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Subcommittee on Transportation and Public Assets
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Oversight of Major Transportation Projects: Opportunities To Apply Lessons Learned

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Mr. Chairman:

Thank you for this opportunity to appear before you to discuss the Office of Inspector General's (OIG) efforts related to oversight of major transportation projects in New York. As you know, the complexity and significant Federal investment in designing and constructing these major transportation projects call for rigorous oversight to help ensure the projects are carried out efficiently and economically, and do not compromise safety. Our work in evaluating Federal oversight of large surface transportation projects in New York and across the Nation has identified multiple lessons learned, including areas for improvement, that can maximize the return on the billions of dollars invested annually in transportation projects. The Federal Transit Administration (FTA) invests in building the capacity and improving the quality of public transportation throughout the United States. FTA's office in New York is responsible for an \$18.2 billion portfolio of Federal funds awarded, with 94 percent of its portfolio distributed among the New York Metropolitan Transportation Authority (MTA), New Jersey Transit, Port Authority of New York and New Jersey, and New York City Department of Transportation.

My statement today will focus on (1) lessons learned for improving FTA's oversight of major transportation projects, (2) other opportunities for strengthening oversight of major Department of Transportation (DOT)-funded projects, and (3) our ongoing audit and investigation work of major transportation projects in New York and nationwide.

IN SUMMARY

FTA has taken steps to address the cost overruns and schedule delays experienced with its major transportation projects in New York, including the East Side Access and Second Avenue Subway projects. However, opportunities remain for FTA to further target its oversight and better use the tools it has on hand to meet its project goals. These include promptly addressing identified oversight issues, strengthening stakeholder agreements, and enhancing controls to prevent and detect fraud, among others. Similarly, other DOT-funded large transportation projects have led to important lessons learned that can apply to both FTA and the Department at large, such as the importance of thoroughly documenting grantee actions on the Federal Railroad Administration's (FRA) multibillion dollar High-Speed Intercity Passenger Rail (HSIPR) grant program. Our ongoing audits and investigations continue to seek to identify potential gaps in DOT oversight of major surface transportation projects both in New York and nationwide, including ensuring effective oversight of funds issued through Hurricane Sandy relief efforts. Ultimately, effective stewardship and oversight of highway, rail, and transit projects across the Nation remain critical to maximizing the substantial Federal dollars invested in them.

BACKGROUND

Since the 1990s, OIG has conducted reviews of major transportation projects nationwide, notably the Boston Central Artery/Tunnel Project, the Los Angeles Metrorail Red Line Project, and the Dulles Metrorail Project. Our criminal and civil investigations focus on DOT projects where there are allegations of fraud, regardless of project size. (See the exhibit for a list of our major transportation project audits and investigations.)

OIG has maintained a significant presence in the New York metropolitan area for well over a decade due to the substantial Federal investment, size, and complexity of the area's major transportation projects. After the Federal Government provided \$4.55 billion to reconstruct and enhance Lower Manhattan's transportation infrastructure following the September 11, 2001, terrorist attack, we established an OIG Oversight Team to evaluate FTA's oversight of major projects, including the Fulton Street Transit Center Project and the Port Authority Trans-Hudson (PATH) Transportation Hub.

To date, several of FTA's major projects in New York City have experienced significant cost and schedule overruns. FTA's East Side Access project alone is currently estimated at several billion dollars greater than its original budget and may be approximately 9 years behind schedule.¹ In October 2012, Hurricane Sandy exacerbated the challenges faced by FTA and New York metropolitan area transit agencies and authorities. In response, Congress passed the Disaster Relief Appropriations Act (DRAA) in January 2013, which appropriated more than \$10 billion to FTA's emergency relief program for transit agencies in areas negatively impacted by the storm, and directed our office to support oversight of FTA's Hurricane Sandy relief funds.

OIG WORK POINTS TO OPPORTUNITIES FOR FURTHER IMPROVING FTA'S OVERSIGHT OF MAJOR TRANSPORTATION PROJECTS

FTA has taken steps to address the cost overruns and schedule delays experienced with the East Side Access and Second Avenue Subway projects. For example, FTA and MTA developed an Enterprise Level Project Execution Plan in 2009 that provides a risk-based oversight of FTA's major projects.² In addition, FTA is not allowing MTA to access New Starts funds³ awarded on one of its projects, which is experiencing delays and cost overruns. Despite these actions, our audits and investigations of major transit projects in New York and nationwide identified opportunities for FTA to further target its oversight

¹ According to the January 2015 FTA Project Management Oversight Contractor (PMOC) report, MTA's total cost estimate is approximately \$11.2 billion, including finance charges. The same report cites MTA's estimated revenue service date of December 2022, although the PMOC uses a September 2023 forecast. In contrast, the Full Funding Grant Agreement cited an approximately \$7.4 billion total cost and a revenue service of December 2013. A redacted version of this report can be found at http://www.fta.dot.gov/13721_14436.html.

² The Enterprise Level Project Execution Plan was developed to provide the greatest level of assurance that MTA projects could proceed and be delivered within the projects' revised budget and schedule.

³ FTA's discretionary New Starts program is the Federal Government's primary financial resource for supporting locally-planned, implemented, and operated transit capital investments.

activities and better use the tools it has on hand to control cost increases and schedule overruns. These include:

- **Encouraging grantees to promptly address concerns identified by FTA’s Project Management Oversight Contractors (PMOC).** PMOCs play an important oversight role by examining individual projects, identifying risks, and recommending solutions to FTA and grantees. However, our 2008 review of FTA’s oversight of \$4.55 billion in Federal funds provided for Lower Manhattan Recovery Projects determined that grantees had not sufficiently addressed major risks that PMOCs identified, increasing the risk of cost overruns and schedule delays. More recently, we identified similar issues with the Dulles Metrorail project. Based on issues we identified in that report, FTA has noted the importance of PMOCs and plans to conduct an internal review of its PMOC processes to improve monitoring of project construction. As FTA continues its oversight of these projects, it will be critical to fully analyze the results of the PMOC reports, take action where appropriate, and exercise its own oversight role in addition to the contractors’ work.
- **Mitigating project financing risks through financial management oversight contractors (FMOC).** Sound financial planning helps to ensure the financial health of transit agencies, and a continually updated financial plan is the centerpiece of sound capital investment planning. Because of this, FTA conducts an assessment of the financial capacity of grant applicants when a major capital project exceeds \$1 billion in total cost, and retains an FMOC to evaluate a grantee’s financial condition and its ability to construct, operate, and maintain a project. FTA’s FMOCs review grantee capital and operating finance plans, analyze budgets, determine significant unforeseen liabilities, and assess the reasonableness of financing assumptions. For example, for the Hiawatha Corridor Light Rail Transit Project in Minnesota, FTA’s FMOC raised concerns regarding projected operating reserves, resulting in the grantee taking actions and providing a written commitment to aggressively monitor costs and revenues. In addition, after our office raised concerns about the adequacy of local funding, an FMOC validated the sufficiency of project funding for the Seattle Central Link Project’s initial segment. Effectively using FMOCs in identifying and mitigating project financing risks, determining the sufficiency of capital funding sources, and providing assurance to project stakeholders that sufficient funds are available to complete the project will remain vital to FTA’s continued oversight of these projects.
- **Leveraging existing oversight tools and procurement system reviews.** Our work on surface transportation projects for FTA has shown the importance of Project Management Plans (PMP), which help grantees effectively manage major projects’ scope, cost, and schedule, and ensure that projects meet applicable Federal requirements. Our audit on the New Jersey Transit’s Access to the Region’s Core

(ARC) project found that FTA did not receive finalized project documents from the grantee, including a PMP, which may have hindered FTA's ability to mitigate risks.

Another key oversight tool is procurement system reviews, in which FTA facilitates the improvement of grantee procurement operations and assesses the grantee's compliance with Federal procurement requirements. As we reported, procurement system reviews were a significant component of FTA's oversight of American Recovery and Reinvestment Act funds. These reviews should be fully utilized and followed through to resolve grantee deficiencies and ensure compliance with Federal requirements.

Similarly, we reported in 2012 that FTA had not provided its staff with sufficient guidance for grant oversight, such as on deficiencies identified during key audits. Recognizing these vulnerabilities, FTA is conducting a comprehensive update of its oversight program, which it expects to complete by February 2016. Keeping those efforts on track is critical to improve its oversight of transit grantees and ensure appropriate stewardship of Federal funds.

- **Bolstering stakeholder agreements and resolving coordination issues.** Memorandums of Agreement (MOA) and other agreements among stakeholders are important components in major transportation projects, as they require all parties to agree on specific project issues, such as the cost estimate, scheduled completion date, final design, and financing. A lack of effective MOAs was a key barrier for the New Jersey Transit's ARC project, as stakeholders were unable to reach agreement on cost overrun responsibility. Phase 2 of the Dulles Metrorail Project was similarly challenged, as the project's MOA did not specifically address responsibilities among project stakeholders for cost overruns. Since a number of the New York projects will not be completed for some time, there is still an opportunity for FTA to assist the project sponsors in overseeing stakeholder agreements and resolving coordination issues.
- **Strengthening controls to prevent and detect fraud.** Given the billions of dollars involved, fraud is a major risk for FTA's transportation projects, and OIG has designated grant fraud as a high-priority investigative area. The fraud schemes that we typically see on FTA grant projects involve allegations of disadvantaged business enterprise (DBE) fraud, anti-trust violations, embezzlement, false claims, false statements, overbilling, public corruption, kickbacks, and prevailing wage violations. Since fiscal year 2010, we have had 31 FTA grant fraud investigations that resulted in 201 criminal, civil, or administrative penalties—including over \$103 million in fines, forfeitures, restitution, and recoveries; 26 indictments; 38 convictions; 55 suspensions; and 39 debarments. Of the 31 investigations, 35 percent were conducted in New York State.

Thirty-two percent of the 201 penalties were a result of DBE fraud investigations. For example, from 2010 to 2013, OIG investigators uncovered DBE fraud in several New York City projects, including the Times Square and South Ferry subway station rehabilitation, Fulton Street Transit Center, and East Side Access projects. Fraud from these projects alone resulted in over \$29 million being returned to the Federal Government, as well as guilty pleas by company officials to mail fraud charges involving a DBE subcontract valued at \$5.2 million. Similarly, an April 2013 report highlighted a number of weaknesses in DOT's management and oversight of its DBE program, including inadequate oversight of recipients' program implementation, as well as the accuracy of their annual DBE awards and payments data. Improving DOT's DBE oversight is critical to help ensure proper stewardship of taxpayer dollars.

Based on our investigations and audits, we have identified control weaknesses as well as tools for addressing them on federally sponsored projects. For example, we reported that the ARC project's management controls were insufficient to detect fraud and ensure contractor integrity—in part because FTA did not request that the grantee document its fraud prevention program in the PMP, a practice FTA has used on other major projects. Further, the grantee opted not to use an independent private-sector inspector general (IPSIG)⁴ on the project—despite evidence that an IPSIG can help identify problems in real time, such as internal control weaknesses, contractor integrity and ethics lapses, and infiltration of organized crime. Our office has cited using IPSIGs as a best practice on large construction projects in New York and New Jersey, and FTA is now requiring recipients receiving over \$100 million in Hurricane Sandy relief funds to hire and use these independent organizations to prevent and detect fraud.

However, during a 2014 FTA oversight review of MTA New York City Transit (NYCT), it was noted that NYCT failed to notify FTA of current or prospective legal matters from its DBE fraud investigation referrals to the District Attorney's Office, or its execution of confidential Deferred Prosecution Agreements. Grantees are required per FTA's Master Agreement to include information in their progress report that lists claims or litigation involving third-party contracts and potential third-party contracts with a value exceeding \$100,000 or that involve a controversial or highly publicized matter. FTA recommended that MTA include in its next progress report to FTA any claims, litigation, or pending settlements involving third-party contracts and potential third-party contracts, and to provide the FTA Regional Office its revised procedures for ensuring all required information is in future reports.

We consider FTA's recommendation important in our efforts to ensure that both the State of New York's and the Federal taxpayers' interests are protected. We are

⁴ An IPSIG is an independent firm with legal, auditing, and investigative skills, employed by an organization to ensure compliance with relevant laws and regulations and to prevent, uncover, and report unethical and illegal conduct.

encouraged by the steps that the District Attorney of New York County, MTA, and its OIG have recently taken to improve communications with both FTA and DOT OIG to more consistently report allegations of fraud discovered on federally funded MTA projects. Together, our continued vigilance to promote open and regular dialogue with FTA and MTA has led to some referrals of alleged fraud. We are optimistic that in the future MTA and its OIG will provide additional fraud notifications so that we can partner to combat wrongdoing in FTA programs.

- **Enhancing FTA’s Hurricane Sandy internal controls.** In the wake of Hurricane Sandy, FTA responded quickly to assess the damage to transit operations and facilities, assist impacted transit agencies, and develop its oversight plans. However, our initial assessment, which we reported on in December 2013, determined that FTA’s Oversight Plan lacked specificity in key areas, and that FTA had not yet implemented a risk-based framework to help grantees mitigate known risks and ensure that relief funds are properly distributed and spent.

In addition, we reported that FTA has the opportunity to consider further developing its Emergency Relief Program (ERP) to ensure it is well positioned to effectively manage future transit emergency responses, provide guidance consistent with other Government emergency programs, mitigate the impact of future disasters, and maximize the use of Federal funds. Specific Federal emergency response best practices that we identified include mitigating the risk of overpayment for certain emergency services, establishing timeframes to limit requests for emergency relief funds after events occur, setting a minimum amount for providing emergency relief funds, and reviewing a sample of emergency grantee acquisitions. In October 2014, FTA finalized its ERP rules and is in the process of finalizing its ERP Manual. We are completing our assessment of FTA’s compliance with its revised processes, including whether it has effectively implemented improved internal controls for grant-making and management. We plan to issue our report later this month.

OTHER OPPORTUNITIES TO STRENGTHEN OVERSIGHT OF FEDERALLY FUNDED TRANSPORTATION PROJECTS ALSO EXIST

Our prior work also points to ways to improve oversight DOT-wide, including transportation infrastructure projects administered by FRA and the Federal Highway Administration (FHWA) that provide less—but still significant—funding to infrastructure projects in New York City. These opportunities include:

- **Following through on Moving Ahead for Progress in the 21st Century Act (MAP-21) initiatives.** MAP-21 includes key directives to strengthen program oversight, accelerate project delivery and efficiency, and target Federal funds based on performance. In 2013, we reported that while DOT has developed a plan to implement all required MAP-21 sections, it has experienced some delays in issuing

key rulemakings and guidance. Notably, we found that the Department did not assign estimated completion dates to a number of planned actions, including final rulemakings, making it difficult to gauge progress. Timely completion of planned actions could better achieve the intended benefits of MAP-21's innovation and streamlining provisions.

- **Strengthening efforts to stop bad actors from receiving Federal contracts.** Our prior audit work has shown weaknesses in DOT's Suspension and Debarment Program that could allow contractors who have been suspended or debarred for committing fraud or other illegal activities to continue receiving Federal contracts. In 2014, we identified notable problems with the program, including delayed decisions, untimely and inaccurate reporting, and a lack of compliance with Federal requirements and DOT policies. DOT has responded positively to our recommendations, but sustained management attention to this issue is critical to prevent suspended and debarred contractors from receiving DOT contracts.
- **Improving FHWA's financial and project management plans.** DOT finances a number of key FHWA projects in the New York metropolitan area, including the new Tappan Zee Bridge, which is estimated to cost approximately \$5 billion. In 2015, we reported that while FHWA's reviews of the plans generally ensured basic MAP-21 requirements were met, FHWA could implement more specific guidance to its Division Offices and strengthen controls to ensure they comply with Agency requirements. These controls include ensuring that Division Offices verify that there is reasonable assurance of sufficient toll-based financing, if applicable, before accepting a project's initial financial plan, and that annual financial plans provide updated information on project risks and mitigation strategies. Such oversight improvements may also help FHWA advance a major MAP-21 priority to accelerate project delivery.
- **Continuing to build strong grant oversight programs at FRA.** FRA also provides Federal assistance to projects in New York, including the Moynihan Station project, which received a \$30 million grant through the HSIPR grant program. FRA continues to face the significant challenge of building and maintaining robust policies and procedures to oversee the \$10.2 billion HSIPR program—which Congress created in 2008. Since then, FRA has taken key steps to develop the program and address the internal control vulnerabilities we identified in our prior work. However, to provide effective oversight to Moynihan Station and other HSIPR projects, FRA needs to carry out promised actions for ensuring adequate documentation of grant award and amendment decisions, conducting risk analyses of grantees, setting response strategies for identified risks, and tracking and documenting corrective actions taken by grantees.

OIG CONTINUES TO AUDIT AND INVESTIGATE MAJOR PROJECTS IN NEW YORK AND NATIONWIDE TO ENSURE EFFECTIVE STEWARDSHIP OF FEDERAL DOLLARS

Each year, DOT receives over \$50 billion to fund projects to build, repair, and maintain the Nation's surface transportation system; the Department received an additional \$13 billion in 2013 for Hurricane Sandy-related projects. Effective stewardship and oversight of highway, rail, and transit projects across the Nation remain critical to maximizing these substantial Federal dollars. Accordingly, it is critical that DOT continually improve its stewardship and oversight of these projects, including fully implementing MAP-21 requirements to strengthen program oversight, accelerate project delivery and efficiency, and target Federal funds based on performance. We will continue to conduct audits and investigations that seek to identify potential gaps in DOT's oversight of major surface transportation projects, both in New York and nationwide.

- **Compliance with DRAA requirements.** As part of our audit strategy to assess FTA's oversight of Hurricane Sandy relief funds, we are concluding an audit evaluating FTA's implementation of its internal controls plan. DRAA requires more stringent oversight than called for in standard business practices, and our work will determine whether FTA fully implemented key internal controls for Hurricane Sandy oversight and to support future emergency relief efforts. We plan to issue the final report for this audit in June 2015.

Two additional audits related to Sandy relief efforts are underway. First, we began a review in December 2014 to determine whether FTA provides effective oversight of grantees' contracting practices in using DRAA funds. Second, we announced an audit in April 2015 to assess FTA's oversight of PATH's grant procurement practices for the Salt Mitigation of Tunnels Project. This project—part of a larger FTA PATH grant for Sandy repair, recovery, and resiliency work—is projected to cost approximately \$310 million and be completed in 2019. We plan to review PATH's contract administrative system and files for awards already made under the Salt Mitigation project to check for compliance with applicable Federal procurement requirements—a condition for receiving the FTA grant in order to safeguard public funds.

- **FHWA oversight of Highway Trust Fund reimbursements.** We are conducting an audit to assess FHWA's processes to ensure States reimburse the Highway Trust Fund for Federal funds spent on preliminary engineering, which includes the costs of preparing project plans, specifications, and cost estimates, and conducting related studies. In 2013, FHWA authorized approximately \$1.7 billion for preliminary engineering on State highway and bridge projects. Highway projects using Federal funds for preliminary engineering are generally expected to proceed to the right-of-way or construction phases. For projects that do not proceed within 10 years after

funds were first made available, Federal law requires States to reimburse these funds to the Highway Trust Fund.

- **FHWA oversight of project agreements.** Each year, FHWA oversees States' management of over \$40 billion in Federal financial assistance for the construction, maintenance, and operations of the Nation's 3.9 million-mile highway network. Federal law requires FHWA to enter into a project agreement with State Departments of Transportation for each Federal-aid highway project. Project agreements are key internal control mechanisms to ensure funds are obligated and spent in accordance with Federal requirements. The project agreement can also be modified to reflect additional costs that occur over the lifetime of the project. We are assessing FHWA's controls for reviewing and authorizing project agreements and modifications to project agreements.
- **FTA oversight of major capital projects.** Similar to our audit of FHWA major projects, we plan to assess FTA's oversight of major capital projects in the western United States. Projects that we may review include the Regional Transportation District East and Gold Line Enterprise in Denver, Honolulu Rail Transit, the Los Angeles County Metropolitan Transportation Authority Westside Subway Extension, the Central Puget Sound Regional Transit Authority University Link Light Rail Extension in Seattle, and the San Francisco Municipal Transportation Agency Central Subway projects. We are in the planning and scoping phase of this audit.

CONCLUSION

Given FTA's significant investment portfolio in the New York metropolitan area, FTA plays a critical role in overseeing the design and construction of the area's major transportation projects. While FTA has taken actions to address the cost overruns and schedule delays of several New York projects, opportunities remain to enhance FTA oversight by applying lessons learned from past major transportation projects both here in the New York area and nationwide. Only by fully leveraging the oversight tools at hand, incorporating best practices, and committing to sustained management attention can FTA and DOT effectively safeguard the billions of taxpayer dollars invested in these important projects. We will continue to brief Congress on our work, and are committed to promptly notifying DOT and Congress of actions needed to prevent fraud, waste, and abuse and improve FTA oversight.

That concludes my testimony. I will be happy to answer any questions you may have.

EXHIBIT. OIG AUDITS AND DBE FRAUD INVESTIGATIONS OF MAJOR TRANSPORTATION PROJECTS CITED IN STATEMENT

Audits

Report Name	Report Number	Date Issued
Report on the Central Artery / Ted Williams Tunnel Project	TR-1998-109	April 3, 1998
Mega Project Review of Los Angeles Metro Rail Red Line Project	TR-1998-154	June 12, 1998
Pennsylvania Station Redevelopment Project	RT-2000-081	April 19, 2000
Review of the Hiawatha Corridor Light Rail Transit Project	IN-2002-078	February 12, 2002
Lower Manhattan Reconstruction: Lessons Learned From Large Transportation Projects	CC-2006-056	July 13, 2006
Baseline Report on the Lower Manhattan Recovery Projects	MH-2008-086	September 26, 2008
DOT's Implementation of the American Recovery and Reinvestment Act: Continued Management Attention Is Needed To Address Oversight Vulnerabilities	MH-2010-024	November 30, 2009
Actions Needed To Mitigate Risks Associated With the Access to the Region's Core Project	MH-2010-066	May 17, 2010
New York City Fulton Street Transit Center: FTA's Sustained Focus on Key Risk Areas Will Be Needed Until the Project Is Completed	MH-2011-150	August 15, 2011
Actions Needed To Improve FTA's Oversight of the Dulles Corridor Metrorail Project's Phase 1	MH-2012-155	July 26, 2012
Improvements Needed in FTA's Grant Oversight Program	MH-2012-168	August 2, 2012
Completing a Grants Management Framework Can Enhance FRA's Administration of the HSIPR Program	CR-2012-178	September 11, 2012
Top Management Challenges Facing the Department of Transportation	CC-2013-012	March 14, 2013
DOT Has Opportunities To Address Key Risk Areas for Phase 2 of the Dulles Corridor Metrorail Project Upon Approval of Federal Financing	MH-2013-054	March 20, 2013
Lessons Learned From the East Side Access Project Can Enhance FTA's Oversight of MTA's Reporting on Remaining ARRA Grants	MH-2013-098	June 12, 2013
DOT's Fiscal Year 2014 Top Management Challenges	PT-2014-009	December 16, 2013
Initial Assessment of FTA's Oversight of the Emergency Relief Program and Hurricane Sandy Relief Funds	MH-2014-008	December 3, 2013
DOT's Suspension and Debarment Program Continues To Have Insufficient Controls	ZA-2015-003	October 15, 2014

Report Name	Report Number	Date Issued
Top Management Challenges for Fiscal Year 2015	PT-2015-007	November 17, 2014
FHWA Met Basic Requirements But Can Strengthen Guidance and Controls for Financial and Project Management Plans	ST-2015-018	January 27, 2015
FRA Improved Its Guidance on High Speed Rail Grant Agreements, but Policies and Procedures for Amending and Monitoring Grants Remain Incomplete	ST-2015-038	April 1, 2015

Prosecuted DBE Fraud Cases

Investigation	Date
New Jersey Construction Firm Agrees To Pay \$20 Million To Settle Allegations of Fraud	November 29, 2010
New York Construction Firm Owners Indicted on \$19.6 Million Dollar Public Works Fraud Involving Disadvantaged Business Enterprise	March 30, 2011
New York Construction Firm Agrees To Pay \$7.5 Million To Settle Fraud Allegations	April 4, 2012
U.S. and New York-Based Electrical Contractor Settle Civil False Claims Action for \$936,000	June 17, 2013

Note: OIG audit reports, testimonies, and investigations are available on our Web site at <http://www.oig.dot.gov/>.