

**DOT'S IMPLEMENTATION OF THE AMERICAN
RECOVERY
AND REINVESTMENT ACT:
CONTINUED MANAGEMENT ATTENTION IS NEEDED
TO ADDRESS OVERSIGHT VULNERABILITIES**

Department of Transportation

Report Number: MH-2010-024

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Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** DOT's Implementation of the
American Recovery and Reinvestment Act:
Continued Management Attention Is Needed To
Address Oversight Vulnerabilities
Department of Transportation
Report Number MH-2010-024

Date: November 30, 2009

From: Calvin L. Scovel III 
Inspector General

Reply to
Attn. of: J-1

To: The Secretary
Deputy Secretary

This report presents the results of our assessment of the Department of Transportation's (DOT) implementation of the American Recovery and Reinvestment Act (ARRA) of 2009, which designated over \$48 billion for new and existing DOT programs. Both the President and Congress have emphasized the need for full accountability, efficiency, and transparency in the allocation and expenditure of ARRA funds and recognized the importance of the accountability community in accomplishing these objectives. The Office of Inspector General's (OIG) role is to assist DOT officials in their efforts to implement ARRA by identifying areas that need strengthening and making recommendations for program improvements.

Since ARRA's passage earlier this year, DOT has been tackling the difficult work associated with administering a large infusion of funding and the addition of new program requirements. We recognize the commitment of the Secretary of Transportation and his staff to the success of DOT's recovery initiatives. DOT has been proactive on several fronts, including establishing the Transportation Investment Generating Economic Recovery (TIGER) team to coordinate DOT's role in the recovery program, ensure accountability, and develop a risk management and financial reporting plan. Additionally, some Operating Administrations have taken proactive steps to address key ARRA challenges, such as the Federal Highway Administration's (FHWA) comprehensive workforce analysis to determine ARRA staffing needs across the agency. However, as we reported in March 2009, DOT faces significant challenges in ensuring that its

grantees properly spend ARRA funds; implementing extensive new reporting requirements and over \$9 billion in new programs; and combating fraud, waste, and abuse.¹ In response to our March 2009 report on ARRA oversight challenges, the TIGER team developed a plan outlining initiatives that were planned or under way within each Operating Administration that received ARRA funding.

ARRA has now been in effect for over 9 months and the Department's obligation deadlines to date have been met. For this report, our objective was to identify vulnerabilities that could impede DOT's ability to (1) provide effective oversight to ARRA-funded projects and (2) meet new requirements mandated by ARRA and the Office of Management and Budget (OMB). To meet our objective, we conducted systematic surveys, or scans, of the DOT agencies² that received ARRA funding, as shown in table 1; and this report presents a snapshot of DOT's efforts as of the end of September 2009. We identified vulnerabilities related to project selection for existing programs, project and contract oversight for existing programs, new programs created by ARRA, and new reporting requirements mandated by ARRA. During our agency scans, we also assessed DOT's progress in carrying out the initiatives developed in response to our March 2009 report. In conducting this assessment, we recognized DOT's continued effort to implement ARRA in a fast-moving environment and under tight statutory deadlines. Thus, we provided ongoing feedback to the DOT agencies to initiate timely corrective action.

Table 1. Distribution of ARRA Funds Within DOT

DOT Component	Stimulus Funds (millions)	Percent of Total*
Federal Highway Administration	\$27,500	57.15%
Federal Railroad Administration	\$9,300	19.33%
Federal Transit Administration	\$8,400	17.46%
Office of the Secretary of Transportation	\$1,500	3.12%
Federal Aviation Administration	\$1,300	2.70%
Maritime Administration	\$100	0.21%
Office of Inspector General	\$20	0.04%
Total	\$48,120	100.00%

Source: ARRA.

* Percentages do not add up due to rounding.

¹ OIG Report Number MH-2009-046, "American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation," March 31, 2009. OIG reports and testimonies are available on our website: www.oig.dot.gov.

² The OIG was not included.

Exhibit A presents our scope and methodology. Exhibit B provides information on ARRA allocation and expenditure deadlines. Exhibit C describes the role and responsibilities of the DOT-wide TIGER team and its sub-teams. Exhibit D describes common fraud schemes and indicators of fraud. Exhibit E provides a list of related reports, testimonies, and ARRA Advisories we have issued to date, along with a list of ongoing audits related to ARRA.

EXECUTIVE SUMMARY

Our agency scans showed that DOT took unprecedented steps to enhance oversight and create new programs in a short period. For example, FHWA developed national review teams to help oversee the \$27.5 billion it received in ARRA funding and ensure a consistent approach to conducting compliance reviews across its 52 Division Offices, although it is too early to measure their effectiveness. Further, the Office of the Secretary of Transportation (OST) developed an agencywide program to identify key risks in effectively implementing ARRA and develop strategies to mitigate risks.

While proactive steps like these laid the groundwork for addressing its significant oversight challenges, DOT faces vulnerabilities that could inhibit its ability to meet ARRA's goals and requirements going forward. Specifically, our agency scans identified two types of vulnerabilities, as shown in table 2:

- (1) those that require action to mitigate a documented risk or tasks that should be finalized as soon as possible and
- (2) those that, because of their complexity, size, or scope, require a sustained focus, although no deficiencies may be evident now.

Table 2. ARRA Vulnerabilities Facing DOT

<u>Vulnerability</u>	<u>Action Required Now</u> To mitigate a documented risk or tasks that should be finalized as soon as possible	<u>Sustained Focus Required</u> To address a management challenge, although no deficiencies are evident now
<i>Project selection for existing programs</i>	FAA (Airport Improvement Program)	FHWA (highway formula grant program), FTA (transit formula grants programs)
<i>Project and contract oversight for existing programs</i>	FAA (Facilities and Equipment Program staffing and contracts), FRA (staffing), FTA (staffing), MARAD (staffing, Small Shipyards Grant Program oversight), DOT-wide (suspension and debarment)	FHWA (staffing at state departments of transportation, highway project oversight, and follow through with National Review Teams and Indian Reservation Roads Program), FTA (transit project oversight), OST (risk management process), DOT-wide (fraud)
<i>New programs created by ARRA</i>	FRA (High-Speed Rail Program), OST (TIGER Discretionary Grants Program)	Not applicable
<i>New reporting requirements mandated by ARRA</i>	Not applicable	DOT-wide

Some Project Selection Decisions May Not Address ARRA or Program Requirements

We identified vulnerabilities in some Operating Administration programs' grant evaluation and selection processes, particularly at the Federal Aviation Administration (FAA) and the Maritime Administration (MARAD). While DOT's role in evaluating and selecting projects varies across the existing programs funded by ARRA—ranging from complete discretionary authority in FAA's Airport Improvement Program (AIP) to extensive state and local flexibility in selecting projects under FHWA's and the Federal Transit Administration's (FTA) formula grant programs—certain principles apply to all ARRA-funded grant programs. Specifically, DOT is expected to meet existing requirements and new requirements mandated by ARRA; achieve economic recovery program goals, such as maximizing job creation and producing long-term economic benefits; adhere to standing program requirements for approving projects; ensure

“prudent” investment decisions; and demonstrate sufficient transparency in decisionmaking.³

- For existing discretionary programs, we found instances in which DOT agencies have fallen short of meeting some key requirements and ensuring sufficient transparency in decisionmaking. FAA awarded more than 50 AIP grants for projects scoring below its established threshold for high priority ARRA projects.⁴ These awards raise concerns about whether the agency’s process resulted in funding the highest priority projects that will result in long-term economic benefits. In another example, MARAD’s Small Shipyards Grant Program was subjected to further DOT review and evaluation after the Secretary determined that the process used to evaluate the grant applications was incomplete. Although the small shipyard grants were awarded, as required by ARRA, in August 2009, the Secretary’s intervention raised concerns about MARAD’s evaluation and selection process. Should the program receive more funding in the future, clearly written criteria and procedures to guide the selection process could help ensure that the most-deserving projects will be selected.
- For the highway and transit formula grant programs that received billions in ARRA funds, we identified no deficiencies in the grant award processes at this time. However, oversight of state and local project planning requires sustained FHWA and FTA attention to avoid imprudent spending. To obtain funding for selected projects, states and local governments must develop a comprehensive plan—through statewide transportation improvement programs (STIPs) and local transportation improvement programs (TIPs) for state and local projects, respectively⁵—that identifies proposed transportation projects, time frames for completing the projects, and realistic funding sources. Our review of select division and regional offices showed that FHWA and FTA were reviewing recent changes to STIPs and TIPs. However, FHWA and FTA still face a key management challenge in reviewing STIP and TIP changes and making sure grantees adhere to Federal requirements in their project selections.

³ A March 2009 presidential memorandum directed agency heads to refrain from approving “any project that is imprudent or that does not further job creation, economic recovery, and other purposes of the Act.” OMB guidance states that agencies should structure grants to result in meaningful, measurable outcomes that advance ARRA’s goals, such as jobs creation and preservation, and promote accountability and transparency.

⁴ In response to our Advisory, FAA stated that it “carefully ensured that each grant issued using Recovery Act funding fully complied with applicable statutory requirements.” We disagree, since FAA established no criterion for and did not consider long-term economic benefit in making its project selections, as required by ARRA.

⁵ STIPs lay out how states intend to use taxpayers’ and other money to meet their transportation needs. They also identify which projects will be funded and the cost and funding sources for those projects. A TIP documents projects for a particular urbanized area and is included in the STIP. DOT requires that STIPs be fiscally realistic (“constrained”) and present truthful and credible information. Having a realistic STIP is critical for transportation and budget planning purposes.

A Number of Factors Could Inhibit DOT's Oversight of ARRA Spending

DOT has taken several steps to enhance oversight of ARRA spending. For example, DOT created a new risk management tool to comply with OMB's requirement to conduct risk assessments for ARRA-funded programs; and FHWA went a step further by directing its Division Offices to identify ARRA-related risks at the state level and standing up national review teams to evaluate Division Offices' risk-based oversight efforts. However, DOT is still vulnerable because oversight tools such as these require consistent long-term focus. Other DOT vulnerabilities relate to addressing workforce planning and increasing staffing levels to meet the new ARRA demands, overseeing some program grants and contracts that received ARRA funding, carrying out the Departmentwide risk management process that was initiated to comply with OMB requirements, and maintaining robust counter-fraud programs.

- DOT has not ensured all its Operating Administrations have adequate workforce plans and some Operating Administrations have yet to hire staff with the expertise needed to provide enhanced oversight as called for in OMB's guidance. For example, while FHWA developed a comprehensive plan identifying staffing needs through 2012, MARAD lacks such a plan, despite a substantial increase in funding and workload. Additionally, some Operating Administrations acknowledged that the tight deadlines and increased workload have already negatively affected their ability to staff other programs. For example, officials at FTA's New York Regional Office—which typically administers more funds than other FTA field offices—stated that they were behind on non-ARRA work this summer because they redeployed staff to meet ARRA deadlines. To further complicate the situation, some projects selected through the STIP and TIP process could require enhanced Federal oversight at a time when agencies' resources are struggling to meet new demands. For example, the Fulton Street Transit Center in New York City may receive as much as \$424 million in ARRA funds to administer on top of coping with the significant schedule delays and cost increases it has already experienced.
- To mitigate the risk of inefficient or imprudent expenditure of ARRA dollars, OMB directed agencies to take steps, beyond standard practice, to enhance oversight of ARRA grant programs and contracts. Enhanced oversight mechanisms have been established for some DOT programs; but ARRA still poses ongoing management challenges that will require sustained focus. For example, to oversee the \$27.5 billion it received in ARRA funding, FHWA developed national review teams. However, FHWA's management challenge is to make sure these teams have a

consistent approach to conducting compliance reviews across its 52 Division Offices and promote vigilant oversight of recovery projects. In the past, ensuring that its widely dispersed staff provided sufficient oversight to grantees had been a challenge for FHWA. Some agencies, such as MARAD, still may not be providing this enhanced level of oversight for their ARRA-funded programs. For example, MARAD did not establish written policies and procedures for monitoring its small shipyard grants or commit to conducting pre-closeout site visits to grant recipients.

- DOT has taken proactive steps to identify oversight-related risks on ARRA-funded programs, and has taken action beyond existing risk management programs, such as its internal control efforts that are required by OMB Circular A-123. Specifically, DOT initiated a four-stage review of risks related to the implementation of ARRA.⁶ OST has not assessed the resources it needs to effectively oversee the Operating Administrations' implementation of their risk plans and adding resources could enhance the effectiveness of this new oversight tool. Our July 2009 review of risk mitigation strategy documents at FAA, FHWA, the Federal Railroad Administration (FRA), and FTA identified shortcomings, such as missing target completion dates for mitigating identified risks. MARAD and OST had just completed their risk strategy documentation at the time of our review. In September 2009, OST officials stated that the Operating Administrations had completed their risk mitigation strategies, although we have not analyzed these documents to determine whether our earlier concerns had been addressed.
- DOT's Operating Administrations are taking action to combat fraud; but continued outreach is needed to enhance understanding among DOT staff, grantees, and their contractors on how to detect, prevent, and report potential fraud. Efforts to date range from a week-long "Grants A to Z" seminar at FTA, to a lack of a systematic fraud prevention strategy at MARAD. An effective strategy centers on deterring fraud schemes that could occur on projects receiving recovery funding, such as bid-rigging, false claims for materials and labor, and product substitution through mismarking or mislabeling products and materials. A key element of this strategy is increased awareness of certain "red flags" that could indicate the presence of one or more fraud schemes on an ARRA-funded project. In addition, making timely suspension and debarment decisions and reporting them promptly is important in reducing the risk that firms or individuals

⁶ The stages were (1) identifying internal control gaps using a risk assessment questionnaire for seven functional capabilities critical to the efficient operation of Operating Administrations, (2) developing a risk profile for five internal control focus areas, (3) describing risk mitigating procedures and/or strategies, and (4) testing and validating all submitted mitigation efforts and cited internal controls.

who have defrauded the Federal Government, or are otherwise known to be irresponsible, could get ARRA contracts.

DOT Faces Significant Management and Resource Obstacles To Effectively Implement Over \$9 Billion in New ARRA Programs

In addition to increasing funding for existing DOT programs, ARRA created new discretionary grant programs, including \$8 billion to jumpstart the creation of high-speed rail corridors and intercity passenger rail service (under FRA) and \$1.5 billion for surface transportation infrastructure projects (under OST). In starting up these large, high visibility programs, DOT faces significant vulnerabilities, such as unclear selection processes, undetermined oversight strategies, and insufficient resources.

- The High-Speed Rail Program represents a major transformation for FRA. It may not be prepared to ensure the long-term success of the new high-speed rail program as it moves from a relatively small agency focused on rail safety, to a grant-making agency responsible for billions of dollars. While FRA officials recognize the challenge before them, our evaluation of the agency's efforts to date raises significant concerns about its ability to handle these new responsibilities. FRA planned to begin awarding its first round of grants in fall 2009. However, following receipt of our draft report that discussed the risks associated with trying to award the grants that early given its current technical capacity, FRA decided to delay the awards until the second quarter of FY 2010. FRA attributed this delay, in part, to not having finalized or fully documented its program implementation strategy; nor has it acquired sufficient staff and technical capacity to effectively manage the program. To address these vulnerabilities in the short term, and to quickly acquire the technical expertise it needed, FRA used detailees from FTA and contractors from DOT's Research and Innovative Technology Administration (RITA). In addition, the program's grant application and selection process is not well-defined. For example, FRA has not fully determined how it will evaluate the accuracy of applicants' rider and revenue forecasts—a key aspect of how proposed projects' merit and feasibility will be determined.
- OST has not finalized its role in the post-award TIGER Discretionary Grants process and has not thoroughly assessed what additional grant oversight resources or expertise it will need to effectively administer the program once grants are awarded by February 2010. To help oversee TIGER grants, OST plans to partner with the Operating Administration related to the type of project selected. However, to make these partnerships work, comprehensive up-front planning is needed to document

expectations, define roles and responsibilities, and put in place accountability measures to hold all parties responsible for effective grant administration and oversight.

DOT Is Working To Address ARRA Reporting Requirements, But Has Not Completed Key Tasks

ARRA mandated extensive new reporting requirements, which OMB detailed in a series of implementation guidance documents.⁷ These reporting requirements include detailed information on project expenditures, project status and performance reports, and job creation updates. However, certain vulnerabilities could inhibit DOT's ability to provide accurate and reliable data to decisionmakers and the public.

- Operating Administrations have taken actions to ensure that ARRA recipients comply with reporting requirements. OMB guidance requires agencies, such as DOT, to provide some degree of review to ensure that ARRA recipients report accurate ARRA project data. The actions taken ranged from conducting outreach to recipients regarding reporting requirements and developing processes to perform data quality reviews. Each Operating Administration aims to have a process in place before conducting the reviews and, at the time of our audit, two of the five Operating Administrations, FAA and FTA, had documented processes, while FHWA, FRA, and MARAD were still developing their processes. However, it is too early to determine whether these processes will adequately identify omissions and significant reporting errors.⁸
- OMB provided general guidance to agencies on how to obtain and report job creation data for ARRA projects; but DOT's plans for estimating and reporting such jobs raise concerns. For example, OST has requested, but not provided guidance through the Bureau of Transportation Statistics on how the Operating Administrations should assess the reliability of job creation data provided by recipients. In addition, OST's methodology for estimating the number of indirect jobs created by ARRA projects is inconsistent with the Council of Economic Advisors recommended methodology for estimating total employment. Further, OST intends to report new indirect and total jobs on the date recipients are reimbursed for

⁷ Section 1512 of ARRA requires recipients to report on the total amount of ARRA funds received from a Federal agency—the amounts spent on projects and activities; a list of projects and activities funded by name, including a description and completion status; estimates of the number of jobs created or retained by those projects or activities; and details on sub-awards and other payments. Section 1201 of ARRA requires grant recipients to submit periodic reports on their use of ARRA funds, which are to be collected and compiled by their respective Federal agencies and transmitted to Congress. Required information includes amount of funds received, number of projects initiated and completed, and number of jobs created or sustained.

⁸ Much of the data will eventually be reported on www.recovery.gov.

expenditures, which could result in a significant lag between when new jobs are actually created and when they are reported. Given the ambiguity these weaknesses create in OST's estimates, the validity of DOT's job creation estimates, particularly its estimates of indirect jobs and the timing of job creation, could be questioned.

To ensure that DOT provides effective oversight of projects being constructed with ARRA dollars and that remaining ARRA funds are prudently invested, we are recommending that the Department provide us with a plan to address vulnerabilities in the areas where action is needed. The plan should address DOT's actions taken or underway for finalizing comprehensive workforce plans for all Operating Administrations, monitoring ARRA risk strategies, addressing risks related to the quality of data being reported to the public on program results, and determining effective oversight strategies for the high-speed rail and TIGER grants programs. Our complete recommendations can be found on pages 32 and 33. We will continue our ARRA-related audit and investigative work by drilling down on high-risk areas that emerged during our scan. In commenting on a draft of this report, the Department concurred with our recommendation and promised to provide us with a plan within 30 days after the issuance of our final report.

BACKGROUND

Since ARRA was signed into law, Congress and the President have repeatedly stressed the need to ensure that ARRA funds are prudently invested with an unprecedented level of transparency and accountability. Although DOT's programs vary widely in their structure and requirements, all ARRA-funded programs are subject to OMB's implementation guidance, which lays out five key accountability objectives that agencies should focus on during ARRA planning and implementation: (1) award and distribute funds in a prompt, fair, and reasonable manner; (2) ensure the recipients and uses of the funds are transparent to the public, and the resulting benefits are reported clearly, accurately, and promptly; (3) ensure funds are used for authorized purposes and 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. Furthermore, the President has reiterated the administration's goal of responsible and transparent expenditure of ARRA funds, specifying the need for agencies to focus on ensuring that grants are selected on merit-based decisionmaking processes and avoid funding imprudent projects.

In our March 2009 report, based on our analysis of ongoing and prior audit work and observations of DOT's efforts to implement ARRA, we identified three key

challenges and related focus areas facing DOT. The challenges and 10 focus areas associated with them are shown in table 3.

Table 3. Major ARRA Challenges and Related Focus Areas for DOT

Ensuring that DOT's grantees properly spend ARRA funds
<ul style="list-style-type: none"> • Acquire sufficient personnel with relevant expertise to oversee grantees. • Adhere to existing Federal requirements for programs funded under ARRA. • Evaluate the credibility and completeness of cost and schedule estimates. • Oversee grantees' contracting management activities and ensure selection of appropriate contract types. • Address internal control weaknesses and identify unused funds for use elsewhere.
Implementing new accountability requirements and programs mandated by ARRA
<ul style="list-style-type: none"> • Implement new ARRA tracking and reporting requirements that are designed to promote accountability and transparency. • Develop comprehensive plans and sound criteria for the new discretionary grant and passenger rail programs within statutory deadlines. • Develop appropriate oversight strategies for the new discretionary grant and passenger rail programs.
Combating fraud, waste, and abuse
<ul style="list-style-type: none"> • Enhance understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud to the appropriate authorities. • Take timely and effective action to suspend and/or debar individuals or firms that have defrauded the Department, or are otherwise known to be irresponsible, so they do not receive Federal contracts in the future.

To ensure sufficient consideration of the potential risks discussed in our March 2009 report, we recommended that the Secretary of Transportation, through the DOT TIGER team, develop an oversight implementation plan that outlines the key actions DOT has underway or will take to address these issues. DOT's response noted its commitment to effective stewardship and contained a number of initiatives in each Operating Administration to address our report's 10 focus areas. Each Operating Administration's initiatives varied widely in their rigor and level of detail. For example, FHWA's response was detailed and highlighted several key action items, such as its risk management program and the establishment of national review teams. In contrast, FRA's and MARAD's responses lacked detail and did not include specific action items with target completion dates. As part of our agency scans, we assessed items that were contained in this plan.

FINDINGS

SOME PROJECT SELECTION DECISIONS MAY NOT ADDRESS ARRA OR PROGRAM REQUIREMENTS

Some Operating Administrations' project evaluation and selection processes did not sufficiently take into account new ARRA requirements or may be at risk of not fully promoting economic recovery. In some cases, the Operating Administrations had difficulties reconciling their existing program requirements with new ARRA requirements. OMB guidance requires agencies to structure all ARRA grants so they result in meaningful and measurable outcomes that advance ARRA's goals. For discretionary programs, we found vulnerabilities in two Operating Administrations that received discretionary recovery funding, which impacted their ability to meet existing program requirements or new requirements mandated by ARRA and OMB. For formula grant programs, FHWA and FTA face challenges in ensuring recipients adhere to ARRA's goals and meet Federal planning requirements for obtaining funding for highway and transit projects.

Grant Selection and Approval Processes for Some Discretionary Programs Did Not Fully Adhere to ARRA Requirements or May Not Fully Promote Economic Recovery Goals

The grant selection and approval processes for some programs at FAA and MARAD did not fully adhere to ARRA requirements and recovery program goals, creating vulnerabilities that some projects may not achieve meaningful and measurable outcomes, provide long-term economic benefit, and promote accountability and transparency.

FAA's processes for awarding and overseeing ARRA grants for airport improvement projects do not fully comply with the ARRA requirements calling for transparency, merit-based selections, and effective administration of funds. First, FAA's process for approving ARRA airport projects, based primarily on its existing National Priority Rating (NPR) system,⁹ does not include a criterion for considering economic merit. Accordingly, the projects FAA selected may not provide long-term economic benefits. Moreover, while FAA established a threshold NPR score to prioritize projects, and stated its preference for higher priority projects, the Agency still awarded more than 50 grants for low scoring projects. The combination of not considering economic merit and making awards to lower scoring projects raises questions as to whether many of FAA's project selections fully met ARRA requirements. For instance, we identified five projects of questionable economic merit; yet, each received approval for ARRA funding.

⁹ FAA's NPR system rates the value of airport projects on a scale of 0 to 100 by considering safety, security, capacity enhancement, and environmental mitigation factors.

For example, FAA awarded \$13.9 million for a replacement airport in Akiachak, Alaska, a village of about 659 people, even though this project had a low NPR score.¹⁰

Second, at least four FAA recipients have histories of grant management problems, yet FAA rated each as “nominal risk,” raising doubts about the agency’s ability to provide sufficient oversight to ensure ARRA funds are effectively administered. These four grantees—Guam International Airport Authority; Owensboro-Daviess County, Kentucky; Pitkin County, Colorado; and Puerto Rico Port Authority—collectively received about \$15 million in ARRA grants, although auditors identified longstanding problems in such areas as cash management, procurement and suspensions and debarments, and allowable costs. For example, Kentucky’s Owensboro-Daviess County received a \$658,730 ARRA grant, despite reports citing poor administration of AIP funds for 10 of the last 11 years.

To address these concerns, we proposed in a recent ARRA Advisory¹¹ that FAA fully reconcile its guidance with ARRA requirements and establish a selection process that considers economic merit and is transparent. Until FAA can demonstrate economic merit, it should not award additional grants for lower ranked NPR projects. For those ARRA grants already awarded for lower ranked projects with no funds expended, FAA needs to show economic merit or consider withdrawing the grant. Finally, FAA needs to enhance its risk-based approach to ensure new ARRA recipients that historically have not administered AIP funds effectively receive increased oversight. In response to our ARRA Advisory, FAA stated it believed each of the five low scoring NPR projects we identified was qualified to receive an ARRA grant. However, FAA did agree to review the cases of Guam, Owensboro, Pitkin County, and Puerto Rico to determine if those airports should receive increased FAA grant oversight.

MARAD’s initial grant selection and approval process did not meet specific ARRA requirements related to transparency in decisionmaking and the existing statutory requirement to consider the economic conditions of the communities where grant applicants were located. First, MARAD did not provide potential applicants with detailed eligibility information when it solicited applications for its Small Shipyards Grant Program, which received \$100 million in ARRA funding. According to MARAD’s interpretation of the President’s directive, certain types of maritime businesses and projects were ineligible or considered poor candidates for the prudent expenditure of ARRA funds. Reasons for ineligibility included shipyards that build vessels less than 40 feet in length and marinas with limited

¹⁰ Akiachak, which received an NPR score of 40, is within 14 miles of Bethel, Alaska’s fourth busiest airport. In recent years, Akiachak’s existing airport averaged 57 flights per week.

¹¹ OIG ARRA Advisory AA-2009-003, “ARRA Advisory—FAA’s Process for Awarding ARRA Airport Improvement Program Grants,” August 6, 2009.

ship repair or maintenance work, but MARAD did not communicate these criteria to prospective applicants. Additionally, MARAD did not provide recipients with objective metrics—such as the amount of dollar or labor savings a project was expected to generate—that it planned to use to assess projects to address ARRA’s economic and job creation requirements, and the program’s statutory goals. Ultimately, of the 454 applications it received, MARAD rejected 198, or 44 percent, due to ineligibility or the lack of required technical or financial information in an application.

Finally, after MARAD completed its selection process, the Secretary of Transportation announced that the process MARAD used to evaluate applications was incomplete.¹² The Secretary stated that he was instituting a process that complied with the statutory instruction to consider the economic conditions of communities with shipyards and ordered an additional review. Should this program receive additional funding in the future, MARAD’s challenge will be to develop guidelines that clearly spell out the criteria and evaluation process it will use to determine the merit of future project applications.

Federal Review of Projects Selected Through the STIP and TIP Process for Highway and Transit Formula Grant Programs Is Critical To Ensure that ARRA Requirements Are Met

More than half of DOT’s ARRA funds were allotted to FHWA’s and FTA’s formula grant programs for highway and transit projects, respectively. To obtain Federal funds for such projects, states must satisfy Federal transportation planning requirements in their STIPs and TIPs.¹³ For example, states’ plans must demonstrate that the public has had ample information on each proposed project and that public comments have been considered. The plans must also include sufficient financial information to demonstrate fiscal constraint; that is, the projects can be completed using “committed, available, or reasonably available revenue sources.” The planning process gives states and cities considerable flexibility in determining which highway and transit projects to pursue, but DOT plays an oversight role in ensuring that these projects meet Federal requirements. The STIP and TIP process is the first opportunity for DOT to comment on proposed highway and transit projects seeking ARRA dollars.

¹² On August 17, 2009, following the Secretary’s additional review, MARAD announced that it had selected ARRA-funded grant recipients for the Small Shipyards Grant Program. MARAD released the final list of 70 awards totaling \$98 million.

¹³ Working with Metropolitan Planning Organizations and local government agencies, each state periodically (at least every 4 years) develops a STIP that identifies all of the transportation projects that will be initiated during the period covered by the plan, and the sources of funding for those projects. A TIP is the plan for a particular urbanized area, while a STIP covers an entire state. A TIP is incorporated as part of a STIP.

Our review of select division and regional offices showed that both agencies were reviewing changes to STIPs and TIPs.¹⁴ FHWA's and FTA's reviews of states' plans have been accelerated, given ARRA's focus on initiating projects as quickly as possible. At the same time, reviews are more complex, in part because many states have amended, and will continue to amend, their STIPs and TIPs to add proposed ARRA projects. This process stresses the importance of DOT's oversight role in reviewing these changes, as hastily amended plans could result in states or localities selecting imprudent projects or ones that do not meet recovery program goals.

A NUMBER OF FACTORS COULD INHIBIT DOT'S OVERSIGHT OF ARRA SPENDING

DOT faces oversight challenges in its ARRA programs related to staffing demands, contract implementation, risk assessments and mitigation, and fraud education and outreach. First, although OMB directed agencies to conduct comprehensive workforce planning exercises, some Operating Administrations lack or have yet to finalize comprehensive workforce plans that reflect the staffing demands ARRA placed on them. Second, some activities associated with DOT ARRA programs, such as FAA's use of existing cost-plus-fixed-fee and award-fee contracts, require an enhanced level of oversight. Further, MARAD's lack of written policies and procedures establishing internal controls for its Small Shipyards Grant Program calls into question whether ARRA requirements for enhanced levels of oversight will be met. Third, while it has been proactive in some aspects of assessing risk, several vulnerabilities exist that could impede DOT's efforts to prudently spend its ARRA funds. Finally, DOT must make a sustained, proactive effort to educate its grantees on fraud prevention and ensure its Suspension and Debarment Program is timely in preventing contractors and individuals who have defrauded the Government, or are otherwise known to be irresponsible, from receiving ARRA contracts.

Some Operating Administrations Have Not Fully Addressed Staffing Demands Posed by ARRA

The large increase in funding and tight time frames involved in the implementation of ARRA have strained DOT's resources, particularly the time and attention of its field staff. To help agencies prepare for the added responsibility of awarding ARRA funding, OMB directed agencies to assess the gap between their current workforce and ARRA human capital requirements. OMB's implementation guidance requires agencies to identify mission-critical human capital needs for ARRA implementation using competency-based

¹⁴ We conducted field work at FHWA Division Offices in California, Maine, New York, Pennsylvania, and Texas. We conducted field work at FTA regional offices in Atlanta, Chicago, and New York.

workforce planning methodologies. While FHWA did develop an agencywide workforce plan, not all Operating Administrations have developed or implemented such plans. Additionally, FAA did not sufficiently consider the effects that meeting ARRA requirements might have on existing programs and obligations, which agencies are expected to continue to fulfill. The significant increase in DOT's workload underscores the importance of finalizing and following through on a comprehensive workforce plan.

FAA's staffing demands have grown significantly, as ARRA increased AIP's funding by \$1.1 billion—an addition of more than 31 percent over the program's \$3.5 billion funding level in fiscal year (FY) 2009. To identify AIP workforce needs, FAA informally surveyed its 9 regional and 18 Airport District Offices (ADOs) that award and oversee grants. FAA's survey identified a staffing gap of six positions and the agency has since filled these positions. In addition, ARRA increased FAA's Air Traffic Organization (ATO) budget by \$200 million for facilities and equipment (F&E). However, ATO officials acknowledge the organization does not have the personnel needed to manage its growing ARRA and non-ARRA workload. In 2008, before ARRA added additional responsibilities, OMB expressed concerns that the ATO “faces many human capital challenges, including obtaining necessary technical and contract management expertise.” Despite the personnel shortfall, FAA reported to OST that staffing for ARRA projects was adequate.

ATO's Power Services Program is particularly vulnerable to staffing shortages. Even before \$50 million of the \$200 million in ARRA F&E funds was added to the program in 2009, ATO was planning to more than double the Power Services Program budget from \$50 million in 2009 to \$122 million in 2011. To manage their growing number of ARRA-funded and non-ARRA-funded projects, program officials indicated they need to add 35 program office and field engineering services personnel. However, the ATO has been slow to fill positions. In FY 2009, just 2 of the 6 staff positions requested for 2009 were filled. With 35 total additional personnel needed by 2011, ATO program officials stated that they plan to meet increased ARRA and non-ARRA staffing needs with support contractors. However, recent FAA evaluations of two support contractors being considered cited staffing and other vulnerabilities. The evaluations identified problems such as high attrition rates, insufficient management staff to accomplish assigned work, and a need to improve the support contractor's engineering design and procurement capabilities in general.

MARAD also lacks a comprehensive workforce plan to address its ARRA human capital needs while continuing to carry out its existing program responsibilities. Addressing staffing demands is critical for MARAD because ARRA increased funding for the Small Shipyards Grant Program tenfold over FY 2008—the first

year of the program. MARAD developed a general strategy to employ contractors and reassign existing staff to do ARRA work on an as-needed basis. The strategy, however, does not list all staff assigned to administer the program, stipulate staff assignments and timelines, identify program management and staff vacancies, or establish mitigation plans to deal with staffing shortfalls. The strategy also excludes human capital data from some offices playing key roles in MARAD's ARRA-funded grant program, such as the Office of the Chief Financial Officer. Additionally, MARAD's workforce plan focuses only on the grant pre-award process, not on the grant oversight process; and two key vacant management positions in MARAD's program office were not included in the plan. According to MARAD officials, they have had difficulty finding qualified new employees with the knowledge, skills, and abilities needed to take on the new responsibilities for overseeing Federal investments. Consequently, they were temporarily filling this need by employing contractors and using existing staff. As MARAD dedicated experienced financial and technical staff to review ARRA grant applications, its other work, such as administering its loan guarantee program, was delayed, but was later completed. MARAD officials told us in September 2009 that they had addressed the staffing needs posed by ARRA and further analysis was not required. However, the lack of a comprehensive workforce plan based on a detailed analysis does not provide us with reasonable assurance that MARAD's deployment of its staff is sufficient to meet both its ARRA-related and existing program responsibilities.

While FRA did not conduct an ARRA-specific comprehensive workforce analysis after ARRA increased its budget by billions of dollars, it previously identified overall staffing shortages in both its High-Speed Rail Program and Amtrak Capital Grants Program. As part of its overall restructuring plan for the Office of Railroad Development, FRA recently prepared a workforce analysis¹⁵ to determine its human capital needs for administering the future needs of the organization as a whole, including its ARRA programs. The agency also identified the need for 27 additional full-time equivalents (FTEs) in its FY 2010 budget request. The agency is also seeking assistance in conducting project oversight through an existing interagency agreement with DOT's RITA.

FTA initiated a workforce analysis that pre-dated ARRA, but it remains a work in progress—more than 7 months since ARRA was signed into law. FTA estimates that ARRA funding could result in 1,200 new ARRA grants, and that its regular programs will likely generate over 1,000 grants in FY 2009. According to FTA, it is working to identify staffing gaps and develop an action plan to fill the positions. For example, to manage its ARRA programs, FTA reported that it has hired 23 employees to fill critical vacancies and will fill an additional 13 positions by the

¹⁵ A staffing proposal (dated September 1, 2009) was provided to OIG on September 24, 2009.

end of calendar year 2009, bringing the total number of hiring actions to support ARRA activities to 36. FTA also received authority from the Office of Personnel Management to hire 40 re-employed annuitants for ARRA work and direct-hire authority for 40 term ARRA employees. Although FTA has been hiring staff to meet the increased ARRA workload, we do not have sufficient assurance that FTA's efforts have been guided by a comprehensive plan that depicts the agency's staffing needs across its Headquarters and regional offices.

Officials at FTA's New York Regional Office—which typically administers the most funds of FTA's field offices and received over \$1 billion—stated that they were behind on non-ARRA work because they were dedicating staff from regular programs to meet their deadline for awarding ARRA funds. Given that the New York office oversees projects totaling over \$12 billion in Federal investments—including the Second Avenue Subway Project, East Side Access Project, and the Access to the Region's Core Project—the impact of any delays could be significant. In addition, officials from FTA's Atlanta Regional Office expressed concern that the office would not have sufficient personnel to administer ARRA grants. In response to this concern, officials told us they planned to hire four temporary employees. Further, some projects selected through the STIP and TIP process could require enhanced Federal oversight at a time when agencies' resources are struggling to meet new demands. For example, in September 2008,¹⁶ we reported that New York City's Fulton Street Transit Center project, which is receiving ARRA funding, had experienced significant estimated cost increases and schedule delays. Although \$847 million was already committed to the project through FTA's Lower Manhattan Recovery Projects program, New York added a significant portion of its ARRA funding—as much as \$424 million—to boost the project. Consequently, DOT's exposure on this project could be over \$1.2 billion.

In contrast to the other agencies we reviewed, FHWA completed workforce analyses at each of its 52 Division Offices to identify any additional staffing requirements through FY 2012, when its ARRA funds for oversight activities become unavailable for obligation. FHWA identified further staffing needs at the Headquarters level, primarily to address ARRA's reporting requirements. Based on its analyses, the agency began posting job announcements in January 2009 to fill 56 permanent positions and about 5 contract support positions for FY 2009. As of mid-June 2009, FHWA had filled 34 of the newly identified positions and was hiring 4 additional individuals for a special ARRA review team. In addition to hiring new staff to meet specific FHWA division needs, FHWA used detailees for ARRA work and shared staff between its offices.

¹⁶ OIG Report Number MH-2008-086, "Baseline Report on the Lower Manhattan Recovery Projects," September 26, 2008.

At FHWA, four of the five Divisions we visited noted that the economic downturn has resulted in hiring limitations at their respective state Departments of Transportation. For example, the Pennsylvania Department of Transportation is under a hiring freeze, and the Texas Department of Transportation lost between 8 and 9 percent of its workforce. According to the Division Office officials we spoke with, states are taking measures to address staffing shortages, such as temporarily shifting existing personnel to needed offices and hiring temporary construction inspectors. However, the focus on ARRA projects, existing staffing limitations, and decreases in state transportation funding could ultimately overwhelm states and undermine their ability to achieve ARRA's goals to stimulate the economy and protect Federal investments.

Operating Administrations Have Established Varying Levels of ARRA Oversight

Varying levels of oversight have been established for DOT's ARRA programs, from FAA's use of cost-plus contracting types in its Facilities and Equipment program to FHWA's challenge in overseeing states' use of billions in highway funding. To mitigate the risk of inefficient or imprudent expenditure of ARRA dollars, OMB directed agencies to take steps, beyond standard practice, to enhance oversight of ARRA grant programs and contracts. OMB also directed agencies to initiate additional oversight mechanisms to mitigate the unique implementation risks of ARRA, such as using fixed-price contracts and competitively awarding grants. Some DOT agencies, such as MARAD, have not provided this enhanced level of oversight. Other agencies, such as FHWA and FTA, will likely find it to be a difficult management challenge to provide sufficient oversight even when additional mechanisms have been established, or existing mechanisms are enhanced.

Despite OMB guidance emphasizing fixed-price contracts, FAA's ATO is modifying existing cost-plus-fixed-fee and award-fee contracts to manage some of the \$200 million worth of ARRA funding for projects in its Facilities and Equipment program. These types of contracts create substantial risk, given that they provide considerable latitude for cost growth in the event of changes to a project's scope or requirements—cost growth that the Government bears. Moreover, we have repeatedly reported that FAA has not managed these types of contracts well.¹⁷ In addition, a recent FAA Program Management Review of one of the program's contractors raised questions about the contractor's overreliance on the same small group of subcontractors and the ability to do quick turnaround jobs.

¹⁷ OIG Report Number FI-2008-054, "Interim Report: Award-Fee Criteria for the National Airway Systems Contract," May 28, 2008. OIG Report Number FI-2009-002, "Interim Report on Award-Fee Criteria for the System Engineering and Technical Assistance II Contract," October 7, 2008. OIG Report Number PT-2009-005, "Top Management Challenges," November 17, 2008.

Also, MARAD has not taken measures to enhance oversight of ARRA funds awarded through its Small Shipyards Grant Program. We found the existing guidance for the grant management process was a high-level plan that lacked specific procedures and processes for enhancing MARAD's oversight of ARRA funds and mitigating potential risks. Specifically, MARAD did not issue written policies and procedures establishing internal controls that address segregation of duties, financial reconciliations, and access to and storage of records. In July 2009, MARAD officials told us that existing guidance was outdated and would be revised. Establishing specific internal controls would provide a reasonable assurance that the MARAD offices managing and overseeing ARRA funds are safeguarding the funds against fraud, waste, and abuse; and that agency operations are recorded and accounted for properly. MARAD's reliance on grantees to provide proof that work is being conducted in accordance with the terms of the grant agreements further weakens its oversight of ARRA projects. Moreover, MARAD's oversight strategy includes plans to visit grantee shipyards, but officials said they could not guarantee that they would visit each shipyard to verify that ARRA funds were used as intended, before all of the monies were expended. Instead, MARAD plans to rely on monthly progress reports and documentation provided by its grantees, such as invoices and photographs of the projects. MARAD officials also told us that they plan to withhold 10 percent of the Federal share of each grant until receiving a final closeout report.

FHWA has taken a number of measures to enhance its oversight of ARRA projects; however, the sheer magnitude of the ARRA funds the agency is responsible for administering creates significant oversight challenges. FHWA directed its 52 Division Offices to implement a risk management program that is geared at preventing inefficient or imprudent spending on ARRA projects. FHWA's key management challenge is following through on this initiative to ensure it results in effective oversight of the \$27.5 billion the agency is responsible for. As part of this strategy, FHWA Division Offices are required to augment their usual oversight efforts by conducting "visible monitoring" of processes and documentation within their respective states. For example, Divisions may conduct checks of financial transactions, consultant procurements, bid processes, and change order approvals.

FHWA also needs to sustain focus on its national review teams—a new strategy for overseeing Division Offices' implementation of the risk management program. These teams will conduct site reviews across the country and utilize standard review guides to examine programs, projects, and processes. This will afford

FHWA the opportunity to identify national trends, and potentially, best practices.¹⁸ However, FHWA's planned schedule is aggressive and it remains to be seen whether this new strategy will effectively identify non-compliance issues. In the past, FHWA's efforts to employ a centralized approach like this have not always been successful, as we saw with its implementation of a program to identify risks related to structurally deficient bridges.¹⁹

FHWA's Indian Reservation Roads Program (IRR),²⁰ which received \$310 million in ARRA funds, also presents a significant oversight challenge. This program is jointly administered between FHWA and the Department of the Interior Bureau of Indian Affairs (BIA). BIA has experienced documented problems in overseeing Federal funds at reservations and villages in the past. Further, in February 2009, the Interior Department Inspector General issued a flash report²¹ citing concerns about the IRR program's oversight of contract, financial, and construction management processes in Alaska. Accordingly, FHWA also identified this program as a key ARRA implementation risk and, according to its risk mitigation plan, intends to hire additional staff and provide educational activities for BIA field personnel and the tribes on ARRA requirements through "webinars" and other means. We agree that providing an enhanced level of oversight beyond standard business practices, and collecting reliable data on program results, will be difficult due to the large number of widely dispersed Indian Reservations and Alaska Native Villages that are expected to receive ARRA funding (over 300) and the complex tribal sovereignty issues involved.

FTA plans to primarily rely on existing reviews to provide oversight of ARRA-funded projects, using ARRA funds to increase the level of these reviews. At the grantee level, this will include a set of established periodic reviews such as generalized triennial reviews (state reviews for non-urbanized areas) and specific area reviews, for example, procurement system reviews. FTA plans to use some ARRA funds designated for oversight to increase the level of these reviews for grantees identified as being high risk. At the specific grant level, day-to-day oversight will be done by regional office personnel. As it normally does, FTA also plans to use project management oversight contractors and occasional reviews by financial management oversight contractors. Additionally, FTA officials informed us that they plan to use project management oversight contractors on some ARRA projects that are not considered to be major projects—an increased

¹⁸ Between June and September 2009, the national review teams were scheduled to visit 33 states and conduct 56 reviews. The types of reviews scheduled in each state were based on the specific risks identified by the Divisions and the number of projects available for review.

¹⁹ OIG Report Number MH-2009-013, "National Bridge Inspection Program: Assessment of FHWA's Implementation of Data-Driven, Risk-Based Oversight," January 12, 2009.

²⁰ This program provides funding to improve the transportation systems providing access to and within Indian Reservations and Alaska Native Villages.

²¹ DOI OIG Report No. WR-IV-BIA-0001-2009, "BIA Alaska Regional Indian Reservation Roads Program Rife with Mismanagement and Lacking Program Oversight," February 2009.

level of oversight from standard practice. Follow-through by FTA to ensure that all oversight activities are conducted consistently with sufficient rigor is key, given the dramatic increase in funds that FTA will be overseeing on its ARRA projects.

DOT Has Developed ARRA Risk Management Strategies But Implementation Issues Remain

In response to OMB guidance requiring agencies to review, assess, and manage ARRA risks, OST initiated a four-stage process to develop mitigation strategies to address the immediate risks confronting ARRA programs. This process involved active consultation among OST and the Operating Administrations in an effort to supplement existing oversight programs.²² Our summer of 2009 review of risk management strategy documents at FAA, FHWA, FRA, and FTA identified shortcomings in the documentation, such as missing target completion dates for mitigating identified risks. Additionally, MARAD and OST had just completed their risk strategy documentation. At that time OST officials stated that they were actively working with the Operating Administrations to correct shortcomings and finalize these documents. In September, OST officials stated that the Operating Administrations had completed their risk mitigation strategies, although we have not analyzed these documents to determine whether our earlier concerns had been addressed.

The Operating Administrations' efforts to implement their risk management plans will need to be monitored by OST over time. OST staff told us they plan to monitor the actions monthly, provide guidance, comments and feedback, and share best practices among all Operating Administrations. These actions would help OST ensure that each Operating Administration follows through and takes sustained action to manage identified risks in its portion of the recovery program, identify cross-organizational issues, and determine if the mitigation strategies are, in fact, working throughout the ARRA program. However, OST may not have the resources needed in the long-term to ensure that the strategies are carried out and to evaluate their effectiveness. According to OST, it deployed two staffers to assist in ARRA-related administrative reporting and one senior manager to oversee the effort. OST's oversight challenge has been exacerbated because ARRA did not provide OST with administrative funding for this activity. Insufficient resources could affect OST's ability to provide oversight in the long term.

²² Existing oversight programs include DOT reviews of management controls and financial systems to comply with the Federal Managers Financial Integrity Act (FMFIA) and reviews of internal controls over financial reporting under OMB Circular A-123, "Management's Responsibilities for Internal Controls."

DOT Has Taken Steps To Increase Fraud Education and Outreach, but Continued Focus Is Needed as Additional ARRA Dollars Are Released

OMB requires Federal agencies to aggressively address fraud, waste, and abuse in ARRA projects. Some Operating Administrations have been proactive in meeting this requirement. For example, FTA provided a week-long “Grants A to Z” seminar, which included an OIG presentation that provided FTA staff with training on how to recognize and prevent fraud in the recovery program. Given that many ARRA projects may involve grantees with little or no experience in managing Federal grants, sustained outreach is needed to enhance understanding among DOT staff, grantees, and their contractors on how to deter, detect, and report potential fraud, waste, and abuse. The OIG investigations related to ARRA fraud that are already open underscore the need to make sure fraud awareness is reaching the public and private parties involved in ARRA’s implementation. Specifically, as of August 2009, we received 131 ARRA-related complaints through our Fraud Hotline. U.S. Attorney’s Offices have accepted six investigations for prosecution that deal with allegations of disadvantaged business enterprise fraud, false statements, bribery, and bid-rigging.

Increasing awareness of certain “red flags” that could indicate the presence of one or more fraud schemes contractors use to increase job profit is a key element in deterring fraud, waste, and abuse. Typical fraud schemes include bid-rigging and collusion; materials and time overcharging; and bribery, kickbacks, and conflicts of interest. Indicators of bid-rigging and collusion include identical errors in contract bids, and common addresses, phone numbers, or personnel among bidders. Indicators of materials and time overcharging include lack of supporting documentation or original documents; and indicators of bribery include unexplained or unreasonable compensations. (See exhibit D for additional fraud schemes, descriptions, and red flag indicators.)

In addition to outreach, another key focus area is DOT’s implementation of its Suspension and Debarment Program, which has a history of untimely processing and reporting of suspension and debarment actions. Inattention to this vulnerability creates the risk that government funds, including ARRA program dollars, will be awarded to businesses and individuals that have committed fraud or are otherwise known to be irresponsible. In May 2009, we issued an ARRA Advisory to the Department on this subject. The Advisory included proposed actions for OST to (1) revise the policy and process to prevent irresponsible businesses and individuals from conducting business with the Department and (2) assign responsibility to a specific office to monitor and oversee Operating Administrations’ implementation and compliance with the policy. Attention to this issue is important because significant delays in deciding and reporting suspension and debarment cases have put DOT and other Federal agencies at risk

of doing business with unethical parties.

Since the awarding of ARRA funds, OIG's investigative staff has conducted fraud awareness and prevention briefings and meetings for FHWA officials from all 50 states, the District of Columbia, and Puerto Rico; state DOT officials from 35 states; FTA regional officials with the responsibility for providing service to 26 states; local transit authority staff from 9 states; and local aviation authorities. Outreach efforts have also included industry stakeholders, such as the National Association of State Highway and Transportation Unions. As more recovery projects are initiated across the country, OIG's investigative staff plans to continue to partner with program officials to provide fraud prevention and awareness education. However, each Operating Administration must maintain its own rigorous fraud prevention and awareness programs and not solely rely on OIG for education and outreach.

DOT FACES MANAGEMENT AND RESOURCE OBSTACLES TO EFFECTIVELY IMPLEMENT OVER \$9 BILLION IN NEW ARRA PROGRAMS

In addition to increasing funding for existing DOT programs, ARRA created new discretionary grant programs, including \$8 billion to jump start the creation of high-speed rail corridors and intercity passenger rail service (under FRA)²³ and \$1.5 billion for surface transportation infrastructure projects (under OST). Working within tight time frames, FRA and OST were required to develop comprehensive plans and sound criteria for the new programs and develop appropriate oversight strategies. While each agency has made some progress, they must overcome significant resource and management obstacles to effectively implement their programs.

FRA Resources May Be Insufficient To Effectively Implement and Manage the High-Speed Rail Program

FRA's High-Speed Rail Program represents a significant organizational transformation for the agency, from a relatively small agency primarily focused on rail safety issues, to a grant-making agency responsible for starting up a large, long-term program, which could receive much public attention and scrutiny. Taking on the new responsibilities that come with this transformation has been a challenge for FRA. Specifically, FRA has not acquired sufficient capacity to effectively manage the program and has not developed a comprehensive implementation strategy. At the same time, the agency faced a significant challenge in completing the grant application and selection process within a

²³ The Administration has pledged to provide an additional \$1 billion per year in each of the next 5 years.

constricted timeframe. While the initial process of evaluating applications has been completed²⁴ and the agency plans to begin awarding grants in the second quarter of FY 2010, FRA has not determined how it will evaluate cost, schedule, and ridership estimates. Finally, the concurrent implementation and integration of a new electronic management system for administering grants further heightens implementation risks in the rush to meet statutory deadlines.

FRA officials acknowledged that FRA has insufficient capacity to start up and effectively manage the High-Speed Rail Program. According to officials, the money currently allotted for program management will be depleted during the grant evaluation and award phase, leaving no money for grant administration oversight. Consequently, FRA has asked Congress to increase from \$20 million (0.25 percent) to \$80 million (1 percent) the amount of ARRA funds it can use to administer the program. FRA has also requested an additional 27 FTEs²⁵ in its FY 2010 budget—specifically to help support the High-Speed Rail Program.²⁶ To fill gaps in the near term, FRA assessed its options to address resource needs to complete the first round of the grant application evaluation and selection process. Ultimately, to score the 214 grant applications it received in its initial round of evaluations and selections, FRA assembled 12 evaluation teams (each consisting of three individuals). These teams, which were required to complete their assessments within a 2-week time frame due to statutory deadlines, were comprised of staff borrowed from within FRA, as well as FTA and DOT's Research and Innovative Technology Administration.

FRA has not finalized policies and procedures for program implementation and operation, but rather has relied on contractors to develop an implementation strategy. For example, an FRA contractor developed a grants management master plan that contained over 400 action items for FRA, such as developing performance measures and standard operating procedures for grant administration. The plan did not contain deadlines or contingencies for performing pre-award tasks, such as establishing standard grant agreements and standard operating procedures, tools or templates to help oversee projects and conduct site visits, or standardized processes for reviewing and processing grantee invoices. FRA has not provided us documentation showing the status of these tasks, so it is unclear whether FRA will be able to complete these tasks before grants are awarded. FRA officials told us that they are focusing on tasks along the program's "critical path"

²⁴ ARRA required FRA to select all projects by September 30, 2012.

²⁵ This staff is to be distributed between FRA's Office of Railroad Development (22 positions), Office of Chief Counsel (2 positions), and Office of Financial Management and Administration (3 positions). FRA has begun hiring and anticipates new staff to be on board by the second quarter of FY 2010.

²⁶ On September 24, 2009, FRA commented that it has completed its workforce assessment and submitted its staffing proposal. We have not reviewed this analysis and thus, cannot comment on how FRA determined the number of FTEs it actually needs. Regardless of whether it receives the FTEs requested in the 2010 budget, it is important that FRA's staffing proposal is translated into an implementation plan that will adequately address its requirements.

and intend to address other tasks at a later, undetermined date. In response to concerns we expressed in our draft report, FRA stated it was in the process of documenting its program implementation strategy and operational policies and procedures. With the assistance of a contractor, FRA expects to complete a grant management manual, which will include comprehensive grants management policies and procedures, by March 2010.

FRA issued interim guidance for ARRA grant applicants in June 2009. While the guidance included general grant terms and conditions, application procedures, project safety requirements, quality assurance procedures, and evaluation criteria, it lacked sufficient detail and clear direction to prospective applicants. For example, the guidance required applicants to determine the future funding needs for all proposed projects using a cost-estimating methodology that may not be developed until October 2010—nearly a year after the first round of grant selections are to be made. In addition, as part of its application evaluation and selection process, FRA planned to assign a quantitative score for each application, after weighing each project against a set of criteria.²⁷ FRA officials stated that the level of risk of each proposed project would be assessed based on the applicant's ability to complete the project within budget, on time, and as designed. However, at the time of application evaluations, FRA had not determined how it would assess applicants' cost and schedule estimates. Moreover, FRA had not finalized how it would evaluate the accuracy of applicants' rider and revenue forecasts—a key aspect of the merit and feasibility of proposed projects. Currently, FRA's metrics, as stated in its interim guidance, are largely qualitative, as shown in table 4, and a methodology for weighing these metrics was not identified in the guidance—making the process more subjective.

Due to time constraints, FRA conducted application eligibility and quality reviews nearly simultaneously. FRA regional staff determined the eligibility of each proposal, while the 12 evaluation teams scored the projects. FRA noted that the eligibility review was too time-consuming to conduct for every project; and only submitted documents were reviewed. If an application was missing information, no requests were made for additional documentation. According to FRA, because an underlying purpose of ARRA is to get funds out into the economy quickly, there was little time for a lengthy, iterative review process, particularly with the number of applications received. FRA used the extent to which an applicant did or did not submit the required information as part of determining the applicant's eligibility.

²⁷ FRA had the authority to apply additional criteria for final selection. However, its interim guidance did not provide details as to how the FRA Administrator might apply this authority.

Further, while FRA developed its internal methodology for the evaluation panel to weigh these metrics,²⁸ we were unable to determine if or when it will be publicly available. Without a clear and complete methodology for ranking applications, the selection process will lack transparency—one of ARRA’s key principles—and questions will remain as to how the agency determined the projects with the highest merit. Full disclosure of FRA’s rationale for making investment decisions is important considering that a limited number of the hundreds of project sponsors that applied for funding are likely to be selected.

Table 4. Summary of FRA’s High-Speed Rail Grant Selection Criteria

<p>Evaluation Criteria:</p> <ul style="list-style-type: none"> • <u>Public Return on Investment:</u> Includes transportation benefits, economic recovery benefits, other public benefits • <u>Project Success Factors:</u> Project management approach, sustainability of benefits • <u>Other Attributes:</u> Timeliness of project completion
<p>Additional Selection Criteria: To ensure that evaluation scoring has been applied consistently, projects meet key priorities and achieve balance/diversity</p> <ul style="list-style-type: none"> • <u>Region/Location:</u> Geography and Economic Conditions • <u>Innovation:</u> Technology and Industrial/Capacity Development • <u>Partnerships:</u> Multi-state agreements • <u>Tracks and Round Timing:</u> Project costs and schedules
<p>Final Selection:</p> <ul style="list-style-type: none"> • A technical evaluation panel will review each application and assign a rating between 1-5 points according to the evaluation criteria above. • The ratings will be weighted by the relative priority of each criterion (which also varies by application track) to achieve an overall application score. • The scored applications will be presented to the FRA Administrator, who may then apply the additional selection criteria to make final project selections.

FRA is also tasked with implementing a new electronic grants management system, Grants Solutions, and is in the process of integrating this system with its accounting system, Delphi, to enable more comprehensive monitoring of ARRA funds. Given the other tasks FRA still needs to complete within short time frames, moving to this new electronic system presents a significant management challenge for FRA. Because agencies often experience unforeseen problems in implementing new management systems, the agency risks employing a new system and adding additional features to it prior to establishing a sufficient level of expertise or experience. FRA stated that it recognizes this and assembled a team early on in the process to help develop and implement the new grants management

²⁸ FRA provided its Evaluation Guidebook (dated August 24, 2009) to OIG on September 24, 2009.

system.²⁹ FRA added that it has trained its staff and deployed the system, as scheduled, in January 2009. While they anticipate awarding all grants through the system in FY 2010, FRA officials stated that they also continue to make system enhancements as deemed necessary. To ensure successful implementation, FRA will need to continue thoroughly testing the system and training staff responsible for using the system.

OST Has Not Finalized Oversight Responsibilities in the TIGER Discretionary Grants Post-Grant Award Process

OST has not finalized its role in the post-grant award process of its \$1.5 billion TIGER Discretionary Grants program—a capital investment program for surface transportation infrastructure³⁰—once grants are awarded. Also, OST has not thoroughly assessed what additional grant oversight resources or expertise it will need to effectively administer these grants.

Earlier this year, DOT publicly released the primary and secondary selection criteria it will use as the basis for evaluating TIGER grant applications (see table 5).³¹ During our audit, we discussed with OST officials potential difficulties we noted with establishing objective internal grant review and selection criteria. Qualitative factors such as “improving existing transportation facilities or systems” and “livability” are subject to interpretation by OST grant application evaluators. In addition, OST must use the primary and secondary criteria it developed to competitively select grants, while meeting the statutory requirement that the grants be equitably distributed geographically. These potentially competing requirements, mandated by law, could be difficult to reconcile, and revising selected projects to satisfy the geographic distribution requirements could result in higher rated projects being taken off the list. OST officials told us they would provide us with clear documentation and complete disclosure of how projects are selected to ensure a high degree of transparency and accountability. On September 22, 2009, OST issued its internal review guidance. OST began evaluating grant applications on September 23, 2009.

²⁹ This team consisted of FRA program and grants management experts as well as system support experts from the Center of Excellence provider, the Department of Health and Human Services.

³⁰ TIGER grants will provide funding to state and local agencies on a competitive basis for projects with a significant national, metropolitan, or regional impact. DOT is expected to give priority to projects where Federal funds are required to complete the project’s overall financial package and are expected to be completed by February 2012. The grants offered under this program may range from \$20 million to \$300 million. The Department plans to make final project selections no later than February 17, 2010.

³¹ *Federal Register*, Vol. 74, No. 115, Wednesday, June 17, 2009.

Table 5. TIGER Grant Selection Criteria

<p>Dollar Thresholds and Priorities: Project(s) should be between \$20 million and \$300 million. The Department may waive the \$20 million minimum to fund significant projects in smaller cities, regions, or states. Priority will be given to projects expected to be completed by February 17, 2012, and where Federal funds are needed to complete the project's overall financial package that includes non-Federal sources of funds.*</p>
<p>Primary Selection Criteria: <u>Long-Term Outcomes:</u> (1) improving the condition of existing transportation facilities and systems, (2) economic competitiveness, (3) livability, (4) sustainability, and (5) safety. <u>Job Creation and Economic Stimulus:</u> Job creation and preservation and rapid increases in economic activity, particularly jobs and activities that benefit economically distressed areas.</p>
<p>Secondary Selection Criteria:</p> <ul style="list-style-type: none"> • Innovation. • Partnership.
<p>Final Selection: The evaluation team will recommend a project based on primary and secondary criteria. The primary selection criteria will be given more weight. Project pool will be reviewed for geographic distribution requirements. A state cannot receive more than 20 percent of the funds made available under this program. The list of recommended projects may be adjusted to meet rural and urban needs and equitable geographic distribution.</p>

Source: 74 FR 28755 (June 17, 2009)

*ARRA allows 100 percent of Federal share of project costs.

OST's role in overseeing projects that have been awarded TIGER grants also remains unclear. This may be a challenge given that OST lacks experience in directly overseeing a grant program of this magnitude. While OST plans to partner with Operating Administrations to oversee TIGER grants, key issues remain unresolved as to how the partnerships will work. For example, OST has not defined the level of administrative and oversight control it plans to retain. In addition, OST has not assessed the type and level of in-house expertise it needs for the post-award grant phase, although OST officials acknowledged that they will likely need to acquire new staff and resources to do so.

DOT IS WORKING TO ADDRESS ARRA REPORTING REQUIREMENTS, BUT HAS NOT COMPLETED KEY TASKS

ARRA's extensive new reporting and performance measurement requirements, which OMB detailed in a series of implementation guidance documents, are designed to promote accountability and transparency. While DOT has been working to meet these requirements, it has not fully documented and implemented

processes for reviewing data collected from ARRA recipients and faces challenges in reporting accurate and consistent job creation data.

DOT's Operating Administrations Have Not Fully Documented Processes for Reviewing Data Collected From ARRA Recipients

The data reporting requirements mandated by ARRA and OMB guidance include detailed information on project expenditures, project status and performance reports, and job creation updates.³² Additionally, OMB's June 2009 guidance directed the Department to provide some degree of review to ensure that recipients are reporting accurate ARRA project data to the Federal Government—even though OMB did not spell out how Federal agencies should accomplish this task. The initial agency review period was from October 22 through October 29, 2009; and will be repeated quarterly thereafter. Review of recipient data quality was identified as a risk by the majority of Operating Administrations in their risk assessments and the Recovery Accountability and Transparency Board³³ requested that Offices of Inspectors General determine whether their respective agencies, including DOT, have established a process to perform limited data quality reviews that are intended to identify material omissions or significant reporting errors.

We found that the Operating Administrations have taken actions to ensure that ARRA recipients comply with data reporting requirements. Officials from all the Operating Administrations told us that they will conduct data quality reviews of recipient data, notify recipients of errors, and address systemic or chronic reporting problems when data become available. At the time of our review, the Operating Administrations were in various planning stages for conducting the reviews. For example, FAA and FTA had documented processes to conduct the data quality reviews while FHWA, FRA, and MARAD had not accomplished this task. Operating Administrations planned to have processes in place by October 22, 2009—in time to conduct limited data quality reviews, as required by OMB. Department officials stated that once completed, they expect the Operating Administrations to continue to revise the review processes based on lessons learned during the initial data quality reviews. However, until all the Operating Administrations have final processes in place, we cannot assess whether these processes will adequately identify omissions and significant reporting errors.

DOT's Readiness to Report Accurate and Consistent Job Creation Data Is Unclear

ARRA requires DOT to estimate and report on the number of jobs created through the recovery program. Several challenges, such as a lack of guidance to the

³² Much of the data will eventually be posted on www.recovery.gov.

³³ This Board was created by ARRA to conduct oversight of recovery funds. The Board consists of a chairman, appointed by the President, and 12 Inspectors General, including DOT.

individual Operating Administrations on assessing data reliability and untimely reporting on new jobs, may impede the Department's ability to provide accurate reports. Because DOT has already provided monthly estimates to the Secretary, its information on ARRA projects may need to be revised at a later date to provide more credible data.

First, DOT has not provided guidance on how Operating Administrations should assess the reliability of job creation data provided by recipients. OST has requested that DOT's Bureau of Transportation Statistics design a methodology to be used by each Operating Administration for this purpose, but this work is not expected to be completed until later this year. In the meantime, individual Operating Administrations have provided their own guidance to recipients and developed their own data assurance methodologies.

Second, DOT's methodology for estimating jobs created on ARRA projects through indirect employment is not consistent with the Council of Economic Advisors' (CEA) recommended methodology for estimating total employment. To estimate indirect employment, DOT plans to use a modified input-output model. Input-output models are simplistic in their assumptions and do not take into account the effects of changes in prices, wages, and interest rates. To obtain more accurate total job estimates, CEA draws upon the results from more sophisticated models that do consider such factors. While DOT committed to use CEA's methodology to estimate total employment, the Department continues to use its modified input-output model for estimates of indirect employment. Given the limitations of this model, DOT's indirect employment estimates may lack credibility.

Third, OST intends to report indirect and total jobs as having been created on the date recipients are reimbursed for expenditures on projects that generate jobs—not when the expenditures generating the jobs actually occur. Given that expenditures may not be reimbursed until well after a project has started, there may be significant time lags between when new jobs are actually created and when they are reported, creating ambiguity in the estimates.

CONCLUSION

ARRA's passage required DOT to manage an enhanced workload for existing grant programs, while meeting new program requirements in a short period of time. This created significant challenges including overseeing numerous grantees and projects across the country, standing up several new programs, and meeting tight time frames for distributing and expending funds and reporting results.

The Department and its Operating Administrations have taken a variety of measures to address the challenges presented by ARRA. At this point in the recovery program, some Operating Administrations have made strides towards enhancing management of their portion of the program. However, others, such as FRA, currently lack adequate resources, processes, and the capacity to effectively manage this new workload.

Until DOT addresses the areas we identified as requiring action now—such as finalizing comprehensive workforce plans for all Operating Administrations and determining effective oversight strategies for the new high-speed rail and TIGER Grants programs—it will remain vulnerable to not meeting ARRA’s goals or requirements. Further, DOT must keep sight of key management challenges that require a sustained focus over time, such as carrying out the work of FHWA’s national review teams, providing counter-fraud outreach, and overseeing the STIP and TIP process for billions in highway and transit formula grants.

As we move to the next phase of our ARRA work, we will use the results of our agency scans to conduct detailed assessments of areas that warrant additional work and reporting based on potential risks. In fact, we have already initiated audits concerning FRA’s High-Speed Rail Program and FAA’s AIP Grant selection process. We remain committed to protecting the Federal investment over the long term.

RECOMMENDATIONS

To ensure the Department takes sufficient action to address the areas of concern identified in this report, we recommend that the Secretary of Transportation, through the DOT TIGER team, develop an action plan that lays out the steps that DOT will take or has already taken to:

1. Finalize comprehensive workforce plans for all Operating Administrations that address the adverse impacts of staffing issues on existing programs.
2. Identify necessary actions and resources for carrying out and monitoring DOT’s risk management strategy.
3. Address risks related to the quality of data being reported to the public on program results, particularly job creation data.
4. Implement an effective oversight strategy for FRA’s High-Speed Rail and OST’s TIGER Discretionary Grants Programs.
5. Implement an effective oversight strategy for MARAD’s Small Shipyards Grant Program and, should the program receive more funding in the future,

develop comprehensive guidelines for the grant evaluation and selection process.

6. Implement follow-up actions planned in response to ARRA Advisories.

The plan should assign responsibility, explain detailed action steps, and identify target completion dates for how the Department or its Operating Administrations plan to address these issues.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided a draft of this report to DOT for review and comment on October 13, 2009. DOT provided us its formal comments on November 16, 2009, which we incorporated into this report, as appropriate. DOT's complete comments are included as the appendix to this report. DOT also provided informal technical clarifications, which we also incorporated into this report. In its formal comments, DOT cited the new approaches it has taken to swiftly implement ARRA and, while it concurred with our recommendation to develop an action plan, the Department stated that our draft report lacked sufficient focus on providing critical, actionable insights. We find this response perplexing since our report identified key vulnerabilities regarding program requirements that may not be fully met by some Operating Administrations. Our report also identified a number of factors that could inhibit DOT's oversight of ARRA spending, as well as key tasks to address ARRA reporting requirements that still need to be completed. Our intent during the audit was to provide DOT with real-time observations to mitigate further risks.

In fact, some Operating Administrations did take action in key areas based on our work, which clearly demonstrates the usefulness of our independent assessment of their efforts. Specifically, our continuous feedback during this audit resulted in the DOT agencies taking steps to address issues we raised even before we issued a draft report for comment. For example, in September we aired concerns about FRA's capacity to stand up its new high speed rail program under tight timeframes and make prudent investment decisions among over 200 competing proposals in such a short period of time. Subsequently, FRA postponed the announcement of its selections from fall 2009 to early winter 2010.

In its comments, the Department praised its unprecedented efforts to meet ARRA requirements under tight statutory deadlines. Our approach also recognized the fast-moving nature of ARRA's implementation and, like the Department, we realized that standard business practices would not apply. Accordingly, we completed a review in less than 5 months at each DOT agency that received ARRA funding and provided real-time feedback throughout this audit, including

detailed exit briefings to each of the Operating Administrations and a comprehensive capstone briefing to the Department's leadership in September. In addition, we designed a new template for expeditious reporting of results—ARRA Advisories—and issued three such advisories during the course of this audit.

DOT also expressed concern about our critique of its methodology for estimating jobs created through ARRA-funded projects, along with its timing of reporting job creation data. With regard to this issue, we have continued our dialogue with the Department since the issuance of the draft report and modified the report as appropriate. However, we continue to maintain that limitations in DOT's model for estimating indirect employment could result in less credible job creation estimates. In any case, the issuance of the data validations procedures being planned by the Bureau of Transportation Statistics is an important control that has yet to be completed.

The Department also commented that it looked forward to finding new and innovative ways to work effectively with the OIG in order to identify problems and implement solutions. We can report that our scan has positioned us well to do so. In fact, we recently provided an early notice to the Department on our future work by publishing our FY 2010 Recovery Act Audit Plan that includes 24 initiated or planned audits that will provide in-depth analysis of some of the issues raised in this report. For example, we already initiated an audit of FAA's process for awarding ARRA-funded grants under its AIP program.

ACTIONS REQUIRED

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

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

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cc: Heads of All Operating Administrations
All Secretarial Officers

EXHIBIT A. OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of this audit, the second phase of our ARRA-related work, was to identify vulnerabilities that could impede DOT's ability to (1) provide effective oversight to ARRA-funded projects and (2) meet new requirements mandated by ARRA and OMB. To address our audit objective, we conducted expeditious and structured reviews, or scans, of each DOT Operating Administration's implementation of ARRA—based on the 10 key focus areas identified in our Phase I March 2009 oversight challenges report.

Specifically, we:

- established a task force to develop a strategy and approach for the Phase II work, ensure coordination of our efforts, develop a consistent message and reporting format, and share information;
- identified a team structure consisting of five audit teams overseen by an Overall Lead/Reporting Program Director to conduct a scan across the six DOT agencies (excluding OIG) that received ARRA funding—Air (FAA), Land (FTA and FHWA), Sea (MARAD), New Programs (FRA), and New Programs (OST);
- developed a Structured Information Collection Matrix (SICM) that laid out standard questions under each of the 10 focus areas (see table 3 in the Background section) to ask at each DOT component and a list of key documents to collect;
- determined the agency Headquarters and Department-level offices each team would need to interview in order to answer the questions contained in the SICM;
- selected first-level field locations within FTA and FHWA to conduct our audit work using the following methodologies.
 - **FTA:** The team conducted site visits at 3 of the 10 FTA Regional Offices, specifically New York, Chicago, and Atlanta. We selected New York and Chicago because they were two of the three Regional Offices that received more than \$1 billion in ARRA funding, assuming that larger dollar amounts are associated with greater risk. We chose Atlanta because, at the time of selection, it was the Regional Office that had awarded the largest number of ARRA grants, and therefore might have encountered more advanced ARRA issues than the other offices.

- **FHWA:** The team conducted site visits at FHWA Division Offices in Texas, California, New York, Pennsylvania, and Maine. These Divisions were selected based on risk factors that could subject ARRA funds to fraud, waste, or abuse. Three factors were considered in weighting the overall risk of each state, including the total amount of ARRA funds provided to the state, the percent of ARRA funds obligated as of May 7, 2009, and the results of FY 2007 single audits of the state's highway planning and construction program.
- interviewed key external stakeholders to get a perspective on ARRA's implementation, including associations, state and local Inspectors General and audit offices;
- conducted systematic surveys, or scans, using the SICM of the six DOT components that received ARRA funding (excluding OIG) to identify potential vulnerabilities in each agencies' ARRA implementation; and
- assessed DOT's progress in implementing the initiatives contained in the action plan it prepared in response to our March 2009 report on ARRA oversight challenges.

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

EXHIBIT B. OVERVIEW OF DOT PROGRAMS FUNDED UNDER ARRA AND RELATED REQUIREMENTS

Federal Aviation Administration

ARRA appropriated \$1.3 billion to the Federal Aviation Administration (FAA) to Grants-In-Aid for Airports and Facilities and Equipment projects. ARRA designated \$1.1 billion for Airport Improvement Program (AIP) projects. These discretionary grants are intended for development projects that enhance capacity, safety, and security, as well as for aircraft noise compatibility planning and programs. The ARRA statute requires that AIP funds must supplement and not supplant planned expenditures from airport-generated revenues or from other state and local sources for airport development activities. ARRA also expresses priority for those projects that can be completed within two years.

ARRA also provided \$200 million for FAA Facilities and Equipment (F&E) projects, including related expenses incurred in administering the program. ARRA stipulates that F&E recovery funds will be used to upgrade power systems, air route traffic control centers, air traffic control towers and terminal radar approach control facilities, and navigation and landing equipment. ARRA directs FAA to give preference to projects that could be completed in 2 years.

Federal Highway Administration

ARRA appropriated \$27.5 billion for Highway Infrastructure Investments. This amount includes \$840 million in set-asides to specific FHWA programs and \$26.7 billion in apportionments to the states. Funds may be used for projects eligible under the Surface Transportation Program, such as construction or resurfacing of highways or bridges, or for passenger and freight rail transportation and port infrastructure projects.

Set-asides

ARRA sets aside \$840 million for the following programs:

- Up to \$40 million for FHWA's management and oversight of ARRA projects and activities
- \$550 million for Federal Lands Highway (FLH) programs. FLH works with Federal Land Management Agencies to manage transportation needs on public roads serving Federal and Indian lands. In distributing ARRA funds, priority should be given to capital investments and projects that can be completed by February 17, 2011. The breakdown of this funding is as follows:

- \$310 million for Indian Reservation Roads. FLH and the Department of the Interior's Bureau of Indian Affairs jointly administer this program which addresses the transportation needs of over 560 Indian Tribes and Alaska Native Villages. Up to 4 percent of the ARRA funds may be used by the Secretary of the Interior for program management, project oversight, and administrative expenses.
 - \$170 million for Park Roads and Parkways. FLH and the National Park Service jointly administer this program, which provides access to hundreds of National Park Service sites.
 - \$60 million for Forest Highways. FLH and the U.S. Forest Service jointly administer this program, which provides access to and within the National Forest System.
 - \$10 million for Refuge Roads. FLH and the U.S. Fish and Wildlife Service jointly administer this program, which provides access to the National Wildlife Refuge System.
-
- \$20 million for Highway Surface Transportation and Technology Training. This program is designed to increase the effectiveness of state departments of transportation training programs.
 - \$20 million for Disadvantaged Business Enterprises bonding assistance. The DOT Minority Resource Center provides assistance to disadvantaged business enterprises in obtaining bid, payment, and performance bonds.
 - \$105 million for the Puerto Rico Highway program.
 - \$45 million for the Territorial Highway program. This program provides for the construction and improvement of highways in American Samoa, The Commonwealth of Northern Mariana Islands, Guam, and the United States Virgin Islands.
 - \$60 million for the Ferry Boat and Ferry Terminal Discretionary Grant program. This program provides funds for the construction of ferry boats and ferry terminals. Under ARRA, priority should be given to projects that demonstrate the ability to be completed by February 17, 2011.

Apportionments

The remaining \$26.7 billion is apportioned to the states according to existing formulas. States must set aside 3 percent (totaling \$800 million) of their apportionment for transportation enhancement activities and sub-allocate 30 percent (totaling \$8 billion) of their apportionment to geographic areas based on population. The remaining 67 percent (totaling \$17.8 billion) may be used in any area of the state for eligible projects. Funds for transportation enhancements are restricted to 12 specific activities, including providing facilities for pedestrians and bicycles, acquisition of scenic easements, landscaping, and historic preservation. ARRA stipulated priority for projects that can be completed in three years and those located in economically distressed areas.

Federal Railroad Administration

ARRA appropriated \$9.3 billion to the Federal Railroad Administration (FRA) designating \$8 billion to FRA for Capital Assistance for High-Speed Rail (HSR) Corridors and Intercity Passenger Rail Service, and \$1.3 billion to the National Railroad Passenger Corporation for Capital Grants to Amtrak.

Capital Assistance for HSR Corridors and Intercity Passenger Rail Service

ARRA appropriated \$8 billion to FRA for three new competitive grant programs for funding high-speed intercity passenger rail capital improvements, which were authorized by the Passenger Rail Investment and Improvement Act of 2008.

- Intercity Passenger Rail Service Corridor Capital Assistance program (Section 301)
- Congestion Grants program (Section 302)
- High-Speed Rail Corridor Development program (Section 501)

The Secretary of Transportation has the authority to decide how the \$8 billion should be allocated across the three programs, and FRA said that it will not allocate funding in advance of receiving applications.

Funding Strategy. FRA adopted an approach that recognizes the different stages of HSR corridor development, the near-term desire to aid economic recovery efforts, and the long-term desire to develop a national HSR network. To address these diverse goals, FRA plans to fund these programs according to four tracks, which have different application eligibilities, requirements, and deadlines for each track. Tracks 1 and 2 will use ARRA funds (up to 100 percent Federal match, at the option of the grant recipient; but FRA favors applicants with a funding match), while tracks 3 and 4 will use FRA's FYs 2008 and 2009 appropriations (50/50 match).

FRA anticipates making multiple awards under each of the four tracks, and may reserve some ARRA funding for tracks 1 and 2 for future rounds of applications because they will be using their annual appropriations funding in tracks 3 and 4.

Additionally, ARRA required that funding may not be used for project planning or operating expenses, and that the FRA Administrator may retain up to $\frac{1}{4}$ of 1 percent of these funds to oversee and implement these grants.

Capital Grants to the National Railroad Passenger Corporation

ARRA appropriated \$1.3 billion to the National Railroad Passenger Corporation (Amtrak) for capital grants to Amtrak, designating \$450 million for capital security grants. ARRA stipulated that the remaining \$850 million in non-security funds to be used for projects that repair or upgrade railroad assets or infrastructure, or those that expand passenger rail capacity or rehabilitate rolling stock. ARRA prohibited the use of funds to subsidize Amtrak operating losses and required the Secretary to take measures to ensure that projects are completed in 2 years. ARRA also stipulated that projects shall supplement and not supplant planned expenditures, and that not more than 60 percent of the funds for non-security activities will be used for capital projects along the Northeast Corridor.

Federal Transit Administration

ARRA appropriated \$8.4 billion for three major transit programs—funds that were originally to be used only for capital projects. Of that amount,

- \$6.9 billion was appropriated for the Transit Capital Assistance Program (a combination of several programs as detailed below).
- \$750 million was appropriated for projects eligible under the Section 5309 Fixed Guideway Modernization Program.
- \$750 million was appropriated for Capital Investment Grants, for major capital projects eligible under the Section 5309 New Starts/Small Starts program.
- Less than 1 percent of the total funding of \$8.4 billion (\$64.3 million) is available to FTA for oversight and administration of the ARRA program. The \$64.3 million is a combined amount deducted from the various programs before allocation.

Transit Capital Assistance

Of the \$6.9 billion appropriated for the Transit Capital Assistance Program, \$100 million is reserved for the Transit Investments in Greenhouse Gas and Energy Reduction (TIGGER). TIGGER is a new discretionary grant program for public transportation projects that reduce a transit agency's greenhouse gas emissions or result in a decrease of a transit system's energy use.

Exhibit B. Overview of DOT Programs Funded Under ARRA and Related Requirements

The remaining \$6.8 billion was originally designated for capital expenses, even in cases where the programs usually can use funds for operating expenses. On June 24, 2009, President Obama signed the Supplemental Appropriations Act for 2009. This new law includes a provision allowing up to 10 percent of each ARRA amount apportioned for the section 5307, section 5311, and section 5340 programs to be used for operating assistance.

- 80 percent (\$5.44 billion) is available for section 5307 Urbanized Areas, defined as areas with a population over 50,000 as designated by the U.S. Bureau of the Census. Generally, section 5307 funds are for transit capital and operating assistance, but areas over 200,000 in population may not use 5307 funds for operating assistance, except the ARRA funds designated in the Supplemental Appropriations Act for 2009. Funds are apportioned on the basis of legislative formulas, and the same formulas were used for ARRA.
- 10 percent (\$680 million) is available for section 5311 Non-Urbanized Areas. Section 5311 funds are distributed through states to non-urbanized areas—those with less than 50,000 in population. Funds may generally be used for transit capital, operating, or administrative assistance and are apportioned through statutory formula. The same formulas were used for ARRA.

Of the \$680 million, 2.5 percent (\$17 million) was designated for the Tribal Transit program, a discretionary program for recognized Indian tribes through an annual national competitive process. Funds may be used for the same purposes as other section 5311 funds.

- 10 percent (\$680 million) is available for section 5340 Growing States and High Density States. The permitted uses and requirements of section 5340 funds are the same as for the 5307 and 5311 funds to which they are added, and in its publication of apportioned ARRA funds, FTA combined the 5340 amounts in the 5307 or 5311 allocation to each urbanized or non-urbanized area.

Fixed Guideway Infrastructure Investment

ARRA provided \$750 million for the Fixed Guideway Modernization program—a capital program for the modernization or improvement of existing fixed guideway systems, which can include heavy rail, light rail, commuter rail, monorail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, portions of motor bus service operated on exclusive or controlled rights-of-way, and high-occupancy-vehicle lanes. FTA apportioned \$742.5 million (\$750 million less 1.0 percent for oversight) to urbanized areas

through the section 5309 Fixed Guideway Modernization program. This amount was sufficient only for funds to be apportioned under the first four tiers of the normal seven-tier statutory formula. Funds were allocated directly to 39 urbanized areas that have fixed guideway transit systems with segments that are more than seven years old and are at least one mile in length.

Capital Investment Grants

ARRA provided \$750 million for Capital Investment Grants—major capital projects eligible under the discretionary section 5309 New Starts/Small Starts program. This program funds planned, implemented, and operated major capital transit projects for assistance, consisting either of new systems or of extensions of existing systems. FTA apportioned \$742.5 million (\$750 million less 1.0 percent for oversight) for Capital Investment Grants. Per ARRA, priority was to be given to projects that are currently in construction or able to obligate funds within 150 days of enactment. FTA apportioned these funds directly to 11 projects, based on an analysis of construction schedules and cash flow needs of New Starts and Small Starts projects currently under construction. The amounts allocated under the ARRA program did not increase the total Federal investment in these projects, but rather were substituted for section 5309 funds scheduled to be appropriated in future years, in order to expedite project delivery.

Maritime Administration

Under ARRA, MARAD received \$100 million for assistance to small shipyards—commercial facilities that build, deliver, and/or repair vessels—for capital and related infrastructure improvements. ARRA designated \$98 million for grants and up to \$2 million for administering the Small Shipyards Grant Program. This program provides financial assistance in the form of competitive grant funds to small shipyards to facilitate the efficiency, operations, and quality of the domestic ship construction and repair industry.³⁴ The program also provides grants for training to enhance shipyard employees' technical skills and to promote operational productivity in communities with economies linked to the maritime industry. Federal grant funds for a small shipyard project may not exceed 75 percent of the total cost. The remaining 25 percent must be matched by the grant recipient, unless the Maritime Administrator determines that a project merits a higher percentage of Federal financial assistance.

To be eligible for the program, small shipyards must employ 1,200 or fewer production employees. The program also requires that no more than 25 percent of the program's funds be awarded to shipyard facilities with 601 to 1,200 production

³⁴ Without the approval of the Maritime Administrator, grant funds to small shipyards may not be used to construct physical facilities, such as buildings, or to acquire land.

employees. In addition, the shipyard facility must be located in a single geographic location that is in or near a maritime community.

Office of the Secretary of Transportation

ARRA provided the Office of the Secretary of Transportation (OST) \$1.5 billion in TIGER Discretionary Grants designated for transportation projects with a significant national, metropolitan, or regional impact. According to ARRA, eligible purposes include highway or bridge projects; public transportation projects, including investments in projects participating in the New Starts or Small Starts programs; passenger and freight rail transportation projects; and port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement. OST can also invest in projects that involve or benefit more than one mode.

Per ARRA, OST must select projects ranging from \$20 to \$300 million, with no more than 20 percent provided to one state. ARRA also requires OST to equitably distribute TIGER grants geographically. The Secretary can waive the \$20 million minimum project threshold for the purpose of funding significant projects in smaller cities, regions, or states. The Federal share of project costs may be up to 100 percent, with priority given to projects that require Federal funding to complete financing and will be completed within 3 years. Up to 0.1 percent of the funds made available to OST may fund grant award and oversight and portions may be transferred to other modal administrators.

EXHIBIT C. OVERVIEW OF THE OST TIGER TEAM

The Department created a Transportation Investment Generating Economic Recovery (TIGER) team to coordinate its role in ARRA. The TIGER team consists of approximately 60 officials from Operating Administrations and offices and is co-chaired by the Deputy Assistant Secretary for Budget and Programs and the Deputy Assistant Secretary for Transportation Policy. The team was tasked with coordinating the Department's ARRA role in (1) prioritizing transportation investments, (2) rapidly distributing funds to state and local governments, (3) providing transparency, and (4) monitoring funds distribution. Additionally, the team was tasked with developing financial reporting standards, measuring performance, managing risk, and reporting of job creation.

Initially, the TIGER team formed eight work groups to coordinate specific areas and implemented a virtual intranet site to field and answer questions across the Department, report critical deadlines, and share data. Each TIGER work group is headed by an OST senior staff member and the group includes Departmental issue-area experts. Subsequently, three groups were consolidated and another group added.³⁵ The TIGER work groups and roles are as follows.

- **Communication Work Group:** Coordinates ARRA announcements and events for the Department, such as coordinating press releases and various events related to the Department's Recovery Act activities.
- **Executive Accountability Board:** Focuses on encouraging communication between the audit community and the Department, facilitating dissemination of information on best practices from OIG and GAO activity, expediting corrective actions, and providing a forum to ensure the audit community is aware of Departmental actions. The work group includes Department senior management and OIG and GAO staff.
- **Financial and Data Stewardship Work Group:** Will (1) develop strategies for gathering and reporting ARRA information efficiently and unobtrusively, with attention to data quality and (2) serve as a forum for Departmental acquisition and grants officials to address issues, challenges, and best practices. A Grants Executive Board was also created to manage risk for the Department's financial assistance programs and (3) serve as a forum for Departmental budget and finance staff to address challenges in fulfilling ARRA financial reporting requirements.

³⁵ The Data Consolidation, Financial Stewardship, and Financial Assistance work groups were consolidated into the Financial and Data Stewardship work group. Additionally, a new work group was added, the Hearings Work Group.

- **Geographic Information Systems Mapping Work Group:** Coordinates efforts to use Geographic Information Systems (GIS) to map the Department's ARRA project data on a publicly accessible website. The goal is to present project specific information at a variety of geographic levels, along with some summary descriptive information, and the status of each project.
- **Hearings Work Group:** Facilitates future congressional hearings that may arise under ARRA.
- **Informational Technology Work Group:** Ensures all required Departmental ARRA information is publicly available online and complies with OMB specifications.
- **Jobs Reporting Work Group:** Coordinates the Department's response to ARRA section 1512 and 1201 job reporting requirements.

The TIGER team meets weekly to report on program-specific and working group challenges, milestones, and deliverables. Further, the TIGER team co-chairs submit weekly reports to the recovery.gov Web site, brief the Secretary on weekly accomplishments, and work to ensure that all reporting deadlines in the OMB guidance and from Congress are met.

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

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

Bid-rigging and Collusion

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

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

Materials Overcharging

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

- Discrepancies between contractor-provided quantity documentation and observed data, including yield calculations.
- Refusal or inability to provide supporting documentation.
- Contractor consistently loading job materials out of the view of project inspector.
- Truck weight tickets or plant production records with altered or missing information.
- Photocopies of quantity documentation where originals are expected.

- Irregularities in color or content of weight slips or other contractor documents used to calculate pay quantities.

Time Overcharging

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

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

Product Substitution

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

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

Disadvantaged Business Enterprises (DBE) Fraud

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

- Minority owner lacking background, expertise, or equipment to perform subcontract work.

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

Quality-Control Testing Fraud

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

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

Bribery

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

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

Kickbacks

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

- Unexplained or unreasonable limitations on the number of potential subcontractors contracted for bid or offer.
- Continuing awards to subcontractors with poor performance records.
- Non-award of subcontract to lowest bidder.
- “No-value-added” technical specifications that dictate contract awards to particular companies.

Conflicts of Interest

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

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

Reporting Concerns about Fraud, Waste, or Abuse

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

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

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

EXHIBIT E. RELATED PRODUCTS AND ONGOING WORK

OIG Report Number MH-2010-002, “Status of Operating Administrations’ Processes to Conduct Limited Quality Reviews of Recovery Act Recipient Data,” October 6, 2009.

OIG ARRA Advisory Number AA-2009-003, “ARRA Advisory – FAA’s Process for Awarding ARRA Airport Improvement Program Grants,” August 6, 2009.

OIG ARRA Advisory Number AA-2009-002, “ARRA Advisory – Sampling of Improper Payments in Major DOT Grants Programs Department of Transportation,” June 22, 2009.

OIG ARRA Advisory Number AA-2009-001, “ARRA Advisory – DOT’s Suspension and Debarment Program,” May 18, 2009.

OIG Testimony Number CC-2009-062, “American Recovery and Reinvestment Act: DOT’s Implementation Challenges and the OIG’s Strategy for Continued Oversight of Funds and Programs,” April 30, 2009.

OIG Testimony Number CC-2009-058, “American Recovery and Reinvestment Act: DOT’s Implementation Challenges and the OIG’s Strategy for Continued Oversight of Funds and Programs,” April 29, 2009.

OIG Report Number MH-2009-046, “American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation,” March 31, 2009.

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

In addition, we have a number of ongoing audits—undertaken before passage of ARRA—that relate to the DOT programs that received additional funding in ARRA. They are:

- Audit of the Department’s Suspension and Debarment Program,
- Audit of Use of Award Fee Contracts Within DOT,
- Audit of AMTRAK’s 5-Year Capital Plan,
- Assessment of FHWA Oversight Over Highway Bridge Program and National Bridge Inspection Program,

- Single Audit Oversight,
- Financial Statement Audits for FY 2008/2009,
- Audit of DOT's Information Security Program and Practices for FY 2009,
- Audit of Public Private Partnerships,
- Audit of Improper Payment AIP Grants, and
- Audit of FAA Oversight of Use of Airport Revenue—Denver International Airport.

APPENDIX. AGENCY COMMENTS



The Deputy Secretary of Transportation

WASHINGTON, D.C. 20590

November 16, 2009

MEMORANDUM TO: Calvin L. Scovell III
Inspector General

FROM: John D. Porcari 

SUBJECT: Management's Comments on the Office of Inspector General's Draft Report: "DOT's Implementation of the American Recovery and Reinvestment Act: Continued Management Attention is Needed to Address Oversight Vulnerabilities"

The Department has taken a proactive, hands-on approach to implementing the American Recovery and Reinvestment Act of 2009 (Recovery Act), which started in advance of its passage and has continued through its implementation to the current date. Before the law passed, we began planning, devising strategies, preparing systems, and creating new lines of communication. The Department recognized the urgency of the Nation's economic situation and the need for creative approaches to invest in our transportation infrastructure, to get people back to work, and to improve transportation safety and efficiency. We are dedicated to excellence in all aspects of this ambitious task.

The actions the Department has taken to implement the Recovery Act, such as using new approaches like the TIGER team, amount to a paradigm shift. Of necessity, linear, sequential decision-making has given way to a fast-paced method of managing that proceeds along multiple tracks to meet short deadlines. Planning, documentation, and vetting often occur simultaneously.

The Department's new responsibilities have placed additional challenges on the Office of Inspector General (OIG). It must now conduct its programmatic reviews in real time, while systems, approaches, and processes are still evolving. It must process information that quickly becomes outdated, sometimes in weeks or months.

The Department is now more than 7 months into the implementation of the Recovery Act. As of November 12, 10,000 projects have been authorized by the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and the Maritime Administration. More than half are underway or completed. The Department has met or exceeded every statutory milestone set forth in the Recovery Act and has allocated virtually all of its funding, with the exception of some highway funds and

grants yet to be issued in connection with the Federal Railroad Administration's (FRA) High Speed Intercity Passenger Rail (HSIPR) Program and the Secretary's TIGER Discretionary Grants Program. These last two programs were built from the ground up with unprecedented speed and are in full compliance with the requirements of the Act.

The OIG draft report offers useful insights into some areas of success in the Department's implementation of the Recovery Act, and it also identifies others in need of attention, but it lacks sufficient focus on providing insights that are critical to the Department's continued success and further performance improvement. For example, the report notes that FRA has not yet finalized policies and procedures for all the subsequent phases of its new programmatic responsibilities. While this was known and understood by management, which is pursuing an expedited approach to program development and implementation, it is cited by the OIG draft report as a negative rather than recognizing it as an innovative approach and offering insights useful for achieving success. Similarly, the OIG draft report calls upon the Department to develop additional guidelines for programs, such as MARAD's Small Shipyards program, which may not receive additional funding in the future, and would therefore derive little benefit from this use of staff time. Nonetheless, we understand the basis for some of these recommendations, and appreciate their potential utility, and will provide a detailed action plan relating to the recommendations within 30 days of this memorandum. We look forward to future interactions with OIG that provide management with information more useful to achieving continued success moving forward.

Recovery Act Project Selection In Compliance with Applicable Requirements

The OIG draft report raises questions with regard to the selection of projects by MARAD and FAA. All grants awarded under their programs, however, were in full and complete accord with all applicable requirements, including all 70 grants issued by MARAD. Thus, the statement in the OIG's draft that "MARAD did not fully adhere to ARRA requirements" is inaccurate. While a process issue did arise, OST's effective oversight identified and resolved the issue, and OST ensured that all grant recipients were appropriately selected and complied with the requirements of the Act.

With regard to FAA, we note that the draft report continues to assert the OIG's disagreement with a handful of the 330 projects selected to receive Recovery Act funding under the Grants in Aid to Airports Program (AIP). Early in the draft, OIG raises concerns whether this subset of projects indeed constituted the highest priority and whether they were capable of generating long-term economic benefits. Several pages later, however, the draft report asserts in broad strokes that FAA's processes for awarding and overseeing Recovery Act grants for AIP projects do not comply with the requirements. The chain of logic that would connect the draft report's specific concerns with a small subset of projects to a sweeping assertion of general noncompliance is not clear.

FAA will work with OIG to explore the basis for and rationale behind OIG's concerns. The Department, however, continues to maintain the same position it took in response to

the OIG's ARRA Advisory on the topic, i.e., that the FAA carefully ensured that each grant issued using Recovery Act funds fully complied with all statutory requirements. (see <http://www.dot.gov/recovery/docs/ARRAAdvisoryAIPresponse.pdf>) Moreover, we note that the FAA implemented detailed procedures with explicit internal controls on all project selections. We are confident that a detailed review of the AIP selections, with full consideration of all applicable criteria, will reveal that FAA's selections were appropriate and in compliance with statutory direction and executive branch guidance.

DOT Implemented Extraordinary Oversight Measures

The Department has recognized the need for extraordinary oversight measures to ensure that the Recovery Act's expectations are fulfilled. In this regard, the OST Office of Financial Management created an innovative and rigorous adaptation of the A-123 process to identify and assess risks, to identify and implement mitigating actions, and to test their effectiveness.

This detailed and rigorous process depends on a combination of resources drawn from both OST and the operating administrations, and the oversight is proceeding as planned. The OST meets each month with the staff of the operating administration to discuss risk mitigation efforts and review their documentation. As a result of these ongoing discussions, the operating administrations have revised their A -123 documentation, which now consists of narratives, risk assessments, and business procedures to verify the adequacy of controls in specific Recovery Act funded programs. In addition, the Department has tested a sample of Recovery Act transactions to verify the adequacy and accuracy of these controls. Consequently, the draft report's discussion of issues involving our risk management program is now 3 months out of date, and is not reflective of its current status.

The operating administrations also have heightened their oversight activities. The FHWA for example, has established National Review Teams to review specific transactions in each State. The teams use a standardized national protocol, and have been conducting State by State reviews for months. Another mode, the FTA, is also increasing and expanding its oversight activities related to Recovery Act funding. It is now focusing on at-risk grantees regardless of their size and has stepped up its review of grantees' financial and project management. The FAA also has added resources to its oversight efforts and will be conducting specific on-the-ground oversight of all Recovery Act projects. Similarly, MARAD plans to conduct site visits to monitor the progress of its grantees. All these actions have been implemented to ensure that funds provided under the Recovery Act are used appropriately, as intended, and to maximum benefit.

DOT Will Continue to Provide Appropriate Staffing and Effective Oversight of Recovery Act Programs

Implementing the Recovery Act has required extraordinary effort and ingenuity on the part of DOT's management and staff. Staff throughout the Department have stepped forward to ensure that DOT sets the standard for accomplishing its Recovery Act initiatives. Sustaining these efforts over the longer term, however, will require properly

allocated resources, and to that end most of the operating administrations have completed a workforce analysis. To ensure the adequacy of these workforce plans in meeting future demands, I have asked the Department's Director of Human Resources to work with the Human Resource offices throughout the Department to ensure that their workforces are sufficient to meet expectations.

With regard to the additional staffing obligations suddenly imposed on DOT by the Recovery Act, the OIG's draft report ignores the context in which this situation occurred. As noted earlier in this response, Recovery Act timeframes did not provide the luxury of sequential analysis. Congress provided specific statutory milestones, and agencies were expected to move quickly and effectively to implement this important law and get Americans back to work.

The DOT can take enormous pride in the manner in which it stepped up to the task. The Department primarily relied upon the resources it had on hand to implement the Recovery Act and to meet all statutory deadlines. Moreover, DOT was the first department in the Federal government to request and receive direct authority to hire and rehire annuitants to fill critical skilled positions quickly. Third, the various modes cooperated with one another, and offered their specialized experts across organizational lines. Finally, to the extent that additional resources were needed, particularly on a surge basis, DOT used its expertise in contracting to obtain the necessary personnel.

DOT Quickly Implemented Major New Programs

Under the Recovery Act, DOT was required to create three new programs: the Secretary's Supplemental Discretionary Grants for a National Surface Transportation System Program, otherwise known as the TIGER Grants Program, FRA's-High Speed Intercity Passenger Rail (HSIPR) Program, and FTA's Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program. For the reasons described above, each program was designed with unprecedented speed.

The Government Accountability Office (GAO) praised the TIGER Grant program for the quality of its framework and decision criteria. Specifically, a report issued on June 30, 2009,³⁶ found that DOT had generally adhered to key requirements for communicating important elements associated with funding opportunities and awarding grants that support economic recovery and transportation infrastructure, all while complying with Recovery Act requirements. The GAO report further stated that the program had provided among other things, a full description of the basis to award grants, including information on all criteria and sub-criteria, and the weights of the various factors, if they differed in importance.

It is difficult to reconcile the GAO's positive review with the vague concerns expressed in the OIG draft that the Department's need to meet statutory requirements for geographic dispersion could result in the selection of noncompetitive projects. We agree with the GAO report's finding that the "selection criteria established for the program

³⁶ *Recovery Act: The Department of Transportation Followed Key Federal Requirements in Developing Selection Criteria for its Supplemental Discretionary Grants Program,* GAO-09-785R

support a framework for merit-based spending of Recovery Act funds,” and believe that the issues described in the OIG draft are speculative and without firm foundation. The FRA also made a virtue of necessity and accomplished an enormous amount in a brief period of time. Using internal resources, along with assistance from subject matter experts from other operating administrations as well as from the Volpe Center in Boston, FRA developed an implementation strategy for the HSIPR Program that used a parallel, phased approach. Over the last few months the FRA has achieved goals that could have taken years in the past. These include issuing a draft strategic plan for high speed rail, reaching out to stakeholders through various forums, creating and releasing interim program guidance, creating an application process for grants and an evaluation method, and most recently, executing a full scale review of the applications. FRA's continued success is contingent on many factors including obtaining the additional resources for its resource planning efforts to sustain and manage the program, as described in the Fiscal Year 2010 President's Budget.

Equally impressive is the manner in which FTA quickly assembled an implementation and evaluation team to address the requirements of the TIGGER discretionary grant program. This program is intended to provide funding for projects that reduce energy usage by transit systems and greenhouse gas emissions. Implementation and evaluation efforts were completed with unusual alacrity. The FTA announced availability of funding for the TIGGER program in March, solicited a request for competitive proposals and received responses valued at over \$2 billion by May. By mid-October, these proposals were evaluated, selections were completed, and 43 transit systems received grants totaling \$100 million, which was the entire appropriation.

DOT Seeks to Provide Reasonable Jobs Estimates with a Strong Methodological Basis

Identifying and tracking the job creation associated with program spending is a new responsibility for DOT and for the entire government. As such, it represents uncharted territory that would benefit from an ongoing and detailed dialogue between the Department and the OIG.

Early in the Executive Branch's implementation of the Recovery Act, efforts were initiated to create a single governmentwide set of guidelines for completing estimates of job creation and retention. These were abandoned as OMB recognized that the differences between agency programs and the economic sectors in which they operate required the use of sector-specific measurements tailored to individual agency programs and the particular kinds of jobs they will create, even at the risk of creating inconsistencies in approach.

OST faced an analogous situation, and the Department's chief economist, after working with the operating administrations, determined that different measures which are specific to individual programs and industries would be more useful than a general discussion of data quality and a single set of guidelines that would apply equally to all modes. His assessment was informed by the expert judgments of senior staff at the Bureau of Transportation Statistics.

The OIG draft report takes issue with his approach, but offers no alternatives that may prove more accurate or appropriate. The draft report also criticizes OST for not providing guidance as to how to categorize different types of direct employment. The reason for this concern is unclear. There is no need to “categorize different types of direct employment” in order to calculate job numbers, and it is not clear how such categorization would affect the Department's calculation of indirect employment. Further, the report inaccurately states that DOT is waiting for a contractor to provide guidance on categorizing the different types of direct employment. Rather, DOT has been working with a contractor to categorize different types of output and to develop methods of estimating indirect jobs for each different type of output. That work was recently completed.

The OIG draft report also lacks precision in addressing the issue of consistency with respect to the methods used by DOT to calculate indirect job generation and those used by the Council of Economic Advisers (CEA). The CEA's approach is based on a model that uses the same rule of thumb for many types of public expenditures, whether they are schools, windmills, or buses. The DOT's input-output model analyzes each type of expenditure separately.

It is important for the OIG draft report to recognize that both methods -- DOT's and CEA's -- are based on estimates; each is more sophisticated in some areas and less so in others. It is not accurate, however, for the OIG's report to state that the Department, in using a methodology specifically tailored to different types of expenditures, will generate estimates of indirect employment that lack credibility. Finally, the draft report identifies a concern with the lag in timing for reporting on job creation. While we understand the preference to report on jobs as they occur, the data and systems that would permit real time reporting do not exist.

In closing, we realize that a cornerstone of the Department's success in implementing the Recovery Act will be meaningful and effective communication between OIG and management. We have begun to find new ways to enhance that communication, such as joint participation in the Accountability Stewardship Group of the TIGER Team. We envision further refinements in this and similar forums to aid in the rapid exchange of information on important management issues. For example, these forums could provide an effective venue to convey information on number, type, and status of ongoing and completed OIG Recovery Act investigations. This information could allow management to identify trends and take actions to address vulnerabilities more quickly than using traditional after-the-fact reporting methods.

Finding new and innovative ways to work effectively together, to identify problems, and to implement solutions will better enable the Department function more effectively in this new environment -- one where actions that used to require years are done in months, and those that took months are completed in days.