



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**Perspectives on FRA's Oversight of the
High-Speed Intercity Passenger Rail
Program and of Federal Funding for the
California High-Speed Rail Authority**

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Subcommittee on Railroads, Pipelines, and Hazardous Materials
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Introduction

Chairman Denham and Members of the Subcommittee:

Thank you for inviting me here to discuss our past and ongoing audit work related to the Federal Railroad Administration's (FRA) oversight of the High-Speed Intercity Passenger Rail (HSIPR) program. As you know, FRA administers the HSIPR program, a discretionary grant program created by the Passenger Rail Investment and Improvement Act of 2008 (PRIIA).¹ Between 2009 and 2011, Congress appropriated over \$10 billion for the program, and as of July 2018, FRA had disbursed \$8.6 billion of those funds. Nearly 39 percent of HSIPR program funding has been dedicated to California's planned high-speed rail corridor between San Francisco and Los Angeles, managed by the California High-Speed Rail Authority (CHSRA).

Since HSIPR was launched, we have identified a number of implementation challenges for FRA, including developing written policies and practices to guide the program's grant lifecycle process and oversight activities. To date, we have issued 21 recommendations related to FRA's oversight of HSIPR. FRA has taken action on 20 of them, and we continue to monitor FRA's oversight of the program.

My testimony today will focus on (1) steps FRA has taken to address our recommendations related to HSIPR program oversight and (2) the status of our ongoing audit on FRA's oversight of its grants to CHSRA for high-speed rail.

Summary

FRA faced several challenges in developing an oversight framework for the HSIPR program but took action to address many of them in response to our previous findings and recommendations. For example, FRA improved some of its HSIPR project-planning materials, which now include guidance to help grantees such as CHSRA forecast ridership and revenue, evaluate public benefits, and estimate operating costs. FRA also took steps to address certain weaknesses in its oversight of HSIPR funds. For example, following our 2015 audit that identified challenges with amending and monitoring compliance with HSIPR grant agreements, FRA updated its guidance on identifying and mitigating risks during the grant amendment process and added a requirement that Agency staff report suspected fraud, waste, or abuse to DOT-OIG for investigation. Other FRA actions

¹ Pub. L. No. 110-432 Div. B.

based on our recommendations include grant-management training for its staff and a web-based tracking tool that can help the Agency monitor California's compliance with the terms of its grant agreement. Given the importance of grant oversight for ensuring proper stewardship of taxpayer dollars, our office continues to monitor FRA's efforts to oversee the HSIPR program. At your request, Mr. Chairman, we recently initiated an audit of FRA's oversight of its grants to the California high-speed rail project, which will assess the Agency's risk analysis, assessment, and mitigation efforts, as well as its procedures for overseeing the expended Federal funds. To meet these objectives, we will examine FRA's management of the HSIPR program in general and specifically the oversight of its grants to CHSRA. Given that our audit is still in its initial phase, the evidence we have collected is not yet sufficient to allow us to discuss our preliminary findings. We expect to report on the results of our review in spring 2019.

Background

Congress directed FRA in PRIIA to establish a grant program to fund various types of intercity passenger rail improvements, while continuing to carry out its prior responsibilities, including its oversight of Amtrak. These new responsibilities greatly expanded FRA's role in developing and managing the Nation's rail system. In addition, 4 months after PRIIA's enactment, the American Recovery and Reinvestment Act of 2009 (ARRA)² appropriated \$8 billion to FRA to develop and implement the HSIPR grant program and established aggressive requirements for the timing of fund obligations and expenditures. Congress has since not reauthorized the HSIPR program, but the Fixing America's Surface Transportation Act of 2015³ established a new Consolidated Rail Infrastructure and Safety Improvement program to fund rail infrastructure and safety projects.

In 2008, California voters approved Proposition 1A, which authorized \$9.95 billion in State funding for the construction of the California high-speed rail system and connection improvements to existing passenger rail systems. CHSRA is charged with planning, designing, and constructing the 520-mile rail system, which is expected to operate between San Francisco and Los Angeles at speeds of up to 220 miles per hour.

Through the HSIPR grant program, FRA awarded the State approximately \$3.3 billion in capital construction funds and \$231 million for environmental review and preliminary engineering work, for a total of approximately \$3.5 billion

² Pub. L. No. 111-5.

³ Pub. L. No. 114-94.

(see table). The California high-speed rail project is the largest recipient of HSIPR funds,⁴ with approximately 39 percent of program funds obligated. Most of the funds awarded to the project were appropriated under ARRA and, in accordance with the governing grant agreement, were expended prior to the statutory deadline of September 30, 2017.⁵ An additional \$929 million in Federal funding—appropriated in fiscal year 2010—remains unexpended. Under the terms of its grant agreement with FRA, CHSRA must first provide State funds to match the Federal ARRA expenditures before FRA will release the fiscal year 2010 appropriated funding. Through the end of fiscal year 2017, CHSRA had provided \$293.1 million of its total \$2.5 billion matching share for the Federal ARRA grant.

Table. California High-Speed Rail: Identified and Proposed Sources of Funding

Funding Source	Amount	Purpose
American Recovery and Reinvestment Act (Federal)—awarded August 17, 2010	\$2.6 billion	Planning and environmental work on Phase I, as well as construction on the initial Central Valley segment
FY2010 Appropriations (Federal)—awarded December 16, 2009	\$0.9 billion	Construction on the initial Central Valley segment
California Proposition 1A Bond Sale Proceeds	\$10 billion	Planning and construction throughout Phase I
California Cap-and-Trade* proceeds received through December 2017	\$1.7 billion	
Future California Cap-and-Trade	\$4 billion to \$4.5 billion	
California Cap-and-Trade Financing projections from 2024-2050*	\$3.9 billion to \$11.1 billion	
Projected Total Funding for All of Phase I	\$23 billion to \$30.7 billion**	
Projected Total Cost for All of Phase I	\$63.2 billion to \$98.1 billion	

Source: CHSRA 2018 business plan and grant agreements

*California launched its Cap-and-Trade program in 2013. Through the program, the California Air Resources Board sets an overall emissions target for the state and sets a limit on carbon dioxide emission levels from certain entities. A portion of the proceeds from the sale of emissions allowances finances the high speed rail project.

**These projected sources of funding are between \$32.5 billion and \$75.1 billion less than the total projected costs for the entire Phase I system (San Francisco to Anaheim).

⁴ Other major recipients of HSIPR grant funding include the States of Washington (\$751.6 million), Illinois (\$1.1 billion), and North Carolina (\$520 million).

⁵ \$5.1 million in unspent funds were returned to the Treasury following their statutory expiration.

FRA's largest grant to CHSRA⁶ is directed toward completion of preliminary engineering and environmental review in support of the entire 520-mile system and construction of an initial 119-mile segment of the system in California's Central Valley. The grant agreement requires CHSRA to match the \$2.5 billion Federal investment and complete the scope of work.

Since 2012, we have issued seven reports related to the HSIPR program (see exhibit).

FRA Has Faced Challenges in Implementing and Overseeing the HSIPR Program but Has Made Improvements

Since the creation of the HSIPR program, FRA has faced challenges in implementing and overseeing it, including administering and managing over \$10 billion in grant funds. To its credit, FRA took action on our recommendations related to project planning and worked to address certain weaknesses we identified in its oversight and management of HSIPR funds. Such actions have the potential to improve any future administration of California's railroad programs, including the high-speed rail project.

FRA Has Taken Steps To Improve Its Guidance for High-Speed Rail Planning and Decision Making

FRA's challenges with the HSIPR program have included developing a coherent plan for rail that integrates the entire country and communicating guidance to help States such as California plan and implement high-speed rail projects. For example, in 2012 we reported that the lack of a clearly defined, long-term vision for national intercity passenger rail impeded States' abilities to develop their own

⁶ FRA has executed four grant agreements that will benefit California High-Speed Rail, including: (1) an agreement with CHSRA governing \$2.5 billion in ARRA funds, referenced above; (2) an agreement with CHSRA to govern the award of approximately \$930 million appropriated in fiscal year 2010, which also supports construction of an initial rail segment in the Central Valley; (3) an agreement with CHSRA that contributes funding to a project to install positive train control on existing track between San Jose and San Francisco; and (4) an agreement with the Transbay Joint Powers Authority that contributes funding to the construction of the Transbay Terminal Center.

rail plans and passenger rail improvement projects.⁷ Uncertainty about the Federal role and interstate coordination also made it difficult to attract private sector investment.

FRA has since taken action to address six of our recommendations related to project-planning guidance. For example, FRA developed a variety of materials to respond to our recommendation that it complete a National Rail Plan with measurable performance goals and clear stakeholder roles. One significant component of those efforts was a rail planning study for the Southwest Region—comprised of California, Nevada, and Arizona—which identified high-level “candidate corridors” for potential investment, alternatives for addressing certain multi-state planning governance and institutional challenges, and lessons learned that could be applied to future regional planning efforts. In addition, in response to PRIIA requirements and our recommendation, FRA issued guidance to help States develop their own rail plans, including the processes for plan development, specific elements that must be included, and data and methodological requirements. These plans and guidance are now available to California as it continues to develop both its overall State rail planning efforts as well as any future business plans specifically for the high-speed rail program.

FRA has also taken some steps to improve its ability to make funding and planning decisions. Specifically, one of FRA’s key responsibilities and challenges in implementing HSIPR is assessing the economic viability of proposed projects and deciding which ones to fund. In 2012, we reported that FRA had established only minimal requirements and provided HSIPR grant applicants limited guidance on how to determine a project’s viability.⁸ As a result, FRA lacked consistent information to aid its decisions regarding which high-speed rail projects to fund. In response to our findings, FRA developed guidance to help potential grantees prepare HSIPR ridership and revenue forecasts, public benefits valuations, and operating cost estimates. In addition, the Agency established specific requirements for these forecasts, valuations, and estimates for each level of HSIPR project development. In 2016, FRA published detailed benefit-cost analysis guidance and a cost-estimation guide that States can use to inform decision makers about the trade-offs involved in passenger rail investment. This guidance can inform California as it develops any future high-speed rail business plans as well as other supporting plans, such as those for service and development and continuing operations. As such, it may improve the quality of the estimates of ridership, revenue, public benefits valuations, and operating costs for the system.

⁷ *FRA Has Made Progress Implementing PRIIA Responsibilities, but Challenges for Long-Term HSIPR Remain* (OIG Report No. CR-2012-072), March 2012. OIG reports are available on our website at <http://www.oig.dot.gov/>.

⁸ *FRA Needs To Expand Its Guidance on High-Speed Rail Project Viability Assessments* (OIG Report Number CR-2012-083), March 2012.

FRA Has Worked To Address Certain Weaknesses in Its Management and Oversight of HSIPR Funds

HSIPR gave FRA significant new grant-making and oversight duties, presenting unique challenges. Along with quickly establishing a new grant program, the Agency now had to distribute and oversee more than \$10 billion in appropriated grant funds, including the \$3.5 billion granted to California. FRA has taken some steps to address initial weaknesses in its HSIPR grant oversight policies, procedures, and practices. For example, FRA developed—and has continued to refine—its grants management manual in response to our recommendations.⁹ This manual clarifies the Agency’s policies and procedures and guides FRA staff oversight during all stages of the grant administration process, including solicitation, award, administration, monitoring, and closeout.

In particular, one challenge area included the process for amending grants. Once FRA has awarded an HSIPR grant, the Agency may amend an agreement to change the funding amount, the grant’s objectives, or the terms governing the Federal and the grantee’s funding contributions to the project, as needed. For example, California’s FRA grant has been amended six times, including a 2012 amendment that allows the State to expend Federal funds in advance of its provision of State matching funds, which are typically required to be spent concurrently with the Federal funds. While the need to amend a grant amendment may arise for a variety of legitimate reasons, FRA has a responsibility to ensure that the amended grant terms and conditions do not result in unacceptable risk to Federal investments. In response to our findings and recommendations, FRA updated its policies and procedures to include more robust guidance on identifying and mitigating risks during the grant amendment process. These policies and procedures position FRA to provide greater transparency regarding its decisions on grant amendments, including its sixth amendment to its grant to CHSRA.¹⁰

FRA has also developed some tools and training for its staff to help improve the Agency’s oversight of its HSIPR grants. Our 2012 review found that the Agency’s ability to effectively administer and ensure the accountability of HSIPR grant funds was hindered by the lack of experience and expertise of FRA staff. In

⁹ *Completing a Grants Management Framework Can Enhance FRA’s Administration of the HSIPR Program* (OIG Report No. CR-2012-178), September 2012, and *FRA Improved Its Guidance on High-Speed Rail Grant Agreements, but Policies and Procedures for Amending and Monitoring Grants Remain Incomplete* (OIG Report No. ST-2015-038), April 1, 2015.

¹⁰ FRA has amended its grant agreement with CHSRA six times. However, the Agency executed the sixth only subsequent to the issuance of our report on April 1, 2015. The sixth amendment—signed on May 18, 2016—extended the grant’s period of performance from September 30, 2017, to December 31, 2022, among other changes.

response to our recommendations, FRA now provides required training in grant-management best practices, monitoring and risk assessment, and fraud awareness and prevention to all Agency grants management staff.

In addition, FRA has taken action on OIG recommendations related to its processes for monitoring grantee efforts to comply with the terms of their grant agreements and to resolve problems that the Agency identifies through its monitoring reviews. As we noted in prior audits, FRA has faced challenges in this area in the past. For example, we reported in 2015 that FRA staff closed six findings from the Agency's review of a grant to CHSRA without documenting the grantee's actions to correct the problems. These findings included problems regarding schedule slips, implementation of its required risk-management plan, and cost-estimate reports. As a result, it was difficult for FRA to follow up to ensure CHSRA and other grantees resolved identified problems. In response to our recommendations, FRA updated its web-based project management tracking tool and amended its procedures to strengthen its tracking and follow up on any problems it identifies during grant monitoring, such as those identified for the CHSRA grant. FRA also introduced a specific requirement that Agency staff report suspected fraud, waste, or abuse to DOT-OIG for investigation. As such, the Agency may be in a better position to track California's compliance with the terms and conditions of its grant agreement, use that information to guide its ongoing oversight, and detect and report potential fraud. Given the importance of grant oversight for ensuring proper stewardship of Federal funds, our office continues to review FRA's role in providing HSIPR program oversight.¹¹

FRA's Oversight of the California High-Speed Rail Project Is Focus of Ongoing OIG Audit

Mr. Chairman, at your request, we are currently reviewing FRA's oversight of its grants to CHSRA for the California high-speed rail project. As you know, in a letter to our office, you noted the significant funds provided to CHSRA for high-speed rail and cited concerns regarding FRA's oversight of expenditures and CHSRA's compliance with Federal requirements. Your letter also expressed concerns about the Agency's assessment of risk associated with CHSRA's ability to provide required matching funds and its analysis of risk when reviewing CHSRA's business plans and financial reports.

¹¹ In addition to the ongoing audit discussed in this testimony, our audit of FRA's use and acquisition of Monitoring and Technical Assistance Contractors for High-Speed and Intercity Passenger Rail grant oversight is in process.

We announced our audit in April 2018, and it is currently underway. In accordance with your request, our audit objectives are to assess FRA's (1) risk analysis, assessment, and mitigation efforts—particularly regarding the availability of non-Federal matching funds, business plans, and financial reporting—and (2) procedures for determining whether Federal funds expended complied with applicable Federal laws and regulations. Our audit specifically focuses on FRA's work to oversee the CHSRA grants.

To meet these objectives, we are currently reviewing data related to Federal expenditures, conducting interviews with FRA staff, and examining a variety of documentation—including policies, procedures, risk assessments, and invoices—related to FRA's management of the HSIPR program generally and oversight of its grants to CHSRA specifically. This will include onsite interviews of CHSRA and FRA representatives here in California, in addition to our work at FRA Headquarters.

We briefed FRA on the purpose, objectives, and proposed scope and methodologies of our review in late April. Our audit is now currently in its initial phase—known as the Survey phase—during which we test our methodologies and develop preliminary findings. Subsequently, the audit will move into the Verification phase, during which we refine our methodology, collect additional data, finalize our audit findings, and develop recommendations. After completing this phase, we will brief FRA on our findings and recommendations and reach out to other stakeholders, including CHSRA, as needed to validate and discuss our results. We will then issue a draft report to FRA, and the Agency will have an opportunity to review and respond to it. FRA's response will be included as an appendix to our final report, which is typically published 6 to 8 weeks after we provide a draft to the auditee.

We plan to transmit our final report on FRA's oversight of CHSRA in spring 2019 to this Subcommittee and FRA, and will post it on our public website. Given that our audit is still in its initial Survey phase, we are not yet able to report on our preliminary findings, in accordance with Federal auditing standards.¹² However, we will keep this Subcommittee apprised of the status of our review and also inform FRA about our progress and findings as our standards and process dictate.

¹² We are conducting this review in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. These standards require us to obtain sufficient, appropriate evidence to support any findings or conclusions that we present. At this stage, the evidence that we have collected is not yet sufficient to allow us to publicly discuss our preliminary findings.

Conclusion

FRA's grant programs present distinct opportunities for advancing high-speed rail transportation, but also require an unprecedented level of stewardship to safeguard the billions of taxpayer dollars involved. While FRA has made progress in implementing HSIPR and resolving many of the weaknesses identified in our audits, continued management attention and strong oversight will remain critical to ensure that Federal funds are not subject to an unacceptable level of risk. In addition, our work will continue to assess FRA's grant management to identify additional areas for improvement. We thank you and this Subcommittee for keeping focus on this important area and will keep you informed as we monitor FRA's efforts to oversee the HSIPR program, including developments with the California High-Speed Rail Authority and our ongoing review.

This concludes my prepared statement. I will be happy to answer any questions you or other Members of the Subcommittee may have.

Exhibit. OIG Reports on the HSIPR Program Since 2012

- *FRA Has Made Progress in Implementing PRIIA Responsibilities but Challenges for Long-Term HSIPR Remain* (OIG Report CR-2012-072), March 6, 2012
- *FRA Needs To Expand Its Guidance on High-Speed Rail Project Viability Assessments* (OIG Report CR-2012-083), March 28, 2012
- *Completing a Grants Management Framework Can Enhance FRA's Administration of the HSIPR Program* (OIG Report CR-2012-178), September 11, 2012
- *FRA's Requirements For High-Speed Rail Stakeholder Agreements Mitigated Risk, but Delayed Some Projects' Benefits* (OIG Report CR-2013-007), November 1, 2012
- *NEPA: FRA Coordinates as Required, but Opportunities Exist to Modernize Procedures and Improve Project Delivery* (OIG Report CR-2014-010), December 5, 2013
- *FRA Continues To Make Progress Implementing PRIIA Responsibilities but Faces Challenges With Rail Planning* (OIG Report CR-2014-030), February 25, 2014
- *FRA Improved Its Guidance on High-Speed Rail Grant Agreements, but Policies and Procedures for Amending and Monitoring Grants Remain Incomplete* (OIG Report ST-2015-038), April 1, 2015

Note: OIG reports are available on our website at <http://www.oig.dot.gov/>.