
Office of Inspector General

Audit Report

ARRA LESSONS LEARNED: FTA NEEDS TO IMPROVE ITS GRANT OVERSIGHT TO PREVENT IMPROPER PAYMENTS

Federal Transit Administration

Report Number: FI-2014-034

Date Issued: April 2, 2014






Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION**: ARRA Lessons Learned: FTA Needs
To Improve Its Grant Oversight To Prevent
Improper Payments
Federal Transit Administration
Report No. FI-2014-034

Date: April 2, 2014

From: Louis C. King 
Assistant Inspector General for Financial and
Information Technology Audits

Reply to
Attn. of: JA-20

To: Federal Transit Administrator

In February 2009, the Federal Transit Administration (FTA) received an allocation of \$8.4 billion from the American Recovery and Reinvestment Act of 2009 (ARRA) for economic stimulus and recovery grants. FTA and other Federal agencies reimburse grantees for project costs, and ARRA, along with the Improper Payments Information Act of 2002 (IPIA), requires agencies to hold grantees accountable for their expenditures. In its implementation of these statutes, the Office of Management and Budget (OMB) has directed agencies to increase their oversight of grantees.

We initiated this audit to assess FTA's oversight of ARRA expenditures. Specifically, our objectives were to assess whether (1) FTA's oversight of ARRA grantees has prevented and detected grantees' improper payments for project costs, and (2) FTA's oversight of grantees' use of their own workforces for preventive maintenance work was effective.

As part of this audit, we selected a statistical sample of 627 invoices/line items totaling over \$380 million¹ made to 16 transit grantees which allowed us to project the total amount and percentage of improper payments, if any, within the universe of FTA's payments to its ARRA grantees.

¹ This figure includes six Headquarters-level transactions totaling \$(78,581) that are identified in the sample as "ZZ Error" and "ZZ Error-Other"

We reviewed documents that supported payments, and evaluated the sampled payments to determine whether they were made in accordance with FTA's program guidance and Federal laws and regulations. This audit was not intended to identify what payments are recoverable to the Federal Government. We conducted this review in accordance with generally accepted Government auditing standards (GAGAS). Exhibit A provides more details on our scope and methodology.

RESULTS IN BRIEF

FTA's oversight of its ARRA grantees did not prevent or detect approximately \$7.3 million in improper payments to 10 of the 16 grantees in our sample.² Approximately \$5.9 million, or 80 percent, was paid for charges that grantees did not sufficiently document. While a lack of documentation does not necessarily mean a payment was invalid, it does raise questions about the payment's eligibility as well as the overall effectiveness of internal controls. For example, we identified instances where grantees did not obtain proper certifications to document safety and material content of passenger buses and vans. The remaining \$1.5 million of the \$7.3 million, or 20 percent, was paid to grantees for ineligible services. Based on our statistical sampling, we project that \$280.8 million³ or 5.1 percent of ARRA payments to FTA grantees were improper. We also identified \$24.9 million of improper payments outside of our statistical sample that further substantiate these weaknesses in FTA's oversight.⁴

FTA's oversight also did not ensure that grantees justified the use of their own labor forces, known as force account work, for preventive maintenance.⁵ FTA's November 2008 Circular required grantees to develop plans for work performed by their own labor on capital projects, and listed preventive maintenance as a capital project.⁶ These plans must be submitted to FTA for approval⁷ and must include, among other things, scope of work, cost reasonableness, and reasons why a contractor does not have the expertise to do the work. However, of the

² It is important to recognize that improper payment estimates are not intended to be an estimate of fraud in Federal agencies' programs and activities. An improper payment is defined as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. It includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts. Office of Management and Budget guidance also instructs agencies to report as improper payments any payments for which insufficient or no documentation was found.

³ This estimate has a precision of +/-4.7 million, or 0.1 percent of a universe total of \$5.5 billion.

⁴ We did not include these improper payments in calculating our statistical projections.

⁵ Preventive maintenance includes the materials and labor required to preserve or extend the functionality and serviceability of transit vehicles and assets, such as periodic oil changes and vehicle tune-ups.

⁶ Capital projects, including construction of bus stops, installation of elevators and the purchase of buses, are usually items that have a useful life of more than one year.

⁷ FTA approval of force account plans is required when the total amount of force account work exceeds \$10 million.

transactions we reviewed, we found FTA reimbursed over \$253.5 million for force account work for preventive maintenance without complete plans or in some instances without any plans.⁸ For example, the New Jersey Transit Corporation (NJTC) received \$136.2 million for force account work without submitting a plan. Furthermore, FTA's regional offices did not consistently apply the stated requirements of approving force account plans or ensuring plans contained the necessary elements. For example, one regional office provided its approval of a force account plan, while another obtained a plan but neither approved or disapproved it. When we discussed these matters with FTA officials, they noted that the Circular's requirement was an error and officially rescinded it in August 2012. By removing this control, FTA increases the risk that grantees will inappropriately use FTA funds for their own labor forces.

We are making a series of recommendations to strengthen FTA's oversight of grantees to prevent and detect improper payments for current and future Federal-aid projects and assist the Agency in recovering improper payments.

BACKGROUND

Since February 2009, FTA has awarded 1,072 ARRA grants to 642 grantees totaling over \$8.78 billion, including \$443 million in flexible funding⁹ from the Federal Highway Administration. As of March 2011, FTA had expended nearly \$5.5 billion on projects ranging from construction of bus stop shelters to the construction of an entire transit center in New York City.

To guard against improper use of federal grant funds, OMB issued Circular A-123¹⁰ which implemented IPIA and defined improper payments as:

- Payments to ineligible recipients;
- Duplicate payments;
- Payments in incorrect amounts;
- Payments for ineligible services, and services not received; and
- Payments with insufficient documentation.

Circular A-123 further defines an improper payment as "any payment that should not have been made or that was made in an incorrect amount under statutory,

⁸ We do not consider these amounts to be recoverable improper payments.

⁹ Flexible funds may be used for either transit or highway projects.

¹⁰ M-06-23, August 2006. Appendix C, "Requirements for Effective Measurement and Remediation of Improper Payments"

contractual, administrative, or other legally applicable requirements.” Consistent with this definition, we applied the following criteria:

- **Insufficient supporting documentation:** Payments for work that may have been eligible but lacked supporting documentation.
- **Ineligible services:** (1) Payments for services¹¹ that did not comply with FTA or other Federal administrative requirements¹² for eligibility at the time the payments were made. However, if the payments had met administrative requirements, these services would have been reimbursable; (2) ARRA funds used to pay for activities that should have been paid for with other funds.

FTA’s Circulars outline FTA’s grant program requirements, internal controls, oversight, and project management procedures. The Circulars include FTA’s requirements for force account work—grantees’ use of their own labor forces to carry out capital projects, indicating that a grantee may use its own labor force when:

- It will save money by doing so;
- It has exclusive expertise;
- It will improve safety and efficiency of operations; or
- A labor union agreement exists.

Grantees use their own labor forces for work such as project design, construction, support services, and preventive maintenance on buses, rail cars and locomotives, and other transit assets. FTA requires grantees to obtain FTA approval of their plans to use force account work with an estimated cost of more than \$10,000,000. A force account plan includes a justification for the use of the grantee’s own work force based on one of the four requirements listed above, and must also include:

- A scope of work;
- Clauses from labor union agreements and an analysis relating the agreements to the work;
- The basis for the determination that no contractor has the expertise to do the work; and
- A certification that costs are fair and reasonable.

¹¹ A contractor or the grantee may provide these services, including bus manufacturing, railway construction and repair and maintenance of transit assets.

¹² Examples of administrative requirements include FTA approvals of in-house labor usage or certain vehicle purchases.

FTA Headquarters is responsible for setting grant policy, while the day to day technical assistance is performed within its ten regional and five metropolitan offices. Relying heavily on contractors, FTA conducts oversight with tools such as triennial reviews, procurement system reviews, financial management reviews, and grantee oversight assessments. In August 2012, however, we reported¹³ that FTA does not provide its regions or contractors with adequate guidance or oversight to ensure they consistently identify and track deficiencies found during key reviews and audits of FTA grantees.

FTA OVERSIGHT DID NOT FULLY PREVENT AND DETECT IMPROPER PAYMENTS

FTA's oversight did not prevent or detect approximately \$7.3 million in improper payments to 10 of the 16 transit agencies included in our review. Approximately \$5.9 million (80 percent) was made for services with insufficient documentation. Another \$1.5 million (20 percent) in improper payments was paid to grantees for ineligible services. We project that \$280.8 million or 5.1 percent of ARRA payments to FTA grantees were improper (see table 1). We also identified numerous improper payments outside of our statistical sample for work under the same grant, contract, or force account plan as payments in our sample.

Table 1. Improper Payments in Statistical Sample

Category	Improper Payments Inside of Sample	Projection of Improper Payments Inside of Sample to Universe¹⁴
Insufficient Documentation*	\$5,879,718	\$251,569,430
Ineligible Services	1,463,387	29,260,873
Total*	\$7,343,105	\$280,830,303

*These amounts are the sum of the absolute value of negative and positive transactions.
Source: OIG analysis

FTA Reimbursed Grantees \$5.9 Million for Charges That Were Improper Due to Insufficient Documentation

FTA reimbursed grantees for charges that lacked sufficient documentation. This is occurring because FTA does not require reviews of invoices or their support before it reimburses grantees. FTA's oversight contractors examine invoice documentation during their reviews which may occur a year or more after

¹³ *Improvements Needed in FTA's Grant Oversight Program*, OIG Report No. MH-2012-168, August 2, 2012. OIG reports are available on our website: www.oig.dot.gov.

¹⁴ Our \$280.8 million projection has a precision of +/- \$4.7 million or 0.1 percent of the universe total of \$5.5 billion at the 90 percent confidence level.

payments were made to grantees. OMB's definitions of improper payments include payments without sufficient documentation. Furthermore, Federal internal control standards require transactions to be clearly documented and that documentation should be readily available.¹⁵ While a lack of documentation does not necessarily mean a payment was invalid, it is an internal control weakness because it does not allow management or auditors to determine if the transaction was proper. Of the \$7.3 million in improper payments we identified in our sample, about \$5.9 million, or 80 percent, were for insufficient documentation. For example:

- The Massachusetts Bay Transportation Authority (MBTA) could not provide sufficient documentation for payments totaling \$2.8 million. Before purchasing motor vehicles with FTA grant funds, MBTA is required to have certain certifications on file. However, MBTA's files did not contain the Federal Motor Vehicle Safety Standards (FMVSS) and Buy America certifications required before purchasing 54 vans built to serve persons with disabilities and elderly riders. The FMVSS certification assures FTA that the vehicles complied with Federal safety standards at the time of manufacture. The Buy America certification indicates that the contractor complied with ARRA's requirement that transportation infrastructure projects incorporate American-made products and materials, such as steel and iron.

FTA reimbursed other payments that also did not have sufficient documentation. Specifically, these payments were missing:

- Support for the use of another grantee's contract to purchase transit vehicles (known as piggybacking);¹⁶
- Documentation on contract rates;
- Documentation on why billed rates did not match contract rates; and
- Inspection reports or other documentation to support a contractor's quality of work performed.

Because it does not review grantees' documentation prior to payment transmittal, FTA cannot be sure that it reimburses grantees for eligible expenses.

¹⁵ *Standards for Internal Control in the Federal Government*, GAO/AIMD—00-21.3.1, November 1999.

¹⁶ Piggybacking refers to a grantee's use of another entity's rights to purchase specific deliverables, usually buses or vans, under the other entity's contract terms, rather than initiating its own procurement procedures. The grantee must determine that the price remains fair and reasonable and the contract complies with Federal requirements.

Grantees' Payments for Ineligible Services Totaled Nearly \$1.5 Million

Grantees made payments for ineligible services totaling nearly \$1.5 million. Among other reasons, these payments were largely related to the grantees' use of force accounts—for work other than preventive maintenance—without proper justification and the required FTA approval. When a grantee relies on its own workforce for projects, it is possible that the workforce lacks the necessary expertise or even exceeds contractor costs for comparable work. FTA review and approval of force account plans serves to ensure that Government funds are used appropriately. For example:

- The New York Metropolitan Transportation Authority (MTA) did not provide to FTA for approval the required justification of ARRA-related expenditures. MTA received \$19.2 million—\$693,204 within our sample—for ARRA work that its own employees performed without submitting proper plans or justifications to FTA. The work included support services such as “flagging” at construction sites and bus operations to move transit passengers around track work areas. An MTA official stated that they believed that force account plans were not required for support services. FTA officials agreed that these activities required force account plans. They also stated that regional offices and grantees need clearer guidance in this area.

We also identified instances where grantees' failure to follow proper procedures affected the eligibility of an expense. For example:

- NJT requested reimbursement before it needed the funds. FTA's Circular instructs grantees to request only those funds that they will expend within 3 business days or the funds are considered excess and must be returned with interest. FTA paid NJT \$344,619 on December 20, 2010, but NJT held the funds and did not pay its contractor until 11 business days later. NJT stated that the time lapse was an oversight.

Numerous Improper Payments Were Also Made Outside of Our Statistical Sample

We also identified improper payments outside of our statistical sample totaling approximately \$24.9 million—for work acquired under the same grant, contract, or force account plan as payments in our sample (see table 2).

Table 2. Improper Payments Outside of Statistical Sample

Category	Improper Payments Outside of Sample
Insufficient Documentation	2,602,800
Ineligible Services	22,250,235
Total	\$24,853,035

Source: OIG analysis

We did not include these payments in calculating our statistical projections, but these improper payments further illustrate the oversight weaknesses we identified. For example:

- **\$19.3 million in payments for force account work with missing or incomplete force account plans.** MTA did not submit force account plans for \$18.5 million in support services for FTA’s advance approval. Another agency, Metropolitan Rail (METRA), the commuter rail system in the Chicago area, lacked the necessary justification for its force account plan totaling \$779,800.
- **\$2.6 million in payments that lack required documentation.** MBTA could not provide FMVSS and Buy America certifications for its purchase of 54 transit vans in addition to the 54 vans in our sample.
- **\$3.0 million in payments for which the grantee did not obtain an FTA waiver to purchase additional buses.** While FTA guidance caps the number of spare buses allowed in an active fleet at 20 percent, CMTA exceeded this ratio by purchasing 7 buses beyond the limit. Furthermore, CMTA did not have a plan to dispose of the buses that were being replaced or a waiver to exceed the 20 percent.

FTA’S OVERSIGHT DID NOT ENSURE THAT GRANTEES PROPERLY JUSTIFIED USE OF THEIR OWN LABOR FORCES FOR PREVENTIVE MAINTENANCE

FTA did not properly oversee grantees’ use of their own labor forces for preventative maintenance. The Agency made reimbursements totaling over \$253.5 million for this force account work that did not comply with its Circular in effect since November 2008. This occurred because FTA’s regions did not consistently apply guidance when overseeing grantees for these activities. FTA stated that it had erroneously developed the requirement on force account plans for preventative maintenance for its November 2008 Circular.

The November 2008 version of FTA's Circular required grantees to develop force account plans for work on capital projects and listed preventive maintenance as a capital project. In August 2011, FTA instructed its reviewers to cease testing on the requirement for preventive maintenance force account plans. However, during the time that the 2008 Circular was in effect, the Agency reimbursed grantees despite missing, unapproved, or inadequate force account plans. For example:

- NJT did not provide a force account plan to Region 2 for preventive maintenance force account work totaling \$136.2 million. NJT informed us that force account plan requirements were not applicable to preventive maintenance work but to “capital programs.”
- FTA reimbursed the Chicago Transit Authority (CTA) \$75.2 million for preventive maintenance force account work performed between January and April 2009. CTA submitted its force account plan to FTA's Region 5 in August 2009, and Region 5 approved it in October 2009—several months after the work was performed and FTA had reimbursed CTA. FTA stated that the onus was on the grantee to make sure all Federal requirements were met prior to reimbursements.
- In April 2010, Region 9 approved the Municipal Transportation Agency/City and County of San Francisco's (MUNI) preventive maintenance force account plan, several months after MUNI was paid \$10 million of ARRA funds for preventive maintenance force account work. In contrast, just 2 months earlier, Region 10 had informed Tri-County Metropolitan Transportation District of Oregon (Tri-Met) that it would hold back reimbursements for preventive maintenance force account work unless Tri-Met submitted a plan, asserting that it had just learned of FTA's requirement. Tri-Met submitted the plan, but FTA could not provide evidence that Region 10 reviewed or approved it.

In its August 2012 revision of the Circular, the Agency no longer applied force account requirements to preventive maintenance. FTA further informed us that, while preventive maintenance is classified as a capital expense, the Agency believes that it is actually more like an operating expense¹⁷ than a capital expense, and therefore force account requirements do not apply. By removing this internal control requirement, FTA has increased the risk that grantees will inappropriately use FTA grants for their own labor forces. See exhibit C for details on payments made on preventive maintenance force account work.

¹⁷ According to FTA C 9030.1D, “[o]perating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.”

CONCLUSION

Given the significant investments the Federal Government has made through ARRA, it is critical that agencies take every possible step, including preventive actions, to increase transparency and accountability with their use of the funds. While ARRA is drawing to a close, going forward, FTA can apply lessons learned to strengthen controls over ongoing projects funded by ARRA grants and ensure that oversight weaknesses do not place any future funding at risk for fraud and abuse.

RECOMMENDATIONS

We recommend that FTA:

1. Determine if improper payments identified in this report are recoverable, and develop and implement a plan to maximize the return of these payments.
2. Provide training to regional office personnel on topics specific to force account plans that addresses and clarifies FTA's requirements for reimbursement.
3. Modify existing FTA Circulars, instructions to oversight contractors, and training for grantees to reinforce program requirements, including those addressing such certifications as FMVSS and Buy America.
4. Implement preventive measures to guard against improper payments, such as periodically requesting payment documentation (i.e. force account plans and current contracts), prior to reimbursing grantees for expenditures.
5. Implement controls governing payments to grantees for preventive maintenance force account activities.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided a copy of our draft report to the Federal Transit Administrator on September 3, 2013. We received FTA's letter of comments on March 20, 2014, which is reprinted as the appendix to this report. While FTA generally disagrees with our findings, it concurred or partially concurred with our recommendations.

FTA concurred in part with our first recommendation—to develop and implement a plan to recover improper payments that may be or are determined to be recoverable. According to FTA, however, it has reviewed the payments we identified as improper and determined that these payments were not improper and therefore not recoverable. The majority of the improper payments we identified were due to insufficient documentation, and OIG and FTA disagree on what constitutes “insufficient documentation.” Our definition is consistent with *Standards for Internal Control in the Federal Government*, “which states all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination.” Further, OMB states that insufficient documentation of payment must be reported as an improper payment. While FTA concluded that “the 80 percent of the OIG's monetary findings linked to documentation could subsequently be adequately documented by grantees,” the documentation was not always readily available to us when requested. In one case, we received documentation from FTA over a year after we requested it. While this recommendation is considered resolved, it will remain open, pending our verification of FTA's review.

FTA concurred with recommendation 2 and partially concurred with recommendations 3, 4, and 5, and provided adequate proposed actions and target dates for implementing our recommendations. The recommendations are considered resolved but open, pending our review of FTA's completed actions.

Despite its general concurrence with our recommendations, FTA took issue with a number of our findings. We disagree. FTA noted that recent reviews of its Capital Investment Grants and Formula Grants programs, which were performed by a consultant under contract to DOT, found no improper payments. However, our audit focused solely on ARRA expenditures in all of FTA's programs—not on all expenditures within certain programs—and met all GAGAS requirements. In contrast, the consultant's reviews were not required to have the rigor or level of assurance needed to meet Government auditing standards. The consultant that conducted the reviews also stated that its work was not an audit. FTA's letter also refers to a master agreement it signs with each transit authority it funds as one of its oversight and management practices. However, this master agreement supports

our position regarding the importance of documentation in that it states that “costs submitted without sufficient documentation are ineligible.”

Similarly, FTA’s letter states that the Agency does not require force account plans for preventive maintenance. However, the November 2008 version of FTA’s Circular—the criteria applicable to the transactions we reviewed—required such plans for work on capital projects, and listed preventive maintenance in this category. In June 2011, we notified FTA of this fact, and two months later, FTA issued a technical advisory to instruct oversight contractors to stop testing for preventive maintenance force account plans. FTA issued a revised circular in August 2012, which officially rescinded the requirement for these account plans.

In general, FTA’s response raises concerns about its understanding of OMB guidance and the application of internal controls. FTA consistently provided the information we requested in an untimely manner and often after the conclusion of our testing or notification of potential findings, prompting questions about the data’s reliability. Our concern on this point is increased when we note that in 2013, KPMG LLP, the independent auditor of DOT’s financial statements, reported a significant deficiency in DOT’s internal controls pertaining to FTA’s audit evidence.¹⁸ Specifically, KPMG stated that, “On more than one occasion, FTA did not provide us with timely, accurate, reliable, or valid responses to auditor requests for information and inquiries.” These conditions increase the risk that audits will be compromised.

ACTIONS REQUIRED

FTA’s planned actions for all five recommendations are responsive, and its target action dates are appropriate. All five recommendations will remain open pending receipt of documentary evidence that appropriate corrective actions are complete. If you have any questions concerning this report, please call me at (202) 366-1407, or George Banks, Program Director, at (410) 962-1729.

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cc: DOT Audit Liaison, M-1
FTA Audit Liaison, TBP-30

¹⁸ *Quality Control Review of the Department of Transportation’s Audited Financial Statements for Fiscal Years 2013 and 2012*, OIG Report No. QC-2014-015, December 16, 2013. OIG reports are available on our website: www.oig.dot.gov.

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this audit from April 2011 through September 2013 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. Our two objectives were to assess whether FTA's oversight: (1) has prevented and detected ARRA improper payments and (2) was effective for grantees' use of their own work forces for preventive maintenance activities. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

To assess the effectiveness of FTA's oversight of ARRA grantees to prevent and detect improper payments, we obtained, reviewed, and analyzed documentation demonstrating FTA (Headquarters and regional) program management policies and procedures. We also interviewed FTA Headquarters officials from the Office of Budget and Policy; Office of Program Management; Office of the Chief Counsel; officials from seven FTA Regions; and grantee representatives.

To verify the accuracy of reimbursement requests, we reviewed documentation to ensure payments complied with FTA program guidance and applicable laws and regulations. Using a statistical sample, we tested FTA ARRA payments made between February 17, 2009 and March 31, 2011. OIG statisticians selected a 5-stage probability proportional to size with replacement sample from a universe of 10,287 disbursements, with net disbursements totaling \$5,491,403,339. "With replacement" means that each sample selection was drawn from the entire universe. Any State, vendor or disbursement already selected was returned to the eligibility pool and had another chance of selection. We conducted sampling as follows:

- Stage 1: We selected a sample of 11 out of 55¹⁹ States, including 10 unique States since 1 State was selected twice. In Stage 2, statisticians drew two separate samples for the State selected twice. This procedure was used whenever a sample item was selected more than once.
- Stage 2: We selected 2 grantees from each of the 11 States, resulting in a sample size of 22 grantees (16 unique grantees since four grantees were selected twice, plus 2 sets of Headquarters transactions coded as "ZZ Error" and "ZZ Error-Other").

¹⁹ This figure includes States, U.S. Territories, and ZZ error payments.

- Stage 3: We selected 5 disbursements from each of the 22 grantees. For grantees with less than 5 disbursements in the universe, all disbursements were selected, for a total sample size of 102 disbursements (88 unique), including 96 disbursements to 16 grantees (see Exhibit B), and 6 ZZ error transactions.
- Stage 4: Each grantee provided a listing of invoices/line items included in each of the applicable disbursements selected in Stage 3. Statisticians then selected a sample of 10 line items from each disbursement. When a disbursement included less than 10 line items, all were selected.
- Stage 5: We developed a subsample of 42 line items from one grantee's Stage 4 line items.

The total sample size was 748 line items (670 positive and 78 negative line items) with an absolute value of \$475 million. Because line items were selected more than once, 627 unique items were reviewed, with an absolute amount of \$381 million (563 positive (\$370 million) and 64 negative line items (\$11 million).

To supplement our payment testing procedures, an OIG engineer reviewed documentation for ten sample payment construction items to determine whether the payments were commensurate with the value of the work accomplished, and that the work met the quality standards established under the contract.

At the completion of payment testing, OIG statisticians projected our findings of 54 (45 unique) improper payments in the amount of \$7.3 million that were found in our sample of 748 (627 unique) line items to estimate the total amount of improper payments made in FTA ARRA programs during the period reviewed. Statisticians estimated that \$280.8 million or 5.1 percent of FTA ARRA payments to grantees were improper. Our estimate has a precision of +/- \$4.7 million at the 90 percent confidence level.

To address our second audit objective pertaining to oversight of preventive maintenance activities, we reviewed force account plans for compliance with justification and FTA approval requirements. We also interviewed FTA Regional officials as to their roles in ensuring compliance.

EXHIBIT B. IMPROPER PAYMENTS IDENTIFIED INSIDE AND OUTSIDE OF SAMPLE

Table A: Findings Identified Inside Sample, by Grantee^a

Grant Type	Samples With Findings ^b	Ineligible Services	Insufficient Documentation	Total
Cape Ann Transportation Authority, MA (CATA)				
Formula—Urbanized and Urbanized/Flex	3	-	\$676,765	\$676,765
Massachusetts Bay Transportation Authority, MA (MBTA)				
Formula—Urbanized	1	-	2,785,320	2,785,320
Regional Transportation Authority, IL (METRA)				
Formula—Urbanized	5	\$38,325	-	38,325
Capital Metropolitan Transportation Authority, TX (CMTA)				
Formula—Urbanized	1	387,239	-	387,239
Oregon Department of Transportation, OR (ODOT)				
Formula—Non-Urbanized	1	-	9,594	9,594
New Jersey Transit Corporation, NJ (NJT)				
Formula—Urbanized	1	344,619	-	344,619
Metropolitan Transportation Authority, NY (MTA)				
Formula—Urbanized	7	693,204	-	693,204
City of Phoenix, AZ				
Formula—Urbanized	1	-	47,640	47,640
Tri-County Metropolitan Transportation District, OR (Tri-Met)				
Formula—Urbanized and Urbanized/Flex	8	-	2,154,310	2,154,310
Southern California Regional Rail Authority, CA (SCRRA)				
Formula—Urbanized	17	-	206,089 ^c	206,089 ^c
Total^d	45	\$1,463,387	\$5,879,718	\$7,343,105^c

^aWe did not identify improper payments for Chicago Transit Authority, IL (CTA); Port Authority of Allegheny County, PA (PAAC); San Francisco Municipal Transportation Agency, CA (MUNI); County of Lebanon Transit Authority, PA (COLT); and Dallas Area Rapid Transit, TX (DART), Harris County Community & Economic Development Department (TX), or ZZ Error/Other.

^bNumber of samples excludes line items that were selected multiple times in the sample.

^cAll figures in this table are presented in absolute value.

^dNumbers may not add due to rounding.

Exhibit B. Improper Payments Identified Inside and Outside of Sample

Table B: Findings Identified Outside Sample, by Grantee

Grantee	Ineligible Services	Insufficient Documentation	Total
MBTA	-	2,602,800.00	2,602,800.00
METRA	779,799.85	-	779,799.85
CMTA	2,985,960.00	-	2,985,960.00
MTA	18,484,474.65	-	18,484,474.65
Total	22,250,234.50	2,602,800.00	24,853,034.50

EXHIBIT C. PAYMENTS MADE ON PREVENTIVE MAINTENANCE FORCE ACCOUNT WORK

Grantee	Inside of Sample	Outside of Sample^a	Total
CTA	50,000,000.00	25,200,000.00	75,200,000.00
NJT	72,413.09	136,111,586.91	136,184,000.00
MUNI	13,617,261.00	6,493,353.00	20,110,614.00
TRIMET	4,300,000.00	17,694,259.26	21,994,259.26
Total	67,989,674.09	185,499,199.17	253,488,873.26

^aPayments outside of our statistical sample were for preventive maintenance force account work performed under the same grant or force account plan as payments in our sample.

EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT

<u>Name</u>	<u>Title</u>
George Banks	Program Director
Ingrid Harris	Project Manager
Marguerite Nealon	Senior Auditor
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Rosa Scalice	Auditor
Petra Swartzlander	Senior Statistician
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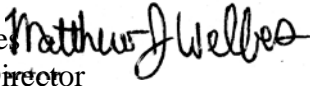
APPENDIX. AGENCY COMMENTS

Memorandum

U.S. Department
of Transportation
**Federal Transit
Administration**

Subject : INFORMATION: Management Response to Office of Inspector General Draft Report on ARRA Lessons Learned

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Reply to
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FTA OBLIGATED \$8.7 BILLION WITHOUT ANY IDENTIFIED IMPROPER PAYMENTS

The Federal Transit Administration (FTA) successfully obligated more than \$8.7 billion in American Recovery & Reinvestment Act (ARRA) funds in full compliance with applicable law and regulation without any improper payments. FTA adhered to stringent monitoring and oversight standards in distributing Recovery Act funds to public transit agencies and provided exceptional stewardship of taxpayer dollars.

FTA reviewed every specific finding in the OIG draft report and determined that none of the payments were improper.¹ All of the payments were made to eligible recipients, for eligible services, and in the correct amount. Specifically, FTA concluded that the 80 percent of the OIG's monetary findings linked to documentation could subsequently be adequately documented by grantees, and that these payments were in full compliance with applicable OMB guidance. Further the remaining 20 percent of OIG's findings relating to the eligibility of grant activities were also fully appropriate and in accord with grant requirements, FTA oversight requirements, and OMB guidance relating to payments.

FTA's findings are supported by independent third-party reviews, conducted by Deloitte Consulting, of FTA's payment practices to grant recipients. Deloitte found that FTA had *zero* improper payments in its Capital Investment Grants program in 2010 and 2012, and *zero* improper payments in its Formula Grants program in 2011.

¹ The FTA strongly disputes the OIG report's definition of "improper payments," which is based on an overly-broad and erroneous interpretation of the definition contained in OMB Circular A-123. However, even under the OIG's incorrect definition, all of FTA's payments were proper.

These reviews covered roughly the same time period as the OIG report and used a methodology fully compliant with OMB guidance and carefully reviewed by the OIG.

In light of the fact that FTA's detailed review definitively established that each of the examples cited in the OIG report were fully appropriate and in accord with grant requirements, we respectfully request that the OIG adjust its extrapolated values cited in the draft report to ensure that they are in accord with all of the material facts.

FTA Oversight Prevents and Detects Improper Payments

With respect to oversight, ARRA set a new standard for expectations and practice. FTA's oversight of ARRA funds adhered to the most robust and rigorous oversight standards in the agency's history. FTA recognized at the outset that there were inherent risks in the ARRA program for meeting the accelerated Congressional deadlines imposed for obligating and distributing ARRA funds. Recognizing these challenges, FTA enhanced its customary oversight practices—which include triennial reviews, procurement reviews, and project management risk oversight—with additional layers of oversight, including:

- an overall program risk assessment;
- an ARRA-specific oversight plan;
- a detailed risk assessment for grantees and projects, with projects and grantees posting additional risks in key oversight areas receiving additional monitoring, reviews, or technical assistance;
- workshops for ARRA grantees on complying with procurement system and financial management requirements;
- additional procurement system and financial management oversight reviews were conducted to ensure compliance; and,
- triennial and state management reviews were expanded to cover additional questions related to compliance.

FTA used these enhanced measures to supplement its existing management and compliance practices that enable the agency to monitor grantee performance on a regular basis and review extensive documentation. For example, triennial reviews, conducted once every three years, examine how recipients of Urbanized Area Formula Program funds meet statutory and administrative requirements, among other things. In addition, FTA signs a Master Grant Agreement ("Master Agreement") with each transit agency it funds. The Master Agreement describes standard terms and conditions governing the administration of any project supported with Federal assistance. The Master Agreement includes eight eligibility criteria that grantees must meet—including a provision that costs submitted without sufficient documentation are ineligible. In assessing whether a payment is documented sufficiently, FTA considers whether the documentation is reasonable and persuasive. FTA also performs State management reviews and grantees have single annual audits. These internal controls

have long been effective and accepted by the Office of the Secretary of Transportation, as well as OMB.

FTA Made No Payments for Ineligible Services to ARRA Grantees

After comprehensive and detailed review of the OIG findings, and the basis behind those findings, FTA strongly disagrees with the OIG assertion that it made payments for ineligible services. FTA applies comprehensive criteria, fully consistent with OMB guidance, to determine what types of expenses are eligible and whether improper payments have occurred. These are included among the eight criteria in the Master Agreement. A cost is deemed ineligible if it is outside the scope of a project, outside the period of performance (e.g., expenses pre-date the agreed upon start date), are unreasonable, or legally prohibited, among other criteria. FTA reviewed the four grantees that the OIG cites as incurring ineligible services and none of them met established criteria for ineligibility.

For example, the OIG cites the Capital Metropolitan Transportation Authority (CMTA) of Austin, TX, for ineligible services. Specifically, the OIG determined that \$387,279 was ineligible for a planned bus procurement because the agency's grant application referred to a bus spare ratio of 20.3 percent, and the OIG alleges that this violates FTA's recommended spare ratio level of 20 percent. (A spare ratio refers to the percentage of total vehicles that are not needed in peak service out of all the vehicles used in peak service.) This OIG conclusion is wrong as well as inappropriate. FTA approved the spare ratio when FTA approved the grant, in part because FTA determined that the miniscule differential in the spare-ratio allowance was immaterial to the value of the procurement.

Additionally the OIG stated that the CMTA did not have a plan in place to dispose of its outdated buses before purchasing replacement buses. However, FTA does not require grantees to have a formal plan for immediate disposition of buses that have exceeded their useful life upon receipt of replacement vehicles. FTA informed the OIG in April 2012, that it had determined that the costs were eligible in accordance with the terms of the Master Agreement. Importantly, FTA would not, in any case, have refused payment for these buses, as they were payments to an eligible recipient, for an eligible service, and in the correct amount.

FTA Ensures that Documentation Is Adequate and Sufficient to Support Grant Funding

FTA verified, in response to the OIG draft report findings, that sufficient documentation was available to support the payments made to the five grantees mentioned in the report that constitute 80 percent of the OIG draft report monetary findings and that the payments cited were not improper.

FTA's business practices are fully consistent with OMB guidance for determining *sufficient documentation*. FTA was able to obtain from the grantees and review documentation, which was sufficient for approval of funds in all cases. As part of its

normal business practice, FTA reviews multiple forms of documentation as part of the triennial review and in accordance with the terms of the Master Agreement signed with each grantee, as noted earlier. These reviews enable FTA to determine that the payments are for an eligible service, to an eligible recipient, and in the proper amount. In addition to matters of the immediate availability of documentation, the OIG also cited payments where minor administrative or clerical issues arose as *improper payments*, even though these instances meet neither the statutory definition nor the OMB definition of an *improper payment*. For example, the OIG cites that \$344,619 in ARRA funds to the New Jersey Transit Corporation were ineligible because the agency disbursed the funds approximately one week after the three-day window recommended in FTA's Grant Management Circular. FTA reported to the OIG in June 2012 that these costs were eligible, as FTA's Common Rule only requires that recipients minimize the time elapsing between the transfer of funds from the Treasury and the disbursement of funds. This was a payment to an eligible recipient, for an eligible service, and in the correct amount. FTA also disagrees with the OIG's finding that project costs should be deemed ineligible if the grantee does not have a work plan associated with "force accounts," which refers to capital project work directly performed by an FTA-funded recipient, such as a State department of transportation or a transit agency. (In other words, it is construction undertaken directly by the funded entity's workforce, rather than by a contractor.)

While grantees are required to have force account plans for capital projects, FTA would not necessarily declare costs ineligible for reimbursement solely on this basis. For example, FTA concurs with the OIG's finding that the New York Metropolitan Transportation Authority (MTA) should have submitted a force account work plan for services provided by a third-party contractor at construction sites, and did not do so at the time. However, FTA does not agree with the OIG report's conclusion based on this finding — namely, that \$693,204 in sampled payments were made improperly. The payment was still for an eligible service, to an eligible recipient, and in the correct amount.

The OIG's conclusion that this was an *improper payment* necessarily implies that this is a "payment that should not have been made," and thus that FTA should have withheld the funds. However, withholding funds solely on the basis of a lack of force account plans inflicts undue financial harm on the grantee that is disproportionate to the seriousness of the omission. The Department of Transportation's Financial Assistance Guidance Manual states that "enforcement measures should match the seriousness of the problem. The designated... official should apply sound judgment in determining what enforcement measures are appropriate for a situation." Moreover, the DOT and the OMB accept FTA's standard procedures in such matters, which entail working with the grantee through oversight mechanisms to ensure that they submit required force account plans in the future. FTA issues corrective action plans to grantees to achieve the desired outcome, whether it is to submit a force account plan or other remedy.

FTA Oversight of Eligible Preventive Maintenance Work is Accurate and Appropriate

FTA strongly disagrees with the OIG's finding that FTA did not properly oversee grantees' use of their own labor forces, particularly with respect to preventive maintenance work performed on transit systems. The OIG states that "FTA has increased the risk that grantees will inappropriately use FTA grants for their own labor forces." The OIG's finding reflects a misunderstanding of eligible expenses under FTA's grant programs.

Force accounts are required for capital projects, addressing supporting labor costs for such capital projects. FTA does not require force accounts for preventive maintenance work because this kind of work constitutes an operating expense. Under Generally Accepted Accounting Principles (GAAP) and for purposes of reporting data to FTA's National Transit Database, grantees report preventive maintenance as an operating expense. Preventive maintenance is an eligible expense under many of FTA's grant programs and we fully expect that many grantees will rely on their own staff for these activities. It is important to emphasize that the use of labor in these cases is at the discretion of the transit agencies; it is an allowable use of their FTA formula funds.

Conclusion

The FTA successfully obligated more than \$8.7 billion in ARRA funds to help revitalize public transportation around the nation and sustain over 10,000 jobs during the worst economic downturn since the Great Depression. FTA carried out this responsibility with an unprecedented level of oversight, due diligence, internal controls, and fiscal stewardship, resulting in *no* incidents of improper payments on any major grants in recent years.

We disagree with the OIG report's characterization that millions of ARRA dollars were jeopardized by FTA's grantee oversight. To the contrary, thanks to FTA and the efforts of its grantees, FTA was able to provide reasonable assurance that funds distributed relating to ARRA went to eligible recipients, for eligible services, and in the correct amount. These projects helped the nation tackle essential and long overdue transportation infrastructure work that has significantly improved access to jobs and opportunities for millions of Americans. Finally, the OIG report's characterization and extrapolation that millions were at risk should be adjusted, or removed completely from the report, as they present an inaccurate portrayal of actual circumstance, inasmuch as subsequent review determined that each of the cited findings were justified and not improper.

Recommendations and Responses

Recommendation 1: Determine which improper payments identified in this report are recoverable and develop and implement a plan to maximize the return on these investments.

Response: Concur in part. FTA has reviewed each and every payment identified by the OIG in this report. None of the identified payments were improper; none of the identified payments are recoverable. FTA considers this recommendation completed.

Recommendation 2: Provide training to regional office personnel on topics specific to force account plans that address and clarifies FTA’s requirements for reimbursement.

Response: Concur. FTA will send a refresher of FTA’s force account plans and requirements to its regional staff by May 1, 2014.

Recommendation 3: Modify existing FTA Circulars, instructions to oversight contractors, and training for grantees to reinforce program requirements, including those addressing such certifications as Federal Motor Vehicle Safety Standards and Buy America.

Response: Concur in part. FTA engages in a process of continual review and improvement of its oversight program. FTA updated its Grants Management Circular in August 2012, and FTA has just completed its annual review of instructions to oversight contractors in these topic areas in February 2014. Based on these updates, FTA considers this recommendation completed.

Recommendation 4: Implement preventive measures to prevent improper payments, such as periodically requesting payment documentation (i.e. force account plans and current contracts), prior to reimbursing grantees for expenditures.

Response: Concur in part. As a matter of standard practice, when FTA has concerns about a grantee, FTA may, at its discretion, place the grantee on “draw-down restriction” – which means the grantee’s requests for payment are subject to further FTA review before payment is made. FTA will develop enhanced procedures for identifying high-risk grantees, and implement procedures for reviewing documentation for payments from these grantees by November 30, 2014.

Recommendation 5: Implement controls governing payments to grantees for preventive maintenance force account activities.

Response: Concur in part. FTA does not require a force account plan for preventive maintenance activities. However, FTA has procedures to check the eligibility of preventive maintenance activities in the grant at the time the grant is awarded. FTA will remind regional staff of these procedures by May 1, 2014.

We appreciate this opportunity to offer additional perspective on the OIG draft report. Please contact Lauren Tuzikow at (202) 366-2059 with any questions or requests for additional assistance.