use of Funds*, GAO-10-999 (Washington, D.C.: Sept. 20, 2010) and *Recovery Act: States' and Localities' Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability*, GAO-10-604 (Washington, D.C.: May 26, 2010). Additional reports on Recovery Act implementation can be found at http://gao.gov/recovery/related-products/.

grant program[4] administered by the Office of the Secretary of Transportation, both of which we discuss in this statement.[5]

Our statement is based on our recently completed and ongoing work, and addresses the (1) status and use of Recovery Act transportation funds, (2) outcomes and long-term benefits of Recovery Act transportation investments, and (3) challenges and key lessons learned from DOT's and states' experiences implementing the Recovery Act. We conducted all of our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to produce 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 statement today. Additional information on our scope and methodology is available in each issued report.

Background

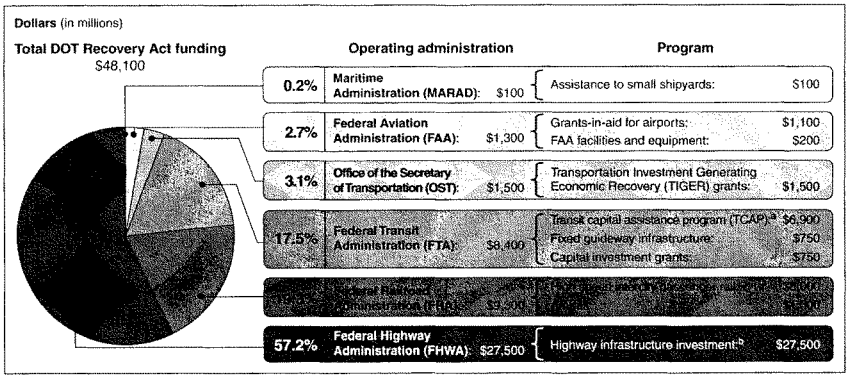
The vast majority of the $48.1 billion of Recovery Act funding for transportation programs went to the Federal Highway Administration (FHWA), FRA, and the Federal Transit Administration (FTA) for highway, road, bridge, rail, and transit projects. Indeed, more than half of all Recovery Act transportation funds were designated for the construction, rehabilitation, and repair of highways, roads, and bridges (see fig. 1). The remaining funds were allocated among other DOT operating administrations.[6]

[4]The high speed intercity passenger rail and TIGER grant programs are discretionary grant programs. Traditionally, federal surface transportation funding has been primarily delivered through formula grant programs based on distributions prescribed by federal statute. In a discretionary grant program, agency officials generally have the authority to determine which eligible applicants will receive awards and how much each will be awarded.

[5]GAO, *Intercity Passenger Rail: Recording Clearer Reasons for Awards Decisions Would Improve Otherwise Good Grantmaking Practices*, GAO-11-283 (Washington D.C.: Mar. 10, 2011) and *Surface Transportation: Competitive Grant Programs Could Benefit From Increased Performance Focus and Better Documentation of Key Decisions*, GAO-11-234 (Washington, D.C.: Mar. 30, 2011).

[6]The total amount of Recovery Act funds allocated to each program does not equal the total funds distributed. Most operating administrations, as allowed by the Recovery Act, retained a small percentage of the funds for oversight and administrative costs, and some fund allocations included set asides for other programs or activities. The Recovery Act also provided $20 million for salaries and expenses at the DOT Office of Inspector General to monitor DOT's Recovery Act programs.

Figure 1: Recovery Act Funds Appropriated to DOT Programs



Source: GAO analysis of DOT data.

[a]TCAP includes nonurban and urban formula funds, tribal grants, funds transferred from FHWA, and Transit Investment for Greenhouse Gas and Energy Reduction grants.

[b]Of the $27.5 billion the Recovery Act made available to FHWA, FHWA apportioned $26.6 billion to states for highway infrastructure investment and $105 million for the Puerto Rico highway program. Of the remaining funds, $550 million was allocated to Federal Lands and Indian Reservations, $20 million for Highway Surface Transportation Technical Training, $45 million for the Territorial Highway Program, and $60 million for the Ferry Boat Discretionary Program, among others.

DOT administered most Recovery Act funds through existing transportation programs. For example, highway funds were distributed under rules governing the Federal-Aid Highway Program generally and the Surface Transportation Program in particular.[7] DOT also established new grant processes to award high speed intercity passenger rail and TIGER grants. For these programs, DOT published selection criteria, solicited and

[7]The majority of federal-aid highway infrastructure funding is distributed through seven major projects, often referred to as core highway programs. These programs are the Surface Transportation Program, National Highway System Program, Interstate Maintenance Program, Highway Bridge Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program, and the Equity Bonus Program.

reviewed applications, and awarded grants to applicants that it judged best met the criteria and complied with legislative and regulatory requirements.

The Recovery Act included obligation deadlines to indicate the temporary nature of the funds and to facilitate their timely use. Therefore, the Recovery Act identified short deadlines for obligating most transportation funds, and it required that preference be given to projects that could be started and completed expeditiously. For example, highway and transit funds were to be fully obligated by September 30, 2010. All TIGER funds must be obligated by September 30, 2011, and all high speed intercity passenger rail funds must be obligated by September 30, 2012.

The Recovery Act also introduced new requirements for existing programs to help ensure that funds add to states' and localities' overall economic activity, and are targeted to areas of greatest need. For example, the Recovery Act required governors of each state to certify that their state will maintain its planned level of spending for the types of transportation projects funded by the act and also required states to give priority to projects in economically distressed areas.[8]

State and local agencies, contractors, and others that receive Recovery Act funding are required to submit quarterly reports on the number of jobs created or retained, among other data. These job calculations are based on the number of hours worked in a quarter and funded under the Recovery Act—expressed in full-time equivalents (FTE)—but they do not account for the total employment arising from the expenditure of Recovery Act transportation funds. That is, the data recipients report do not include employment at suppliers (indirect jobs) or in the local community (induced jobs).[9]

[8]Economically distressed areas are defined by the Public Works and Economic Development Act of 1965, as amended. To qualify, the areas must have (1) a per capita income of 80 percent or less of the national average, (2) a 24-month average unemployment rate that is 1 percent greater than the national average, or (3) "special needs" arising from actual or threatened severe unemployment or economic adjustment programs resulting from severe short- or long-term changes in economic conditions.

[9]Therefore, both the data reported by recipients and other macroeconomic data and methods are necessary to gauge the overall employment effects of the stimulus. The employment effects in any state will vary with labor market stress and fiscal condition.

Most Recovery Act Transportation Funds Have Been Obligated, and Expenditures for Infrastructure Continue to Increase

According to DOT data, as of March 31, 2011, DOT had obligated more than $45 billion (about 95 percent) on over 15,000 projects and had expended more than $26 billion (about 59 percent) of the $48.1 billion it received under the Recovery Act (see table 1).[10]

Table 1: Recovery Act Transportation Projects, Obligations, and Expenditures, as of March 31, 2011

Dollars (in millions)

	Number of projects		Obligations		Expenditures	
Program	**Awarded**	**Completed**	**Amount**	**Percent obligated**	**Amount**	**Percent expended**
Federal Highway Administration						
Highway infrastructure investment[a]	12,931	7,072	$26,342	99.9%	$18,661	70.8%
Federal Railroad Administration						
High speed intercity passenger rail	57	0	5,354	67.1	94	1.8
Capital grants to Amtrak	154	89	1,291	100.0	1,180	91.4
Federal Transit Administration						
Transit capital assistance program (TCAP)	1,010	146	7,829	100.0	4,265	58.5
Fixed guideway infrastructure	51	23	743	100.0	441	59.4
Capital investment grants	11	11	743	100.0	743	100.0
Office of the Secretary of Transportation						
TIGER grants	51	0	1,489	99.3	77	5.2

[10]Programs administered by DOT and funded by the Recovery Act typically required DOT review and approval of proposed projects submitted by the states or other applicants, resulting in an obligation of federal funds. (An obligation is a commitment that creates a legal liability of the government for the payment of goods or services ordered or received.) States or other recipients then solicit for and select contractors to perform the work. Federal funds are expended when the state or other intended recipient submits invoices for completed work.

Dollars (in millions)						
	Number of projects		Obligations		Expenditures	
Program	Awarded	Completed	Amount	Percent obligated	Amount	Percent expended
Federal Aviation Administration						
Grants-in-aid for airports	372	364	1,088	99.1	1,043	95.9
FAA facilities and equipment	399	378	198	99.0	130	65.7
Maritime Administration						
Assistance to small shipyards	70	30	98	100.0	76	77.6
Total	**15,106**	**8,113**	**$45,175**	**95.5%**	**$26,710**	**59.1%**

Source: GAO analysis of DOT data.

Notes: For information on total federal outlays for all programs administered by states and localities under the Recovery Act, see http://gao.gov/recovery.

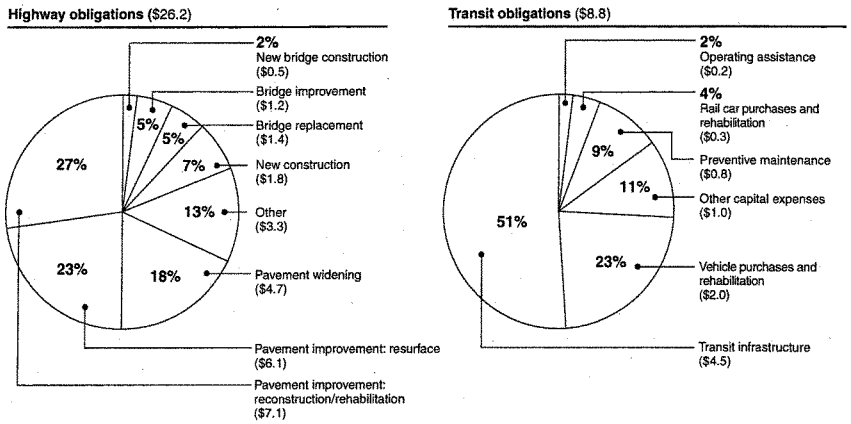
The percentage obligated is not based on the total Recovery Act funds each agency received but on the amount agencies allotted for distribution to projects. In most cases, this amount was less than the total amount of Recovery Act funds the agency received.

[a]Includes Puerto Rico and the other territories but not federal lands projects.

States and other recipients continue to report using Recovery Act funds to improve the condition of the nation's transportation infrastructure, as well as invest in new infrastructure. For example, according to DOT data, highway funds have been primarily used for pavement improvement projects, such as resurfacing, reconstruction, and rehabilitation of existing roadways, and public transit funds have been used primarily for upgrading transit facilities and purchasing new vehicles (see fig. 2).

Figure 2: Highway and Transit Obligations, by Project Type

Dollars (in billions)



Source: GAO analysis of DOT data.

Notes: Percentages may not add to 100 because of rounding.

Transit obligations include Recovery Act funds that were transferred from FHWA to FTA. The category "other" includes safety projects, such as improving safety at railroad grade crossings; engineering; right-of-way purchases; and transportation enhancement projects, such as pedestrian and bicycle facilities. "Transit infrastructure" includes engineering and design, acquisition, construction, and rehabilitation and renovation activities. "Other capital expenses" includes leases, training, finance costs, mobility management project administration, and other capital programs.

Highway data are as of December 31, 2010, and transit data are as September 30, 2010.

Recovery Act funding for aviation is reported to have gone to rehabilitating and reconstructing airfield runways and taxiways, as well as air navigation infrastructure such as air traffic control towers, engine generators, back-up batteries, and circuit breakers. The Recovery Act grant provided to Amtrak has been used to make infrastructure improvements and return cars and locomotives to service. Because high speed intercity passenger rail and TIGER were new grant programs, the Recovery Act allowed additional time for DOT to develop criteria, publish notices of funding availability for each program, and award grants. As a result, projects selected for high speed intercity passenger rail and TIGER

were announced about a year after enactment, and DOT has been making progress obligating Recovery Act funds for these programs. For example, DOT selected one intercity passenger rail project to rehabilitate track and provide service from Portland to Brunswick, Maine, at speeds up to 70 miles per hour. Another project was selected to initiate the first part of California's high speed rail system, which envisions service at more than 200 miles per hour between Los Angeles, San Francisco and the Central Valley, and eventually, San Diego. DOT's TIGER grants funded projects across different surface transportation modes, including highways, transit, rail, and ports. For example, the California Green Trade Corridor/Marine Highway project is a collaborative effort of three regional ports in California to develop and use a marine highway system as an alternative to existing truck and rail infrastructure for transporting consumer goods and agricultural products.

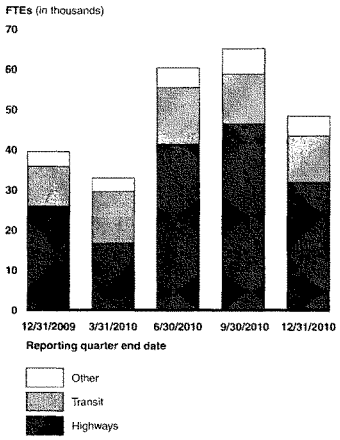
According to DOT, a variety of Recovery Act projects have been completed. Approximately 68 percent of the completed highway projects involve pavement improvement, according to FHWA, and completed transit projects generally included preventative maintenance activities and some vehicle purchases and facility construction, according to FTA. Amtrak had also completed a variety of projects, including construction station upgrades, right-of-way improvements, installing communications and signaling systems, and replacing aging bridges, among other things. While no high speed intercity passenger rail projects had been completed as of March 31, 2011, 15 projects were under way, according to FRA. These projects, which represent more than two-thirds of the allotted funding, include track and signaling work to improve reliability and increase operating speeds, improvements to stations, and the environmental analysis and preliminary engineering required to advance projects to construction.

The Recovery Act Helped Fund Transportation Jobs, but Long-Term Benefits Are Unclear

Recovery Act funds helped pay for jobs across various transportation modes. At a time when the construction industry was experiencing historically high unemployment and many states could not afford to maintain existing infrastructure, transportation officials we met with told us that the Recovery Act helped to keep the transportation industry in operation while allowing states to tackle some of their infrastructure maintenance priorities. According to the most recent recipient reported data, Recovery Act transportation projects supported about 50,000 FTEs

from October 2010 through December 2010.[11] Transportation recipients reported the highest FTE counts during the quarter that ended September 2010, when many projects were under way (see fig. 3).

Figure 3: FTEs Reported by Recovery Act Transportation Program Recipients for Quarters Ending December 2009 through December 2010



Source: GAO analysis of recipient reported data from Recovery.gov.

Note: "Highways" includes FHWA projects funded for highway planning and construction. "Transit" includes FTA projects funded with capital investment grants, metropolitan transportation planning grants, formula grants (including grants for other than urbanized areas), and the capital assistance program for reducing energy consumption and greenhouse gas emissions. "Other" includes projects funded by FAA's Airport Improvement Program; FRA's Amtrak grant and high speed intercity passenger rail program; Maritime Administration's Assistance to Small Shipyards Program; and the Office of the Secretary of Transportation's Bonding Assistance Program and TIGER grants.

For the most recent reporting quarter, highway projects accounted for approximately two-thirds of the transportation FTEs reported, and the

[11]Recipient reported data for January 2011 through March 2011 was expected to be published on Recovery.gov on April 30, 2011.

remaining one-third of FTEs were attributed to transit and all other transportation projects. The relatively low portion of FTEs reported for all other transportation projects is expected to rise in future reporting quarters as more high speed intercity passenger rail and TIGER program funds are obligated and projects get under way.

While FTEs reported for the high speed intercity passenger rail and TIGER programs are expected to increase as these projects get under way, other program areas have reported fewer FTEs in the most recent reporting quarter. Recipient reported data for the quarter ending December 31, 2010, showed fewer recipients reporting than in the previous quarter across all program areas (highways, transit, and other). This may indicate that more projects were completed in the quarter ending December 31, 2010, than were started. Also in that quarter, the percentage of recipients that reported any FTEs decreased compared to the previous quarter, which may indicate that some projects are essentially completed but not closed out financially or may reflect interruptions in work due to winter weather for some projects in colder climates.

Although recipients reported jobs funded, other long-term impacts of Recovery Act investments in transportation are unknown at this point. Transportation officials in several states we visited told us that Recovery Act funds helped reduce backlogs of "shovel-ready" resurfacing projects. Some states have efforts under way to report on Recovery Act benefits, but federal and state officials told us that attributing transportation benefits to Recovery Act funds can be difficult, particularly when projects are funded from multiple sources or when historic performance data is not available for particular projects.

We recommended that DOT ensure that the results of Recovery Act projects are assessed and a determination is made about whether these investments produced long-term benefits.[12] Specifically, in the near term, we recommended that FHWA and FTA determine the types of data and performance measures needed to assess the impact of the Recovery Act and the specific authority they may need to collect data and report on these measures. DOT officials told us that they expect to be able to report on Recovery Act outputs, such as miles of roads paved, bridges built or

[12]GAO, *Recovery Act: States' and Localities Uses of Funds and Actions Needed to Address Implementation Challenges to Bolster Accountability*, GAO-10-604 (Washington, D.C.: May 26, 2010).

repaired, and transit vehicles purchased, which will help to assess the act's impact. DOT will not be able to report on outcomes, such as reductions in travel time. DOT has not committed to assessing the long-term benefits of Recovery Act investments in transportation. DOT stated that limitations in its data systems, coupled with the fact that Recovery Act funds represented only about one year of additional funding for some transportation programs, would make assessing the benefits of Recovery Act projects difficult. We continue to believe, however, that it is important for organizations to measure performance to understand the progress they are making toward their goals and to produce a set of performance measures that demonstrates results.

For Recovery Act high speed intercity passenger rail and TIGER grant programs, DOT has set broad performance goals and required recipients to identify potential project benefits. Specifically, FRA has outlined goals for developing high speed intercity passenger rail service in its strategic plan and national rail plan and evaluated grant proposals based on the potential project benefits they intended in their applications.[13] However, the identified goals are broad—such as providing for transportation safety and economic competitiveness—and do not contain specific targets necessary to determine how or when FRA will realize intended benefits. DOT also incorporated performance measures tailored to each TIGER grant awardee based on the project design and the capacity of the recipient to collect and evaluate data. DOT is evaluating the best methods for measuring objectives and collecting data and is working collaboratively with applicants to weigh options for measuring performance. As many TIGER projects are just being initiated, the effectiveness of these measures will not be clear for some time.

[13]Department of Transportation, *Vision for High-Speed Rail in America* (Washington, D.C., April 2009); FRA, *Preliminary National Rail Plan* (Washington, D.C., October 2009); and FRA, *National Rail Plan–Moving Forward: A Progress Report* (Washington, D.C., September 2010).

Recovery Act Requirements Proved Challenging for DOT and Some States, Leading to Several Lessons Learned

Federal, state, and local transportation officials we contacted reported that while Recovery Act transportation funds provided many positive outcomes, they also provided lessons learned that may be relevant as Congress considers the next surface transportation reauthorization. In addition, our reports on high speed intercity passenger rail and the TIGER grant program identified a number of challenges and key lessons learned.

Maintenance of Effort and Economically Distressed Area Requirements Proved Challenging

Certain Recovery Act provisions not typically required under existing DOT programs proved challenging for some states to meet. We found that it may have been difficult for states to meet these requirements for a number of reasons, including rapidly changing state economic conditions. Confusion among the states as to how to interpret and apply the new requirements was also a contributing factor.

- *Maintenance of effort.* We have reported that there were numerous challenges for DOT and states in implementing the transportation maintenance-of-effort provision in the Recovery Act. This provision required the governor of each state to certify that the state would maintain its planned level of transportation spending from February 17, 2009, through September 30, 2010, to help ensure that federal funds would be used in addition to, rather than in place of, state funds and thus increase overall spending. A January 2011 preliminary DOT report indicated that 29 states met their planned levels of expenditure, and 21 states did not. States had a monetary incentive to meet their certified planned level of spending in each transportation program area funded by the Recovery Act because those that fail will not be eligible to participate in the August 2011 redistribution of obligation authority under the Federal-Aid Highway Program.[14] States had until April 15, 2011, to verify their actual expenditures for transportation programs covered by the Recovery Act. DOT is reviewing this information to determine if any more states met their planned levels of spending.

The DOT preliminary report summarized reasons states did not meet their certified planned spending levels, such as experiencing a reduction in

[14]As part of the Federal-Aid Highway Program, FHWA assesses the ability of each state to have its apportioned funds obligated by the end of the federal fiscal year (September 30) and adjusts the limitation on obligations for federal-aid highway and highway safety construction programs by reducing it for some states while increasing it for others.

dedicated revenues for transportation due to a decline in state revenues or a lower-than-expected level of approved transportation funding in the state budget.[15] The preliminary report also identified a number of challenges DOT encountered in implementing the provision, such as insufficient statutory definitions of what constitutes "state funding" or how well DOT guidance on calculating planned expenditures would work in the many different contexts in which it would have to operate. As a result, many problems came to light only after DOT had issued initial guidance and states had submitted their first certifications. DOT issued seven pieces of guidance to clarify how states were to calculate their planned or actual expenditures for their maintenance-of-effort certifications.

DOT invested a significant amount of time and work to ensure consistency across states on how compliance with the maintenance-of-effort provision is certified and reported. As a result, DOT is well-positioned to understand lessons learned—what worked, what did not, and what could be improved in the future. DOT and state officials told us that while the maintenance-of-effort requirement can be useful for ensuring continued investment in transportation, more flexibility to allow for differences in states and programs, and to allow adjustments for unexpected changes to states' economic conditions, should be considered for future provisions. For example, the Recovery Act allows the Secretary of Education to waive state maintenance-of-effort requirements under certain circumstances and allows states to choose the basis they use to measure maintenance of effort.[16] The maintenance-of-effort requirement for transportation programs proved difficult for states to apply across various transportation programs because of different and complicated revenue sources to fund the programs. Many states did not have an existing means to identify planned transportation expenditures for a specific period and their financial and accounting systems did not capture that data. Therefore, according to DOT, a more narrowly focused requirement applying only to programs administered by state DOTs or to programs that typically receive state funding could help address maintenance-of-effort challenges.

[15]As of February 17, 2009, many states did not yet have an enacted budget for fiscal year 2010 and in response to anticipated changes in available funding, state legislatures adopted reduced budgets.

[16]See GAO, *Recovery Act: Planned Efforts and Challenges in Evaluating Compliance with Maintenance of Effort and Similar Provisions*, GAO-10-247 (Washington, D.C.: Nov. 30, 2009).

- *Consideration of economically distressed areas.* Our previous reports have identified challenges DOT faced in implementing the Recovery Act requirement that states give priority to highway projects located in economically distressed areas. For example, while an economically distressed area is statutorily defined, we found that there was substantial variation in how some states identified economically distressed areas and the extent to which some states prioritized projects in those areas. We reported instances of states developing their own eligibility requirements for economically distressed areas using data or criteria not specified in the Public Works and Economic Development Act.[17] Three states—Arizona, California, and Illinois—developed their own eligibility requirements or interpreted the special-needs criterion in a way that overstated the number of eligible counties, and thus the amount of funds, directed to economically distressed areas.[18] Officials in these three states told us that they did so to respond to rapidly changing economic conditions. In May 2010, we recommended that DOT advise states to correct their reporting on economically distressed area designations, and in July 2010 FHWA instructed its division offices to advise states with identified errors to revise their economically distressed area designations. In September 2010, we recommended that DOT make these data publicly available to ensure that Congress and the public have accurate information on the extent to which Recovery Act funds were directed to areas most severely affected by the recession and the extent to which states prioritized these areas in selecting projects for funding. DOT recently posted an accounting of the extent to which states directed Recovery Act transportation funds to projects located in economically distressed areas on its website, and we are in the process of assessing these data.

Most states we visited as part of our ongoing Recovery Act oversight considered the requirement to prioritize projects in economically distressed areas in addition to other immediate and long-term

[17]In response to a recommendation we made, FHWA, in consultation with the Department of Commerce, issued guidance on August 24, 2009, that provided criteria for states to use for designating special-need areas for the purpose of Recovery Act funding. The criteria align closely with special-need criteria used by the Department of Commerce's Economic Development Administration in its own grant programs, including factors such as actual or threatened business closures (including job loss thresholds), military base closures, and natural disasters or emergencies. FHWA issued "questions and answers" on Nov. 12, 2009, to further address implementation questions.

[18]As part of our Recovery Act oversight, we tracked the uses and accountability for Recovery Act funds in 16 states, including Arizona, California, and Illinois, and the District of Columbia.

transportation goals, as the Recovery Act required. For example, officials in Washington state said that they considered federally-recognized economically distressed areas as one of several criteria when selecting projects. Other criteria included state economic data and projects that would be ready to proceed in a short amount of time. However, state officials were also uncertain what the economically distressed area requirement was intended to accomplish, such as whether it was intended to provide jobs to people living in those areas or to deliver new infrastructure to those areas. The economically distressed area provision proved difficult to implement because of changing economic conditions, and it is unclear that it achieved its intended goal.

Better Documentation Could Reduce Challenges to the Integrity of Selection Decisions for High Speed Intercity Passenger Rail and TIGER Grant Programs

We have reported that allocating federal funding for surface transportation based on performance in general, and directing some portion of federal funds on a competitive basis to projects of national or regional significance in particular, can more effectively address certain challenges facing the nation's surface transportation programs. In our recent reports on the high speed intercity passenger rail and TIGER programs, we found that while DOT generally followed recommended grantmaking practices, DOT could have documented more information about its award decisions.

The Recovery Act and the Passenger Rail Investment and Improvement Act of 2008 required FRA to implement a plan to award and oversee billions of dollars for high speed intercity passenger rail grants. This was challenging for FRA as it did not have a large-scale grantmaking infrastructure in place and had to develop that capability within a short time frame to meet Recovery Act goals. We mostly found that FRA substantially followed recommended practices for awarding these grants, including communicating key information to applicants and planning for the grant competition.[19] However, one area in which FRA could have done better is to develop clearer records for how it made final grant award decisions. Specifically, while FRA maintained detailed records on how officials evaluated applications on technical merit, the documented reasons for making final grant selections were typically vague and provided little insight into why projects were or were not selected. In addition, FRA provided only general reasons for adjusting applicants' requested funding amounts. We recommended that FRA should better document the rationales for award decisions in any future high speed and

[19]GAO-11-283.

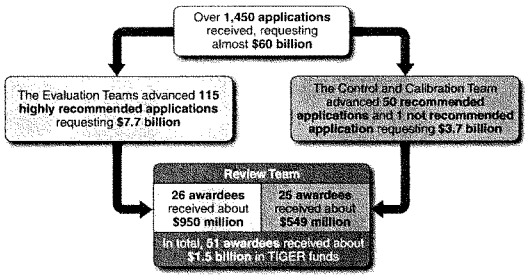
intercity passenger rail funding rounds by including substantive reasons why individual projects are or are not selected and for any changes made to requested funding amounts. Without a clear record of selection decisions, FRA is vulnerable to criticism about the integrity of its decisions. This is important because FRA has already been criticized for its award decisions and for providing incremental improvements to existing systems rather than providing more funds to meet the administration's expectations of developing a true national high speed rail intercity passenger network.

To evaluate the more than 1,450 TIGER grant applications it received, DOT developed criteria to assess the merits of these projects. We evaluated these criteria and concluded that DOT had followed key federal guidance and standards. The criteria clearly indicated that projects should produce long-term benefits, such as improving the state of repair of existing transportation infrastructure, reducing fatalities and injuries, and improving the efficient movement of workers or goods. To apply its criteria, DOT used 10 Evaluation Teams of five reviewers to conduct a technical review of all applications. The evaluators drafted narratives explaining their assessments, assigned ratings such as "highly recommended" and "recommended," and advanced those that best met the criteria for further review. A Control and Calibration Team, made up of senior staff from the Office of the Secretary of Transportation, also selectively reviewed and advanced applications throughout the process to ensure consistency across Evaluation Teams' ratings and to help meet statutory requirements such as an equitable distribution of funds. The Evaluation Teams advanced 115 highly recommended applications. The Control and Calibration Team advanced an additional 50 recommended applications as well as 1 application that was not recommended. Together, the teams advanced 166 applications for further review. The TIGER Review Team—composed of 12 senior DOT officials, such as the Deputy Secretary and cognizant operating administrators—reviewed those 166 applications. This team—which considered a broader set of factors than the Evaluation Teams, including project readiness and whether expected project benefits outweighed costs—developed a final list of 51 projects that it recommended to the Secretary of Transportation for award. All 51 projects were accepted by the Secretary, and the awards were announced on February 17, 2010.

Of the 51 applications that received awards, 26 were from the highly recommended applications advanced by the Evaluation Teams and the other 25, which received one-third of the TIGER funds, were from the

recommended applications advanced by the Control and Calibration Team (see fig. 4).

Figure 4: Number of TIGER Applications Advanced and Selected



Source: GAO analysis of DOT information.

While DOT thoroughly documented the Evaluation Teams' assessments and the Review Team's memorandum recommending projects to the Secretary of Transportation for award described the strengths of projects recommended for award, it did not document the Review Team's final decisions and its rationale for selecting recommended projects for half the awards over highly recommended ones. DOT officials told us that some highly recommended projects were not selected to achieve a more equitable geographic distribution of award funds, as required by the Recovery Act. Furthermore, our discussions with DOT officials indicated that the Review Team raised some valid concerns about some highly recommended projects, such as whether a project's economic benefits were overstated. However, without adequate documentation of final decisions, DOT cannot definitively demonstrate the basis for its award selections, particularly the reasons why recommended projects were selected for half the awards over highly recommended ones. Developing internal documentation is a key part of accountability for decisions, and DOT guidance states that officials should explain how discretionary grant projects were selected when projects with the highest priority in a technical review were not funded. The absence of documentation can give rise to challenges to the integrity of the decisions made, and DOT is vulnerable to criticism that projects were selected for reasons other than merit. We recommended that DOT document key decisions for all major

steps in the review of applications, particularly decisions in which lower-rated applications are selected for award over higher-rated applications, and, in consultation with Congress, develop and implement a strategy to disclose information regarding award decisions. [20]

Both the high speed intercity passenger rail and TIGER programs represent important steps toward investing in projects of regional and national significance through a merit-based, competitive process. We noted a natural tension between providing funding based on merit and performance and providing funds on a formula basis to achieve equity among the states as the formula approach can potentially result in projects of national or regional significance that cross state lines and involve more than one transportation mode not competing well at the state level for funds. Given that the Recovery Act was intended to create and preserve jobs and promote economic recovery nationwide, Congress believed it important that TIGER grant funding be geographically dispersed. As we noted in our recent report discussing the TIGER grant program, when Congress considers future DOT discretionary grant programs, it may wish to consider balancing the goals of merit-based project selection with geographic distribution of funds and limit, as appropriate, the influence of geographic considerations.

Chairman Mica, Ranking Member Rahall, and Members of the Committee, this concludes my statement. I would be pleased to respond to any questions at this time.

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[20]GAO-11-234.

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STATEMENT OF
ROY KIENITZ
UNDER SECRETARY OF TRANSPORTATION FOR POLICY
BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
MAY 4, 2011

STIMULUS STATUS: TWO YEARS AND COUNTING

Chairman Mica, Ranking Member Rahall, and members of the Committee, thank you for inviting me to appear before you today to discuss the Department of Transportation's implementation of the American Recovery and Reinvestment Act.

The President signed the Recovery Act on February 17, 2009. The Recovery Act appropriated $48.1 billion to the Department of Transportation. Most of this funding was appropriated for existing programs, such as the various highway programs administered by the Federal Highway Administration (FHWA), the Transit Capital Assistance Grants and Fixed Guideway Infrastructure Grants administered by the Federal Transit Administration (FTA), and the Federal Aviation Administration's Facilities and Equipment and Airport Improvement Programs. These programs have been very successful, funding more than 15,000 projects in all 50 states. As of April 29th, we've obligated over 99 percent of the funding for these projects, and over half of the projects have been completed. As of the end of January, these projects had provided 82,000 direct job-years of work for American workers, and over 280,000 job-years of work in the overall economy, taking into account indirect jobs in supplier industries and additional jobs generated as these employees spend their increased incomes.

These projects have had a significant, positive effect on the American transportation system. Almost 9,000 projects have been completed. Among the projects that we have funded is a fourth bore for the Caldecott Tunnel near Oakland, California, where hundreds of workers are expanding Highway 24 from six lanes to eight to alleviate congestion for 160,000 daily commuters from the Contra Costa suburbs to Oakland. We're expanding Interstate 94 in Wisconsin from six lanes to eight from Milwaukee down to the Illinois state line. In Tampa we're linking Interstate 4 with the Lee Roy Selmon Crosstown Expressway to provide trucks with direct access to the Port of Tampa without going through downtown – just the kind of "last-mile" investment in intermodal transportation that transportation experts have repeatedly told us we need. We've added over 8,000 buses to the Nation's transit fleet, enough to reach from here to Baltimore. We're restoring the 136-year-old Eads Bridge across the Mississippi in St. Louis to a State of Good Repair, along with 80-year-old subway stations in Philadelphia, and even the historic Brooklyn Bridge in New York City. Recovery Act funding has made it possible to expand transportation capacity around the Nation to serve the traveling public, and to finally get thousands of maintenance, repair, and rehabilitation projects done – many of which were long overdue but had been delayed pending the availability of funds.

In addition to these existing programs, Congress enacted a new competitive surface transportation grant program and added a considerable amount of funding to previously authorized high-speed rail programs. We are proud of the work that we have done in implementing these competitive grant programs and awarding grants within a year of the legislation being enacted. We are also pleased that we were able to use these programs to introduce the kind of competitive, merit-based, data-driven approach to project selection that the President has long advocated. And we are pleased that the U. S. Government Accountability Office (GAO), in reviewing these programs, generally found that we did a good job in carrying out the Congressional mandate.[1]

The TIGER Grant Program

Congress provided $1.5 billion for a new program of competitive surface transportation grants that we have called the "TIGER Grant" program – Transportation Investment Generating Economic Recovery. Everyone on this Committee knows that our transportation program is too stove-piped, with dozens of programs allocating money to narrowly defined categories of projects. The TIGER Grant program allowed us to break down these stovepipes, and allocate funds to the projects that our economy most needed, regardless of what mode of transportation they were in, and allowed us to fund projects that crossed the boundary between one mode of transportation and another. Moreover, this new program allowed us to demonstrate the use of best practices in evaluating and selecting projects – using competition to generate the best ideas that states and localities had to offer, and using benefit-cost analysis to evaluate which projects had the best prospects for success. While the TIGER Grant Program was in many ways a learning experience for our state and local partners and for us, we believe that the program is producing good value for the American people that will serve us well for generations to come.

We had several goals for the program. First, we wanted it to encourage economic recovery by getting projects started promptly. Second, we wanted to make a significant contribution to meeting the national transportation system's long-term reinvestment needs by selecting projects that reflected our strategic goals. Third, we wanted our approach to the evaluation of project applications to be as rigorous and systematic as possible, within the limited time available, to ensure that we were selecting the best possible projects. And fourth, we wanted the selection process to reflect the President's strong commitment to transparency.

The Notice of Funding Availability (NOFA) that we published on June 17, 2009, reflected these goals. It made clear that we would give preference to projects that could create employment promptly and that would create employment in areas where unemployment was high, and that we would give preference to projects that advanced our strategic goals. It also made clear that applicants would be expected to demonstrate how

[1] U.S. Government Accountability Office, *Intercity Passenger Rail: Recording Clearer Reasons for Awards Decisions Would Improve Otherwise Good Grantmaking Practices* (GAO-11-283, March 10-, 2011) and *Surface Transportation: Competitive Grant Programs Could Benefit from Increased Performance Focus and Better Documentation of Key Decisions* (GAO-11-234, March 30, 2011).

well their projects would advance those strategic goals by providing a benefit-cost analysis that supported their assertions. It also made clear that, in the interest of transparency, we would document our decisionmaking process and make those documents available to GAO and the Department's Inspector General.

Before the applications came in, we organized Evaluation Teams to review the applications when they arrived. When the applications were submitted in September 2009 (over 1450 applications, requesting almost $60 billion in funding), our 10 evaluations teams were in place and ready to begin reviewing applications. The Evaluation teams documented their ratings of the projects on standard Evaluation Sheets, shown in Appendix III of GAO's report. The Evaluation Sheet asks for a rating on each of the criteria laid out in the NOFA and a narrative discussion to justify the rating. We created a separate Control and Calibration Team to analyze the ratings of the 10 different teams to ensure that they were rating projects in a consistent way. The Evaluation Teams rated 115 applications as "Highly Recommended" and advanced them for further review.

We also created an Environmental Analysis Team to ensure that the projects were able to meet federal environmental requirements, and an Economic Analysis Team to determine whether each project's benefit-cost analysis demonstrated that it was reasonably likely to have benefits in excess of its costs. These teams reviewed the projects advanced by the Evaluations Teams and documented their ratings in written evaluations of each project. They then provided the results of their reviews to the Review Team, which would make the final recommendations to the Secretary.

The Review Team, comprising the Administrators of the Department's surface transportation modes with infrastructure responsibilities along with the Department's Assistant Secretaries, Deputy Secretary, and myself, met twice a week for several weeks to review these applications. We had presentations from the Evaluation Teams, Economic Analysis Team, and Environmental Analysis Team, and discussed these projects in some detail. Projects were given a preliminary rating by the Review Team, and then the Review Team returned to these ratings in subsequent meetings. In some cases we raised questions about a project and asked the staff to follow up with the project sponsor to get further information. Finally, after a lengthy process, we made our recommendations to the Secretary, who made the final decision about which projects should receive awards.

The statute required us to take measures so as to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities. In some cases, this led us to consider and make awards to the best projects that would meet such statutory geographic distribution requirements. We ultimately selected 51 projects for awards.

These projects will have important impacts on the transportation system. The Otay Mesa project in Southern California, for example, will build a critical interchange between I-805 and State Route 905, allowing trucks bound for the border crossing with Mexico to use a six-lane highway rather than a local road. Otay Mesa is one of our biggest export

points to Mexico, handling $10.3 billion in exports in 2010. Construction has begun in West Virginia on the Appalachian Regional Short-Line Railroad project, which will rehabilitate hundreds of miles of short-line railroad line in West Virginia, Kentucky, and Tennessee. This is a public-private partnership that will improve rail service and divert bulk shipments of aluminum, sand, and chemicals off of local highways and onto rail, enhancing safety and improving energy efficiency. The Kansas City Transit Corridors and Green Impact Zone project will rehabilitate and upgrade transit infrastructure in the city's 150-block Green Impact Zone and along regional transit lines. The Green Impact Zone is creating a national model that demonstrates how integrated, place-based investments can transform a community. The Milton-Madison Bridge between Kentucky and Indiana will not only replace an 80-year-old bridge in poor repair, but it will pioneer design-build techniques that will reduce the length of the expected bridge closure from one year to just 10 days.

The President has proposed building upon the concepts embodied in the TIGER Grant Program by creating a National Infrastructure Bank, with funding of $5 billion per year. Like the TIGER Grant Program, the National Infrastructure Bank would break down the modal silos so that DOT can fund more innovative projects to achieve our national transportation goals. Like the TIGER Grant Program, the National Infrastructure Bank would allow us to fund intermodal connections that would streamline our transportation system and make each part of it work more effectively. Like the TIGER Grant Program, the National Infrastructure Bank would use economic analysis to evaluate the benefits and costs of alternative projects, allowing us to direct our funding toward the projects that promise the greatest return to the American people. Unlike the TIGER Grant Program, the National Infrastructure Bank would provide a more flexible range of funding options, including grants, loans, and loan guarantees, to allow us to leverage our limited supply of federal funding and to bring private sector partners in to participate in infrastructure financing, design, and operation. We recognize that the vast majority of our federal transportation funding will continue to flow to the States through the kinds of formula programs that we have used in the past. But we also believe that some funding should be available in competitive programs like TIGER and the National Infrastructure Bank so that states that have innovative projects – that go beyond the scope of their formula allocation, that make notable contributions to achieving our transportation goals, and that provide demonstrable economic benefits to Americans not just in one state but across the country – can receive the funding and financing that they could not get from formula programs alone.

The High-Speed Rail Grant Program

Congress also decided to allocate a significant level of funding to carry out the high-speed rail program that had been enacted with President Bush's signature in 2008 as the Passenger Rail Investment and Improvement Act (PRIIA). While this program had already been authorized, the increased funding required us to expand our effort to evaluate competing projects and administer grant awards.

As with the TIGER Grant Program, DOT issued a Notice of Funding Availability to notify potential applicants of the criteria under which grant applications would be evaluated. We established Technical Review Panels to review the applications and rate them in terms of how effectively they met the initial evaluation criteria in the NOFA. The Technical Review Panels used guidebooks to assess the applications against six technical review criteria – transportation benefits, economic recovery benefits, other public benefits (such as environmental and energy-saving benefits), the project management approach, the sustainability of benefits, and the likely timeliness of project completion. We required applicants to provide information on benefits and construction and operational costs of their proposed projects to support consideration of the benefits that the project would provide. The High-Speed Rail Program was complicated by the fact that we had several different program authorizations, not only in PRIIA but in past appropriations acts. So we established four "tracks" within which applicants could apply, with different program eligibilities and criteria for each track. The ratings of the Evaluation Teams were documented with narratives explaining why each rating was given. As with the TIGER Grant Program, a Review Team reviewed the ratings prepared by the Evaluation Teams and made recommendations to the Secretary. Part of the role of this Review Team was to apply the selection criteria outlined in the NOFA, such as regional balance, balance between large and small population centers, and the need for assistance to economically distressed areas.

The High-Speed Rail Program has also had some notable successes. Recognizing the work required to establish a comprehensive new infrastructure program, Congress gave the Department until September 30, 2012, to obligate the $8 billion appropriated for high-speed and intercity passenger rail. The Department is on track to meet this deadline, having already obligated 70 percent of the funding through 31 awards to 17 states. Last September construction began on the Chicago-St. Louis corridor, where we will be increasing train speeds from 79 to 110 mph. Illinois completed 76.5 miles of track work last fall, and expects to complete another 96 miles this summer. The state will also be buying new locomotives and passenger cars for the route, and will improve stations, install improved signaling systems for safe operations, and make grade crossing improvements. In North Carolina, the first new locomotive funded by their Recovery Act grant was delivered last June, allowing operation of an additional daily train between Charlotte and Raleigh. Construction is now underway on improvements to three stations and a railyard. In March our grantee, the North Carolina Department of Transportation, reached agreement with project stakeholders, which has allowed us to disburse the final $462 million to fund additional construction over the next three years. Maine began construction last August on new trackwork and station platforms to allow the Northern New England Passenger Rail Authority to extend the "Downeaster" passenger rail from Portland to Freeport and Brunswick. Construction has continued this Spring, and will be completed by Fall 2012. Finally, California is partnering with us to build the first over-200-mph high-speed rail system in the United States, and has matched our funding commitment by drawing from $9 billion in bonds authorized for the program in a vote by the citizens of the State.

The President believes that we should continue our progress in constructing a new surface transportation system for the 21st Century. As he said in his State of the Union Address, "Within 25 years, our goal is to give 80 percent of Americans access to high-speed rail." He has therefore proposed spending $3.1 billion for High-Speed Rail Corridor Development in Fiscal Year 2012. This will maintain our momentum toward expanding our high-speed passenger rail network, bring our existing rail network up to a state of good repair, and increase the overall capacity of our rail network, allowing freight trains to operate more freely as well.

GAO's Reviews of the TIGER Grant and High-Speed Rail Programs

We welcome GAO's reviews of our work. While we always try to administer our programs consistent with the best management practices, we recognize that a second opinion is always valuable in identifying ways in which we can do our work better. GAO plays that role of providing a second opinion.

GAO has recently issued two reports on our Recovery Act work, one on the TIGER Grant Program and one on the High-Speed Rail Program. In its report on the TIGER Grant Program, GAO found that USDOT had "developed comprehensive merit-based selection criteria and a competitive selection process to evaluate TIGER applications and meet statutory criteria." GAO found that DOT had "followed key federal guidance and standards for developing section criteria." GAO noted that, unlike the TIGER Grant Program, "many federal surface transportation programs do not effectively address key challenges because federal goals and roles are unclear, programs lack links to performance, and some programs do not use the best tools and approaches to ensure effective investment decisions." As a result "we have recommended that a criteria-based selection approach—like that developed in TIGER—be used to direct a portion of federal funds in programs designed to select transportation projects with national and regional significance."

GAO also found that DOT

> "maintained good documentation of the criteria-based evaluation conducted by its Evaluation Teams in the technical review and effectively communicated information about its criteria to applicants—an important step in promoting competition and fairness. By thoroughly documenting how its technical teams considered and applied the criteria, clearly communicating selection criteria to applicants, and publicly disclosing some information on the attributes of the projects that were selected, DOT took important steps to build the framework for future competitive programs."

GAO also raised concerns that we had not documented the discussions by the Review Team that led to the recommendations to the Secretary. We did document our rationales for selecting projects in a memorandum from myself to the Secretary that recommended projects for selection, and then again in a memorandum from the Secretary back to my office that actually designated projects for selection. These memoranda describe each

project selected (including the activities to be funded), identify the specific benefits expected from each project, and explain how each project satisfies the funding priorities established in the announcement. DOT also maintained summaries of the Review Team meetings, which we provided to GAO; GAO summarized excerpts of those documents in its report. The summaries indicated, for example, that we raised concerns about whether projects had adequate financial commitments from other funding partners, whether the projects were as ready to go as the applicant claimed, and whether the project's economic benefits were overstated. These were indeed typical of the kinds of concerns we raised about projects in our discussions.

Nevertheless, GAO was concerned that we had not documented the decision-making of the Review Team as thoroughly as we had documented the recommendations of our Evaluation Teams. We emphasize that we did document our rationale for selecting applications for award, but we also acknowledge GAO's concerns. The Congress has recently appropriated an additional $527 million for the National Infrastructure Investments program, which is similar in design to the TIGER Grant Program. As we implement this program later this year, we plan to address the concerns raised by GAO.

GAO also reviewed the High-Speed Rail Program, particularly the process we used in evaluating and selecting projects for grant awards. GAO identified "six recommended practices used across the federal government to ensure a fair and objective evaluation and selection of discretionary grant awards." Of those six practices, GAO found that DOT fully applied five of the six principles, and partially applied the sixth. Overall, GAO concluded that "FRA substantially met recommended practices for awarding discretionary grants."

GAO also asked applicants for high-speed rail funding how effectively FRA communicated with them. GAO reported that "Applicants we spoke with praised FRA's communication and stated that FRA officials did a good job providing information and answering questions during the period leading up to the pre-application and application deadlines."

GAO also did a comparison between the high-speed rail program and 21 other competitive federal Recovery Act programs. GAO found that "FRA publicly communicated at least as much outcome information as all but one Recovery Act competitive grant program we reviewed." Finally, GAO did a statistical analysis of the factors that appeared to have influenced project section. According to GAO, the statistical analysis "supports statements from senior department and FRA officials indicating that the technical review scores were largely the basis for their selection deliberations."

GAO concluded that "FRA established a fair and objective approach for distributing these funds and substantially followed recommended discretionary grant award practices used throughout the government."

As with the TIGER Grant program, GAO raised concerns about the adequacy of our documentation of the reasons for selecting one project over another, contrasting this with the "robust documentation of the other steps used to determine eligibility and assess technical merit." FRA documented the rationales for selecting each application in a memorandum from the FRA Administrator to the Secretary recommending applications for selection, and then again in a memorandum from the Secretary to the FRA Administrator designating applications for selection. These memoranda describe each project selected (including the activities to be funded), identify the specific benefits expected from each project, and explain how each project satisfies the funding priorities established in the document. GAO argues that these memoranda did not make clear why the projects that were selected were better than the projects that were not selected.

We are currently in the process of reviewing a third round of applications for high-speed rail funding, and we have adopted a more thorough process of documenting our decisionmaking for project selection. We are being careful to identify the specific benefits of each project and how those benefits match up with the selection criteria in our Notice of Funding Availability. We take GAO's concerns seriously, and we are always striving to improve on the processes we use to administer the programs that the Congress enacts.

We have tried to make our project selection process as transparent as possible. To the extent that we have fallen short, we commit ourselves to making improvements. But we believe that, on the whole, we have spent this funding wisely, on projects that will both aid the recovery process that we are still engaged in and provide lasting benefits to our Nation's transportation system. I welcome your questions.

Questions for the Record
Submitted by Chairman Mica
Stimulus Status: Two Years and Counting
May 4, 2011

U.S. Department of Transportation
Under Secretary for Policy
Roy Kienitz

General Stimulus Questions

1. You claimed 82,000 direct job-years of work have been created by the Stimulus transportation funds. What does "job-years" mean? And how many years are people working in these jobs?

ANSWER: A "job-year" is one person working for one year. It is a term used in section 1201 of the American Recovery and Reinvestment Act of 2009 (ARRA) to measure the amount of employment created or sustained by transportation projects funded by ARRA. One person working a full year would have worked one "job-year," but twelve people each working one month would also have worked, together, one "job-year." Because the amount of time that people working on construction projects varies so much (some people are subcontractors who may only work a few days or weeks on a project, and then go on to work on another project), there needs to be a common measurement unit for the number of "jobs" created by a project. If we had used, for example, the total number of people who had worked on a project as our measure of job creation, that would have produced a much larger number than the number of job-years, because many people who work on these projects work for less than a full year. "Job-years" is thus a conservative measure of the employment generated by a project.

We did not measure the length of time each worker worked on each of the projects funded by ARRA. The Congress did not direct us to collect those data, and, under the Paperwork Reduction Act, we generally do not collect data unless it is necessary to meet an objective specified in law. But we know the length of time between when each project started and when it was completed, which is the outer limit on how long workers might have worked on the project. This time period varies widely, from a few months to several years.

2. You testified that the Stimulus transportation funds have had a "significant, positive effect on the American transportation system." Since over half the funds have been spent on repaving roads, what is this "significant, positive effect," a smoother ride? The Committee would consider decreasing commuter times, relieving congestion, and improving bottlenecks as "significant, positive" effects.

ANSWER: Highway resurfacing projects can reduce vehicle operating costs, as driving on smoother pavements reduces overall wear and tear on vehicles as well as typical repair costs. The degree of savings related to an individual project varies depending on the condition of the pavement before it was resurfaced; however, driving 10,000 miles per year on pavements with

poor ride quality can increase annual vehicle operating costs by $250 relative to driving the same distance on pavements with good ride quality, the equivalent of a fuel tax of $0.50 per gallon.

Highway resurfacing can also reduce travel time to the extent that current road conditions force drivers to reduce speed. Pavement conditions are particularly critical on Interstate routes and other high-speed roadways, as the presence of potholes and other symptoms of pavement distress may cause drivers to slow down or change lanes abruptly. These actions in turn can increase crash rates. Studies have also shown a relationship between pavement ride quality and driver fatigue, suggesting that driving on rougher roads can reduce highway safety.

Resurfacing a roadway will also reduce routine maintenance costs, by sealing cracks and other breaks in the road surface that allow deterioration associated with environmental conditions. Resurfacing a roadway at the proper time in its service life helps to preserve the value of the initial investment of funds to construct it, and postpones the need for pavement reconstruction, which is much more costly than resurfacing. Timely system rehabilitation actions are an essential component of comprehensive strategies for minimizing the lifecycle costs of highway facilities.

In transit, our Recovery Act expenditures reduced the backlog of overdue rehabilitation and replacement activities from about $79 billion to about $75 billion, a five-percent reduction. The $2.3 billion in expenditures on new transit rail cars, buses, and vans will reduce the vehicle maintenance costs for the Nation's transit vehicle fleet by about 3.5 percent, or roughly $230 million per year – a rate of return of roughly 10 percent. Moreover, these vehicle replacement investments will reduce in-service vehicle failures by about 6.5 percent, reducing the number of failures by 33,000 per year. These failures affect 650,000 passengers, and eliminating them saves 330,000 hours in delay costs each year. The expenditures on transit facilities and infrastructure will also reduce breakdowns and reduce passenger delays.

The High-Speed and Intercity Passenger Rail (HSIPR) investments under the Recovery Act also will have significant, positive effects. HSIPR grants will reduce travel times by enabling

- service with maximum speeds of 110 mph between Chicago and St. Louis that will reduce travel times by around an hour (faster than driving);
- service with maximum speeds of 110 mph between Chicago and Detroit that will save 30 minutes;
- service with maximum speeds of 160 mph between Trenton and New Brunswick on the Northeast Corridor; and
- initial construction of the California high-speed train system that is planned to link Los Angeles with San Francisco in under 3 hours (less than half the time it takes to drive), with maximum speeds of 220 mph.

The HSIPR Program will help reduce congestion. First, on the railroads themselves, new passing tracks, junctions (interlockings), and train control systems will smooth the flow of all types of traffic—freight, commuter, and intercity passenger. Second, HSIPR-funded high-speed rail will attract significant traffic volumes from the motor vehicle and air modes, thus freeing up capacity at our airports and on our highways. For proof, one need look no further than the

Northeast Corridor, where rail has captured more than two-thirds of the New York-Washington air-plus-rail market, and over half of the New York-Boston market, despite significant shortcomings in capacity and reliability. Finally, high-speed rail service can serve as an alternative to automobile driving, thereby helping to lessen traffic congestion.

Essential to the HSIPR Program is the imperative of safeguarding the present and future fluidity of all railroad traffic—freight, commuter, and intercity passenger. Thus, several projects near Chicago, New York, Dallas, Los Angeles, Raleigh, and elsewhere are addressing some of the most congested rail segments in the nation. These bottleneck eliminations will not only improve intercity passenger rail trip time and reliability but also help ensure the efficient movement of commuter and freight trains.

Other "significant, positive effects" of HSIPR funding include making stations more accessible to those with disabilities, completing vital environmental and engineering work for the replacement of century-old bridges and tunnels, and connecting new communities to the passenger rail network—thus providing people with another option for intercity travel. (Such an option is especially needed in these times of rising gas prices.) Likewise, decreased energy consumption and reductions in emissions are to be expected to the degree that travelers switch from air and highway to high-speed and intercity passenger rail.

A perfect example of the benefits of HSIPR investments is our allocation of some $450 million to Amtrak for improvements to the Northeast Corridor between Trenton and New Brunswick, New Jersey. The investment in constant-tension catenary and improved power supply will, at the same time, reduce trip times (by allowing higher speeds —up to 160 mph), improve reliability (by reducing electric power-related incidents), and provide additional capacity (by boosting the available power levels).

3. Why have only half of DOT's Recovery Act transportation funds been spent (about 56% or $27 billion of the $48.1 billion appropriated to DOT?

ANSWER: States varied in how they approached the question of how to spend their Recovery Act funding. Some chose to spend the money as quickly as possible, and emphasized ready-to-go projects like repaving. Others chose to invest in larger projects that would have a longer-term impact on their transportation systems. These projects take longer to complete. Finally, some states appear to have more cumbersome project selection, approval, and contracting procedures that have delayed outlays. The range of outlay rates by state (outlays as a percentage of obligations) ranges from 38 percent to 98 percent.

4. Why have only 4% ($64 million out of $1.5 billion appropriated) of TIGER Grants and 1% ($98 million out of $8 billion appropriated) of High-Speed Intercity Passenger Rail (HSIPR) Grants been spent (outlaid)?

ANSWER: The outlay rates on TIGER and HSIPR grants have been slower than for the other Recovery Act funds for two reasons. First, these programs were both new competitive programs. As a consequence, DOT needed to develop guidance for applicants, allow time for applicants to develop applications, review and analyze those applications, and then make and administer

awards that responsibly carry out the requirements of the statute. Second, due to the ambitious goals of these programs, the projects funded under these programs are generally larger, more complex projects that take longer to responsibly plan and execute than the more generic resurfacing and rehabilitation projects that were more commonly funded under other Recovery Act programs. For example, most TIGER Grant applications made clear that construction could not possibly begin until late in the 2010 construction season. Most of these projects, however, will be actively under construction during the 2011 construction season, so we expect a substantial portion of this funding to be spent creating jobs this year.

As of May 9, 2011, $111 million of the HSIPR funding had been spent. This is more than twice what was expected to have been outlayed at this stage for such a program. The pace of construction will accelerate as the preliminary engineering and environmental phases of these projects are completed.

In the case of both TIGER and HSIPR, the outlay rates reflect pre-construction processes necessary to make certain that taxpayer funding is spent responsibly and in a manner that not only creates jobs in the near term but also delivers strong economic benefits in the long run.

5. How much money has DOT deobligated from the High-Speed Intercity Passenger Rail (HSIPR) Grant program?

ANSWER: As of May 13, 2011, DOT has deobligated $0.780 billion, which had previously been obligated to Wisconsin's Madison-to-Milwaukee corridor development program. In addition, funds were allocated but never obligated to canceled corridor development programs in Ohio ($0.385 billion) and Florida ($1.558 billion). With the further addition of approximately $0.068 billion in residual ARRA funding, FRA has been able to redistribute a total of $2.79 billion (0.780 + 0.385 + 1.558 + 0.068). Approximately 30% of this amount ($836 million) has already been obligated to other grant recipients.

6. GAO reported that nationally, states are obligating less of their regular highway formula dollars than they did at the same time for the previous three years. If the Stimulus funds were meant to provide a stimulating effect to the economy with additional funds, why aren't states doing spending their regular highway dollars so the Nation can experience and economic boost? What is DOT doing about this problem?

ANSWER: It is true that, in Fiscal Year 2010, obligations by the states of their regular highway formula dollars lagged somewhat through the first three quarters of the fiscal year. However, by the end of FY2010, the states had obligated 100 percent of their obligation limitation, just as they had in the previous three fiscal years. Moreover, in FY2011, the states are no longer lagging behind in obligating their regular highway funds. As of March 31, 2011 (the end of the first half of FY2011), the states had obligated almost 46 percent of their obligation limitation. This was a higher obligation rate than the states had achieved in any of the previous three fiscal years (13.35 percent in FY2010, 29.65 percent in FY2009, and 34.23 percent in FY2008). We therefore believe that any lag in obligations during FY2010 was temporary and was made up both by the end of FY2010 and through the first half of FY2011.

7. Why can't DOT measure the long-term economic impact of the Recovery Act?

ANSWER: Transportation capital investments deliver economic benefits over very long periods of time, typically decades. Therefore measuring the long-term economic impact of the transportation components of the Recovery Act is not yet possible. We could try to estimate the long-term economic impact of the Recovery Act, but it would be expensive to do it, it would create a burden on the states to report the necessary data, and there would be no assurance of the precision of the estimate.

U.S. DOT has funded over 15,000 projects under the Recovery Act. Measuring the long-term economic impact of the Department's overall Recovery Act program would amount to collecting data over the usable life of each of these projects sufficient to carry out a benefit-cost analysis. We have models that could be used to estimate benefits for many of these projects (such as FHWA's Highway Economic Requirements System and FTA's Transit Economic Requirements Model), but these models require as inputs detailed data from the states and transit agencies on the actual conditions and performance of their highways and transit systems before the improvement is made, and also detailed projections of what condition and performance changes are expected after the ARRA-funded improvement is made. It would be a major burden on the states and transit agencies to collect and report these data, and require speculation on future travel patterns and other unknown variables, but if the Congress directed us to require that these data be reported, projected, and modeled, we would do so.

8. Why did 21 states fail to meet the maintenance-of-effort requirement? What is the penalty for states that failed to meet their planned level of spending?

ANSWER: Section 1201 of the Recovery Act required the Governor of a State to certify to the Secretary of Transportation that the State would maintain its effort with regard to State funding for the types of transportation projects funded by the Recovery Act. DOT issued initial guidance on the MOE standard and the August 2011 redistribution on February 9, 2010. In that guidance, DOT indicated that a State would fail to meet the maintenance of effort standard if it failed to meet the certified amount for each individual covered transportation program under the Recovery Act. Failure to meet the certified level of effort disqualifies the State from participating in the August 2011 redistribution of obligation authority under the Federal-Aid Highway Program.

The goal of the MOE provision was to help ensure that the States would use Federal funds to supplement, and not supplant, State funds. The Department of Transportation (DOT) therefore believes that it is appropriate in light of the language and purposes of the Recovery Act to find that a State has complied with the MOE provision if a State met or exceeded its overall planned expenditures even if it failed to meet its planned level of expenditures in one or more covered transportation programs. Based on this, six states failed to meet the Maintenance-Of-Effort (MOE) requirement (Alaska, Delaware, Idaho, Kansas, Maryland, and New York), and have each been notified by a letter from the Secretary of Transportation.

9. Why did DOT not comply with the President's directive to be completely transparent and provide Congress with the reasoning behind the High-Speed Rail and TIGER Grant selections?

ANSWER: We have provided GAO – the investigative arm of the Congress – with every document concerning the decision-making process on these grants that we have. Where GAO believed that the documents provided did not provide an adequate discussion of the reasoning behind a particular grant, we discussed the individual grants and provided additional information about the considerations that went into the decision on each grant. In particular, we have provided GAO, and posted on the DOT website, the memoranda signed by the Secretary that provide the reasoning behind each grant under the TIGER Grant and High-Speed and Intercity Passenger Rail programs.

The Department has also posted the list of the 1,456 TIGER grant applicants received under the program on the Department's Recovery Act website (http://www.dot.gov/recovery/ost/). We have also listed the 259 HSIPR grant applications. These lists provide the project name, the applicant, a project description, the amount requested, whether the application was forwarded for higher-level review, whether it was selected for funding, and (if so) the amount awarded. The website also has a copy of the Secretary's decision memorandum that describes in more detail the projects selected for funding and the reasons why they were selected. The Department also provided a written summary of the selection process and the criteria used to evaluate TIGER Grant and HSIPR applications for those interested in understanding the selection process.

Furthermore, following the February 17, 2010, announcement of projects selected for funding, the Department has been available for any unsuccessful applicant interested in scheduling a debriefing to learn why their application may have been less competitive. To date, the Department has held over 1,000 debriefings for interested applicants from across the nation.

10. Given the recent critical findings by GAO in its report on the High-Speed Rail (HSIPR) and TIGER award processes on the Department's failure to ensure the integrity of its award decisions, what steps is DOT taking to respond to GAO's recommendations?

ANSWER: GAO was generally complimentary about the way in which we administered these grants. GAO said that we "developed comprehensive merit-based selection criteria and a comprehensive selection process to evaluate TIGER applications and meet statutory criteria." It said that we "followed key federal guidance and standards for developing selection criteria." It also said that we

> "maintained good documentation of the criteria-based evaluation conducted by its Evaluation Teams in the technical review and effectively communicated information about its criteria to applicants—an important step in promoting competition and fairness. By thoroughly documenting how its technical teams considered and applied the criteria, clearly communicating selection criteria to applicants, and publicly disclosing some information on the attributes of the projects that were selected, DOT took important steps to build the framework for future competitive programs."

GAO was concerned that some of the projects that received funding were not rated as "highly recommended" in the initial evaluation team reviews, and that these projects received funding even though other projects rated "highly recommended" did not. This occurred partly to achieve balance among different regions of the country and between urban and rural areas. Some regions of the country presented applications that were not as highly rated as other parts, and so we had to choose less highly rated projects for those parts of the country. Also, some evaluation teams were more selective than others, and our Control and Calibration Team found that some teams were not sending forward certain projects as highly recommended, even though they were just as good as projects that other teams were forwarding as highly recommended. So to achieve consistency across evaluation teams, we asked them to advance more projects than they had originally advanced.

Concerning the decision-making process for our high-speed rail grants, GAO concluded that "FRA established a fair and objective approach for distributing these funds and substantially followed recommended discretionary grant award practices used throughout the government." GAO identified "six recommended practices used across the federal government to ensure a fair and objective evaluation and selection of discretionary grant awards." Of those six practices, GAO found that DOT fully applied five of the six principles, and partially applied the sixth. Overall, GAO concluded that "FRA substantially met recommended practices for awarding discretionary grants."

GAO also asked applicants for high-speed rail funding how effectively FRA communicated with them. GAO reported that "Applicants we spoke with praised FRA's communication and stated that FRA officials did a good job providing information and answering questions during the period leading up to the pre-application and application deadlines."

GAO also did a comparison between the high-speed rail program and 21 other competitive federal Recovery Act programs. GAO found that "FRA publicly communicated at least as much outcome information as all but one Recovery Act competitive grant program we reviewed." Finally, GAO did a statistical analysis of the factors that appeared to have influenced project section. According to GAO, the statistical analysis "supports statements from senior department and FRA officials indicating that the technical review scores were largely the basis for their selection deliberations."

As with any GAO review, GAO made suggestions on how we could make a good decision-making process even better. It suggested that we document the discussions by the TIGER Review Team more thoroughly. We have already done that in the second round of TIGER Grants (which were not included in GAO's review) and plan to do that in the next round of TIGER Grants as well. GAO also suggested, in our decision-making process for the High-Speed and Intercity Passenger Rail program, that we provide more detailed reasons for selecting some projects but not others. We have already adopted that suggestion in the decision-making process used for the most recent round of HSIPR grants, announced on May 9, 2011.

11. Why did DOT not publishing technical scores for discretionary grant programs like HSIPR and TIGER? Considering transparency was one of the Obama Administration's top 3 goals of the Stimulus, what other steps is DOT taking to increase the transparency of its awards?

ANSWER: DOT is committed to fostering transparency in its discretionary grant programs. For its HSIPR and TIGER awards, DOT published on its website a summary of the grant application evaluation and selection processes. The website also listed all 259 HSIPR and 1,456 TIGER applicants, described each project application, identified those projects advanced for further consideration, and provided the amounts of application requests and awards made. DOT also published the Secretary's decision memoranda for HSIPR and TIGER, which described the rationale for each award. GAO in its March 2011 reports on the HSIPR and TIGER programs compared the extent to which DOT publicly communicated outcome information to 22 other similar Recovery Act competitive grant programs and noted that only one of the programs communicated more outcome information on technical scores and comments. Even with this increased level of transparency, DOT is exploring plans to further increase the programs' level of communication with the public for TIGER III, HSIPR, and future discretionary grant programs.

DOT did not publish the technical evaluation scores for applicants for the HSIPR and TIGER discretionary grant programs because the technical evaluation scores were only one element of DOT's evaluation and review of HSIPR and TIGER grant applications and thus did not reflect DOT's complete evaluation and review of the applications. DOT also reviewed HSIPR grant applications for cross-cutting selection criteria, such as region/location, innovation, partnerships, tracks and timing (preference for corridor development), and compliance with statutory requirements. DOT reviewed TIGER grant applications for statutory distributional requirements in addition to technical evaluation scores. Furthermore, the technical evaluation scores were only part of DOT's process in evaluating and selecting HSIPR and TIGER discretionary grant awardees. These scores were not designed for publication purposes, and applicants were never warned that projects would be publicly rated. Public identification of applicant project scores has significant implications for both DOT and applicant behavior and could have risked unintended consequences. Therefore, in the interest of the integrity of the process and the need for expedience implicit to the Recovery Act, technical evaluation scores were structured as pre-decisional tools for purposes of internal DOT deliberation only and were therefore not fit for disclosure.

12. The Stimulus was enacted to create jobs and spur the economy. It has been over two years since its enactment and over a year since DOT announced the grant selections for both the HSIPR and TIGER programs. What is the status on distributing these awards and how have they "created jobs and spurred the economy?"

ANSWER: All of the TIGER Grant and HSIPR funds have been awarded. As of May 13, 2011, almost 98 percent of the TIGER Grants have been obligated, while about 71 percent of the HSIPR funds have been obligated. About 5 percent of the TIGER Grant funds have been spent, and about 1.4 percent of the HSIPR funds have been spent. We estimate that these two programs have created about 2,000 job-years of work, and have increased economic activity by about $280 million. These programs are, of course, still at an early stage in terms of their impact on

employment and on the economy generally. Ultimately, they will generate 103,000 job-years of work and an impact on economic activity of $14.9 billion.

The obligation of ARRA funding continues to be one of FRA's top priorities. FRA continues to work closely with applicants and key stakeholders of the projects to effect obligations. Staff members are in regular contact with the selected applicants to assist in the completion of all pre-award requirements.

HSIPR awards are creating jobs indirectly as well as directly. As an example of direct impacts, 700 people are currently at work on the constuction of the Chicago-St. Louis corridor. These figures will be increasing in the months ahead, as many other large projects begin construction activities. As an example of indirect impacts, HSIPR funding is supporting the nation's rail equipment manufacturing industry. For instance, GE Transportation announced on May 12, 2011 that the company is hiring 250 production workers for its locomotive plant in Erie, PA, and is investing $96 million in a new state-of-the-art locomotive manufacturing facility in Fort Worth, TX that will create more than 500 new high-tech jobs. European and Asian companies with rail expertise are also building or expanding U.S. rolling stock factories in response to the HSIPR program's investments:

- Nippon Sharyo (Japan) is building a plant in Rochelle, IL
- Siemens (Germany) is expanding its plant in Sacramento, CA
- Kawasaki (Japan) is expanding its plant in Lincoln, NE
- Alstom (France) is expanding its plant in Rochester, NY (creating 200 new jobs) and also has the nation's largest passenger rail rolling stock factory in Hornell, NY
- CAF (Spain) has a plant in Elmira, NY

Employment is also increasing in supplier industries. The rail for the Chicago-St. Louis corridor project is being manufactured at the Rocky Mountain Steel plant near Pueblo, CO; concrete crossties come from the CXT factory near Tucson, AZ; and stone ballast comes from Gads Hill and Iron Mountain, MO. As the HSIPR program grows in size and stature, and as the Nation's investment in intercity passenger rail grows more predictable and stable, ancillary industries such as railcar manufacturing will respond with increasing investment and employment.

TIGER Grants (DOT Discretionary Grants - $1.5 billion)

1. Please provide the specific ranking for each TIGER and HSIPR grant application, along with the meaning of the scale used to determine the ranking.

ANSWER: We assigned ratings to each application, such as "highly recommended" or "recommended," but we did not rank the applications within each of these rating categories. Moreover, as we reviewed the applications in more detail, we found some inconsistencies in the ratings assigned from different evaluation teams, so we ultimately found that some "recommended" projects from some evaluation teams were projected to be more effective at meeting the program's criteria than some of the "highly recommended" projects from other evaluation teams. We have provided all of these project application ratings to GAO.

Similarly, FRA's HSIPR selection process did not produce a ranking for each grant application. FRA used a two-stage evaluation process in which complete and eligible applications were reviewed by technical evaluation panels consisting of subject-matter experts for the assignment of ratings based upon specified evaluation criteria (e.g., public return on investment, transportation benefits, economic recovery benefits, etc.). The evaluations prepared by the evaluation panels were then presented to the FRA Administrator and Departmental senior leadership who made selections on the basis of specified selection criteria, such as region/location, innovation, partnerships, and tracks and round timing. This process did not produce a specific ranking for each project. The Secretary's decision memoranda for both the TIGER and HSIPR programs are available on the Department's Recovery Act website and detail the reasoning behind each award selection.

2. In the GAO report on TIGER Grants, GAO found that half the awardees were received a highly recommended rating from the technical teams and half received a recommended rating. Why did DOT fund projects receiving only a "recommended" rating, as opposed to only funding projects receiving a "highly recommended" rating? How can DOT claim the best projects were selected?

ANSWER: This occurred partly to achieve balance among different regions of the country and between urban and rural areas in the allocation of project funding. Some regions of the country presented applications that were not as highly rated as other parts, and so we had to choose less highly rated projects for those parts of the country. Also, some evaluation teams were more selective than others, and our Control and Calibration Team found that some teams were not sending forward projects as highly recommended, even though they were just as good as projects that other teams were forwarding as highly recommended. So to achieve consistency across evaluation teams, we asked them to advance more projects than they had originally advanced.

3. How did you incorporate Benefit-Cost Analysis applicants submitted into the project evaluations, and what steps have you taken to improve this analysis in the future?

ANSWER: In the first round of TIGER Grants, applicants for amounts in excess of $100 million were required to submit a "well-developed" analysis of expected benefits and costs. Applicants for amounts between $20 million and $100 million were required to estimate the project's expected benefits in the five long-term outcome areas specified in the Notice of Funding Availability. Applications for amounts less than $20 million were not required to provide a benefit-cost analysis, but were informed that DOT would need to evaluate the benefits and costs of each project to determine whether the benefits appeared to exceed the costs. Many applicants for smaller projects provided benefit-cost analyses even though they were not required to do so, because it was apparent that DOT would need to evaluate benefits and costs as part of our overall evaluation process. We found that some of the benefit-cost analyses were very good, while others used inappropriate analytical techniques. Some of the applications for larger amounts provided poor-quality or non-existent benefit-cost analyses, while some of the applications for smaller amounts of money provided very good-quality analyses. The difference between applications for large projects and applications for small projects appeared to be more the amount of money spent on the analysis than the quality of the analysis.

In the second round of TIGER grants, we drew upon our experience in the first round and required all applications to provide a benefit-cost analysis, but with the understanding that smaller projects could use more judgmental techniques for evaluating benefits, rather than paying for elaborate statistical estimates of these benefits. We also recognized that many applicants were confused about how a benefit-cost analysis should be done, so we provided an extensive appendix to our Notice of Funding Availability to provide more information about how a good benefit-cost analysis should be prepared. We also conducted a workshop on benefit-cost analysis on May 17, 2010, which was web-streamed for those who could not attend in person and video-recorded for others to watch later. Potential applicants can access the recording of this workshop from the DOT website (http://mediasite.yorkcast.com/webcast/Viewer/?peid=48d006182cf5438680a75b7c6dfc2c9e). We are also conducting research on how to improve our ability to measure benefits of transportation infrastructure projects, and will make the results of this research available to potential applicants as it is completed.

In the evaluation of TIGER Grant applications (in both the first and second rounds), the applications were first reviewed by evaluation teams, which rated each application. If an application were rated "highly recommended," it was advanced to the Review Team for further review. Those applications that were advanced to the Review Team were also reviewed by the Economics Team, which focused particularly on the benefit-cost analysis for the project. The Economics Team first evaluated the usefulness of the benefit-cost analysis, so that it could advise the Review Team on how credible the conclusions of the benefit-cost analysis were. The Economics Team also assessed the likelihood that the benefits of the project would exceed its costs. In many cases the Economics Team had to re-analyze the data to correct for errors in the original analysis. In some cases, the data were insufficient to demonstrate clearly whether the benefits of the project exceeded the costs, so that assessment had to be made based on the overall information provided by the applicant. The members of the Economics Team provided the results of their assessment to the Review Team and answered questions about the benefits and costs of each project that was reviewed by the Review Team. The results of the evaluation of benefits and costs were a significant factor in the Review Team's recommendations to the Secretary.

4. How many TIGER awardees are projects that will have a national or regional impact? What are some examples? How many TIGER awardees will have a local impact? How much funding went to projects that will have a local impact only?

ANSWER: The Recovery Act specified that TIGER Grants should be awarded for "projects that will have a significant impact on the nation, a metropolitan area or a region." All of the projects selected were determined to have at least a regional impact. Applicants were not required to break out the impacts into national, metropolitan or regional categories. The evaluation process assessed the overall project costs and benefits, but the impacts were not assessed by sub-category.

Broadly speaking, the larger projects (e.g. Crescent Corridor, CREATE, National Gateway, Moynihan Station, Doyle Drive, I-244 Bridge Replacement) can be expected to have the most

significant impact nationally, in a major metropolitan area, or across a wide region. Many of the less costly projects are likely to impact a smaller region (e.g. Burlington Waterfront North, US-93/2nd Street, Auke Bay, Milliwork District, US-18, Lake County Connectivity). But even some of the smaller projects, such as Beartooth Highway, a primary access road to Yellowstone National Park, have larger impacts.

Before the Committee on Transportation and Infrastructure
United States House of Representatives

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Ensuring ARRA Funds Are Spent Appropriately To Maximize Program Goals

Statement of
The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation

Chairman Mica, Ranking Member Rahall, and Members of the Committee:

Thank you for inviting me here today to discuss the Department of Transportation's (DOT) implementation of the American Recovery and Reinvestment Act (ARRA). ARRA designated $48 billion for new and existing DOT programs to create and save jobs, invest in long-term growth, and improve the Nation's transportation system. In addition to the infusion of billions of dollars into DOT programs, ARRA established extensive new transparency and accountability requirements.

Since ARRA's passage, DOT has been tackling the difficult work of administering the large infusion of ARRA funds. However, more difficult work is ahead. With many major projects entering the construction phase and new high-dollar ARRA projects getting underway, a significant portion of DOT's recovery funds are just now being spent.

My testimony today will focus on four key challenges DOT faces in ensuring ARRA dollars are spent appropriately to maximize program goals: (1) addressing vulnerabilities in its High-Speed Intercity Passenger Rail (HSIPR) and Transportation Investment Generating Economic Recovery (TIGER), two new ARRA-funded discretionary grant programs; (2) meeting ARRA requirements for reporting on jobs and considering economic impact; (3) ensuring grantees provide effective project and financial management; and (4) preventing fraud, waste, and abuse.

IN SUMMARY

DOT faces substantial challenges in ensuring its HSIPR and TIGER programs meet ARRA's reporting, transparency, and program and financial management requirements, and that the significant ARRA dollars obligated under these programs are not wasted. Our ARRA audits—which have primarily targeted the Federal Highway Administration (FHWA), the largest custodian of DOT's ARRA dollars, and the Federal Aviation Administration (FAA)—can help inform DOT regarding the critical decisions it must make in the future. Specifically, DOT needs to improve jobs data reporting and grant selection processes to meet ARRA's transparency and accountability requirements and its goal to optimize economic growth; strengthen project and financial oversight to ensure quality and maximize efficiency; and take proactive measures to combat fraud, waste, and abuse.

BACKGROUND

ARRA designated an unprecedented $48 billion for DOT programs. 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.

Almost 95 percent of DOT's ARRA funds are distributed to FHWA, the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for the construction and maintenance of highway, road, bridge, rail, and transit projects (see table 1). The remaining

ARRA funds are distributed among the Office of the Secretary of Transportation (OST), FAA, the Maritime Administration (MARAD), and the Office of Inspector General (OIG).

Table 1. Distribution of ARRA Funds Within DOT

DOT Operating Administration	ARRA Funds ($ in millions)	Percent of Total[a]
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%**

Source: ARRA
[a]Percentages do not add up due to rounding.

In addition to providing funding for a number of existing DOT programs, ARRA directs DOT to create several new programs and establishes tight time frames for distributing and expending funds and reporting results, such as the number of jobs created. To ensure accountability, 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 fund recipients and uses 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.[1]

Both the President and Congress have emphasized the need for accountability, efficiency, and transparency in allocating and expending ARRA funds and have recognized the role of Inspectors General and the Government Accountability Office in accomplishing these objectives. In addition, ARRA created the Recovery Accountability and Transparency Board, consisting of our office and nine other Inspectors General, and added funding to help address the increased workload of monitoring ARRA programs.

In the first year after ARRA's enactment, OIG focused on identifying key management and funding vulnerabilities—including the need for sufficient personnel with grant oversight expertise—to better position DOT to meet ARRA requirements and ensure funds are spent

[1] OMB "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," February 18, 2009.

wisely.[2] DOT developed an oversight plan that outlined key actions to address identified vulnerabilities. We are monitoring DOT's progress in mitigating these management and funding risks. Additionally, we have initiated a number of audits that target high-risk areas. Exhibit A lists our completed and ongoing ARRA work to date.

ADDRESSING VULNERABILITIES IN NEWLY CREATED HIGH-SPEED RAIL AND INTERMODAL PROGRAMS

FRA and OST are responsible for administering, respectively, the HSIPR and TIGER discretionary grant programs—two programs DOT expects to continue beyond ARRA. Standing up the programs requires direct oversight of grantees constructing large infrastructure projects—a role FRA and OST have not previously performed. FRA and OST have encountered challenges in establishing necessary oversight controls. Failure to address these challenges could have cost and schedule implications in the future.

FRA Faces Significant Challenges in Meeting Responsibilities Under Its Expanded Role in High-Speed Rail

Historically, FRA has focused on promoting and overseeing railroad safety. In 2008, FRA's role was significantly expanded to include the development of high-speed rail.[3] ARRA accelerated this expansion by adding $8 billion to HSIPR and established tight deadlines for program design and implementation. Most notably, ARRA required FRA to issue within 120 days of its enactment, interim guidance detailing grant application requirements. FRA met this mandate and awarded ARRA HSIPR grant funds in January 2010.

Despite this accomplishment, FRA continues to face challenges in managing and administering the HSIPR program. Our work indicates that FRA has not issued sufficient guidance for preparing forecasts of net benefits of high-speed rail projects or for establishing access agreements between states and their freight railroad partners. The forecasts provide the basis for the sustainability of the service and thus FRA's future award decisions. The access agreements, particularly the Service Outcome Agreements,[4] are critical for FRA to ensure that the investment achieves the anticipated public benefits. Finally, FRA has yet to finalize policies and procedures that would ensure a core set of grant management responsibilities—such as programmatic and financial reporting and monitoring contractors' performance in constructing projects—are consistently executed to meet Federal requirements. Yet, FRA has continued to concurrently solicit and review HSIPR applications, issue HSIPR grant awards, and obligate the funds.

As of March 2011, FRA had obligated $5.4 billion of the $8 billion of ARRA funds awarded under HSIPR. Less than 1 percent of that amount has been expended by grantees. With the

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[2] OIG Report Number MH-2009-046, "American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation," March 31, 2009. OIG Report Number MH-2010-024, "DOT's Implementation of the American Recovery and Reinvestment Act: Continued Management Attention Is Needed To Address Oversight Vulnerabilities," November 30, 2009. OIG reports and testimonies are available on our website: www.oig.dot.gov.

[3] The Passenger Rail Investment and Improvement Act of 2008 required FRA to establish a high-speed rail discretionary grant program and authorized $3.725 billion in program funding over 5 years.

[4] Service Outcome Agreements are tri-party agreements between the state, operator, and freight railroad companies addressing responsibilities, such as project ownership, maintenance, and passenger rail performance, to ensure the project benefits are realized. Typical agreements outline the number of train frequencies and on-time performance levels the freight railroad is required to support.

majority of HSIPR implementation and construction ahead, FRA has an opportunity and an obligation to build in oversight controls before grantees spend a significant amount of program money. We are currently examining the challenges FRA faces in awarding, obligating, and disbursing grant funds. Doing so will determine how well FRA is managing its grant lifecycle process; assessing the economic and financial viability of proposed projects; ensuring Federal investments are allocated to the most worthy projects; and developing sufficient guidance on state-freight railroad access agreements to ensure these projects meet HSIPR program goals.

Effective Coordination Between OST and Operating Administrations is Key To Executing TIGER Grants

OST's TIGER program is also in the early stages of implementation. In February 2010, OST awarded $1.5 billion in discretionary grants to 51 recipients across the Nation for multimodal surface transportation projects. These projects are expected to have a significant impact by creating jobs and providing economic recovery. As of April 1, 2011, 3.6 percent of TIGER funding had been expended.

OST is on track to meet its ARRA required deadline to fully obligate funds for all TIGER projects by September 30, 2011. However, the grant agreements for 27 of the projects have completion dates beyond February 2012—the congressional goal for completing TIGER projects. Further, while OST completed an OMB-required risk assessment early in the TIGER program, which contained many risks related to project selection, it will need to focus now on identifying risks related to project implementation and carry out effective mitigation actions addressing these risks.

We are examining OST's and the Operating Administrations' ability to oversee TIGER program performance and the efficient use of ARRA funds. Effective oversight and management of the TIGER program is highly dependent on OST's coordination with the Operating Administrations, although OST is ultimately responsible for ensuring ARRA requirements are met. OST relies heavily on the four Operating Administrations currently administering TIGER grants—FHWA, FTA, FRA, and MARAD—to carry out the program. To date, we have observed that FHWA, FTA, and MARAD have oversight procedures in place, but FRA is still in the process of developing them. In addition, Operating Administrations have varying requirements for grantee reporting, and OST officials informed us that their biweekly discussions with Operating Administrations are not documented. We will continue to assess the sufficiency of the oversight procedures and evaluate the impact of our initial observations.

MEETING NEW ARRA REQUIREMENTS FOR JOBS REPORTING AND CONSIDERING ECONOMIC IMPACT

On FAA-administered ARRA-funded projects, we identified weaknesses in the Agency's jobs data reporting—some of which extend across DOT—and its grant selection process. A lack of rigor in jobs data reporting and grant selection hinders the Department's efforts to meet ARRA's transparency and accountability requirements and its goal to optimize economic growth.

Jobs Data Reporting Errors Affect Efforts To Assess the Impact of FAA's ARRA Projects

FAA has weaknesses in its DOT Section 1201 reporting on ARRA jobs, based on our ongoing audit. Section 1201, which is unique to DOT's ARRA programs,[5] requires grant recipients to periodically report to Congress on (1) the number of direct on-project jobs created or sustained by each project receiving ARRA funds and (2) to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries. We focused on FAA's Airport Improvement Program (AIP)[6]—which received $1.1 billion to enhance the Nation's airport system. We found that 65 of 268 AIP grantees provided monthly reports to FAA on cumulative job hours recorded for ARRA projects that showed fewer hours than the month before, indicating that an error occurred at some point in reporting. While some of these errors may have been corrected before the issuance of the DOT Section 1201 report in May 2010,[7] we found several instances where incorrect data from airports were reported in the Section 1201 report, including the fact that one airport reported over 100,000 more job hours than actually occurred.

DOT's Job Reporting Lacks Transparency Regarding Limitations in the Methodology

Certain weaknesses in jobs reporting extend beyond FAA to DOT's process for estimating and reporting jobs information to Congress under Section 1201. For example, DOT's latest report did not include an estimate of the number of indirect jobs. DOT's planned method to separate indirect jobs from total jobs in future reports does not consider factors such as wage increases, that can reduce indirect jobs—which means DOT's indirect jobs estimates could be overstated. In addition, the report does not state exactly how DOT calculated the total number of jobs funded or note whether jobs were created or sustained. As a result, the full extent to which ARRA funding for DOT projects results in direct on-project jobs or indirect industry jobs is also unclear.

By taking action to address these weaknesses, DOT would enhance transparency over this important area and better satisfy the Section 1201 reporting requirement. In discussing overall job reporting issues with us, DOT officials explained that the total jobs were calculated using the President's Council of Economic Advisers (CEA) methodology of dividing total dollar outlays by $92,000. They also explained the basis for not distinguishing between created and sustained ARRA jobs. We recognize the validity of the CEA methodology and the reasonableness of not

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[5] An additional jobs reporting requirement established under Section 1512 initially required each recipient of ARRA funds to report quarterly the estimated number of jobs created and retained by ARRA-funded projects or activities. Subsequent OMB guidance on Section 1512 eliminated the distinction between created and retained jobs for reporting purposes.

[6] AIP provides funds primarily to enhance safety and security, maintain the infrastructure, increase capacity, and mitigate airport noise.

[7] DOT's Section 1201 Report, dated May 7, 2010, includes data from February 17, 2009, through January 31, 2010.

trying to distinguish between created or sustained jobs. However, by providing additional explanations in future reports on the limitation in the job counting methodology, valuable information on the limitations in the methods would be communicated. In addition, inclusion of estimates on indirect jobs would more fully comply with the reporting requirement the Congress has established.

FAA's Grant Selection Process Lacked the Rigor Needed To Ensure ARRA's Economic Goals and Transparency Requirements Were Met

FAA's process for awarding $1.1 billion in AIP grants complied with five key ARRA requirements, but fell short on two others.[8] ARRA required agencies to use merit-based criteria in selecting projects, including the ability of projects to optimize economic activity relative to Federal dollars obligated. According to FAA, it has met this requirement because economic factors, such as airport growth and long-term usage, are considered when FAA develops its Airport Capital Improvement Plan (ACIP)—a rolling plan of AIP-eligible projects. However, it was not apparent that FAA applied economic factors when developing its list of potential ARRA grant candidates from the ACIP. Instead, FAA established selection requirements beyond those required by Congress and the President, including geographic distribution and limits on the size of awards. By doing so, FAA dispersed ARRA funds widely, but not necessarily to airports experiencing growth or most likely to increase long-term use of the selected airports. For example, five small airfields in Alaska collectively received $59 million—as much funding as Texas and more than New York, Florida, and Illinois. Only California received more ARRA funding.

FAA also fell short of meeting ARRA's transparency requirements in its prioritization of projects. Of the 360 projects FAA selected for ARRA funds, FAA publicly disclosed information on its selection process for about 280 higher priority projects[9]—not on the more than 80 lower priority projects selected. Until FAA discloses to the Congress and the public why lower priority projects were funded, it will not have fully met ARRA transparency requirements.

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[8] ARRA, OMB, and the President required FAA in making awards to (1) use its normal discretionary grant process; (2) award 50 percent of funds in 120 days, and remaining funds in 1 year; (3) give priority to projects that can be completed in 2 years; (4) ensure ARRA funds do not supplant planned expenditures; (5) increase oversight beyond normal levels; (6) design transparent merit-based selection criteria; and (7) design selection process to optimize economic activity relative to Federal dollars obligated.

[9] For ARRA purposes, higher priority projects are those scoring equal to or higher than 62 in FAA's National Priority Rating system.

ENSURING EFFECTIVE PROJECT AND FINANCIAL OVERSIGHT AND MANAGEMENT OF ARRA FUNDS

FHWA and FAA have taken actions to improve oversight of projects. However, both Agencies continue to face significant challenges in effectively using these oversight mechanisms and ensuring ARRA funds are appropriately spent. Further, strong financial oversight of grantees and expanded use of single audits[10] are needed to prevent or detect improper payments.[11]

Improved FHWA Oversight Mechanisms Are Critical To Efficiently Complete Highway Projects

FHWA is responsible for overseeing more than half of DOT's ARRA funds, which have been obligated to over 13,000 highway projects ranging from relatively simple paving projects to more expensive highway and bridge projects. As of April 22, 2011, FHWA reported that over half of these projects were completed with 72 percent of ARRA funds expended. To ensure its remaining ARRA dollars—many of which are obligated to more complex projects or higher risk grantees—are spent wisely, it will be critical for FHWA to maximize use of existing oversight mechanisms.

Within 3 months following ARRA's passage, FHWA developed and implemented independent National Review Teams (NRT) to assess states' management capabilities and recommend corrective actions. While the teams were conducting thorough assessments of states' management of ARRA funds, FHWA had yet to fully address identified vulnerabilities. For example, 12 percent of NRT observations on program vulnerabilities were not included in summary reports to FHWA Division Offices, limiting accountability for needed corrective actions. Moreover, FHWA had conducted only limited analyses of NRT results, preventing FHWA from identifying national trends or emerging risks and assessing the effect of states' corrective actions. FHWA took action to address the issues in our review and strengthen the NRT process.

Opportunities to improve project performance, cost, and quality through value engineering (VE)[12] may also be lost if FHWA fails to take prompt action to ensure states conduct VE studies. Federal law requires all federally aided highway and bridge projects with an estimated total cost equal to or exceeding $25 million and $20 million, respectively, to undergo VE studies during project concept and design. In May 2010, FHWA revised its VE policy and created performance measures for states. However, our ongoing review of high-dollar ARRA projects found some states did not complete VE studies during the project design and concept phase, as required. FHWA is updating its regulations to include VE requirements, years after Congress required it to

[10] 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. Independent single audits are conducted annually, in accordance with OMB Circular A-133, to determine whether grantees are complying with these requirements.

[11] An improper payment is defined as being any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. It includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payment for services not received, and any payment that does not account for credit for applicable discounts. OMB guidance also instructs agencies to report payments for which insufficient or no documentation was found as improper payments.

[12] VE studies aim to objectively review reasonable design alternatives on highway and bridge projects.

do so in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).[13]

FHWA's actions to address weaknesses in the oversight of local public agencies' (LPA)[14] infrastructure projects have also had limited impact. FHWA has acknowledged the risks associated with LPAs, including a lack of state resources to perform adequate oversight of LPAs, LPAs' inadequate resources for contract administration and quality assurance procedures, noncompliance with Federal labor requirements, and improper processing of contract changes. We found continued noncompliance with Federal requirements for LPA projects in some states, and we will be making recommendations to improve oversight of project costs and quality.

FHWA delegates much of its oversight responsibility for Federal-aid highway projects to states, but it is ultimately accountable for ensuring projects comply with Federal requirements. We are examining the agreements that define Federal and state oversight roles and responsibilities and whether those agreements address Federal requirements and program risks. For some projects, FHWA has retained approval responsibilities regarding project design, plans, contract awards, and inspections—referred to as "full oversight." We will determine whether this type of oversight helps ensure that ARRA projects meet Federal requirements relating to quality and cost. We are also assessing FHWA's oversight of states' practices for awarding ARRA-funded highway contracts. Consistent with ARRA, DOT regulations require recipients of all Federal-aid program funds to use bidding practices that are effective in securing competition. Optional FHWA contract award guidance for state grantees suggests an effort be made to maximize competition by a number of methods, including not publicly disclosing the bidders' list, not publishing the engineer's estimate, extending advertising periods, and dividing large projects into smaller ones. Promoting best practices for improved competition could achieve cost savings in ARRA-funded and other Federal-aid contracts.

Strong Financial Oversight of Grantees and Use of Single Audits Are Needed To Prevent or Detect Improper Payments

We have identified vulnerabilities in Operating Administrations' financial oversight of ARRA grantees and their compliance with OMB's ARRA accountability requirements. For example, FAA has primarily focused its oversight of AIP grantees on construction status of projects, not on ensuring grantees comply with FAA and OMB financial requirements. While FAA took several actions to increase its project oversight of AIP grantees—including adding technical expertise and conducting site visits—a national consulting firm that FAA hired to review ARRA payments determined that 14 of 24 ARRA-recipient airports did not have adequate documentation to justify their ARRA payment requests, as required by FAA. These results are consistent with findings we reported in December 2010 on FAA's financial oversight of non-ARRA-funded AIP program grants. We concluded that FAA's approach to AIP grant oversight is inadequate to effectively prevent or detect improper payments.

We have identified several potential causes for the shortcomings in FAA's financial oversight of AIP grantees. First, FAA relies on grantees to self-certify that they adhere to the specifics of

[13] Pub. L. No. 109-59 (2005).

[14] LPAs are agencies, other than state transportation agencies, that administer Federal-aid projects through design and/or construction—for example city and county governments.

their grant agreements and collect and maintain documentation that validates their ARRA payment requests. Second, FAA does not review grantee payment requests beyond summary documentation, which does not include actual contractor and subcontractor invoices for ARRA-funded work. Third, ARRA grantees approve change orders for ARRA-funded contract work without conducting FAA-required cost or price analyses, and without seeking FAA approval. Finally, FAA employees at a number of locations around the country often cited staff and resource limitations as impediments to their ability to more rigorously oversee airport sponsors' use of ARRA funds.

Full compliance with OMB single audit requirements for ensuring grantees' implement effective corrective action plans would help FAA and DOT's other Operating Administrations prevent improper payments. Since May 2010, we have issued 66 Single Audit Action memorandums on deficiencies in grantees' procedures or in their operations in overseeing ARRA funds. Common deficiencies include improper reporting and inadequate monitoring of sub-recipients. Based on an ongoing audit of DOT's implementation of single audit recommendations, Operating Administrations frequently issued untimely and incomplete management decisions on single audit findings, failed to include evaluations of grantees' corrective action plans, and did not follow through with grantees to confirm that they implemented corrective actions. Specifically, 16 questioned costs findings, totaling $3.7 million, awaited final decision or repayment for an average of 20 months. We evaluated the tracking systems to identify grantees with unresolved findings and problematic single audit histories at five Operating Administrations—FTA, FRA, FHWA, FAA, and NHTSA. FTA had an effective tracking system, but the tracking systems at FHWA, FAA, and NHTSA were ineffective and FRA did not have a tracking system.

We recently initiated an audit of oversight of improper payments in FTA's ARRA programs; and we are planning a similar audit of FHWA's ARRA programs.

COMBATING COMMON FRAUD, WASTE, AND ABUSE SCHEMES THROUGH PROACTIVE MEASURES

Since ARRA's enactment, OIG has worked proactively with DOT to deter fraud schemes through ongoing outreach, targeted assessments of projects with fraud risk indicators, and investigations of criminal and civil complaints. Weaknesses in DOT's suspension and debarment (S&D) program increased the risk of inappropriately awarding contracts to contractors that could defraud DOT. The surge in ARRA funding and significant construction activity underscores the need for DOT and OIG to continue to aggressively pursue counter-fraud efforts and maintain sound internal controls to prevent, recognize, and report fraud.

Proactive Measures Help DOT Combat Common Fraud Schemes

Ongoing outreach and assessments are key to combating fraud, waste, and abuse in ARRA-funded programs. To date, OIG has provided 269 fraud awareness and prevention presentations to over 18,800 Operating Administration officials, state DOT officials, local transit authority staff, and aviation authorities. These presentations aim to alert stakeholders to common fraud schemes: false statements, claims, and certifications; disadvantaged business enterprise fraud; collusive bid rigging; product substitution; bribery and kickbacks; and conflicts of interest. OIG has also participated in fraud prevention task forces with law enforcement partners, including

U.S. Attorney's Offices; other Federal, state, and local OIGs; local prosecutors; and the Federal Bureau of Investigation. Operating Administrations' outreach to ARRA contract recipients is critical to ensuring recipients of Federal grants and contracts have meaningful ethics programs and sound internal controls to recognize, prevent, and report fraud.

With many high-dollar ARRA projects entering the construction phase, OIG's and DOT Operating Administrations' use of independent risk assessments are also critical to identifying and stopping fraud. For example, OIG is examining projects where the winning bid was substantially below the engineer's estimate. Some contractors intentionally underbid projects, only to make up the lost revenues in fraudulent change orders and false claims. Operating Administrations could conduct similar analyses as part of their ARRA oversight activities. Doing so would be consistent with OMB's direction to ensure agencies take strong action to mitigate instances of fraud, waste, and abuse in the ARRA program.

Finally, we continue to investigate criminal and civil complaints related to ARRA. As of March 2011, we have 51 open ARRA investigations (see table 2)—45 of which the Department of Justice is reviewing for potential prosecution.

Table 2. Open Investigations Into Allegations of ARRA Fraud, by Operating Administration, as of March 31, 2011

Allegation	FHWA	FAA	FTA	DOT	Total
False Statements, Claims, Certifications	15	1	2	1	19
Disadvantaged Business Enterprise Fraud	10	4	3	0	17
Prevailing Wage Violations	5	0	1	0	6
Anti-Trust Violations, Bid Rigging, Collusion	4	1	1	0	6
Kickbacks	1	0	0	0	1
Corruption[a]	0	1	0	0	1
ARRA Whistleblower	1	0	0	0	1
Total	**36**	**7**	**7**	**1**	**51**

Source: OIG

[a] This type of investigation involves allegedly dishonest or fraudulent conduct by individuals who are responsible for the oversight of ARRA funded projects.

Attention to Effective Suspension and Debarment Practices Can Help Prevent Fraud and Waste

One of the strongest deterrents against contract fraud, waste, and abuse is DOT's ability to make timely S&D decisions and promptly report them to the Government's tracking system.[15] However, weaknesses in DOT's S&D program have increased the risk of awarding contracts and grants to individuals or firms that could defraud the Department.[16]

In January 2010, we reported that it took DOT an average of over 300 days to reach a suspension decision and over 400 days to reach a debarment decision, giving unethical, dishonest, or otherwise irresponsible parties ample opportunity to bid for and receive contracts. These delays were due largely to lengthy and unnecessary reviews being conducted before deciding cases and a lack of priority assigned to DOT's S&D workload. DOT's management controls were also inadequate for ensuring that suspensions or proposed debarments of parties found to be irresponsible were made within DOT's required 45-day limit. The cumulative effect of these weaknesses increased the risk that DOT and other agencies could have awarded contracts and grants to parties that DOT may ultimately suspend or debar.

DOT and FAA initiated corrective actions in response to recommendations we made. Notably, in March 2010, DOT issued a revised S&D policy, which clarified the oversight and management role of the Office of the Senior Procurement Executive. The policy also requires that the Department take action to suspend or debar within 45 days of a referral by the Inspector General or others, or to document the reasons why action is not being taken. While these agency actions represent positive steps, sustained focus is needed to ensure DOT and FAA make S&D decisions in a timely manner and provide strong management oversight for the program.

CONCLUSION

In closing, I want to emphasize the importance of addressing identified challenges now—before many ARRA projects fully enter the construction phase and large scale projects, including HSPIR, are launched. OIG embraces its key role in helping to ensure accountability, efficiency, and transparency over DOT's portion of the massive recovery program. We will continue to assist the Department in its efforts through our audit and investigation activities until all ARRA funds are spent. We are committed to promptly notifying DOT and Congress of actions needed to prevent fraud, waste, and abuse and achieve ARRA goals.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you or other Members of the Committee may have.

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[15] The Excluded Party Listing System is a web-based system maintained by the General Services Administration used to track S&D decisions and affected parties Governmentwide.

[16] OIG Report ZA-2010-034, "DOT's Suspension and Debarment Program Does Not Safeguard Against Awards to Improper Parties," January 7, 2010, and OIG Testimony CC-2010-036 before the Committee on Oversight and Government Reform, United States House of Representatives, "Weaknesses in DOT's Suspension and Debarment Program Limit Its Protection of Government Funds," March 18, 2010.

EXHIBIT A. OIG'S RECOVERY OVERSIGHT WORK

Completed ARRA Work		
Title	**Type of Product**	**Date Issued**
Top Management Challenges Facing the Department of Transportation	Testimony	March 10, 2009
American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation	Report	March 31, 2009
American Recovery and Reinvestment Act: DOT's Implementation Challenges and the OIG's Strategy for Continued Oversight of Funds and Programs	Testimony	April 29, 2009
American Recovery and Reinvestment Act: DOT's Implementation Challenges and the OIG's Strategy for Continued Oversight of Funds and Programs	Testimony	April 30, 2009
DOT's Suspension and Debarment Program	ARRA Advisory	May 18, 2009
Sampling of Improper Payments in Major DOT Grants Programs Department of Transportation	ARRA Advisory	June 22, 2009
FAA's Process for Awarding ARRA Airport Improvement Program Grants	ARRA Advisory	August 6, 2009
Status of Operating Administrations' Processes to Conduct Limited Quality Reviews of Recovery Act Recipient Data	Report	October 6, 2009
DOT's Implementation of the American Recovery and Reinvestment Act: Continued Management Attention Is Needed to Address Oversight Vulnerabilities	Report	November 30, 2009
DOT's Suspension and Debarment Program Does Not Safeguard Against Awards To Improper Parties	Report	January 7, 2010
Letter to Senator Mark Pryor on DOT OIG's Recovery Act Oversight Activities	Congressional Correspondence	February 19, 2010
Recovery Act Data Quality: Errors in Recipient Reports Obscure Transparency	Report	February 23, 2010

Completed ARRA Work

Title	Type of Product	Date Issued
Weaknesses in DOT's Suspension and Debarment Program Limit its Protection of Government Funds	Testimony	March 18, 2010
Federal Railroad Administration Faces Challenges in Carrying Out Expanded Role	Testimony	April 29, 2010
FHWA's Oversight of the Use of Value Engineering Studies on ARRA Highway and Bridge Projects	ARRA Advisory	June 28, 2010
Letter To Ranking Member Issa Regarding DOT's Use of ARRA Signage	Congressional Correspondence	August 17, 2010
ARRA Websites Vulnerable to Hackers and Carry Security Risks	Report	October 22, 2010
Actions Needed To Strengthen The Federal Highway Administration's National Review Teams	Report	January 6, 2011
Amtrak Made Significant Improvements in its Long-Term Capital Planning Process	Report	January 27, 2011
FAA Fulfilled Most ARRA Requirements in Awarding Airport Grants	Report	February 17, 2011

Ongoing ARRA Work

Title
ARRA Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service Programs
Oversight of Federal–aid Highway Projects Administered by Local Public Agencies
FHWA's Federal–Aid Highway Program Oversight of Procurement Practices for ARRA–Funded Contracts at State Departments of Transportation
Review of Job Creation Under the American Recovery and Reinvestment Act of 2009
High Speed Rail Forecasting Best Practices
FTA's Oversight of the Dulles Corridor Metrorail Project
FHWA's Oversight of High-Dollar ARRA Highway Projects
FTA's Oversight of Major Transit Projects in New York City
High-Speed Rail and Intercity Passenger Rail Infrastructure Access Agreements
Transportation Investment Generating Economic Recovery Discretionary Grants
FAA's Oversight of ARRA Expenditures
FRA's Progress in Administering Major Grants
Improper Payment Oversight in FTA ARRA Programs
DOT's Implementation of Single Audit Recommendations and Cost Recovery
Quantitative Analysis of the Causes of Amtrak's Delays

Exhibit A. OIG's Recovery Oversight Work

U.S. Department of Transportation
Office of the Secretary of Transportation

The Inspector General

Office of Inspector General
Washington, DC 20590

May 26, 2011

The Honorable John L. Mica
Chairman, Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

The Honorable Nick J. Rahall, II
Ranking Member, Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

Dear Chairman Mica and Ranking Member Rahall:

Thank you for the opportunity to testify before the Committee on Transportation and Infrastructure in the May 4, 2011, hearing on the American Recovery and Reinvestment Act of 2009 (ARRA). As requested, we are providing responses to questions for the record submitted by the Committee. Our responses are included in an enclosure to this letter. We will continue to monitor the Department's efforts in implementing ARRA projects and will keep the Committee apprised of our ongoing work.

If I can answer any questions or be of further assistance, please contact me at (202) 366-1959 or Joseph W. Comé, Assistant Inspector General for Highway and Transit Audits, at (202) 366-5630.

Sincerely,

Calvin L. Scovel III

Calvin L. Scovel III
Inspector General

Enclosure

CC-2011-028

Questions for The Honorable Calvin L. Scovel III
From the Committee on Transportation and Infrastructure,
U.S. House of Representatives

1. **Given the challenges DOT faced in implementing the Stimulus Bill, how would you grade DOT's overall efforts, and the stimulating effect, now that most of the funds have been obligated and more than half of the projects have been completed?**

Answer: The Department of Transportation's (DOT) efforts to implement provisions of the American Recovery and Reinvestment Act of 2009 (ARRA) and to assess the impact of ARRA projects are still in process. Since ARRA's passage, DOT has been tackling the difficult work of administering the large infusion of ARRA funds and has met its milestones to date for obligating ARRA funds. However, significant work lies ahead to complete ARRA projects and to meet future deadlines. With many major projects entering the construction phase and new high-dollar ARRA projects getting underway, a significant portion of DOT's recovery funds are just now being spent. Other ARRA programs, such as the High-Speed Intercity Passenger Rail (HSIPR) program, are still being developed and represent challenges that will persist for years. For example, the Federal Railroad Administration (FRA) has until September 30, 2012, to obligate all ARRA high-speed rail funds and until September 30, 2017, to spend them.

Accordingly, the full impact of DOT-implemented ARRA projects may not be known until more of the projects are substantially complete. However, DOT must ensure that the project-related data it is receiving are timely and accurate and will give it the capability to sufficiently assess and report on the impact of ARRA now and in the future. The Office of Inspector General (OIG) has several ongoing audits examining DOT's implementation and oversight of ARRA projects, including audits related to the Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grant Program, oversight of improper payments in the Federal Transit Administration's (FTA) ARRA grant programs, FRA's progress in awarding high-speed rail grants, and the Federal Aviation Administration's (FAA) oversight of ARRA expenditures. Our updated ARRA audit work plan can be found at http://www.oig.dot.gov/recovery.

2. **Your March 31, 2009, report indicated that DOT's challenges lay in 3 areas: (1) ensuring that grantees properly spend Stimulus funds; (2) implementing new accountability requirements and programs mandated by the Stimulus; and (3) combating fraud, waste, and abuse. In which area does DOT need improvement? AND**
3. **As you have completed systematic reviews of DOT agencies that received stimulus funding to identify areas of high risk, what high risk areas have emerged as a result of these reviews?**

Answer: Over the past 2 years, our ARRA audit work has pointed to high-risk areas related to highway and bridge projects, improper payments, new discretionary grant programs, and suspension and debarment practices that require the sustained attention of DOT management.

Oversight of Highway and Bridge Projects

As steward of more than half of DOT's ARRA funds, the Federal Highway Administration (FHWA) must ensure that the remaining ARRA dollars, especially those dollars obligated to more complex projects or higher risk grantees, are spent appropriately. Accordingly, it must maximize its use of existing oversight mechanisms. For example, national review teams (NRTs) were created by FHWA to assess states' management capabilities and recommend corrective actions. FHWA had yet to fully address vulnerabilities that NRTs identified at the time we completed our audit last year. FHWA did not include 12 percent of NRT observations on program vulnerabilities in summary reports to FHWA Division Offices; thereby limiting accountability for needed corrective actions. In response to our January 2011 audit report, FHWA took steps to improve the monitoring and implementation of corrective actions resulting from NRT assessments. In addition, FHWA could increase oversight of local public agencies (LPA).[1] FHWA has acknowledged the risks associated with LPAs, including inadequate contract administration and quality assurance procedures, noncompliance with Federal labor requirements, and improper processing of contract changes. We found continued noncompliance with Federal requirements for LPA projects in some states, and we will be making recommendations to improve oversight of project costs and quality.

[1] LPAs are agencies, other than state transportation agencies, that administer Federal-aid projects through design and construction—for example city and county governments.

Financial Oversight of Grantees to Prevent or Detect Improper Payments

Additionally, strong financial oversight of grantees and expanded use of single audits[2] are needed to prevent or detect improper payments.[3] Since May 2010, we have issued 66 single audit action memorandums on deficiencies in grantees' procedures or in their operations in overseeing ARRA funds. Common deficiencies include improper reporting and inadequate monitoring of sub-recipients. Our ongoing audit of DOT's implementation of single audit recommendations has so far found that Operating Administrations frequently issued untimely and incomplete management decisions on single audit findings, failed to include evaluations of grantees' corrective action plans, and did not follow through with grantees to confirm that they implemented corrective actions.

Addressing Vulnerabilities in Newly Created ARRA Programs

Standing up new HSIPR and TIGER discretionary grant programs are two other high-risk areas because they require direct oversight of grantees constructing large infrastructure projects—a challenging role that neither FRA nor the Office of the Secretary of Transportation (OST) has previously performed. Our work indicates that FRA has not issued sufficient guidance for preparing forecasts of net benefits of high-speed rail projects or for establishing access agreements between states and their freight railroad partners. These forecasts provide the basis for the sustainability of the service and thus FRA's future award decisions. In addition, FRA has yet to finalize policies and procedures that would define a core set of grant management responsibilities to ensure it meets Federal requirements. These responsibilities include programmatic and financial reporting and monitoring contractors' performance. At the same time, FRA has continued to concurrently solicit and review HSIPR applications, issue HSIPR grant awards, and obligate the funds without having grant oversight policies in place. Failure to address this challenge could have cost and schedule implications in the future. OST faces a similar challenge in implementing the TIGER program, which is in the early stages of implementation. In February 2010, OST awarded $1.5 billion in discretionary grants to 51 recipients across the Nation for multimodal surface transportation projects. These projects are expected to have a significant impact by creating jobs and providing economic recovery. However, the grant

[2] 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. Independent single audits are conducted annually, in accordance with Office of Management and Budget (OMB) Circular A-133, to determine whether grantees are complying with these requirements.

[3] An improper payment is defined as being any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. It includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payment for services not received, and any payment that does not account for credit for applicable discounts. OMB guidance also instructs agencies to report payments for which insufficient or no documentation was found as improper payments.

agreements for 27 of the projects have completion dates beyond February 2012—the statutory goal for completing TIGER projects. As a result, the stimulative effect of the projects may be delayed.

Attention to Effective Suspension and Debarment Practices to Help Prevent Fraud and Abuse

Finally, while the Department has taken significant steps that should improve its Suspension and Debarment (S&D) program, it needs to continue its efforts in this area to reduce the risk of contracts being awarded inappropriately. One of the strongest deterrents against contract fraud, waste, and abuse is DOT's ability to make timely S&D decisions and promptly report them to the Government's tracking system.[4] However, in January 2010, we reported that it took DOT an average of over 300 days to reach a suspension decision and over 400 days to reach a debarment decision. These delays, due largely to lengthy and unnecessary reviews before cases were decided and the failure to assign priorities to DOT S&D workloads, gave unethical, dishonest, or otherwise irresponsible parties ample opportunity to bid for and receive contracts. In response to our recommendations, in March 2010, DOT issued a revised S&D policy, which clarified the oversight and management role of the Office of the Senior Procurement Executive. The policy also requires that the Department take action to suspend or debar within 45 days of a referral by the Inspector General or others, or to document the reasons why action is not being taken. While these agency actions represent positive steps, sustained focus is needed to ensure DOT and FAA make S&D decisions in a timely manner and provide strong management oversight for the program.

4. **Your oversight funding is available until September 30, 2013. Will you need two more years to wrap up your work? What will be your primary focus as the department's Stimulus activities wind down?**

Answer: With many ARRA projects just entering the construction phase, oversight of ARRA could extend for more than 2 years, but recent legislation eliminated our ARRA funding earlier than originally scheduled. OIG received $20 million in ARRA funds, which originally ran through fiscal year 2013. Our current plan for ARRA-related work focuses on the Department's oversight of new programs, project construction, compliance with ARRA reporting requirements, financial management, and the detection of improper payments.

Our funds will be cut off prior to September 2013 due to the Dodd-Frank Wall Street Reform and Consumer Protection Act, which amended ARRA's funding

[4] The Excluded Party Listing System is a web-based system, maintained by the General Services Administration, used to track S&D decisions and affected parties Governmentwide.

provisions to rescind ARRA discretionary appropriations not obligated by December 31, 2012. We estimate that we could have up to $3 million in unobligated ARRA funds remaining on that date. This situation will trigger the loss of highly skilled and professional auditors, analysts, and investigators and impair our capacity to provide robust oversight of ARRA transportation infrastructure projects and related programs. Such a decrease would come at a critical stage, since the deadlines for expending ARRA funds on various DOT programs extend more than 4 to 6 years into the future. With over $25 billion in construction funds yet to be spent, investigations and audits to identify and prevent fraud, schedule delays, cost overruns, and other associated risks will still be needed. We already have 55 open investigations of alleged fraud—49 of which the Department of Justice is considering for potential prosecution. Losing our ARRA funding would undermine our ability to continue this work.

5. **In the GAO's September 2010 Report, GAO reported DOT is not measuring the long-term economic impact of the Stimulus, but GAO found it is important for DOT to determine if they achieved the goals stated in the bill. Why isn't DOT doing a long-term economic impact analysis of the Stimulus?**

Answer: OST officials indicated to us that DOT is not conducting a long-term economic impact analysis of ARRA for a variety of reasons. First, Congress neither requested that DOT do so nor provided DOT with the funding to conduct such an analysis. Second, OST indicated that obtaining the data from the states necessary to support such work would have led to conflicts with the Paperwork Reduction Act. Because it was already asking the states for a considerable amount of reporting to fulfill the legally mandated employment impact assessment, OST was concerned that further information requests would unduly burden ARRA recipients. Finally, determining the effect of ARRA would have required quality data on conditions before ARRA funds were expended. Such information would be required to provide a baseline for the analysis. OST considered it unlikely that this information was available on a consistent basis.

We have not assessed OST's rationale for not conducting a long-term economic analysis. However, we are planning to assess the economic impacts as DOT moves forward with standing up and implementing the TIGER and HSIPR grant programs.

6. **You mentioned concerns about the transparency of information being provided on jobs, especially at FAA. Can you detail actions that could be taken to address this concern?**

   Answer: Ensuring transparency regarding job reporting under ARRA Section 1201 and other efforts to demonstrate the impact of ARRA expenditures will require the Department to explain clearly any limitations to the methods and data sources that are used. DOT could take the following actions to address this concern:

   - Report on its methodologies for estimating direct, indirect, and total jobs. DOT most recently reported that 95,000 total jobs have been generated through DOT ARRA expenditures; but it did not publish information on how the number was calculated. This information would be helpful to understand the reported data because there are substantial differences between the methodologies DOT used to estimate different categories of jobs.

   - Report indirect jobs separately, as is required under ARRA Section 1201. DOT plans to estimate indirect jobs using a method that does not incorporate feedback effects, such as the wage increases that tend to accompany major expenditure programs, and reduces the number of jobs that result from a given expenditure. This will result in overestimation of indirect jobs. In contrast, DOT estimates total employment using guidance developed by the Council of Economic Advisors. The guidance is based on results from modeling that incorporates feedback effects.

   - Provide information on the time periods for which jobs are reported. Differences in the timing of job reporting reduce the comparability of jobs across both Operating Administrations and categories. OST officials informed us that they planned to report direct jobs when they occurred. However, FAA instructed airports to report jobs based on valid invoices, while FTA instructed recipients to report jobs regardless of whether they had been invoiced. In contrast, OST plans to report indirect and total jobs as occurring when expenditures are reimbursed.

7. **You mentioned that FAA has not provided to Congress and to the Public the reasons why 80 lower priority Airport Improvement Program grants were funded? Do you know where FAA stands on their response?**

   Answer: In February 2011, we recommended to FAA that it increase its transparency by disclosing its internally developed justifications for choosing lower priority projects. In response, FAA informed us that it will post on its Recovery Act website additional information on project selection, including a

justification for selecting and approving the 80 lower priority projects. Moreover, FAA stated it will include information regarding the economic expectations behind the projects to the extent it is available. FAA anticipates completing this action by May 31, 2011.

8. **Based on your review of the TIGER program, and considering the GAO's report on the lack of transparency in the selection process and poor project selection, were the best projects chosen and were they initiated quickly? AND**
9. **What is your assessment of the selected projects?**

Answer: Since ARRA's passage, we have coordinated closely with the Government Accountability Office (GAO) to maximize our resources and ensure that our ARRA audit work was not duplicative. While GAO assessed the TIGER selection process, OIG initiated an audit in late 2010 on oversight of the grants that emerged from this process. Accordingly, our ongoing audit of TIGER oversight has focused on evaluating the effectiveness of (1) OST's management of the TIGER program, including the performance measures for determining the economic and transportation-related impact of each project and (2) each Operating Administration's oversight of its respective TIGER projects. We are not evaluating the selection process or the merits of the individual projects. As part of our ongoing review, we will determine whether TIGER grants are experiencing any obstacles that could impede their timely completion or the ability of the Department to measure their impact on the economy and the Nation's transportation system.

OST selected 51 TIGER grant recipients, and transferred direct oversight responsibility for the selected grant projects to the appropriate Operating Administrations, as permitted under ARRA. However, OST is ultimately responsible for developing policies and procedures, ensuring that the Operating Administrations provide effective oversight of their TIGER projects, and reporting on the program's impact. Ineffective oversight could result in TIGER projects not fully meeting ARRA goals and requirements and increase the risk of fraud, waste, and abuse.

United States Government Accountability Office

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Testimony

Before the Committee on Transportation and Infrastructure, House of Representatives

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RECOVERY ACT

Preliminary Observations on the Use of Funds for Clean and Drinking Water Projects

Statement of David C. Trimble, Acting Director
Natural Resources and Environment

GAO-11-642T

May 4, 2011

GAO
Accountability • Integrity • Reliability

Highlights

Highlights of GAO-GAO-11-642T, testimony before the Committee on Transportation and Infrastructure, House of Representatives

RECOVERY ACT

Preliminary Observations on the Use of Funds for Clean and Drinking Water Projects

Why GAO Did This Study

The American Recovery and Reinvestment Act of 2009 (Recovery Act) included $4 billion for the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (SRF) and $2 billion for the agency's Drinking Water SRF.

This testimony is based on GAO's ongoing review of clean and drinking water projects. It provides preliminary observations on (1) the status and use of Recovery Act SRF program funds nationwide and in nine selected states, (2) jobs funded by the Recovery Act SRF programs and federal and state efforts to oversee the programs, and (3) challenges, if any, that states have faced in implementing Recovery Act requirements.

For this ongoing work, GAO is, among other things, obtaining and analyzing EPA nationwide data on the status of Recovery Act clean and drinking water funds and projects, as well as information from a nonprobability sample of nine states that it had not reviewed in previous bimonthly reports. These states represent all but one of EPA's 10 regions. GAO is also interviewing EPA and state officials about their experiences with the Recovery Act clean and drinking water funds.

View GAO-GAO-11-642T or key components. For more information, contact David C. Trimble at (202) 512-3841 or trimbled@gao.gov.

What GAO Found

Nationwide, the 50 states have awarded and obligated the almost $6 billion in Clean Water and Drinking Water SRF program funds provided under the Recovery Act and reported using the majority of these funds for sewage treatment infrastructure and drinking water treatment and distribution systems, according to EPA data. These funds supported more than 3,000 water quality infrastructure projects nationwide. Since the Recovery Act was passed, states have drawn down $3.1 billion (79 percent) of the Clean Water SRF program funds and $1.7 billion (83 percent) of the Drinking Water SRF program funds provided under the Recovery Act. States also met the act's requirements that at least (1) 20 percent of the funds provided be used to support "green" projects, such as those that promote energy or water efficiency, and (2) 50 percent of the funds provide additional subsidies in the form of loans for which the principal is forgiven, loans for which the repayment is less than the principal (negative interest loans), or grants. In the nine states GAO reviewed, Recovery Act funds have paid for 419 infrastructure projects that help to address major water quality problems, although state officials said that in some cases, Recovery Act requirements changed their priorities for ranking projects or the projects selected. For example, because some projects could not meet the act's requirement to have funds under contract by February 17, 2010, some states provided Recovery Act funds to lower-ranked projects. Some states provided funding to these priority projects in other ways, such as through state grants or non-Recovery Act SRF funds. In addition, although not required by the Recovery Act, the nine states used 24 percent of the funds they received to pay for projects in economically disadvantaged communities, the majority of which was provided as additional subsidies.

States reported that the Recovery Act SRF programs funded an increasing amount of full-time equivalent (FTE) positions from the quarter ending December 2009 through the quarter ending June 2010, from 6,000 FTEs to 15,000 FTEs, declining to 6,000 FTEs for the quarter ending in March 2011 as projects were completed. EPA and the states are overseeing Recovery Act projects and funds using EPA's oversight plan, updated in June 2010 in response to recommendations GAO made to specify procedures for oversight.

The fiscal year 2010 and 2011 appropriations for the SRF programs continue the green project and additional subsidy requirements. State officials GAO interviewed identified challenges in implementing these requirements for the Clean and Drinking Water SRF programs, including:

- *Encouraging green projects.* Officials in some states said that the goal of supporting green projects is important but that the percent of funds specifically dedicated to green funds (20 percent) was difficult to achieve.
- *Providing subsidies.* Officials in several of the nine states noted that when monies are not repaid into revolving funds to generate future revenue for these funds, the SRF program purpose changes from primarily providing loans for investments in water infrastructure to providing grants.

Mr. Chairman, Ranking Member, and Members of the Committee:

I am pleased to be here today to discuss the preliminary results of our ongoing work examining states' use of funds made available for clean and drinking water projects under the American Recovery and Reinvestment Act of 2009 (Recovery Act).[1] Among other things, the purposes of the Recovery Act were to preserve and create jobs, promote national economic recovery, and provide long-term economic benefits through infrastructure investments, including water infrastructure.[2] The Recovery Act mandates that GAO conduct bimonthly reviews of the funds used by states and determine whether the act is achieving its stated purposes.[3] We are completing the tenth bimonthly review responding to the act's mandate, which updates our May 2010 report and adds new information on the use of the Recovery Act funds provided for the Clean and Drinking Water State Revolving Fund (SRF) programs.[4] Over the past 2 years, our oversight of programs funded by the Recovery Act has covered a wide range of programs, including Medicaid, education, Head Start, highways and transit, and environmental and energy programs.[5]

My statement today is based on an ongoing review of clean and drinking water projects under the Recovery Act and examines the (1) status and use of Recovery Act SRF program funds nationwide and in nine selected states, (2) jobs funded by the Recovery Act SRF programs and federal and state efforts to oversee these programs, and (3) challenges, if any, that states have faced in implementing Recovery Act requirements.[6] For our ongoing work, we are obtaining and analyzing nationwide data from the Environmental Protection Agency (EPA) on the status of Recovery Act

[1]Pub. L. No. 111-5, 123 Stat. 115.

[2]As of April, 8, 2011, the Department of the Treasury had paid out $208.7 billion in Recovery Act funds for use by states and localities. For updates, see http://gao.gov/recovery.

[3]Pub. L. No. 111-5, § 901(a)(1).

[4]We last reported on the use of Recovery Act Clean and Drinking Water SRF program funds for water in GAO, *Recovery Act: States' and Localities' Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability*, GAO-10-604 (Washington, D.C.: May 26, 2010).

[5]See http://gao.gov/recovery for related GAO products.

[6]These states were Alabama, Connecticut, Maryland, Michigan, Missouri, New Mexico, Nevada, Washington State, and Wyoming. We did not select any states in EPA Region 2—which includes New Jersey, New York, and Puerto Rico—because we had reviewed New Jersey and New York in previous Recovery Act reports.

Clean and Drinking Water SRF funds and projects, as well as information from nine states on their use of Recovery Act funds. We are discussing this information and Recovery Act requirements and reporting with EPA and state officials, including program officials in state environmental and public health departments responsible for the SRF programs and state Recovery Act officials. To develop a more in-depth view of the states' use of Recovery Act funds for Clean and Drinking Water SRF programs, we selected a nonprobability sample of nine states that we had not reviewed in our previous bimonthly reports, representing all but one of EPA's 10 regions. We had state officials review and correct data in EPA's Recovery Act databases; we found the data reliable for our purposes. We conducted this performance audit from September 2010 through April 2011, 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.

Background

Both the Clean Water and Drinking Water SRF programs authorize EPA to provide states and local communities with independent and sustainable sources of financial assistance, such as low- or no-interest loans, for projects that protect or improve water quality and that are needed to comply with federal drinking water regulations and protect public health. The Clean Water SRF program was established in 1987 under the Clean Water Act, which was enacted to protect surface waters, such as rivers, lakes, and coastal areas, and to maintain and restore the physical, chemical, and biological integrity of these waters. The Drinking Water SRF program was established in 1996 under the Safe Drinking Water Act, which was enacted to establish national enforceable standards for drinking water quality and to guarantee that water suppliers monitor water to ensure compliance with standards.

The Recovery Act provided $6 billion for EPA's Clean Water and Drinking Water SRF programs.[7] This amount represents a significant increase over the federal funds awarded to the base SRF programs in recent years. From fiscal years 2000 through 2009, annual appropriations averaged about $1.1 billion for the Clean Water SRF program and about $833 million for the Drinking Water SRF program. The Recovery Act funds represent a significant federal investment in the nation's water infrastructure at a time when, according to a 2010 Congressional Budget Office report, overall spending on infrastructure has been declining, and when reported problems with the quality and safety of water supplies have raised questions about the condition of the nation's infrastructure.[8]

In addition to increasing funds, the Recovery Act included some new requirements for the SRF programs. First, projects funded with Recovery Act SRF program funds had to be under contract—ready to proceed—within 1 year of the act's passage, or by February 17, 2010. Second, states had to use at least 20 percent of these funds as a "green reserve" to provide assistance for green infrastructure projects, water- or energy-efficiency improvements, or other environmentally innovative activities. Third, states had to use at least 50 percent of Recovery Act funds to provide "additional subsidies" for projects in the form of principal forgiveness, grants, or negative interest loans (loans for which the rate of interest is such that the total payments over the life of the loans are less than the principal of the loans). Uses for these additional subsidies can include helping economically disadvantaged communities build water projects, although these uses are not a requirement of the act. Congress incorporated two of these requirements—green projects and additional subsidies—into the fiscal year 2010 and 2011 non-Recovery Act, or base, SRF program appropriations.

[7]The $6 billion in Recovery Act funds includes about $39 million in Clean Water Act (CWA) Section 604(b) Water Quality Management Planning Grants. Section 604(b) of the CWA requires the reservation each fiscal year of a small portion of each state's Clean Water SRF allotment—usually 1 percent—to carry out planning under Sections 205(j) and 303(e) of the CWA. States generally use 604(b) grants to fund regional comprehensive water quality management planning activities to improve local water quality. In addition, the $6 billion included a small amount of funding for trust territories, tribal governments, and the District of Columbia. Any reference to Recovery Act funds in this report excludes these water quality planning, territorial, tribal, and District of Columbia funds.

[8]Congressional Budget Office, *Public Spending on Transportation and Water Infrastructure* (Washington, D.C.: November, 2010).

In addition to program-specific provisions, water projects receiving Recovery Act funds had to meet the act's Buy American and Davis-Bacon provisions. The Recovery Act generally requires that all of the iron, steel, and manufactured goods used in the project be produced in the United States, subject to certain exceptions.[9] Federal agencies could issue waivers for certain projects under specified conditions, for example, if using American-made goods was inconsistent with the public interest or if the cost of goods was unreasonable; the act limits the "unreasonable cost" exception to those instances when inclusion of American-made iron, steel, or other manufactured goods would increase the overall project cost by more than 25 percent. Furthermore, agencies do not need to use American-made goods if they were not sufficiently available or not of satisfactory quality. In addition, the Recovery Act applied Davis-Bacon provisions to all Recovery Act-funded projects, requiring contractors and subcontractors to pay all laborers and mechanics at least the prevailing wage rates in the local area where they were employed, as determined by the Secretary of Labor.[10] Contractors were required to pay these workers weekly and submit weekly certified payroll records.

To enhance transparency and accountability over Recovery Act funds, Congress and the administration built numerous provisions into the act, including a requirement that recipients of Recovery Act funding—including state and local governments, private companies, educational institutions, nonprofits, and other private organizations—report quarterly on a number of measures. (Recipients, in turn, may award Recovery Act funds to subrecipients, which are nonfederal entities.) These reports are referred to as "recipient reports," which the recipients provide through one Web site, www.federalreporting.gov (Federalreporting.gov) for final publication through a second Web site, www.recovery.gov (Recovery.gov). Recipient reporting is overseen by the responsible federal agencies, such as EPA, in accordance with Recovery Act guidance provided by the Office of Management and Budget (OMB). Under this guidance, the federal agencies are required to conduct data quality checks of recipient data, and recipients can correct the data, before they are made available on Recovery.gov. Furthermore, additional corrections can be made during a continuous correction cycle after the data are released on Recovery.gov.

[9]Pub. L. No. 111-5, § 1605.

[10]Pub. L. No. 111-5, §1606.

A significant aspect of accountability for Recovery Act funds is oversight of spending. According to the federal standards of internal control, oversight should provide managers with current information on expenditures to detect problems and proactively manage risks associated with unusual spending patterns.[11] In guidance issued in February 2009, OMB required each federal agency to develop a plan detailing the specific activities—including monitoring activities—that it would undertake to manage Recovery Act funds. EPA issued its first version of this plan in May 2009, as required, and updated this document as OMB issued new guidance.[12]

All Recovery Act SRF Program Funds Have Been Awarded and Obligated, and With Some Exceptions, States Reported Supporting Major Infrastructure Projects and Helping Economically Disadvantaged Communities

Nationwide, the 50 states have awarded and obligated the almost $6 billion in Clean Water and Drinking Water SRF program funds provided under the Recovery Act and reported using the majority of these funds for sewage treatment infrastructure and drinking water treatment and distribution systems, according to EPA data. In the nine states we reviewed, states used these funds to pay for infrastructure projects that help to address major water quality problems, although state officials said that in some cases, Recovery Act requirements changed their priorities or the projects selected for funding. The nine states also used their Recovery Act funding to help economically disadvantaged communities, although officials indicated that they continue to have difficulty helping these communities.

[11]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999).

[12]The most recent version of the plan is EPA, *Environmental Protection Agency Recovery Act Plan: A Strong Economy and a Clean Environment* (Washington, D.C.: June 1, 2010).

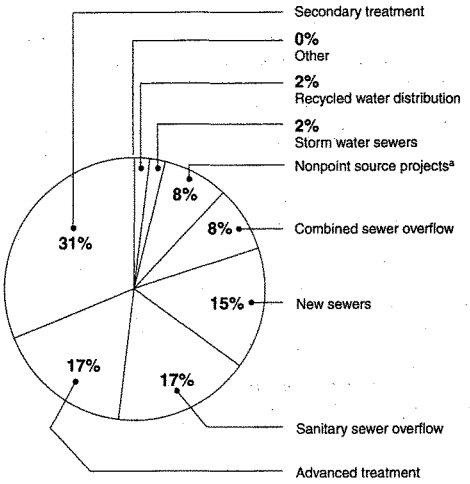
Nationwide, EPA Data Indicate States Used the Majority of Recovery Act Water Funds for Sewage Treatment Infrastructure and Drinking Water Treatment and Distribution Systems

As of March 30, 2011, states had awarded funds for contracts and obligated the $4 billion in Clean Water SRF program funds and $2 billion in Drinking Water SRF program funds provided under the Recovery Act. As we reported in May 2010, EPA indicated that all 50 states met the Recovery Act requirement to award Recovery Act funds to contracted projects by February 17, 2010, 1 year after the enactment of the Recovery Act.[13] In the 2 years since the Recovery Act was passed, approximately 79 percent, or $3.1 billion, of the Clean Water SRF program funds and approximately 83 percent, or $1.7 billion, of the Drinking Water SRF program funds have been drawn down from the Treasury by states.

Across the nation, the states have used the $6 billion in Recovery Act Clean and Drinking Water SRF program funds to support more than 3,000 water quality infrastructure projects. As shown in figure 1, the states used the majority of their Recovery Act Clean Water SRF program funds to pay for secondary and advanced treatment at wastewater treatment plants, as well as projects to prevent or mitigate sanitary sewer overflow. Wastewater treatment involves several processes, including primary treatment to remove suspended solids; secondary treatment to further remove contaminants using biological processes; and tertiary or advanced treatment to remove additional material in wastewater, such as nutrients or toxic chemicals. Sanitary sewer overflows can occur as a result of inclement weather and can pose significant public health and pollution problems, according to EPA.

[13]GAO-10-604.

Figure 1: Categories of Clean Water SRF Projects Funded by the Recovery Act Funds in 50 States

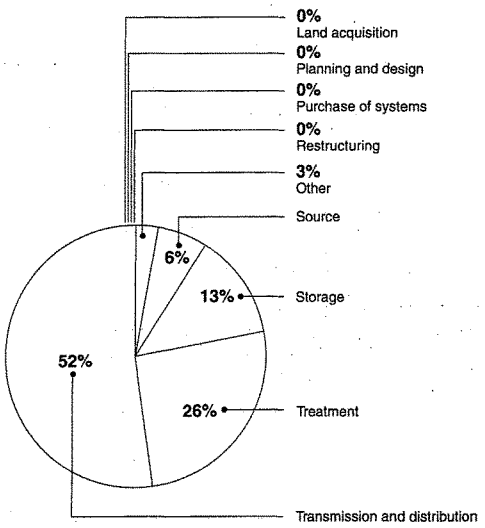


Source: GAO analysis of EPA data.

[a]Nonpoint source pollution refers to water pollutants from nonpoint sources—diffuse sources from a variety of land-based activities, such as timber harvesting, agriculture, and urban development.

As shown in figure 2, the states used about half of their Recovery Act Drinking Water SRF program funds to pay for projects to transmit and distribute drinking water, including pumps and pipelines to deliver water to customers. States used about 40 percent of their funds for projects to treat and store drinking water.

Figure 2: Categories of Drinking Water SRF Projects Funded by the Recovery Act in 50 States

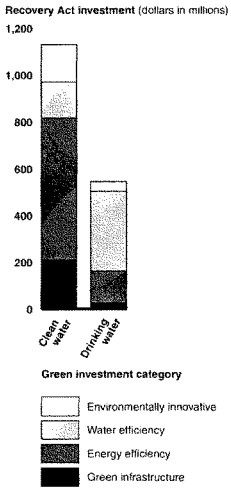


Source: GAO analysis of EPA data.

In addition to requiring that projects awarded funds be under contract within 1 year of the act's passage, the Recovery Act required that states use at least 20 percent of their funds for "green" projects. According to EPA data, all states met the 20-percent green requirement, with $1.1 billion of total Clean Water SRF program funds going to green projects and $544 million of total Drinking Water SRF program funds going to green projects. The goal of supporting green projects is to promote green infrastructure, energy or water efficiency, and innovative ways to sustainably manage water resources. Green infrastructure refers to a variety of technologies or practices—such as green roofs, porous pavement, and rain gardens—that use or mimic natural systems to enhance overall environmental quality. In addition to retaining rainfall and snowmelt and allowing them to seep into

groundwater, these technologies can mitigate urban heat islands,[14] and sequester carbon. Figure 3 shows the amount of Clean Water and Drinking Water SRF program funds that states awarded to green projects by type of project.

Figure 3: Total Recovery Act Funds Awarded to the 50 States for Green Projects under the Clean Water and Drinking Water SRF Programs, by Type of Project



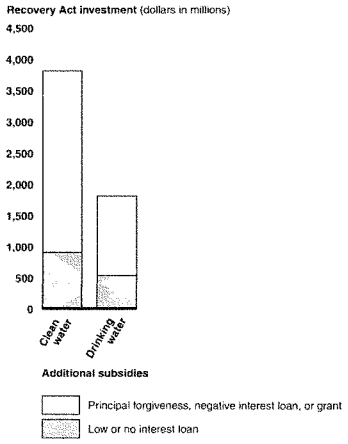
Source: GAO analysis of EPA data.

Nationwide, states also met the Recovery Act requirement to provide at least 50 percent of the Clean Water and Drinking Water SRF program funds as additional subsidies in the form of principal forgiveness, negative interest loans, or grants. Of the total Recovery Act funds awarded, 76

[14]Urban heat islands are metropolitan areas that are significantly warmer than the surrounding rural areas.

percent of Clean Water SRF Recovery Act funds and 70 percent of Drinking Water SRF Recovery Act funds were distributed as additional subsidies. Figure 4 shows the total Clean Water and Drinking Water Recovery Act funds awarded by states as principal forgiveness, negative interest loans, or grants. The remaining funds will be provided as low- or no-interest loans that will recycle back into the programs as subrecipients repay their loans.

Figure 4: Amount of Recovery Act Funds Awarded by the 50 States as Principal Forgiveness, Grants, or Negative Interest Loans and Low- or No-Interest Loans



Source: GAO analysis of EPA data.

Recovery Act Water Funds Generally Addressed Major Water Quality Problems in Nine States, Although Recovery Act Requirements Changed State Priorities or Projects

In the nine states we reviewed, Recovery Act Clean and Drinking Water SRF funding has been used to address the major clean and drinking water problems in the state. The nine states we reviewed received a total of about $832 million in Recovery Act SRF program funds—about $579 million for their Clean Water SRF programs and about $253 million for their Drinking Water SRF programs. In total, these funds supported 419 clean and drinking water projects. Officials in the states we reviewed said, however, that Recovery Act priorities—particularly the need for projects to be under contract 1 year after the passage of the Recovery Act or green projects—either changed their priorities for ranking and funding projects or changed the projects they funded.

To award SRF program funds, each of the nine states we reviewed used a system to score and prioritize water projects seeking funds to address water quality problems. To do this, states generally rank or group water infrastructure projects, submitted by local municipalities or utilities, using a system of points. The projects with the most points are considered the highest priority on the list of projects for funding and, in all but one state we reviewed,[15] state officials used their ranking system to address major water problems. In most of the nine states we reviewed, compliance is a key aspect of their ranking system, allowing points to be awarded to infrastructure projects that help the states eliminate causes of noncompliance with federal or state water quality standards and permits. Officials in most of the nine states said that they generally obtain information on their water systems' compliance with federal and state water quality standards through discussions with their program compliance staff and from state databases.

Officials in the nine states we reviewed told us that the Recovery Act requirements—the readiness of a project to proceed; the green project requirement; and, to a lesser degree, the Buy American and Davis-Bacon provisions—caused them to modify their ranking systems or otherwise modify the list of projects that receive Recovery Act funding.

Readiness of a project to proceed. In the nine states, officials included readiness to proceed and other Recovery Act requirements in their ranking

[15]Alabama officials indicated that the ranking system for their Clean Water program was developed in the 1980s to address impaired waters and did not reflect the state's current clean water problems. The officials said that the state's major water quality problem is now aging infrastructure and that they were planning to revise their ranking system based on the current water quality problems.

system and selected projects on the basis of that ranking system or said that they did not fund—or bypassed—top-ranked projects that were not ready to proceed to construction by February 17, 2010, 1 year after the passage of the Recovery Act. For example, Washington State's two top-ranked clean water projects did not receive Recovery Act SRF program funds because they could not meet the February 2010 deadline. The projects were to decommission septic systems and construct a wastewater treatment plant to reduce phosphorus discharges to the Spokane River. In Wyoming, many of the projects that were not ready to proceed were water treatment plants, which state officials said take longer to design and plan for construction. Although these higher-ranked projects did not receive Recovery Act funds, at least two states were able to fund these projects in other ways, such as through state grants or non-Recovery Act SRF program funds.

Green project requirement. Three states listed green projects separately from other projects. For example, Washington State officials told us that they established a green projects category because they had anticipated that energy and water efficiency projects (green projects) would not score well under their ranking system, which focuses on water quality protection and improvements. Other states funded green projects ahead of higher-ranked projects. For example, Maryland bypassed many projects to fund the first green-ranked project on its list. Similarly, Nevada did not fund 11 higher-ranked projects and funded a lower-ranked drinking water project that had green components.

Buy American and Davis-Bacon provisions. State officials identified a few projects that did not proceed because potential subrecipients either did not want to meet one or more Recovery Act requirements, such as the Buy American and Davis-Bacon provisions, or did not want to increase the cost of their projects. For example, local officials in Alabama withdrew their application for a drinking water project because the project was already contracted without Buy American and Davis-Bacon wage requirements, and an addendum to the contract to meet the regulations would have increased the project's cost. Similarly, officials in all nine states said that a few communities chose not to apply for or withdrew from the Recovery Act funding process to avoid paperwork or the additional costs associated with the act's requirements. For example, Wyoming officials said that potential subrecipients for three clean water projects refused funding, citing time constraints or difficulty meeting Buy American requirements.

States Supported Economically Disadvantaged Communities, in Part Using Additional Subsidies Authorized under the Act, Although Officials Cited Continuing Difficulty in Helping these Communities

Although the Recovery Act did not require states to target Clean and Drinking Water SRF program funds to economically disadvantaged communities, six of the nine states that we reviewed distributed more than $123 million in clean water funds, and eight of the nine states distributed almost $78 million in drinking water funds, to these communities.[16] This amount represents about 24 percent of the almost $832 million in Recovery Act funds that the states were awarded.[17] As shown in table 2, a large majority of the funds provided to these communities were provided as additional subsidies—grants, principal forgiveness, and negative interest loans.[18]

Table 2: Number of Economically Disadvantaged Community Projects Funded for Nine States under the Recovery Act SRF Programs

Dollars in millions

SRF Programs	Total Clean and Drinking Water SRF projects funded	Number of projects funded in economically disadvantaged communities	Amount of SRF funds provided to economically disadvantaged projects	Amount of SRF funds to economically disadvantaged projects provided as additional subsidies	Percent of additional subsidies provided to economically disadvantaged projects
Clean Water	261	70	$123	$101	82%
Drinking Water	158	63	$78	$66	85%
Total	**419***	**133**	**$201**	**$167**	**83%**

Source: GAO analysis of state provided data.

*The nine states funded a total of 419 clean and drinking water projects; all 50 states funded more than 3,000 clean and drinking water projects.

According to officials in five states, they provided additional subsidies to economically disadvantaged communities because the communities would otherwise have had a difficult time funding projects. For example, officials in Nevada told us that clean and drinking water subsidies were directed to

[16]States differ in how they define disadvantaged communities. In general, disadvantaged community status takes into account factors such as median household income and community size.

[17]In our May 2010 report, we found that the 14 states in that review provided $1.2 billion, or about 43 percent of total funds, for assistance in disadvantaged communities.

[18]In total, the nine states in our review provided more than $558 million of their Recovery Act funds—67 percent—in the form of additional subsidies to all projects. Of this money, 30 percent was awarded to projects in economically disadvantaged communities.

such communities because these communities not only have a difficult time funding projects, they also have some of the projects with the highest priority for addressing public health and environmental protection concerns. New Mexico officials told us that they directed additional drinking water subsidies to economically disadvantaged communities because these communities have historically lacked access to capital. In addition, officials in a few other states told us that small and economically disadvantaged communities often lack the financial means to pay back loans from the SRF programs or lack funds to pay for the upfront costs of planning and designing a project. Officials in at least two states also said that many small and economically disadvantaged communities even lack full-time staff to help manage the water infrastructure.

Even with the additional subsidies available for projects, officials in a few states said that small and economically disadvantaged communities found it difficult to obtain Recovery Act funds. For example, Missouri officials told us that the Recovery Act deadline was the single most important factor hindering the ability of small and economically disadvantaged communities from receiving funding. New Mexico officials also told us that because small and economically disadvantaged communities typically do not have funds to plan and develop projects, few could meet the deadline and several projects that sought Recovery Act funds could not be awarded funding owing to the deadline.

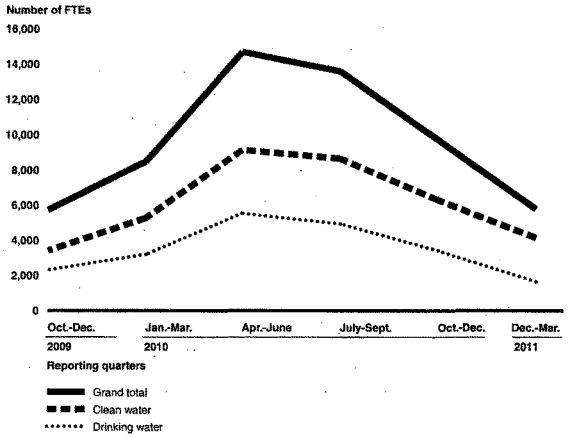
EPA's Office of Inspector General (OIG) noted an additional challenge for EPA related to economically disadvantaged communities. In April 2011, the OIG reported that EPA could not assess the overall impact of Recovery Act funds on economically disadvantaged communities because it did not collect data on the amount of SRF program funds distributed to economically disadvantaged communities nationwide.[19] The OIG recommended that EPA establish a system that can target program funds to its objectives and priorities, such as funding economically disadvantaged communities.

[19]EPA OIG, *Evaluation Report: EPA Faced Multiple Constraints to Targeting Recovery Act Funds*, Report No. 11-R-0208 (Washington, D.C.: April, 11 2011).

The Recovery Act Funded Jobs, and Federal and State Efforts to Oversee the Recovery Act SRF Programs Continue

For the quarter ending December 2009 through the quarter ending in June 2010, the number of full-time equivalent jobs (FTE) paid for with Recovery Act SRF program funds increased each reporting quarter from about 6,000 to 15,000 quarterly FTEs for planning, designing, and building water projects, as shown in figure 5. As projects are completed and funds spent, the number of FTEs funded has declined to about 6,000 for the quarter ending March 2011. Following OMB guidance, states reported FTEs that included only the jobs directly paid for with Recovery Act funding, not the employment impact on suppliers of materials (indirect jobs) or on the local communities (induced jobs). In addition, state officials told us that, although funding varies from project to project, 10 percent to 80 percent of a project's funding is typically for materials such as cement for buildings and equipment such as turbines, pumps and centrifuges, and the remainder pays for labor or FTEs.

Figure 5: SRF FTE Positions Reported Funded With Recovery Act Funds in 50 States



Source: GAO analysis of EPA data.

Note: We did not include data from the first reporting quarter due to concerns about comparability. Nearly all recipients reported funding at least a partial FTE with Recovery Act funds. In comparing clean and drinking water funds across the reporting quarters from October 2010 through March 2011, we found that the percentage of recipients who reported funding at least a partial FTE ranged from 97 percent to 100 percent.

To oversee Recovery Act projects and funds, EPA developed an oversight plan, as required by OMB. In response to our May 2010 bimonthly review and recommendation, EPA updated its guidance to include specific steps to monitor compliance with Recovery Act Clean and Drinking Water SRF program provisions.[20] Our current work is showing that EPA and the states have made progress in implementing EPA's updated plan, which included details on frequency, content, and documentation needed for regional reviews of state programs and state reviews of projects. EPA officials said that regional staff are visiting all 50 states and reviewing their Clean and

[20]GAO-10-604.

Drinking Water SRFs according to its plan. Furthermore, officials in the nine states we reviewed indicated that they have visited Recovery Act projects at least once during construction, as required in EPA's oversight plan.

Challenges in Implementing Recovery Act SRF Programs Highlight Potential Future Challenges for SRF Programs

Our May 2010 report identified the challenge of maintaining accountability for Recovery Act funds and recommended improved monitoring of Recovery Act funds by EPA and the states.[21] As we note above, our current work shows that EPA and the nine states we reviewed have made progress in addressing this challenge. Two challenges EPA and the states faced in spending Recovery Act SRF program funds may continue as requirements introduced with the Recovery Act are incorporated into the base programs. Specifically, in fiscal years 2010 and 2011, the Clean and Drinking Water SRF programs were required to include green projects and additional subsidization provisions.

Encouraging green projects. The effort to support green projects was included in EPA's fiscal year 2010 and 2011 appropriations for the base Clean and Drinking Water SRF programs. As we discussed above, under the green requirement in the Recovery Act, in certain cases state officials said they had to choose between a green water project and a project that was otherwise ranked higher to address water quality problems. We found similar results in our May 2010 report, when officials in some of the 14 states we reviewed said that they gave preference to green projects for funding purposes, and sometimes ranked those projects above another project with higher public health benefits. In addition to competing priorities for funding, EPA's OIG found, in its February 2010 report, that a lack of clear guidance on the green requirement caused confusion and disagreements as to which projects were eligible for green funding.[22] Officials in two of the nine states we reviewed noted that the goal of supporting green projects was not difficult to achieve because they had already identified green projects, but officials in four other states said that achieving the 20-percent green project goal was difficult to achieve, leading one official to suggest that green projects be encouraged without setting a fixed percentage of program funds.

[21]GAO-10-604.

[22]EPA OIG, *Evaluation Report: EPA Needs Definitive Guidance for Recovery Act and Future Green Reserve Projects*, Report No. 10-R-0057 (Washington, D.C.: Feb. 1, 2010).

Providing subsidization. The fiscal years 2010 and 2011 appropriations for the Clean and Drinking Water SRF programs also continued the requirement to provide additional subsidies in the form of principal forgiveness, negative interest loans, or grants. The subsidy provisions reduced the funds available to use as a subsidy from a minimum of 50 percent of total Recovery Act funds to a minimum of 30 percent of base SRF program funds.[23] As with the Recovery Act, the appropriations in fiscal year 2010 and 2011 do not require this additional subsidy to be targeted to any types of projects or communities with economic need,[24] and as the recent EPA OIG report notes, there are no requirements for EPA or the states to track how these subsidies are used. The Clean and Drinking Water SRF programs were created to be a sustainable source of funding for communities' water and wastewater infrastructure through the continued repayment of loans to states. Officials in four of the nine states we reviewed identified a potential challenge in continuing to provide a specific amount of subsidies while sustaining the clean and drinking SRF programs as revolving funds. State officials pointed out that when monies are not repaid into the revolving fund, the reuse of funds is reduced and the purpose of the revolving SRF program changes from primarily providing loans for investments in water infrastructure to providing grants.

Mr. Chairman, Ranking Member, and Members of the Committee, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Committee might have.

GAO Contact and Staff Acknowledgments

For further information regarding this statement, please contact David C. Trimble at (202) 512-3841 or trimbled@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this statement include Jillian Fasching, Susan Iott, Jonathan Kucskar, Carol Peterson, Beverly Ross, Carol Herrnstadt Shulman, Dawn Shorey, Kathryn Smith, and Kiki Theodoropoulos.

[23]For the Clean Water SRF program, the 30 percent-minimum only applies to the portion of appropriated funds exceeding $1 billion.

[24]The Drinking Water SRF program had a subsidy provision that allowed states to use up to 30 percent of their annual grant to provide additional subsidies to help economically disadvantaged communities. 42 U.S.C. § 300j-12(d).

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June 6, 2011

The Honorable John L. Mica
Chairman
Committee on Transportation and Infrastructure
House of Representatives

Attention: Tracy Mosebey
Suzanne Mullen

Dear Mr. Chairman:

Enclosed is our response to the questions submitted for the record regarding our May 4, 2011, testimony entitled *Recovery Act: Use of Transportation Funds, Outcomes, and Lessons Learned* (GAO-11-610T) and *Recovery Act: Preliminary Observations on the Use of Funds for Clean and Drinking Water Projects* (GAO-11-642T).

If you should have any transportation-related questions, please contact Phillip Herr at 202-512-8509, or herrp@gao.gov; for any water-related questions, please contact David Trimble at 202-512-9338, or trimbled@gao.gov

Sincerely yours,

Phillip Herr
Director, Physical Infrastructure

David Trimble
Director, Natural Resources & Environment

Enclosure

QUESTIONS FOR THE RECORD

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE'S MAY 4, 2011 HEARING ENTITLED "STIMULUS STATUS: TWO YEARS AND COUNTING"

General EPA Stimulus Questions

1. **Fifty percent of the Clean Water State Revolving Fund Recovery Act dollars are not required to be repaid. Normally $0.75 on the dollar is repaid to the state revolving fund over 10 years. In the case of the Recovery Act dollars that don't have to be repaid to the fund, there is no recapitalization of the funds. Essentially, EPA has turned the state revolving fund into a simple grant program. Was this the intention of the Stimulus bill?**

The purposes of the Recovery Act were multiple: (1) to preserve and create jobs and promote economic recovery; (2) assist those most impacted by the recession; (3) provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) stabilize state and local government budgets. Under the State Revolving Fund provisions, the Recovery Act required that states provide additional subsidies for projects in the form of principal forgiveness, grants, or negative interest loans. None of principal forgiveness loans or grants will be repaid, and only a portion of the negative interest loans would be repaid, to a state's revolving fund, thereby reducing the amount of funds repaid to the fund to be reused for other projects. Officials in four of the nine states we reviewed noted that this provision, if it is continued, could reduce the funds repaid to the revolving funds.

2. **GAO testified that Stimulus requirements caused states to change their priorities for funding or bypass higher ranked projects as they selected projects for funding. Why did they do this?**

The Recovery Act contained several requirements that competed with the states' existing priorities. Each of the nine states we reviewed used a ranking process to identify high-priority projects to receive SRF funding. The Recovery Act required that the states award funds to projects contracted, or ready to proceed, as of February 17, 2010; to use 20 percent of their funds for green projects; pay Davis-Bacon wages, and follow the act's Buy American provisions. Each state incorporated these requirements into their ranking process as they selected projects to award SRF funding. In the end, officials in the nine states said they were able to address major water quality projects in their states with Recovery Act funds.

3. **Some communities withdrew from receiving Stimulus funds. Why is this?**

Officials in the states we visited had anecdotes of a few communities that did not want to take on Recovery Act requirements and opted out of receiving funds. In some cases, the communities already had contracts and did not want to rebid the contracts to include reporting, Davis-Bacon, or Buy American requirements because this would have increased the projects' costs. A few communities preferred to have their projects funded from the base program to avoid what they

thought would be additional costs associated with the requirements. Some communities did not want to take on the additional work.

4. Did any states have issues with the Davis-Bacon requirement in the act?

Overall, officials in the nine states we reviewed said that the Davis-Bacon provision had not caused much of a problem. Officials in six of the nine states we reviewed said that the Davis-Bacon prevailing wage rates were lower than or the same as the states' prevailing wage rates. Communities in some states reconsidered projects, especially for those projects already contracted, because of potential additional costs due to the Davis-Bacon requirement. The main challenge that states said they had with the Davis-Bacon requirement was in implementation, including getting guidance and monitoring that the requirement was met. Some communities hired consultants to satisfy record keeping requirements.

5. You mentioned that the states faced challenges in meeting the green and subsidy requirements for the State Revolving Funds. Can you explain?

Encouraging green projects. We found in both our 2010 and 2011 reports that in certain cases state officials said they had to choose between a green water project and a project that was otherwise ranked higher to address water quality problems. Officials in two of the nine states we reviewed for our 2011 report noted that the goal of supporting green projects was not difficult to achieve because they had already identified green projects, but officials in four other states said that achieving the 20-percent green project goal was difficult to achieve. These states said that they had to solicit additional projects and work with communities to get enough green projects and that EPA's guidance changed during the process. EPA officials added that they had also heard that achieving the green requirement was difficult in some states, particularly for the drinking water program. However, the officials also said that they were encouraging states to include green components in their drinking water projects rather than seeking solely green projects.

Providing additional subsidies. The base Clean and Drinking Water SRF programs were created to be a sustainable source of funding for communities' water and wastewater infrastructure through the continued repayment of loans to states. Officials in four of the nine states we reviewed identified a potential challenge in continuing to provide a specific amount of subsidies while sustaining the clean and drinking SRF programs as revolving funds. State officials pointed out that when monies are not repaid into the revolving fund, the reuse of funds is reduced and the purpose of the revolving SRF program changes from primarily providing loans for investments in water infrastructure to providing grants.

6. GAO reported in 2010 that officials across the country had mixed opinions of how the Davis-Bacon requirements in the Stimulus would affect the Stimulus funded projects, in terms of cost and executability. What does this mean for the effectiveness of the Stimulus program and whether jobs are being created?

We did not assess the effect of Davis-Bacon requirements on job creation or the Stimulus program. Our 2010 report found that the requirements were a challenge and discussed the new

requirements with federal, state, and local officials involved with 40 programs that were newly subject to the requirements. These officials differed on whether the provisions would affect program costs, but they generally did not expect the provisions to inhibit the ability to achieve Recovery Act goals, including the creation or retention of jobs. In our 2010 and 2011 reports on Recovery Act SRFs, we found that, despite a few challenges, the states we reviewed were generally able to meet the Davis-Bacon requirement.

7. GAO recommended that EPA work with the states to implement specific oversight procedures to monitor and ensure subrecipients' compliance with SRF program and Recovery Act requirements. What sorts of oversight procedures should EPA and states implement? Have they done so?

In response to our recommendation, EPA updated its oversight plan to include specific details of headquarters, regional, and state review of the SRF Recovery Act funding and projects. The plan now calls for:

- EPA headquarters staff should visit projects under both SRF programs in every region in fiscal years 2010 and 2011, review all Clean Water SRF programs and all Drinking Water SRF programs for these years, and provide training and technical assistance, as needed.
- EPA's Office of Wastewater Management and Office of Ground Water and Drinking Water will report bimonthly to the Assistant Administrator for Water on oversight activities.
- Regional staff should conduct state reviews twice a year using an EPA-provided checklist or comparable checklist, examine four project files, and conduct four transaction tests, which can be used to test if an internal control is working or if a dollar error has occurred in the processing of a transaction. In addition, regional staff are to discuss each state's inspection process and audit findings with state officials, and update headquarters staff on any findings or potential issues.
- The regions are to submit to headquarters (1) program evaluation reports, which describe how states are managing their Recovery Act SRF funds and projects; (2) Recovery Act project review checklists, to examine compliance with Recovery Act requirements; and (3) transaction testing forms, to determine if any erroneous payments were made.
- Regional staff should conduct at least one site inspection of a clean water project and a drinking water project in each state each year.

For the most part, EPA and state officials generally carried out the instructions in EPA's oversight plan. In some cases, however, EPA has changed its plan. For example, although the oversight plan recommends headquarters staff visit all regions in 2011, EPA officials saw greater benefit instead in providing regional training. EPA officials also said that because of states' revenue problems, in 2011 EPA contractors would be available to help states carry out site visits to projects.

General Transportation Stimulus Questions

1. **In your statement, you said that stimulus highway funds were used primarily for pavement improvement projects and that transit funds were used to upgrade facilities and purchase and rehabilitate vehicles. Why were these types of projects chosen and did they further the goals of the stimulus (to jumpstart the nation's economy)?**

   State highway officials selected a large percentage of pavement improvement projects and transit operators used Recovery Act funds to upgrade transit facilities and purchase new vehicles for some of the following reasons:

   - In keeping with the Recovery Act requirements to obligate funds within 1 year of the date of apportionment, officials gave preference to projects that could be started expeditiously and completed within 3 years;
   - Given the short obligation and spending timeframes, projects were expected to provide employment quickly;
   - Recovery Act projects were also selected because they supported agency short- and long-term goals, as reflected in State Transportation Improvement Plans.

   State and federal officials said these projects supported the purposes of the Recovery Act because they helped pay for jobs across various transportation modes and the projects invested in transportation infrastructure.

2. **One of the most important provisions in the stimulus was the maintenance-of-effort provision, requiring states to continue spending their regular highway formula dollars. Why did 21 states fail to meet the maintenance-of effort requirement?**

   According to a January 2011 preliminary DOT report on maintenance of effort, states gave the following reasons for why they did not maintain their level of spending:

   - Reduction in dedicated revenues for transportation;
   - State legislatures approved a lower than expected level of transportation funding in the state budget;
   - Project bids came in lower than engineering estimates used for planning purposes, and states were unable to initiate additional projects in time;
   - Transit expenditures are controlled by a party other than the state; and
   - Mistakes in calculating planned transportation expenditures.

3. **Why have only half of the stimulus transportation funds been spent?**

   According to DOT data, as of March 31, 2011, DOT had expended more than $26 billion or about 59 percent of the $48.1 billion it received under the Recovery Act. However, some DOT programs have expended nearly all allotted Recovery Act funds.

For example, more than 95 percent of FAA's grants-in-aid to airports program funding has been expended as have more than 70 percent of FHWA's highway infrastructure investment program funds have been spent. For discretionary grant programs, like the high speed intercity passenger rail and Transportation Generating Economic Recovery (TIGER) Grants, project construction is getting underway. Also, under the Recovery Act 30 percent of funds were suballocated to local governments, but expenses may not have been invoiced since localities with relatively small projects tend to seek reimbursement in one lump sum at the end of a project to minimize administrative costs.

4. Why hasn't DOT assessed the economic impact of the stimulus investment in transportation?

The goals of the Recovery Act were not only to promote economic recovery and to preserve and create jobs but also to make investments in transportation and other infrastructure that would provide long-term economic benefits. However, the Recovery Act did not include requirements that DOT or states measure the impact of funding on transportation projects to assess whether these projects ultimately produced long-term benefits.

Nevertheless, as we have reported, it is important for organizations both to measure performance to understand the progress they are making toward their goals and to produce a set of performance measures that demonstrates results. DOT officials told us that they are looking for opportunities to use existing databases and new Recovery Act data to better understand and measure the outcomes and impacts of Recovery Act projects, but plans to do so have not been finalized. DOT also stated that limitations in its data systems, coupled with the fact that Recovery Act funds represented only about one year of additional funding for some transportation programs, would make assessing the benefits of Recovery Act projects difficult. We continue to believe, however, that it is important for DOT to measure performance to understand the progress they are making toward their goals and to produce a set of performance measures that demonstrates results.

DOT Discretionary Grant Programs (TIGER and HSIPR grants)

5. In your report on the TIGER Grant selection process, GAO found that half the awardees received a highly recommended rating from the technical teams and half received a recommended rating. Were the best projects selected, and why?

The criteria used to select TIGER projects were designed to give priority to projects that could be completed within 3 years and identify projects that could produce long-term benefits. Although it is too soon to evaluate the impacts of the projects, to the extent that DOT adhered to these criteria throughout its selection process, we would expect these projects to produce results.

6. **The administration has emphasized the need for accountability, efficiency, and transparency and made it a central principle of the Stimulus Bill. To what extent did DOT publicly communicate the reasons behind discretionary grant selection decisions?**

DOT communicated many aspects of the evaluation and selection process for both discretionary grant programs, such as the criteria, funding priorities and key dates for evaluating and selecting projects, as well as a list of awards and award amounts. Further, our examination of more than 20 similar discretionary grant programs across the federal government found that the TIGER and HSIPR programs typically communicated at least as much (and in several cases more) information.

However, the DOT grant programs did not substantively communicate the reasons for selecting some projects and not others. While we did not find requirements in the Recovery Act or any other guidance instructing federal programs to publicly disclose the reasons for their selection decisions, in not doing so DOT may have missed an opportunity to provide Congress with information to help it better understand the basis on which funding was distributed. Such information could help inform Congress as to whether and how to continue with these grant programs, provide a roadmap for administering future competitive grant programs, and help build confidence in DOT's institutional ability to administer these types of programs. As we recommended in our recent report on the TIGER grant program, DOT should consult with Congress to develop and implement a strategy to disclose information regarding award decisions.

7. **You recently reported that the cost and benefit information provided by HSIPR and TIGER grant applicants varied in both quality and comprehensiveness. What can DOT do to ensure it is making decisions based on accurate and reliable data?**

We have recommended that DOT take two actions to improve data on proposed projects.[1] First, DOT should identify the data needed to conduct cost-effective modeling and analysis for intercity rail, and to identify strategies for addressing data limitations and barriers to accessing existing data. Second, DOT should provide ongoing guidance and training for rail project applicants on developing benefit and cost information, and provide more direct and consistent requirements for assessing benefits and costs. Such guidance and training should direct applicants to follow federal guidance, require that applicants clearly communicate their methodology for calculating project benefits and costs—including assumptions underlying calculations and uncertainty in estimates, and ensure that applicants receive clear and consistent guidance on values to apply for key assumptions used.

[1]GAO. *Intercity Passenger and Freight Rail: Better Data and Communication of Uncertainties Can Help Decision Makers Understand Benefits and Trade-offs of Programs and Policies.* GAO-11-290. (Washington, DC: Feb. 24, 2011).

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