U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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December 3, 2012

SUMMARY OF SUBJECT MATTER

To: **Members of the Committee on Transportation and Infrastructure**

From: **Majority Staff on the Subcommittee on Railroads, Pipelines, and Hazardous Materials**

Subject: **Hearing on "An Update on the High Speed and Intercity Passenger Rail Program: Mistakes Made and Lessons Learned"**

PURPOSE

On Thursday, December 6, 2012, at 9:30 a.m. in 2167 Rayburn House Office Building, the Committee on Transportation and Infrastructure will receive testimony regarding the Federal Railroad Administration's (FRA) High-Speed and Intercity Passenger Rail (HSIPR) Program. Last December, the Committee held a series of two hearings on the HSIPR Program and this hearing will follow-up on those hearings. The hearing will provide an opportunity to examine FRA's management of the program, consider where projects are in the process, and discuss means of improving the program now that a majority of the funds have been obligated.

HISTORY OF THE HSIPR PROGRAM

Legislative History

The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) authorized two passenger grant programs to States, one for capital improvements on traditional intercity passenger rail, and another for high-speed rail (greater than 110 mph) on designated HSR corridors. These two programs were combined in subsequent appropriations acts into the FRA's HSIPR Program. Using that framework, the American Recovery and Reinvestment Act (ARRA) allocated $8 billion in federal funding. The President's stated vision for the HSIPR program was to provide 80 percent of Americans with access to high-speed rail within 25 years.

Only two months after the passage of the ARRA, Congress appropriated $90 million in the fiscal year 2009 Omnibus for State Capital Grants for Intercity Passenger Rail Service. In the Consolidated Appropriations Act for fiscal year 2010, an additional $2.5 billion in HSIPR funding was appropriated, but no more funds have been appropriated to the program. Indeed, the FY 2011 Omnibus Appropriations Act actually rescinded $400 million of unobligated HSIPR funds, bringing the total appropriated funding for HSIPR down to $10.1 billion.

Status of Funding and Projects

In the HSIPR program there are a total of 151 projects, including large multi-billion dollar, long-term construction projects and small planning projects. The FRA has obligated 99% of all HSIPR funds to 148 projects totaling approximately $9.934 billion[1] (see chart below). Because of an obligation deadline in ARRA of September 30, 2012, it is important to note that 100% of the ARRA funding in the program has been obligated. However, just because the funding is obligated does not mean the projects are under construction, as the agreements discussed in further detail below must be in place prior to expenditure. Further, the ARRA funds must be spent by September 30, 2017 or the funds' availability will be cancelled. (See 31 U.S.C. §1552(a)). As for the remaining 1% of total funding, which includes both FY2009 and FY2010 funding, only three full projects and part of another project are unobligated,[2] as of November 19, 2012.

Now that federal funding for the HSIPR Program has been almost fully obligated, the FRA has shifted focus from awarding and obligating funds to overseeing project management. As of November 29, 2012, there are six completed construction projects, with thirty-one construction projects underway, and thirteen expected to begin in the next six months. Many of the construction projects are upgrades to routes on which Amtrak already operates and service on those routes will not exceed 110 mph. For example, prior to Thanksgiving, the State of Illinois and Amtrak introduced 110 mph service on the Chicago to St. Louis route for an approximately 15-mile stretch of track between Dwight and Pontiac, IL. Of the other projects funded under the program, only the California High-Speed Rail project and the Northeast Corridor would be true-high speed rail. The Committee will explore the Northeast Corridor's future in a hearing next week. Listed below are the obligated projects and funding by corridor.

[1] This total does not include approximately $50 million in ARRA funding retained by FRA for oversight and administration.

[2] The three unobligated projects include: Texas' Valley View Double Track Project IV ($7.19M, FY09 funds); Florida's Orlando-Miami Corridor Plan ($8M, FY10 funds); and New York's Syracuse Track Construction and Signal Improvements ($18.5M, FY10 funds). Part of the Chicago-Iowa City Corridor Service project has yet to obligated; the unobligated amount totals $53M of the FY10 funds.

HSIPR Obligated Projects by Corridor			
Corridor	Obligated Construction Projects	Obligated Projects (All Project Types)	Obligated Funding (in millions)
Boston - Portland - Brunswick	2	3	$60
CA - High-Speed Rail	4	4	$3,897
Charlotte - Raleigh - Richmond - Washington DC	5	7	$695
Chicago - Detroit - Pontiac	8	10	$598
Chicago - Iowa City - Omaha	1	2	$178
Chicago - St. Louis	3	4	$1,343
Eugene - Portland - Seattle - Vancouver BC	6	11	$813
Existing CA	11	24	$172
New Haven - Springfield - St. Albans	5	5	$316
New York City - Albany - Buffalo - Niagara Falls	6	10	$168
Northeast Corridor (DC - NYC - Boston)	7	13	$984
Other Projects*	10	37	$172
Philadelphia - Harrisburg - Pittsburgh	2	5	$66
Regional Equipment Pool	3	3	$436
St. Louis - Kansas City	4	10	$36
Total	77	148	$9,934

Source: Federal Railroad Administration
*Other planning projects, projects on other corridors, and projects on Amtrak long distance routes.

Project Agreements

The key stakeholders in the projects include FRA, the States, and the freight railroads. While FRA manages the grant program, the vast majority of the project grantees are States and State agencies, though Amtrak has received funding for Northeast Corridor (NEC) improvements. Aside from the NEC and some other properties owned by Amtrak and the States, most HSIPR projects are taking place on infrastructure owned by host freight railroads. Given the role freight railroads play in our nation's economic growth, it is important that the host freight railroads' capacity to move their freight not be compromised by passenger rail expansion and investment. This has meant that the grantee States and host railroads have had to establish different sets of terms or agreements to protect each entity's respective interests.

Specifically, three types of terms or agreements have been identified: (1) service outcome agreements or service outcome terms, which set forth the benefits of the investment and the service levels; (2) maintenance-related terms or agreements, which address maintenance responsibilities; and (3) construction-related terms or agreements, which address responsibilities for construction management and performance. In certain circumstances, in lieu of service outcome agreements/terms, FRA has allowed for development rights and/or investment terms or agreements because the project is fairly localized and not one where the project itself could guarantee a particular outcome for the service.

The Committee will hear from witnesses, including representatives of all of the major stakeholders, on the progress of the program, their experience with implementation, and improvements that should be made.

CONCERNS WITH HSIPR PROGRAM

FRA Grant Management Concerns

A variety of concerns have been raised regarding the management of the HSIPR Program. As noted last December, in March 2011, the Government Accountability Office (GAO) released a report that highlighted concerns with transparency and other issues with FRA's selection process. Specifically, the report found FRA applied its established criteria during the eligibility and technical review, but GAO could not verify whether it applied its final selection criteria because the documented rationales for selecting projects were typically vague.

More recently, however, the DOT Office of Inspector General (DOT IG) has released two reports raising concerns with FRA's grants management framework and stakeholder agreements process. Specifically, in a September 11, 2012 report entitled "Completing a Grants Management Framework Can Enhance FRA's Administration of the HISPR Program" (September Report) the DOT IG found that FRA lacked sufficient guidance for staff and grantees to comply with HSIPR grants administration policies and procedures. Furthermore, the DOT IG found that "FRA's HSIPR goals … lack the thoroughness needed to ensure grant managers and decision makers, including Congress, understand the goals the program aims to achieve." (September Report, p. 12). The DOT IG also explained that the FRA lacks mechanisms to assess program and grantee performance and does not have a comprehensive training program for HSIPR staff.

In a November 1, 2012 report entitled "FRA's Requirements for High Speed Rail Stakeholder Agreements Mitigated Risk, but Delayed Some Projects' Benefits," the DOT IG assessed FRA's development of stakeholder agreements for long-term, corridor projects, and the effects that the requirements' development had on short-term, ready-to-go projects. The DOT IG found that FRA's lack of clear guidance on structuring service outcome agreements required FRA to be more involved in negotiating the agreements resulting in a challenging and more time consuming process. Furthermore, the agency's focus on negotiating those long-term project agreements delayed realization of short-term project benefits. The Committee will hear from the DOT IG on its findings from these reports.

California High-Speed Rail Project

One of the Committee's HSIPR Program hearings last year was focused on the California High Speed Rail project, as it is by far the largest beneficiary of the HSIPR Program. In total, the project has been awarded $3.897 billion ($2.952 billion from the Recovery Act, and $945 million from the FY 2010 Appropriations bill). This represents approximately 39 percent of the total HSIPR grant funding obligated by the FRA. Since the Committee's hearing last December, the California High-Speed Rail Authority (CHSRA) adopted a revised business plan in April 2012 that estimated the total cost of the project at $68 billion with a completion date of 2028.

The plan claimed cost and time savings through use of a "blended" approach, i.e., using current right-of-way into San Francisco and Los Angeles, not a dedicated high-speed rail alignment. The plan also assumes that, in addition to the Federal funds already obligated, the project will receive future Federal support of approximately $42 billion.

In July 2012, the California State Legislature approved State bond funds in the amount of $2.7 billion as a match to the obligated Federal funds.[3] The CHSRA is now preparing to begin construction by next summer on the initial construction segment (ICS) from south of Merced to north of Bakersfield. However, it recently announced that the completion date for the ICS would be pushed back a year until December 2017. Other than the rest of the State bond funds, CHSRA does not currently have any other funding, Federal or otherwise, to complete the initial operating segment (IOS) from Merced to the San Fernando Valley. The chart below provides the planned funding breakdown for each segment of the project.

Section	Initial Construction Segment (Merced to Bakersfield)	Initial Operating Segment (Merced to San Fernando Valley)	Bay-to-Basin (San Jose to San Fernando Valley)	Blended Service (San Jose to Los Angeles)	Total Completion
Start and Complete Dates	2013-2017	2015-2021	2021-2026	2013-2028	2013-2028
Federal Funds	$3.3 B	$20.3 B	$8.4 B	$10.0 B	$41.9 B
Prop 1A State Bond Funds	$2.7 B	$4.4 B	$0	$1.1 B	$8.2 B
Private Funds	$0	$0	$10.1 B	$3.0 B	$13.1 B
Cash Flow	$0	$0	$0.2 B	$0	$0.2 B
Other State	$0	$0.7 B	$1.2 B	$3.1 B	$4.9 B
Total Funding	$6.0 B	$25.3 B	$19.9 B	$17.2 B	$68.4 B

Source: CHSRA

Due to a number of concerns raised with the project at last year's hearing, the Committee Chairman and Subcommittee on Railroads, Pipelines, and Hazardous Materials Chairman, along with the Majority Whip and a number of the California delegation signed on a letter to the Comptroller General of the United States requesting the Government Accountability Office (GAO) to review the project. The GAO's review is focused on (1) the reliability of the project's costs and financing sources; (2) reasonableness of the passenger traffic and revenue estimates; and (3) comprehensiveness of estimates of economic impacts, including those on adjacent landowners, associated with the project. The Committee will be updated on the status of GAO's review, which is expected to be completed by February 2013.

[3] Proposition1A was approved by California voters on November 4, 2008, and authorized the State to sell $9.95 billion in general obligation bonds to fund the high speed rail project; however, under State law, the bond funds are only available after appropriation by the Legislature.

INVITED WITNESSES

The Honorable Ray LaHood
Secretary
United States Department of Transportation

Mr. Mitchell Behm
Assistant Inspector General for Rail, Maritime and Economic Analysis
United States Department of Transportation

Ms. Susan Fleming
Director, Physical Infrastructure
Government Accountability Office

The Honorable Paula J. Hammond, P.E.
Secretary of Transportation, Washington State
Chair, AASHTO HSIPR Leadership Group
Chair, States for Passenger Rail Coalition

Mr. Edward R. Hamberger
President & CEO
Association of American Railroads

The Honorable Ann L. Schneider
Secretary of Transportation
State of Illinois