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*Office of Inspector General*  
***Audit Report***

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**FHWA IS MONITORING UNEXPENDED  
RECOVERY ACT HIGHWAY FUNDS, BUT  
SOME FUNDS MAY REMAIN UNUSED**

*Federal Highway Administration*

*Report Number: MH-2013-122*

*Date Issued: September 4, 2013*






# Memorandum

**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** FHWA Is Monitoring Unexpended  
Recovery Act Highway Funds,  
but Some Funds May Remain Unused  
Federal Highway Administration  
Report Number MH-2013-122

Date: September 4, 2013

From: Joseph W. Comé   
Assistant Inspector General for  
Highway and Transit Audits

Reply to  
Attn. of: JA-40

To: Federal Highway Administrator

The American Recovery and Reinvestment Act of 2009<sup>1</sup> (ARRA) provided \$27.5 billion for investments in highway infrastructure projects nationwide. The Federal Highway Administration (FHWA) is responsible for overseeing this investment, which included \$26.1 billion in Highway Infrastructure Investment Grants (highway projects). FHWA issued guidance on ARRA within weeks of the law's passage, and as of April 17, 2013, about 96 percent of these funds have been expended. As part of our ongoing ARRA oversight, we examined the status of any remaining unexpended ARRA highway project funds and whether States can use them to the fullest extent before the time period for spending the funds expires after September 30, 2015.<sup>2</sup> At the end of fiscal year 2012, States had unexpended ARRA funds of approximately \$1.5 billion from ARRA obligations for highway projects and \$155 million in de-obligations, or "recovered" funds, from ARRA projects.<sup>3</sup>

Our objectives were to assess FHWA's controls for monitoring unexpended funds; determine whether FHWA's policies, procedures, and management activities result in the prompt, appropriate use of unexpended ARRA funds; and identify unexpended funds at risk of not being spent by final deadlines. Specifically, we are reporting on (1) whether FHWA has taken adequate actions to monitor

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<sup>1</sup> Pub. L. No 111-5 (2009).

<sup>2</sup> States were required to obligate all ARRA funds to highway projects by September 30, 2010. FHWA classified any funds de-obligated after September 2010 as "recovered" funds.

<sup>3</sup> As of August 1, 2013, unexpended funds obligated to ARRA highway projects have decreased to about \$539 million and recovered funds not obligated to projects increased to over \$269 million.

remaining unexpended ARRA funds and (2) the impact of FHWA's policies and procedures on the use of recovered ARRA funds. We conducted this audit between July 2012 and June 2013 in accordance with generally accepted Government auditing standards. As part of this audit we selected a statistical sample of 70 of 3,346 ARRA highway projects with unexpended ARRA Highway Infrastructure Investment Grant obligations as of September 30, 2012, to project the amount of potential future recovered funds. Exhibit A details our scope and methodology, including the basis for the statistical projection used to estimate the amount of future ARRA recovered funds that will remain unused.

## **BACKGROUND**

In 2009 ARRA established aggressive deadlines for FHWA to distribute ARRA highway funds and formulate policies on the new requirements. ARRA made highway funds available for States to obligate to projects through September 30, 2010, and FHWA met the tight deadline to obligate them. After that date, ARRA funds recovered by FHWA cannot be used on new highway projects but are available to cover additional project costs (upward adjustments) on existing ARRA projects until September 30, 2015. Further, FHWA has implemented a deadline of September 30, 2013, to complete most of the remaining ARRA projects in response to an Office of Management and Budget memorandum, which encouraged agencies to accelerate their spending of remaining ARRA funds.<sup>4</sup>

ARRA funds may be recovered from State highway projects for various reasons. For instance, recovered funds may occur when the amount a State estimated for project cost, used to establish the original obligation of Federal funds, was more than the actual project costs. A State can only use recovered funds to cover additional project costs that are within the scope and purpose associated with the original approved ARRA work (qualified cost increases). As a result, even though States are recovering funds, they may not have an eligible use under Federal law, and those funds could go unused. Also, the State must be granted authority from FHWA to obligate the funds. According to FHWA's August 26, 2010 policy, States' authority to obligate recovered funds for "legitimate" upward adjustments for all its ARRA projects and programs is limited to \$25 million per fiscal year nationwide, with each State having a pro rata share based on its percentage of ARRA funds initially apportioned to States and program offices.<sup>5</sup>

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<sup>4</sup> Office of Management and Budget Memorandum M-11-34, September 15, 2011.

<sup>5</sup> FHWA policy, "Availability of American Recovery and Reinvestment Act of 2009 Appropriations," August 26, 2010.

FHWA's policy further limited the States' authority to obligate recovered funds by ARRA funding categories (represented by program codes).<sup>6</sup> Consequently, in fiscal year 2011 if a State needed more recovered funds on a project than the program code obligation authority allowed, recovered funds would go unused. On February 14, 2012, FHWA amended this policy to allow States the flexibility to obligate recovered funds from any program code, as long as the funds are available, the project is eligible, and the State fiscal year limitation on obligating recovered funds is not exceeded.

FHWA's policy also established a multi-level approval process for States to use recovered ARRA funds. Before the State can obligate its recovered funds, the policy requires States to submit a written application for the use of recovered funds on a specific project. The Division Office and FHWA's Office of the Chief Financial Officer (OCFO) must review and approve the application.

## **RESULTS IN BRIEF**

FHWA has taken adequate actions to monitor remaining obligated unexpended ARRA funds. FHWA's actions included adopting practices beyond its normal oversight activities, such as increasing the amount of data it collects and uses on unexpended funds. FHWA Headquarters tracks ARRA expenditures, recoveries, and project close-outs and distributes weekly status reports to the Division Offices for their use. Additionally, individual Division Offices are also tracking expenditures at a more detailed level and regularly meeting with their State counterparts to investigate the status of ARRA highway projects. For example, FHWA's Virginia Division Office developed weekly spreadsheets on ARRA highway project expenditures and inactive projects, projected anticipated expenditures, and established a target date for expending funds.

Due to Federal restrictions and FHWA policy on the uses of recovered ARRA funds, some highway funds could remain unused when ARRA concludes. We estimate that under current requirements \$356 million in recovered funds could remain unspent.<sup>7</sup> Federal restrictions, such as legal limits on obligating recovered funds for new projects, contribute to the amount of unused recovered funds. Another reason is FHWA's nationwide \$25 million limit on obligating recovered ARRA funds for qualified cost increases per fiscal year, which restricts each State

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<sup>6</sup> The State's share of the nationwide obligation limit of recovered funds for highway projects is further divided into "program codes" that correspond to ARRA funding requirements, such as an ARRA requirement to use 3 percent of ARRA funds for State transportation enhancement activities.

<sup>7</sup> Our \$356 million estimate includes approximately \$155 million of net recovered funds that were de-obligated from highway projects as of September 30, 2012, less \$75 million in authority FHWA has provided to States to obligate recovered funds in fiscal years 2013 through 2015, and an additional \$276 million we project States may recover in future years. Our future estimate is based on a statistical sample of 70 from 3,346 ARRA highway projects with unexpended ARRA funds in 9 of 49 States. Our \$276 million estimate, which is 18.4 percent of the \$1.5 billion of the unexpended amount in our universe, has a precision of plus or minus \$29 million at the 90-percent confidence level.

to using a share of the total national limit. Mississippi, for example, identified over \$2 million in qualifying cost increases above its fiscal year share of the national limit and therefore was unable to fully utilize its recovered funds. FHWA has additional actions at its disposal for reducing barriers on the use of recovered ARRA funds, such as obtaining more complete data on States' qualified cost increases, and in the past it has revised policies and procedures to provide States with more flexibility to use recovered funds.

We are making recommendations for FHWA actions that could provide States with more opportunities to use their recovered ARRA funds.

## **FHWA HAS TAKEN ADEQUATE ACTIONS TO MONITOR UNEXPENDED ARRA FUNDS**

FHWA's policies, procedures, and management activities are adequate to monitor the status and remaining amount of unexpended ARRA funds. FHWA actions include adopting practices beyond its normal oversight activities, such as increasing the type of data it collects and uses to track States' use of the funds. FHWA Headquarters tracks ARRA expenditures, recoveries, and project close-outs on a State level and distributes a weekly status report to the Division Offices.

The three Division Offices we reviewed also produce status reports containing project-specific unexpended obligations and discuss with their State counterparts the status of projects with unexpended obligation balances. For example:

- FHWA's Connecticut Division Office produced in-house reports on ARRA expenditures by project and identified "outlier" highway projects with a low percentage of expended ARRA funds. The Division Office also regularly met with their State counterparts to discuss the status of specific ARRA projects.
- The Virginia Division Office developed weekly spreadsheets on ARRA highway project expenditures and inactive projects, projected anticipated expenditures, and established a target date for expending the funds. The Division Office provided this information to the Director of Field Services (DFS). The office also tracked actual expenditures versus projected expenditures and met bi-weekly with State counterparts to discuss project status, ARRA-specific issues, and inactive ARRA highway projects or projects slowly expending ARRA funds.
- FHWA's Oklahoma Division Office met regularly with its State counterparts and produced spreadsheets tracking ARRA highway projects with unexpended obligations. If the Division Office identified a project that was lagging in

expenditures, it performed follow-up inquiries with the project's manager to determine the cause and whether the project could be moved along.

## **ARRA HIGHWAY FUNDS MAY REMAIN UNUSED WHEN ARRA CONCLUDES**

While FHWA has adequate actions to monitor unexpended ARRA funds, under current requirements for the use of recovered funds, we estimate that about \$356 million in recovered ARRA highway project funds could remain unused when the program concludes in fiscal year 2015. Factors outside of FHWA's control, such as Federal restrictions on the use of the funds, impact the amount of funds that may remain unused. FHWA's nationwide \$25 million fiscal year limitation on obligating recovered funds, which prevents States from using their funds when qualified cost increases exceed this limitation, is also a contributing factor. In fiscal year 2012, FHWA amended its policies and procedures for managing recovered ARRA funds, which gave States more flexibility to use recovered funds than they had in fiscal year 2011. However, additional FHWA actions, such as obtaining more complete data on States' qualified cost increases, could make more recovered funds available to States.

### **ARRA Recovered Funds Remain Unused Due in Part to FHWA's Limitations on Obligating Recovered Funds**

ARRA recovered funds remain unused primarily for two reasons. First, recovered ARRA funds remain unobligated because by law States cannot use them to fund new ARRA highway projects. Second, FHWA's annual \$25 million national limitation on obligating recovered funds—which is not an ARRA statutory requirement—has hindered States' ability to maximize their recovered ARRA funds.

To assess the impact of FHWA's policy, we interviewed State Transportation officials in 9 of 43 randomly selected States that had unobligated recovered funds. Officials for 6 of the 9 States stated that without the fiscal year limitation on obligating recovered funds they would have been able to use more of their ARRA recovered funds for qualified cost increases. For example, in fiscal year 2012 Mississippi identified \$2.7 million in qualified cost increases on an ARRA highway project but only requested to use \$322,800 of its recovered funds on the project because the State had reached its limit. Although later in the year FHWA provided Mississippi with additional authority to obligate recovered funds up to \$542,935, the increase was not enough to fully fund the qualified cost increases on the particular project. As a result, the limitation contributed to Mississippi having more than \$5 million in recovered funds not used by the end of fiscal year 2012.

Exhibit B lists the States with recovered funds not obligated as of September 30, 2012, and States' future authority to obligate recovered funds.

As a result of Federal restrictions and FHWA's policies, about \$356 million in recovered ARRA highway project funds could remain unused when the program concludes in fiscal year 2015. This determination is based on the actual amount of recovered funds as of September 30, 2012, and our estimate of future unused funds. FHWA had not obligated about \$155 million of the \$191 million in ARRA funds recovered as of September 30, 2012, to highway projects.<sup>8</sup> Even if States used all available authority to obligate recovered funds for qualified cost increases, under FHWA policy, only \$75 million of the \$155 million already recovered and not obligated could be used before ARRA ends in fiscal year 2015 (\$25 million for each of the next 3 fiscal years). In the future, the amount of unused recovered ARRA funds will become even greater. Our statistical estimate shows the potential for States to recover an additional \$276 million from highway projects in future fiscal years.<sup>9</sup> Table 1 shows the actual amount of recovered funds not obligated as of September 30, 2012, and our estimate of recovered funds that will remain unobligated when ARRA concludes in fiscal year 2015.

**Table 1. Remaining Highway Infrastructure Investment Grant ARRA Recovered Funds**

<b>Highway Infrastructure Investment Grant Recovered ARRA Funds</b>	<b>Amount</b>
Recovered Funds Not Obligated as of September 30, 2012	\$155 million
<i>Plus</i> – OIG Estimate of Future Recovered Funds in Fiscal Years 2013 through 2015	276 million
<i>Minus</i> – Maximum Amount of Recovered Funds States Can Obligate in Fiscal Years 2013 through 2015 <sup>a</sup>	(75 million)
<b>Estimated Unused Funds Remaining on September 30, 2015</b>	<b>\$356 million</b>

Source: OIG Analysis and FHWA data.

<sup>a</sup>Based on \$25 million per fiscal year authority to obligate nationally.

### **Additional FHWA Actions Could Increase the Availability of Recovered Funds**

FHWA has revised its policies and procedures over time to provide States with more flexibility to use recovered funds. For example, in fiscal year 2012, FHWA Headquarters asked Division Offices to determine if States had qualified project

<sup>8</sup> We did not include \$7.7 million in recovered ARRA funds pertaining to the Puerto Rico Highway Program, the Territorial Highway Program, Highway Surface Transportation and Technology Training, Ferry Boat Development and Federal Lands Highway. FHWA's \$25 million fiscal year obligation limitation includes about \$728,000, or 3 percent, for these programs.

<sup>9</sup> Our estimate of \$276 million has a precision of plus/minus \$29 million, at the 90-percent confidence level.

cost increases above their fiscal year 2012 pro rata share authority to obligate recovered funds and enough recovered funds to benefit from additional authority. FHWA also asked States and program offices to voluntarily relinquish unused authority to obligate recovered funds for other States to use. However, we identified the following additional actions FHWA has at its disposal that could increase the availability of recovered ARRA funds:

**FHWA can revise its ARRA recovered funds policy to be more precise.** FHWA's policy has restricted the availability of recovered funds because it did not precisely define which potential upward adjustments should be applied to the \$25 million fiscal year limitation, thereby reducing what could have been obligated. We found that the basis for FHWA's policy—31 U.S.C. § 1553(c)—only requires that a limitation be applied to “contract changes,” defined as “a change to a contract under which the contractor is required to perform additional work.”<sup>10</sup> Our review identified upward adjustments included in the fiscal year limitation that do not appear to be contract changes because they did not call for additional work by the contractor. For example, FHWA applied the fiscal year limit required for contract changes to an upward adjustment to correct the amount initially obligated to a project due to a “human error.” FHWA also applied the limit to an upward adjustment that corrected the difference between the original Federal obligation made, based on the State's projected contract cost, and the actual amount for which the contract was ultimately awarded. Both instances did not result in the need to modify a contract since the contractor was not performing additional work. As a result, FHWA has reduced what additional funds could have been obligated since upward adjustments not related to contract changes were subjected to the \$25 million fiscal year limitation.

FHWA's policy also did not allow States to use ARRA recovered funds in two categories of upward adjustments, even though these adjustments typically would be eligible for Federal funding under 31 U.S.C. § 1553 (*Availability of Appropriation Accounts to Pay Obligations*). FHWA's policy states that recovered ARRA funds cannot be used for “adjustments to pay claims, or increases under an escalation clause.”<sup>11</sup> However, the basis upon which FHWA's policy excluded these adjustments does not render claims or increases under an escalation clause ineligible for upward adjustments. Instead it specifies that they are not included as a contract change subject to the \$25 million fiscal year limitation. We are unaware

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<sup>10</sup> FHWA stated that it based its August 26, 2010, policy on 31 U.S.C. § 1553(c)(2), which states that for a fixed appropriation account (such as ARRA funds), if an obligation of funds from that account to provide funds for a program, project, or activity to cover amounts required for *contract changes* would cause the total amount obligated from that appropriation to exceed \$25 million during a fiscal year, the obligation may not be made until the head of the agency submits to Congress a notice in writing of the intent to obligate such funds and a period of 30 days has elapsed after the notice is submitted.

<sup>11</sup> A claim results from a contractor seeking additional compensation on a highway project for costs not specified in the contract. A contractor may also seek additional compensation on a highway project resulting from increases (escalation) in commodity prices, such as increases in fuel costs, if allowed under the construction contract.



of ARRA requirements or other statutory requirements that result in these adjustments being ineligible for recovered ARRA funds. By treating the adjustments as ineligible, FHWA may have reduced the amount of additional recovered funds that could have been available for ARRA projects.

Additionally, FHWA's policy incorrectly applied the \$25 million fiscal year limitation to its entire ARRA appropriations account rather than to the programs funded through the ARRA appropriation. The limitation in 31 U.S.C. § 1553(c), on which FHWA based its policy, is triggered by contract changes exceeding \$25 million in a fiscal year in a *program, project, or activity* funded through the appropriations account rather than the account itself. By incorrectly applying the limitation to the entire ARRA appropriation account rather than the individual programs funded through the account, such as the Indian Reservations Roads program, States have less flexibility to use recovered funds before a notification is required, should FHWA elect to do so. This is because the \$25 million fiscal year notification triggering amount will be reached faster than if the limitation was applied elsewhere. Revising how FHWA applies the \$25 million fiscal year obligation limitation could make more recovered funds available before a notification is required.

**FHWA can obtain more complete data on qualified cost increases to accurately determine States' remaining needs for recovered funds.** Although FHWA is monitoring amounts of unexpended ARRA funds, complete data on qualified cost increases would provide FHWA with a stronger basis to more accurately establish whether States need more access to recovered funds now and in the future and take appropriate actions. Currently, FHWA's data are limited because its policy does not encourage States to submit applications for all potential qualified uses of recovered funds. Accordingly, FHWA lacks a clear picture of States' total need for recovered funds. FHWA told us that States have been asked to submit all qualified cost increases regardless of their limitation on obligating recovered ARRA funds. However, FHWA's policy on its Web site, which States and the public rely on for guidance when administering FHWA programs, shows States are still required to submit applications that do not exceed their obligation authority. State representatives we talked with believe this is the policy as well.

With an FHWA deadline of September 30, 2013, to complete most ARRA projects, clarifying what data are needed is important to maximize States' use of recovered funds. Obtaining information from State applications or other sources on qualified cost increases regardless of limitations provides FHWA with an option to obligate most or all funds needed by the States. Under the law, the \$25 million fiscal year limitation on obligating recovered funds is only a notification requirement and FHWA could exceed the annual fiscal year limit by notifying Congress of its intent to do so, an action it has not elected to take in the

past. For instance, in fiscal year 2012, FHWA's assessment showed that States needed \$22 million in authority to obligate recovered funds in addition to the \$25 million available to them. Notifying Congress at that time could have provided States with more use of their recovered funds in fiscal year 2012. FHWA stated that due to the conditions present at that time, it utilized its discretion and elected to remain under the \$25 million notification requirement in fiscal year 2012.

## **CONCLUSION**

To meet a key ARRA goal of stimulating the U.S. economy through timely investments in transportation projects, FHWA faces the ongoing challenge of helping States fully utilize remaining unexpended ARRA funds. While the law places limits on what States can do with ARRA funds after September 30, 2010, FHWA can take actions to reduce administrative barriers, within the law, and provide States with more opportunities to use recovered ARRA funds. In fiscal year 2012, FHWA took actions to accomplish this and lessen the amount that would remain when ARRA concludes. However, to ensure achievement of ARRA's economic recovery goals, it would be prudent for FHWA to explore appropriate actions to make more unspent ARRA funds available to States.

## **RECOMMENDATIONS**

We recommend the Federal Highway Administrator:

1. Revise its August 26, 2010, policy regarding the treatment of recovered ARRA funds for upward adjustments to clearly state that (a) upward adjustments that do not constitute a contract change are not subject to the \$25 million notification limitation, (b) pay claims and increases under escalation clauses are eligible for ARRA recovered funds, and (c) the \$25 million limitation applies to the individual ARRA programs and not to the entire ARRA appropriations account.
2. Implement a process to obtain more complete data and determine more accurately how much recovered funding States need in excess of the authority FHWA has provided to obligate recovered funds.

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

We provided FHWA with our draft report on June 7, 2013, and received its response on July 31, 2013. FHWA's response is included in its entirety in the appendix to this report. In its response, FHWA partially concurred with recommendation 1 and concurred with recommendation 2.

Regarding recommendation 1, FHWA stated that its use of recovered ARRA funds is discretionary and, while there may be alternative methods to implement it, FHWA's method was effective and in compliance with applicable guidance and statute. Further, FHWA stated that revising its August 26, 2010, policy would have limited material benefit, particularly at this late stage of ARRA. FHWA provided an alternative action to our recommendation, stating that it would continue to explore the implications of providing upward adjustments in excess of \$25 million. While we recognize that the treatment of recovered ARRA funds may be within FHWA's discretion, we maintain that once FHWA elected to allow the use of these recovered ARRA funds, it needed to correctly apply the requirements in 31 U.S.C. 1553. As we reported, FHWA has not fully complied with these requirements. We request that FHWA provide additional information on its proposed alternative action to explore the implications of providing upward adjustments in excess of \$25 million so that we can better assess whether the action would meet the intent of our recommendation. Until we receive this information, we consider recommendation 1 open and unresolved.

Regarding recommendation 2, FHWA stated that it implemented a process to obtain more complete and accurate data from States and that it is evaluating options to address the need for additional upward adjustments. We consider the planned actions to be responsive. Accordingly, we consider this recommendation resolved but open pending completion of the planned actions.

### **ACTIONS REQUIRED**

In accordance with follow-up provisions in Department of Transportation Order 8000.1C, we request, for recommendation 1, that FHWA provide within 30 days of this report additional information on its proposed alternative action to explore the implications of providing upward adjustments in excess of \$25 million, and for recommendation 2, that FHWA provide our office with documentation that its planned actions are complete within 10 days of their completion. Until we receive this information, we consider recommendation 1 as open and unresolved and recommendation 2 as resolved but open pending receipt of documentation.

We appreciate the courtesies and cooperation of FHWA representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or David Pouliott, Program Director, at (202) 366-1844.

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cc: DOT Audit Liaison (M-1)  
FHWA Audit Liaison (HAIM-13)

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

We conducted this performance audit from July 2012 through June 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To determine whether FHWA actions were adequate to monitor unexpended ARRA funds on highway projects, we analyzed data from FHWA's Fiscal Management Information System (FMIS) and identified the amount of unexpended funds by State and ARRA highway project. Based on the FMIS data, we selected Oklahoma since it had a low percentage of unexpended funds and randomly selected Connecticut and Virginia to interview officials from the Division Office and State transportation offices, ascertained the status of specific projects, and reviewed supporting documents. We also performed a statistical sample of States and highway projects with unexpended ARRA funds to estimate the amount of additional future recovered funds on highway projects nationally.

To estimate future recovered ARRA funds at the end of fiscal year 2015 when ARRA concludes, our statistical sample was based on 3,346 highway projects with \$1.5 billion in unexpended ARRA funds we identified in FMIS as of September 30, 2012. We selected a 2-stage stratified probability proportional to size sample with replacement to estimate the amount of recoverable funds. We first summarized unexpended amounts by State, which resulted in 49 of 50 States with unexpended funds. In the first sample stage, we selected a sample of 10 states with probability proportional to the unexpended amount. One state was selected twice, which reduced our actual total sample size from 10 to 9 States. In the second stage, we stratified by State and selected 7 ARRA projects with probability proportional to a State's unexpended amount from each stratum, for a sample of 70 projects totaling \$450.8 million in unexpended funds. States then provided us with their estimate of ARRA funds they anticipated recovering on the 70 projects sampled. We found that 18 of the 70 statistically sampled projects had estimated recovering funds in the amount of \$7 million. Based on our findings, we estimated with 90-percent confidence that the amount of estimated recoverable funds is \$276 million, or 18.4 percent, of the universe of \$1.5 billion in unexpended ARRA funds. Our estimate has a precision of plus or minus \$29 million, or 2 percent, which means our 90-percent confidence limits range from \$246 million to \$305 million, or 16.4 percent to 20.3 percent.

### **Exhibit A. Scope and Methodology**

To assess the impact of FHWA's policies and procedures and Federal restrictions had on the use of recovered ARRA funds, we analyzed data from FHWA's FMIS and identified the amounts of ARRA recovered and re-obligated recovered funds by State. We further interviewed FHWA Office of the Chief Financial Officer officials responsible for monitoring recovered funds and approving State applications for the funds and reviewing related documentation. We also interviewed FHWA and State officials in 9 of 43 randomly selected States based on the amount of unobligated recovered funds, to understand the reasons why they remained. We excluded the other States from our universe since they either did not have unobligated recovered funds or we reviewed them separately for specific issues that came to our attention. We also assessed FHWA's \$25 million annual obligation authority limit on recovered funds by performing a legal review of pertinent legislation, laws, and FHWA's policy, supported with an analysis of data obtained from FHWA's FMIS.

**EXHIBIT B. RECOVERED ARRA HIGHWAY INFRASTRUCTURE  
INVESTMENT GRANT FUNDS AND FUTURE OBLIGATION  
AUTHORITY**

	<b>Recovered ARRA Highway Infrastructure Investment Grant Funds Not Obligated as of September 30, 2012</b>	<b>Authority to Obligate Recovered ARRA Highway Infrastructure Investment Grant Funds for Fiscal Years 2013 – 2015</b>
Alabama	\$ 1,316,367	\$ 1,403,019
Alaska	1,260,312	479,229
Arizona	5,949,389	1,425,597
Arkansas	0	960,153
California	22,987,190	7,018,122
Colorado	34,867	1,103,217
Connecticut	2,727,552	824,982
Delaware	0	332,745
District of Columbia	1,526,883	337,329
Florida	11,528,521	3,678,264
Georgia	2,752,578	2,544,390
Hawaii	825,749	343,443
Idaho	122,776	496,908
Illinois	2,209,237	2,555,334
Indiana	7,537,288	1,797,072
Iowa	245,269	978,231
Kansas	269,932	949,974
Kentucky	776,237	1,150,113
Louisiana	27,684	1,174,053
Maine	509,244	357,117
Maryland	2	1,177,263
Massachusetts	20,667,616	1,195,917
Michigan	1,105,109	2,313,924
Minnesota	1,044,095	1,371,861
Mississippi	5,338,082	968,403
Missouri	173,683	1,740,138
Montana	0	578,460
Nebraska	5,685,155	643,452
Nevada	6,600,660	549,942

**Exhibit B. Recovered ARRA Highway Infrastructure Investment Grant  
Funds and Future Obligation Authority**

	<b>Recovered ARRA Highway Infrastructure Investment Grant Funds Not Obligated as of September 30, 2012</b>	<b>Authority to Obligate Recovered ARRA Highway Infrastructure Investment Grant Funds for Fiscal Years 2013 – 2015</b>
New Hampshire	\$ 8,296	\$ 353,535
New Jersey	11,362,809	1,780,155
New Mexico	3,284,167	690,033
New York	8,717,590	3,060,864
North Carolina	4,564,315	2,008,905
North Dakota	2,719,534	464,658
Ohio	4,724,781	2,555,565
Oklahoma	0	1,269,087
Oregon	5,517,074	911,970
Pennsylvania	None	2,803,431
Rhode Island	311,083	374,442
South Carolina	0	1,264,788
South Dakota	969,086	499,893
Tennessee	1,556,016	1,564,188
Texas	57,207	6,145,344
Utah	1,029,171	583,245
Vermont	255,561	343,566
Virginia	0	1,896,744
Washington	1,256,219	1,344,435
West Virginia	2,906,026	575,889
Wisconsin	2,492,931	1,445,136
Wyoming	0	430,488
<b>Totals<sup>a</sup></b>	<b>\$154,953,343</b>	<b>\$ 72,815,013</b>

Sources: OIG analysis of FHWA data

<sup>a</sup> Totals include highway infrastructure grant projects, the focus of our report, and do not include ARRA funding provided for the Puerto Rico Highway Program, the Territorial Highway Program, Highway Surface Transportation and Technology Training, Construction of Ferry Boats, and several Federal Lands Highway programs.

## **Exhibit B. Recovered ARRA Highway Infrastructure Investment Grant Funds and Future Obligation Authority**



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

<b><u>Name</u></b>	<b><u>Title</u></b>
David Pouliott	Program Director
Lorretta Swanson	Project Manager
Stephen Gruner	Project Manager
Cynthia Auburn	Senior Analyst
Jack Burriesci	Senior Analyst
Michael Masoudian	Senior Analyst
Oleg Michalowskij	Senior Analyst
Deborah Kloppenburg	Senior Auditor
Fritz Swartzbaugh	Associate Counsel
Petra Swartzlander	Senior Statistician
Megha Joshipura	Statistician
Andrea Nossaman	Senior Writer-Editor

## APPENDIX. AGENCY COMMENTS



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

# Memorandum

Subject: **INFORMATION:** Federal Highway  
Administration (FHWA) Response to Office  
of Inspector General (OIG) Draft Report on  
Unexpended American Recovery and  
Reinvestment Act (Recovery Act) Funds

Date: July 31, 2013

From: Victor M. Mendez  
Administrator

In Reply Refer To:  
HCFM-1

To: Calvin L. Scovel III  
Inspector General (J-1)

### **FHWA Created Jobs and Stimulated Economy with Constructive Highway Investments**

The FHWA's successful implementation of the Recovery Act resulted in 13,000 highway infrastructure investments that stimulated the economy and put Americans back to work. The OIG report projects \$356 million in recovered funds, or about 1 percent of the \$27.5 billion FHWA received under the Act, could potentially remain unspent by the September 2015 statutory deadline, in large part due to Federal restrictions specified by the Recovery Act that are not found in the regular Federal-aid highway program. As stewards of Federal funds, FHWA is using the full extent of its authority to ensure that States fully and effectively use Recovery Act funds for productive and prudent investments in the Nation's highway infrastructure that contribute to economic growth and job creation.

### **FHWA has Provided Effective Oversight of Recovery Act Funds**

The OIG report recognizes that FHWA's actions with regard to these funds have been appropriate, as well as the extraordinary measures implemented to provide sound and effective oversight. The Recovery Act was funded through general fund appropriations. In accordance with the authorities provided by general fund appropriations, FHWA equitably distributed upward adjustment authority annually among States with qualifying upward adjustments. The FHWA's upward adjustment approval process assured accountability for Recovery Act expired funding by requiring reviews at both the Division Offices and FHWA Headquarters. This two-tiered approval process provided thorough oversight to ensure that upward adjustments for individual projects under the Highway Infrastructure

Investment Account were within the scope of the original project and that States maintain sufficient Recovery Act de-obligation balances to use for upward adjustments. The FHWA created and provided weekly fund status reports that enabled the Agency, including senior leadership, to track Recovery Act funding at both the aggregate and individual project level. From the onset, FHWA actively encouraged States to prioritize expenditure of Recovery Act funds in the delivery of these infrastructure projects. The Agency regularly communicated with the States to emphasize the importance of prioritizing the use of Recovery Act funds to stimulate the economy within an accelerated timeframe.

### **FHWA has Managed Unexpended Funds in Accordance with Statute and Guidance**

Neither the Office of Management and Budget Circular A-11 nor the Government Accountability Office's (GAO) Principles of Federal Appropriations Law provide specific guidance on implementation of expired funds authority; however, GAO does note that such authority is discretionary. Specifically, GAO's Redbook Volume I states that "during the 5-year period, the expired account balance may be used to liquidate obligations properly chargeable to the account prior to its expiration." The FHWA's application of the \$25 million upward adjustment limit to the Recovery Act Highway Infrastructure appropriation account is a reasonable means of implementing Section 1553 of 31 United States Code (31 U.S.C. 1553). In accordance with language within the statute that states "in the case of a fixed appropriation account," FHWA applied the annual \$25 million limit to the entirety of funds originating from the Recovery Act Highway Infrastructure appropriation account heading whether the adjustments were related to contract changes or other adjustments not associated with contract changes. Each State and individual program equitably received a share of the \$25 million limit to make qualifying upward adjustments, provided sufficient de-obligation balances exist. The share of the upward adjustment limitation received by each State and program is proportional to the amount of Recovery Act funds received as a percentage of the overall Recovery Act appropriation.

While we recognize that there may be alternative methods available to implement this discretionary authority, FHWA's method has been effective and is in compliance with applicable guidance and statute. Had FHWA applied 31 U.S.C. 1553(c) to each subcategory within the Highway Infrastructure Investment Account and applied an annual \$25 million upward adjustment limit to each individual "program, project, or activity" as discussed in the OIG report, the potential decrease in projected unexpended Recovery Act funds would be immaterial. States received the vast majority of the Recovery Act's \$27.5 billion via the Highway Infrastructure Investment Program, whereas other activities funded under the Highway Infrastructure Investment Account share totaled less than 3 percent. Many of the smaller subcategories, such as the Forest Highway or Refuge Roads, have either not used their proportional share of the existing \$25 million upward adjustment limit, or have not needed and therefore not requested any upward adjustments. De-obligations associated with those activities total approximately \$720,000. If sufficient qualifying upward adjustment requests existed to re-obligate the entire \$720,000 balance, the amount of projected unexpended funds would decrease by less than 0.2 percent of OIG's projected unexpended funds identified in the report. As a result, the potential cost effectiveness of

this modification and its utility as a tool for reducing unexpended balances from the Recovery Act is not apparent.

### **OIG Recommendations and FHWA Responses**

**Recommendation 1:** Revise FHWA’s August 26, 2010, policy regarding the treatment of recovered Recovery Act funds for upward adjustments to clearly state that (a) upward adjustments that do not constitute a contract change are not subject to the \$25 million notification limitation, (b) pay claims and increases under escalation clauses are eligible for Recovery Act recovered funds, and (c) the \$25 million limitation applies to the individual Recovery Act programs and not to the entire Recovery Act appropriations account.

**Response:** Concur in part. As discussed earlier in this response, FHWA implemented a rational and reasonable interpretation of 31 U.S.C. 1553 in the absence of comprehensive guidance regarding how FHWA should implement expired funds authority. The fact that expired funds may be used to make adjustments to timely obligations or record new obligations does not mandate the use of expired funds for those costs. Nonetheless, FHWA established a prudent process to use expired funds to provide additional upward adjustment flexibility to its grantees while at the same time assuring accountability associated with such funding. Further, at this late stage of the Recovery Act, based on our analysis described above, there is limited material benefit in revising FHWA’s interpretation of 31 U.S.C. 1553 regarding upward adjustments.

The FHWA continues to prudently manage Recovery Act funds. As time has progressed, FHWA has modified the upward adjustment process as necessary to provide additional flexibility to States in completing infrastructure projects. The FHWA will continue to explore the implications of providing upward adjustments in excess of \$25 million should the Agency, in working with the Department, decide such a policy decision is appropriate.

The FHWA requests that OIG close this recommendation upon receipt of this response.

**Recommendation 2:** Implement a process to obtain more complete data and determine more accurately how much recovered funding States need in excess of the authority FHWA has provided to obligate recovered funds.

**Response:** Concur. The FHWA implemented a process to obtain more complete and accurate data from States regarding qualifying upward adjustments. Specifically, on May 23, FHWA Headquarters requested Division Offices work with their States to submit all qualifying upward adjustments requests where sufficient de-obligation balances exist, regardless of pro rata upward adjustment limitations. On June 19, FHWA afforded States an opportunity to verify their requested upward adjustment amount. To date, we have received and approved \$12.2 million in upward adjustments for Fiscal Year (FY) 2013.

In response to the requests for information regarding States’ need for additional pro rata or plans to release their pro rata share, 24 States released a total of \$6.26 million of Recovery Act upward adjustment ceiling for redistribution for FY 2013, 10 States did not request

additional ceiling, and 18 States requested additional Recovery Act upward adjustment ceiling. The FHWA is evaluating options to address need for additional upward adjustments and will notify its Division Offices of any ability to make obligations for upward adjustments in excess of \$25 million. In light of these actions, and FHWA's intent to continue pursuing these options, we request that OIG close this recommendation upon receipt of this response.

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The FHWA appreciates the opportunity to respond to the draft report. If you have any questions or comments regarding this response, please contact Juli Huynh, Director of Financial and Management Programs, at 202-366-6504.