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# *Office of Inspector General*

# *Audit Report*

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## **FRA IMPROVED ITS GUIDANCE ON HIGH SPEED RAIL GRANT AGREEMENTS, BUT POLICIES AND PROCEDURES FOR AMENDING AND MONITORING GRANTS REMAIN INCOMPLETE**

*Federal Railroad Administration*

*Report Number: ST-2015-038*

*Date Issued: April 1, 2015*





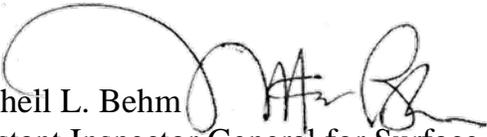
# Memorandum

**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION**: FRA Improved Its Guidance on High  
Speed Rail Grant Agreements, but Policies and  
Procedures for Amending and Monitoring Grants  
Remain Incomplete  
Federal Railroad Administration  
Report No. ST-2015-038

Date: April 1, 2015

From: Mitchell L. Behm   
Assistant Inspector General for Surface  
Transportation Audits

Reply to  
Attn. of: JA-30

To: Federal Railroad Administrator

In 2009 and 2010, Congress appropriated over \$10 billion<sup>1</sup> for the Federal Railroad Administration's (FRA) High Speed Intercity Passenger Rail (HSIPR) program. HSIPR is a discretionary grant program that supports development of high speed and intercity passenger rail networks. These grants go to eligible States and high speed rail authorities for projects that focus on constructing new high speed rail corridors, upgrading high speed rail services on existing intercity passenger rail corridors, or planning future high speed rail services. Some of these grants require recipients to contribute portions of the projects' funding, known as matching shares. As of December 2014, FRA had disbursed approximately \$2.8 billion to grantees that manage high-speed rail projects.

Because of concerns that alternative matching arrangements may put Federal HSIPR funds at risk, the Chairman of the House Subcommittee on Railroads, Pipelines, and Hazardous Materials, House Transportation and Infrastructure Committee, requested that we conduct an audit of FRA's grant amendment and oversight processes. Accordingly, our audit objectives were to assess FRA's policies and procedures for (1) amending HSIPR grants and (2) overseeing compliance with HSIPR grant requirements.

<sup>1</sup> Congress appropriated \$8 billion through the American Recovery and Reinvestment Act of 2009 (ARRA), and an additional \$2.6 billion through appropriations acts for fiscal years 2009 and 2010. In fiscal year 2011, Congress rescinded \$400 million in unobligated appropriations. Grantees must expend all ARRA funds by September 30, 2017.

We conducted our work in accordance with generally accepted Government auditing standards. To conduct our work, we reviewed FRA's policies and procedures, and documentation relating to amendments and monitoring of the 5 largest grants that FRA had amended as of July 1, 2014 (see exhibit B for information on these 5 grants). We also interviewed FRA officials responsible for amending and monitoring HSIPR grants. See exhibit A for details on our scope and methodology.

## **BACKGROUND**

The Passenger Rail Investment and Improvement Act of 2008 (PRIIA)<sup>2</sup> greatly expanded FRA's role in developing and managing the Nation's rail system. FRA's new duties include awarding, obligating, and disbursing appropriated funds for the HSIPR grant program. FRA's Grants Management Manual (Manual) outlines the Agency's programmatic policies and procedures to guide staff in the execution of their grant management responsibilities. FRA began drafting the Manual in April 2010, released the complete Manual in March 2012, and revised and updated it 5 times—most recently in October 2014. The Manual addresses every stage of the grant lifecycle, and includes sections that address the Agency's policies and procedures for processing amendments to grant agreements and monitoring grantees for compliance with legal, regulatory, and grant agreement requirements.

The need to amend a Federal grant agreement may arise for a variety of reasons. For example, the grant-making agency may amend an agreement to change the amount of the grant's funding, the grant's objectives, or the terms governing the Federal and the grantee's funding contributions to the project. For some HSIPR projects, grantees provide funding—or matching funds—for portions of their projects' costs. FRA generally requires each grantee to spend matching funds at an agreed upon proportional rate throughout the grant's life. An alternative arrangement called tapered matching gives a grantee flexibility in the timing of the payments of its matching funds, as long as the final contribution of Federal funds does not exceed the maximum authorized share. For example, FRA may pay 100 percent of the project's early costs while the grantee pays larger shares of later project costs to achieve matching shares by the end of the grant.

FRA monitors grantees to verify that they comply with a variety of requirements; to identify problems and successes in grant programs' implementation; and address issues through advice, technical assistance, and training. This monitoring includes both ongoing routine monitoring and scheduled in-depth visits to grantees. Routine monitoring consists of progress reviews and financial reports,

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<sup>2</sup> Public Law No. 110-432, Div. B.

reimbursement requests, and deliverables. Scheduled monitoring entails desk reviews,<sup>3</sup> site reviews, or both.

Monitoring may reveal problems or significant findings that the grantee needs to correct. FRA defines a significant finding as a problem noted during a monitoring review that jeopardizes project completion or compliance with the terms of the grant agreement. Grantees are responsible for developing corrective action plans to address the issues identified in significant findings. FRA personnel are responsible for follow up with grantees to ensure that they take appropriate corrective actions.

## **RESULTS IN BRIEF**

FRA has implemented a policy that describes requirements for grantees seeking to taper their payments of matching funds, but its other amendment policies are either missing or incomplete. The Agency implemented a policy on tapered matching that requires grantees to identify the sources of their matching funding contributions, provide justifications for and identify the benefits of using the arrangements, and provide assurances that they will meet commitments. However, FRA does not have written policies to address requirements of the Antideficiency Act, and its other amendment policies are incomplete regarding risk assessment and documentation of decisions on grantees' requests for amendments. A lack of comprehensive procedures weakens FRA's internal controls and may expose Federal funds to greater risk.

FRA's grant monitoring policies and procedures are incomplete. They do not require staff to document in the Agency's electronic systems grantees' corrective actions to resolve problems identified during monitoring. For example, FRA staff closed 6 findings from its 2013 review of a grant to the California High Speed Rail Authority (CHSRA) without documenting the grantee's actions to correct the problems in the Agency's electronic system. This lack of documentation makes it difficult for FRA to follow up that grantees have taken actions to resolve problems. Furthermore, FRA's Manual does not include a requirement to report fraud, waste, and abuse to OIG and until October 2014, did not address recovering funds in the event of improper payments.<sup>4</sup> As a result, FRA cannot be certain that it is appropriately safeguarding Federal investments.

We are making recommendations to improve FRA's policies and procedures for amending and monitoring high speed rail grant agreements.

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<sup>3</sup> Desk reviews entail comprehensive reviews of all current progress and financial reporting information using a series of checklists developed by FRA staff.

<sup>4</sup> Improper payments as defined in the Improper Payments Elimination and Recovery Act (IPERA) include payments to ineligible recipients; duplicate payments; payments in incorrect amounts (including overpayments and underpayments); payments for ineligible services and services not received; and payments with insufficient documentation.

## **POLICY EXISTS FOR TAPERED MATCHING BUT OTHER GRANT AMENDMENT POLICIES ARE MISSING OR INCOMPLETE**

FRA has implemented a policy that describes requirements for grantees seeking to taper their payments of matching funds, but its other amendment policies are either missing or incomplete. Specifically, there is no policy that addresses prevention of Antideficiency Act violations in amendments, and the policies on risk management and documentation of decision making on grantees' requests for amendments to grant agreements are incomplete.

### **FRA Has Established a Policy that Describes Requirements for Tapered Matching**

FRA's policy on tapered matching requires grantees to provide assurances that matching funds will be available before the end of their projects. FRA cited the Federal Highway Administration's (FHWA) tapered matching policy as its model. Similar to FHWA's policy, FRA's Manual requires each grantee requesting tapered matching to:

- Provide a justification for the arrangement, and a clear schedule for the process, including the timing and source of matching payments;
- Identify the benefits of using the arrangement; and
- Provide assurances that it will meet commitments, including making provisions for cost recovery, if necessary.

FRA did not have its tapered matching policy in place until September 2012, after it amended its agreement with the Illinois Department of Transportation (IDOT) in July 2012 to allow the grantee to taper payments of its matching funds. FRA also amended its grant with CHSRA in December 2012 to allow the same type of flexibility. FRA's actions in its review and approval of the amendments, however, fulfilled the requirements of the September 2012 policy. Furthermore, the amendment to CHSRA's agreement exceeded the policy's requirements on risk analysis and response. For details on these two amendments, see exhibit C.

### **FRA's Amendment Policy Does Not Cover the Antideficiency Act, and Is Incomplete on Risk Management and Documentation of Decision Making**

FRA's written policies do not address prevention of Antideficiency Act violations in amendments, and is incomplete in the areas of risk management and documentation of decision making. As we previously reported,<sup>5</sup> FRA began administering the HSIPR program while simultaneously developing its grant management policies and

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<sup>5</sup> *Completing a Grants Management Framework Can Enhance FRA's Administration of the HSIPR Program*, OIG Report Number CR-2012-178, September 11, 2012. OIG reports are available at [www.oig.dot.gov](http://www.oig.dot.gov).

procedures. The Agency has made significant progress in developing its guidance, and continues to refine the guidance to meet its needs. For example, the current Manual provides specific details on developing amendments to grant agreements while allowing Agency staff to exercise discretion based on the magnitudes of the amendments. However, the Manual still lacks guidance, including direction on implementing internal control standards, in three areas.

First, the Manual does not include procedures to determine whether amendment requests constitute new obligations of funds. If an amendment to a grant agreement exceeds the eligibility requirements of statutes with respect to award amount, purpose and scope, or timing, the obligation is not permitted under the Antideficiency Act. In general, the Antideficiency Act prohibits Federal employees from making obligations or expenditures (1) in excess of available amounts in appropriations or funds unless statutorily authorized; (2) in violation of their agencies' plans for the funds' use, which must receive approval from OMB; and (3) in excess of the amounts agencies' regulations permit. Instead of written procedures, FRA relies on staff to know whether an amendment constitutes a new obligation. If an amendment to a HSIPR grant agreement substantially changed the purpose or scope of a grant agreement, the amendment would constitute a violation of the act.

The Department does not specifically require its operating administrations to include guidance on Antideficiency Act issues in their policies and procedures. However, some operating administrations, including the Federal Aviation Administration and the Federal Motor Carrier Safety Administration, have developed guidance after committing violations that stemmed from weaknesses in their internal controls. The Department of Defense (DOD) has also established policies for avoiding Antideficiency Act violations. DOD's Financial Management Regulation<sup>6</sup> contains policy and procedures that provide specific actions to reduce the possibility of violations. For example, the regulation requires DOD managers to assess the reliability of internal controls to prevent violations of the act and establishes training requirements for fund control personnel.

Furthermore, the standards for internal control in the Federal Government<sup>7</sup> (Internal Control Standards) require Federal agencies to design policies, procedures, techniques, and mechanisms to enforce management's directives to achieve the entity's objectives and address related risks. Because FRA lacks written procedures and instead relies on staff's knowledge to ensure compliance, the Agency risks violating the Antideficiency Act.

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<sup>6</sup> DOD, *Financial Management Regulation*, Volume 14, Chapter 2, Section 0204.

<sup>7</sup> GAO, *Standards for Internal Control in the Federal Government*, November 1999.

Second, FRA's Manual does not provide guidance on defining risk tolerance, conducting risk analyses of grantees, or setting response strategies for identified risks when considering amendments to grant agreements. The Manual also does not require the consideration of adding special conditions to mitigate grantees' risks.

PRIIA directs FRA to require that, prior to grant awards, grantees provide evidence of legal, financial, and technical capacities to carry out projects. These capacities influence the risk associated with a grant. Furthermore, the Internal Control Standards require agencies to define their risk tolerance, analyze identified risk, and establish strategies for responding to risk. Because FRA has not determined its risk tolerance, and its Manual does not include procedures for analyzing risks or setting response strategies when amending grant agreements, the Agency may be exposing Federal investments to unacceptable levels of risk.

Third, while FRA's Manual outlines requirements for documenting amendment requests and final decisions, it does not require documentation of significant events in the amendment review and approval process, such as interim deliberations and decisions on the terms of agreement amendments. As a result, we were unable to identify the Agency's rationale for certain decisions regarding agreement amendments. For example, for IDOT's grant amendment, FRA did not document its analyses or rationale for altering the project's budget to allow 100 percent Federal funding of the project's rail car procurement. Agency officials informed us that signed amendments generally constitute the only documentation of the decisions the Agency makes during its reviews of amendment requests. We noted that the files for all five grants we reviewed lacked documentation of significant decisions in the amendment process.

The Internal Control Standards require that Federal agencies clearly document internal controls, transactions, and other significant events in a manner that makes the documentation readily available for examination. The Standards further require that documentation and records be properly managed and maintained. FRA's lack of documentation inhibits the Agency's establishment of a record of its rationales for decisions affecting Federal investments.

## **FRA'S POLICIES AND PROCEDURES FOR MONITORING GRANTS ARE INCOMPLETE**

FRA's grant monitoring policies and procedures are incomplete. They do not require staff to document in the Agency's electronic systems grantees' corrective actions to resolve significant findings identified during monitoring. Furthermore, the policy does not include a requirement to report fraud, waste, and abuse to OIG.

### **Documentation of HSIPR Grant Monitoring Activities Is Incomplete**

FRA's Manual does not require documentation of all grant monitoring activities in the Agency's electronic systems. The Internal Control Standards require that Federal managers evaluate and document the results of ongoing monitoring to identify internal control deficiencies. They also require Federal managers to complete and document corrective actions to remediate internal control deficiencies in a timely manner. FRA's Manual requires grant managers to securely maintain and store grant documents in an accessible manner in an electronic system. While grants are active, managers may also choose to maintain hard copy files of documents.

FRA conducts routine monitoring for all grants, such as reviews of payment and progress reports, and scheduled monitoring activities for grants it has determined to be higher risks. Scheduled monitoring includes in-depth desk reviews and onsite reviews of grants. However, the Manual does not require staff to document grantees' actions to address significant findings identified during monitoring. As of October 2014, the Agency's records of grantees' actions to resolve findings were incomplete. For example, as seen in table 1, for three open significant findings in CHSRA's grant program identified in 2013, the deadlines for grantee action to resolve the findings have passed, but there was no documentation of grantee actions to resolve the findings or of revisions to the target action dates in the project management tracking system.

FRA staff also closed findings identified in its monitoring reviews without including documentation of the grantee's corrective actions in its project management tracking system. For example, FRA closed 3 findings from its monitoring review of Transbay Joint Powers Authority in 2013. These findings were in the areas of the risk and contingency management plan; the cost estimate for the transit center superstructure; and the procurement, equipment, and human resources policies. However, staff did not include documentation of the grantee's corrective actions in the electronic grant file. Similarly, FRA staff closed 6 findings from its 2013 review of a grant to CHSRA without documenting the grantee's actions to correct the problems in the Agency's electronic system.

**Table 1. Unresolved Findings from the 2013 Monitoring Review of CHSRA's HSIPR Grant Program as of October 2014**

<b>Finding</b>	<b>Required Action</b>	<b>Target Date</b>	<b>Revised Date</b>
<b>Schedule</b>			
Original schedule timeframes in some areas of the program have not been met, and pose potential risk to forecasted project completion.	Update the program master schedule, incorporating long lead items such as environmental process, real estate acquisition, agreements, permits, equipment procurement, design-build milestones, and other scheduling items.	<i>March 1, 2014</i>	<i>July 30, 2014</i>
<b>Risk Management</b>			
Full implementation of the final risk management plan has not been completed.	Implement all aspects of the risk management plan and provide regular updates to FRA on results of quantitative analyses and on contingency and mitigation planning.	<i>January 1, 2014</i>	<i>Not identified.</i>
<b>Cost Estimate</b>			
Cost estimate breakdown is not presented showing current design-build bid packaging and therefore cannot be used to monitor conformance to budget.	Report project cost estimates consistent with construction packages 2 and 3, construction packages 4 and 5 bid packages, to reflect year of expenditure and develop contingencies appropriate to level of design completion. Include risk based contingency using formal risk assessment methodology when supported by RFP package.	<i>November 1, 2013</i> (construction packages 2 and 3)  <i>January 1, 2014</i> (tentative for construction packages 4 and 5)	<i>July 30, 2014.</i>

Source: CHSRA's ARRA grant, fiscal year 2013 site monitoring status update.

As a result of its lack of proper monitoring documentation, FRA cannot be sure that it is accurately measuring grantee performance or that grantees are taking appropriate corrective actions to resolve identified grant program issues.

### **FRA's Policy on Grant Monitoring Does Not Require Reporting Fraud to OIG**

FRA's policy on grant monitoring does not require reporting on suspected fraud, waste, and abuse to OIG. According to DOT Order 8000.8, operating administrations should direct staff to report all instances of suspected fraud, waste, or abuse to OIG for evaluation or investigation. The Manual requires staff to

report suspected fraud, waste, or abuse to their supervisors, but allows managers to decide whether or not to report to OIG. It also states that staff may anonymously report to OIG. Since 2012, the Agency has worked with OIG's Office of Investigations to provide training to FRA staff on recognizing and responding to potential fraud, waste, and abuse. However, because the Agency has no specific requirements for reporting potential abuses to OIG, there is a risk that FRA may not report all instances of suspected fraud, waste, or abuse for appropriate evaluation or investigation.

### **FRA Updated Its Manual to Address Recovery of Funds**

In October 2014, FRA corrected the Manual to include procedures for recovery of funds as possible enforcement action when a grant is terminated due to misuse of funds, other fraud, waste, or abuse, or the recovery of funds for other improper payments or default. However, previous versions of FRA's policies did not address this recovery. OMB's guidelines defines an improper payment as any payment that should not have been made or that was made in an incorrect amount (including underpayments and overpayments) under statutory, contractual, administrative, or other legally applicable requirements.<sup>8</sup> In fiscal years 2012 and 2013, DOT estimated<sup>9</sup> that HSIPR grantees' improper payments were not material according to guidelines established by the Improper Payments Elimination and Recovery Act (IPERA).<sup>10</sup> However, significant expenditures of HSIPR Federal grant funding will continue through fiscal year 2017 as grantees spend the remaining ARRA-appropriated HSIPR funds.

### **CONCLUSION**

FRA's stewardship responsibility for Federal high speed rail grant funds requires the Agency to ensure these funds are not subject to an unacceptable level of risk. However, FRA's policies for amending and monitoring HSIPR agreements do not adequately address several issues, such as managing risk to HSIPR projects and documenting actions to address review findings. As a result, the Agency may place Federal funds dedicated to the creation of the Nation's high speed rail transportation system at risk and make the system's intended benefits more difficult to achieve.

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<sup>8</sup> OMB M-11-16, Issuance of Revised Parts I and II to Appendix C of OMB Circular A-123, April 14, 2011.

<sup>9</sup> U.S. DOT Agency Financial Report, Fiscal Year 2012 and U.S. DOT Agency Financial Report, Fiscal Year 2013.

<sup>10</sup> Public Law No. 111-204. IPERA defines significant improper payments as those that exceed (1) \$10 million and 2.5 percent of program outlays, or (2) \$100 million. Beginning in fiscal year 2013, IPERA defines significant improper payments as those that exceeded (1) \$10 million and 1.5 percent of program outlays or (2) \$100 million.

## **RECOMMENDATIONS**

We recommend that the Federal Railroad Administrator:

1. Document Agency policy and procedures for prevention of Antideficiency Act violations in HSIPR grant amendments.
2. Amend Agency policy and procedures to establish a process for defining the Agency's risk tolerance, require assessment of the risk associated with grantees prior to executing amendments, and require documented conditions to mitigate the risks to within acceptable levels.
3. Amend Agency policy and procedures to require documentation of significant analyses and decisions during the development of grant amendments.
4. Clarify Agency policy and procedures to require documentation of grantees' corrective actions to resolve findings and staff's efforts to follow-up on past-due and unresolved findings.
5. Amend Agency policy and procedures to require staff to report to OIG for evaluation or investigation all suspected instances of fraud, waste, and abuse.

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

We provided FRA with a draft of this report on February 2, 2015, and on March 11, 2015, we received the Agency's technical comments which we incorporated into the report as appropriate.

On March 19, 2015, we received FRA's response which is included in its entirety in the appendix to this report. In its response, FRA stated that it concurred with all five of our recommendations, and provided a completion date for planned actions. On March 4, 2015, the Agency provided documentation of completed actions to address recommendations 2 through 5. Accordingly, we consider those recommendations resolved and closed. We consider recommendation 1 resolved but open pending completion of planned actions.

We appreciate the courtesies and cooperation of Department of Transportation's representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630, or Kerry R. Barras, Program Director, at (817) 978-3318.

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cc: DOT Audit Liaison, M-1  
FRA Audit Liaison, ROA-03

## **EXHIBIT A. SCOPE AND METHODOLOGY**

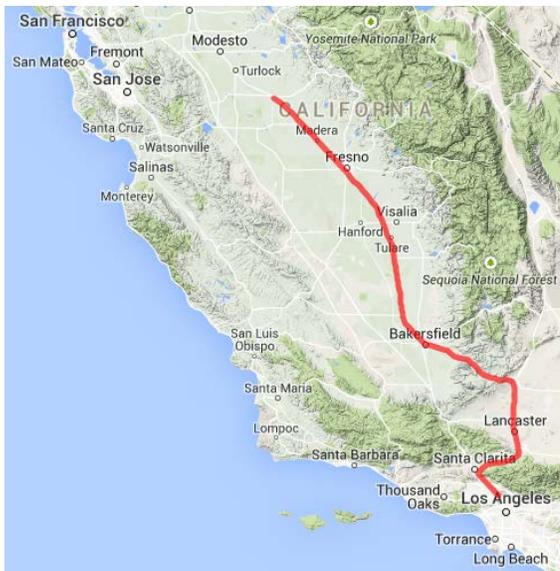
We conducted our work between March 2014 and February 2015 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To assess FRA's policies and procedures for amending HSIPR grants, we reviewed the Manual, and compared its policies and procedures to requirements and best practices in laws, regulations, other operating administrations' policies, and applicable Federal standards. From the universe of 155 HSIPR grant agreements as of July 1, 2014, we identified the 10 agreements with the largest Federal awards. From this group, we selected the 5 agreements with amendments (see exhibit B for information on these 5 agreements). These 5 amended agreements represented 53.3 percent (\$5.4 billion) of the total HSIPR grant funding of \$10.1 billion. We examined documentation and interviewed FRA staff responsible for the most recent amendment to each of these five agreements to compare the process that was used for executing each amendment to FRA's policies and procedures and legal, regulatory, and other standards.

To assess FRA's policies and procedures for overseeing compliance with HSIPR grant requirements, we reviewed the Manual's policies and procedures for grant monitoring, and compared them to requirements and best practices from laws, regulations, and other Federal standards. Using the same sample of five grants used for our first objective, we examined grant monitoring documents and interviewed FRA staff to compare the process used to monitor each of those grants in fiscal years 2012 and 2013 to FRA's policies and procedures and the legal, regulatory, and other standards.

## EXHIBIT B. SUMMARIES OF SELECTED GRANTS

### California High Speed Rail Authority



**Grant Number:** FR-HSR-0009

**Project:** California High-Speed Train Program – ARRA Grant

**Purpose:** To perform engineering and environmental analysis for the early phases of the California High-Speed Train System, station area planning, and construction of the initial Central Valley section.

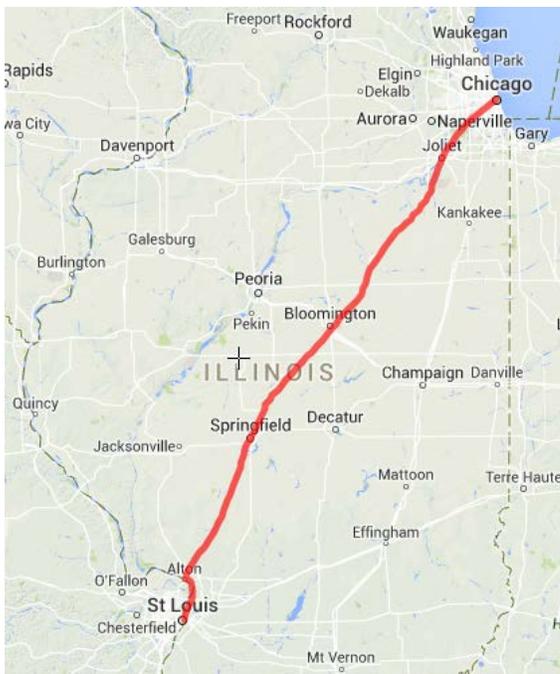
**Project Cost:** \$5,058,327,462

**Required Match:** 49.5375%

**Amendments:** 5 (most recent; December 5, 2012)

**Project Performance Period Ends:** 9/30/2017

### Illinois Department of Transportation



**Grant Number:** FR-HSR-0015

**Project:** Chicago-St. Louis Corridor Improvement Program

**Purpose:** To upgrade passenger rail service between Chicago, IL, and St. Louis, MO, including major improvements to track, signal systems, stations, and rolling stock to increase performance.

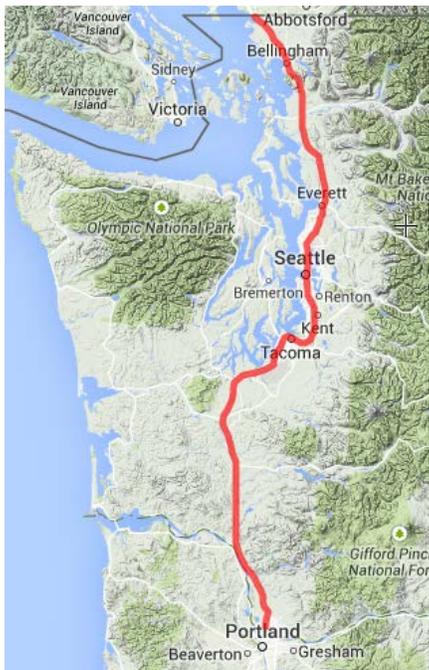
**Project Cost:** \$1,202,446,314

**Required Match:** 5.0%

**Amendments:** 2 (most recent: July 12, 2012)

**Project Performance Period Ends:** 6/30/2017

## Washington State Department of Transportation



**Grant Number:** FR-HSR-0017

**Project:** Pacific Northwest Rail Corridor Program

**Purpose:** To increase frequency, reduce travel time, and improve performance on the Pacific Northwest Rail Corridor in Washington State, including track and signal improvements, acquisition of new equipment and station upgrades.

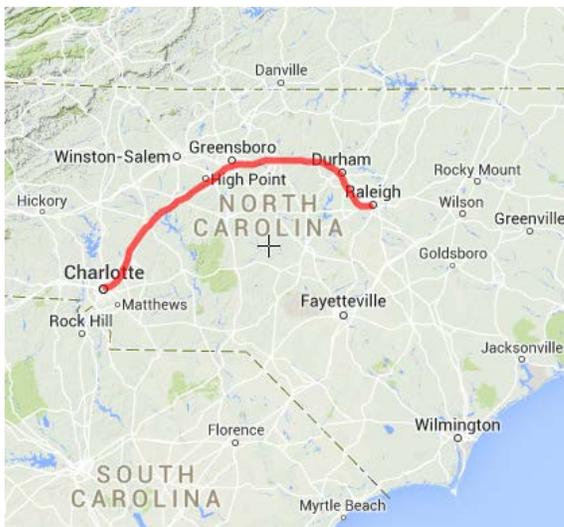
**Project Cost:** \$776,187,690

**Required Match:** 3.17%

**Amendments:** 4 (most recent: March 11, 2014)

**Project Performance Period Ends:** 9/30/2017

## State of North Carolina Department of Transportation



**Grant Number:** FR-HSR-0006

**Project:** NCDOT Piedmont Third and Fourth Frequency Program

**Purpose:** To support two additional midday trains to the Piedmont corridor service and to increase capacity and reliability for the other intercity passenger rail services.

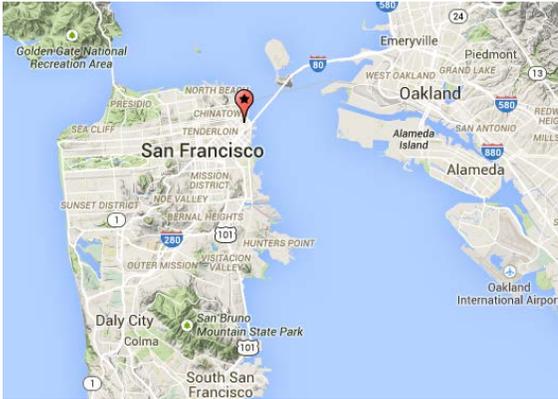
**Project Cost:** \$520,000,000

**Required Match:** 0.0%

**Amendments:** 5 (most recent: April 17, 2014)

**Project Performance Period Ends:** 9/30/2017

## Transbay Joint Powers Authority



**Grant Number:** FR-HSR-0007

**Project:** Train Box, Phase I  
Transbay Transit Center

**Purpose:** To construct the underground level of the Transbay Transit Center in downtown San Francisco, CA, in anticipation of the arrival of California high-speed rail.

**Project Cost:** \$728,518,800

**Required Match:** 45.094%

**Amendments:** 1 (April 20, 2012)

**Project Performance Period  
Ends:** 12/31/2015

## **EXHIBIT C. SUMMARY OF TAPERED MATCHING AMENDMENTS**

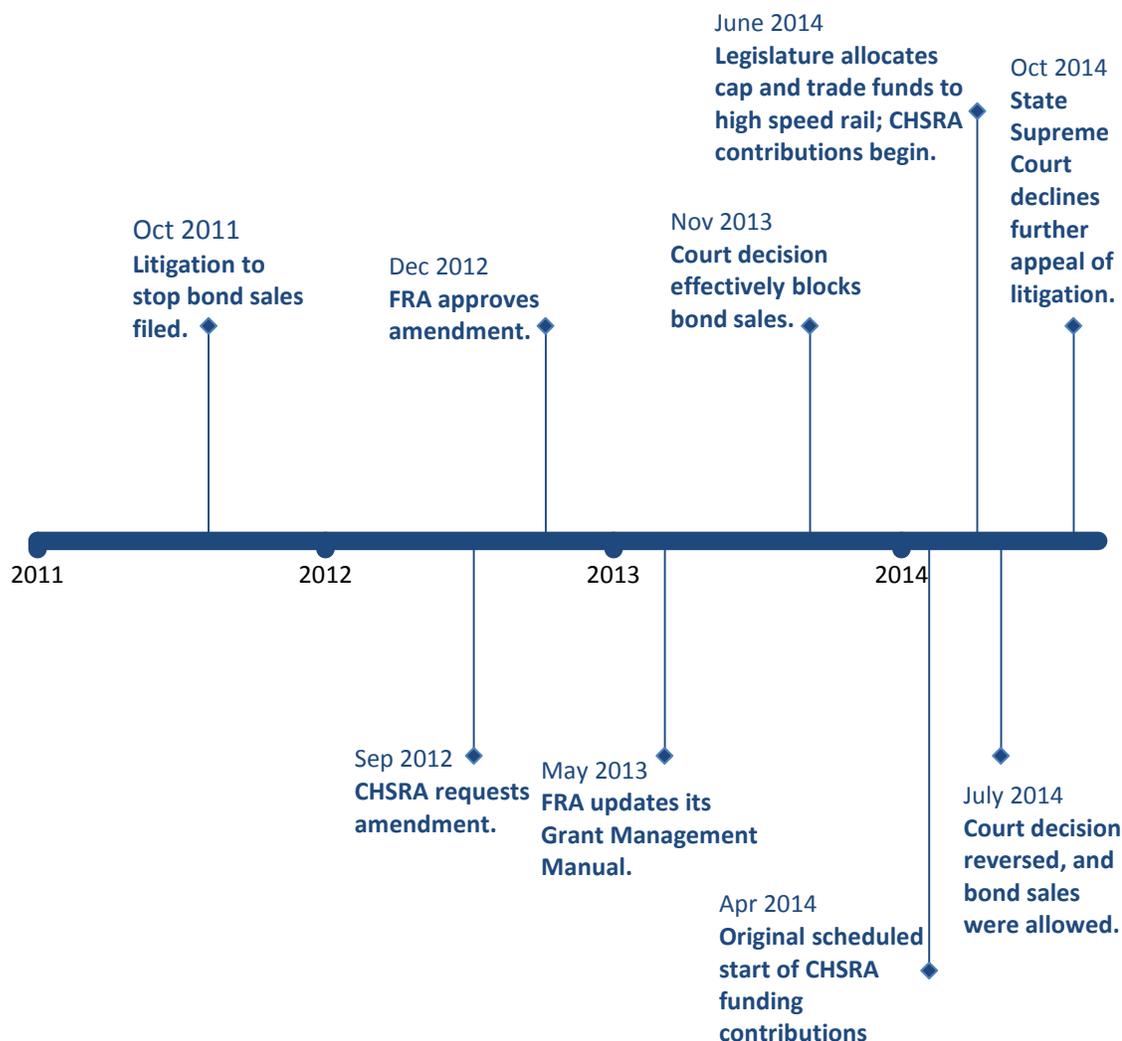
FRA amended two grants to allow the grantees to taper payments of their matching funds. The first grant, with the Illinois Department of Transportation (IDOT), was amended in June 2012 to allow this flexibility. FRA also amended its grant with the California High Speed Rail Authority (CHSRA) in December 2012 to allow the grantee to taper payments.

IDOT's agreement calls for FRA to cover 95 percent of the project's costs, with IDOT responsible for the remaining 5 percent. However, FRA proposed an amendment that called for it to fund 100 percent of the project's rail car procurement, and IDOT to fund 100 percent of real estate purchase costs. If these two expenditures are made simultaneously, they would offset each other. Otherwise, a temporary funding imbalance could occur if the State's share of the total project costs falls below 5 percent. The amendment's tapered match provision allows for a temporary funding imbalance, while maintaining the overall project's cost sharing arrangement. Without the provision, the temporary funding imbalance would constitute a violation of the agreement.

FRA's agreement with CHSRA calls for each party to pay approximately 50 percent of the project's costs. CHSRA stated in its initial application for the grant that its funding share would come from the sale of bonds authorized by the 2008 passage of the \$9.95 billion Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Prop 1A) bond measure. In November 2011, however, several parties sued to prevent CHSRA from issuing Prop 1A bonds. CHSRA was unable to access the bond funding until the litigation was concluded.

In September 2012, CHSRA requested an amendment to its grant agreement to allow tapered matching that would give the State more time to sell the bonds, and identified specific schedule and cost benefits that would result from the use of a tapered matching arrangement. In its review of the application, FRA, in consultation with its Office of General Counsel, performed a risk assessment of CHSRA's request. The Agency developed risk response strategies to address the risks it identified and incorporated them as amendment terms. FRA and CHSRA adopted the amendment in December 2012. See figure 1 for a timeline of significant events surrounding FRA's amendment of its grant agreement with CHSRA.

**Figure 1. Significant Events Related to FRA's Amendment to the CHSRA Grant**



Source: OIG Analysis

The amendment states that CHSRA will use Prop 1A bond proceeds for its matching share and make all reasonable efforts to secure substitute funding if the bond proceeds are not available. The grantee's obligation to provide a matching contribution is an enforceable term of the grant. However, the amendment does not require CHSRA to guarantee its commitment to provide matching funds, but explicitly notes that FRA can amend or terminate the grant and recover from the State of California all expended Federal funds if CHSRA cannot deliver its matching contribution. FRA and CHSRA attached to the amendment a funding contribution plan that governs the schedule for CHSRA's payments of matching funds. The grant agreement calls for regular updates to this plan, which initially

called for CHSRA's first payment in April 2014. In February 2014, FRA approved an updated plan that postponed CHSRA's first payment to July 2014. Subsequently, FRA approved another update to CHSRA's funding contribution plan which extended the first payment date to September 2014.

In November 2013, the California State Superior Court ruled to prevent CHSRA from issuing Prop 1A bonds. In June 2014, the California legislature enacted its 2014-2015 budget, which directs \$250 million in 2014 and 2015 cap and trade revenues<sup>11</sup>, one quarter of future program revenues, and a one-time loan of \$400 million to the high-speed rail project. In July 2014, the California Court of Appeals for the Third Circuit reversed the decision of the State Superior Court and allowed bond sales to proceed. In October 2014, the California Supreme Court refused to hear further appeal of the litigation. CHSRA began providing its matching funds in June 2014.

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<sup>11</sup> Part of California's Global Warming Solutions Act of 2006, the cap and trade program sets a statewide limit on companies responsible for a portion of the State's greenhouse gas emissions. Companies are allocated emission allowances, but must trade or purchase additional allowances to emit greenhouse gases beyond their allowances. The program generates revenues through quarterly auctions and reserve sales of emissions permits. The California Legislature and Governor appropriate proceeds from permit sales.

**EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT**

<b><u>Name</u></b>	<b><u>Title</u></b>
Kerry R. Barras	Program Director
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James Quinn	Senior Analyst
Anthony Saraco	Senior Auditor
Susan Neill	Writer-Editor

## APPENDIX. AGENCY COMMENTS



U.S. Department  
of Transportation  
Federal Railroad Administration

# MEMORANDUM

Subject: INFORMATION: Management Comments –  
Office of Inspector General (OIG) Draft Report on  
HSIPR Grant Amendments and Oversight

Date: MAR 19 2015

From: Sarah Feinberg  
Acting  
Administrator

To: Mitchell L. Behm  
Assistant Inspector General for  
Surface Transportation Audits

Reply to the  
Attn of: ROA-03

The Federal Railroad Administration (FRA) has built an effective project delivery and grant management organization for the \$10 billion High-Speed and Intercity Passenger Rail Program—the most significant Federal rail investment in decades. Forty percent of the more than 150 funded projects are already substantially complete with significant public benefits realized. Numerous external reviews have found no major oversight issues as FRA executed the program.

FRA reviewed OIG's draft report and provides the following comments on its findings and recommendations:

- This report provides additional evidence of FRA's progress, noting that FRA exceeded risk analysis and response requirements for the California High Speed Rail Authority's tapered match amendment.
- Regarding the completeness of FRA's Anti-Deficiency Act compliance program, FRA fully complies with DOT's Order 2700.7C that requires accounting systems to restrict obligations and expenditures to amounts available.<sup>1</sup> Moreover, the Federal Managers' Financial Integrity Act FY 2014 statement of assurance

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<sup>1</sup> DOT Order 2700.7C, *Administrative Control of Funds*, February 15, 1989, paragraph 7.d.

identified no material FRA internal control weaknesses or financial system non-conformances.

- OIG highlighted (a) FRA's staff training with the Office of Investigations to recognize and respond to potential fraud, waste, and abuse, and (b) numerous passages in FRA's grant management manual that stress the need for staff to report observed or suspected fraud, waste, and abuse. FRA will continue to remain steadfast in this regard.
- OIG's concern about documentation reflects its review of records in FRA's electronic database. For significant grant and project-related decisions prior to the launch of this database, FRA kept records in individual project files.

Based on our review of the draft report, we concur with OIG's recommendations 1 through 5, as written. FRA intends to provide documentation by December 31, 2015, to close the recommendations.

We appreciate the opportunity to provide perspective on the OIG's draft report. Please contact Corey Hill, Director, Office of Program Delivery, at [corey.hill@dot.gov](mailto:corey.hill@dot.gov), with any questions regarding these comments.