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Federal Railroad Administration Faces Challenges in Carrying Out Expanded Role

Statement of
Ann Calvaresi-Barr
Deputy Inspector General
U.S. Department of Transportation

Madam Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss ongoing efforts to strengthen the Nation's passenger rail network. As you know, recent legislation has called for significant investment in rail—an investment that demands additional scrutiny and oversight to ensure legislative goals are achieved and taxpayer dollars are used wisely.

My testimony today focuses on (1) changes in the Federal Railroad Administration's (FRA) role and responsibilities under the Passenger Railroad Investment and Improvement Act of 2008 (PRIIA) and the Rail Safety Improvement Act of 2008 (RSIA), (2) the challenges FRA faces in effectively carrying out its new role, and (3) the progress Amtrak has made in improving its operating and capital financial management. My testimony is based on our recent and ongoing work related to FRA, Amtrak, and rail issues in general.

IN SUMMARY

PRIIA and RSIA dramatically realigned FRA’s role and expanded its responsibilities. Together these two pieces of legislation have called for the implementation of a high-speed rail program, improvements in intercity passenger rail services, and safety enhancement initiatives. Each new mandate carries a unique set of challenges for FRA, especially as they relate to implementing the high-speed rail program. Challenges include developing written policies and practices to guide the program’s grant lifecycle process and oversight activities, and obtaining adequate staff to oversee implementation. The American Recovery and Reinvestment Act of 2009 (ARRA) exacerbated these challenges by accelerating timelines and providing FRA an additional $8 billion. At the same time, FRA must continue to carry out its prior responsibilities, including its oversight of Amtrak. While our work has found that Amtrak has improved its financial management of operating and capital planning activities, new PRIIA mandates and ARRA funding could require Amtrak to heighten its improvement efforts. In light of these issues, the Department of Transportation (DOT), Office of Inspector General (OIG) has several audits—completed or under way—to monitor FRA's efforts to carry out its traditional and new roles and responsibilities.

BACKGROUND

Within the last 2 years, new legislation has been enacted with major ramifications to intercity passenger rail in the United States. On October 16, 2008, the President signed into law RSIA, or the Safety Act, and PRIIA. The Safety Act is the most comprehensive new railroad safety law in the past 30 years. In addition to reauthorizing FRA, the Safety Act contains new mandates for freight railroads, commuter railroads, and the National Railroad Passenger Corporation, better known as Amtrak. PRIIA reauthorizes Amtrak and strengthens the U.S. passenger rail network by tasking Amtrak, DOT, FRA, States, and other stakeholders with improving service, operations, and facilities. PRIIA focuses on intercity passenger rail, including Amtrak's long-distance routes and the Northeast Corridor, State-sponsored corridors throughout the Nation, and the development of high-speed rail corridors.

ARRA was signed into law on February 17, 2009, to preserve and create jobs and promote economic recovery through investments in transportation, environmental protection, and other infrastructure. ARRA provided $8 billion to FRA for discretionary grant programs to jump start the development of high-speed rail corridors and enhance intercity passenger rail service. ARRA also directed $1.3 billion to Amtrak for capital investments. In addition, ARRA designated $20 million to DOT OIG through fiscal year 2013 to conduct audits and investigations of DOT projects and activities funded by ARRA. In response, OIG developed a work plan using a three-phase approach to conduct audit and investigative work by emphasizing high-risk areas and promptly reporting results. Between March and December 2009, OIG issued two reports outlining the risks and challenges to DOT program offices related to ARRA, including FRA.[1]

LEGISLATION DRAMATICALLY EXPANDED FRA'S ROLE

Historically, FRA was a small agency, focused primarily on promoting and overseeing railroad safety. FRA was responsible for (1) promulgating railroad safety regulations; (2) administering several small grant and loan programs, such as the Rail Line Relocation grant program and the Railroad Rehabilitation and Improvement Financing loan program; and (3) overseeing Amtrak's operations and disbursing Amtrak's annual grant funds. PRIIA and RSIA, however, dramatically realigned FRA's role and expanded its responsibilities. Together, these mandates call for FRA to undertake several new safety and passenger rail service enhancement initiatives and to develop from the ground up a multi-billion dollar high-speed rail discretionary grant program.

PRIIA Added Several New Initiatives to Enhance Intercity Passenger Rail Service

PRIIA tasked FRA with numerous significant responsibilities—among them the creation of a new High-Speed Intercity Passenger Rail (HSIPR) grant program. Other new PRIIA mandates include initiatives to improve existing intercity passenger rail service and to promote the expansion of intercity passenger rail. PRIIA requires FRA to design a long-range national rail plan that promotes an integrated, efficient, and optimized national rail system for the movement of people and goods. FRA issued its preliminary plan on October 15, 2009, and must submit the final plan to Congress on September 15, 2010.

PRIIA also required FRA to develop performance metrics that establish minimum passenger rail service requirements—such as minimal on-time-performance levels and other service quality measures—and provide a framework for improved passenger rail

[1] OIG Report MH-2009-046, "*American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation*," issued March 31, 2009 and OIG Report MH 2010-024, "*DOT's Implementation of the American Recovery and Reinvestment Act: Continued Management Attention is Needed to Address Oversight Vulnerabilities*," issued November 30, 2009. OIG reports and testimony are available on our website: www.oig.dot.gov.

service. The metrics were developed in conjunction with Amtrak and in consultation with the Surface Transportation Board, Amtrak's host railroads, States, Amtrak's labor organizations, and rail passenger associations. FRA is required to publicly report performance results quarterly. Other Amtrak-related responsibilities that PRIIA requires FRA to carry out include monitoring and conducting periodic reviews of Amtrak's compliance with applicable sections of the American's with Disabilities Act and monitoring Amtrak's development and implementation of performance improvement plans for its long-distance routes.

RSIA Highlighted and Expanded FRA's Traditional Safety Role

RSIA amended existing railroad legislation to make the safe and secure movement of people and goods FRA's highest priority. Most notably, RSIA requires FRA to establish a discretionary grant program, with authorized funding of $50 million per year for fiscal years 2009 through 2013, to support the development and deployment of positive train control technologies. FRA issued a *Notice of Funds Availability, Solicitation of Applications* for this program on March 29, 2010; a status report on positive train control implementation is due to Congress by December 31, 2012.

RSIA also requires FRA to perform several safety-related studies. One study will assess the risks posed to passengers with disabilities boarding and alighting from trains where there is a significant gap between the train and the platform. Another study addresses the risks associated with the use of personal electronic devices by railroad personnel while on duty. This body of work will position FRA to carry out its role as the Nation's rail safety enforcement agency as it undertakes increasing passenger rail responsibilities.

FRA FACES SIGNIFICANT CHALLENGES IN MEETING ITS MANDATE

The new legislative mandates present unique challenges for FRA. Effectively implementing the HSIPR program is key among these challenges. Specifically, FRA must (1) assess the net benefits of high-speed rail, (2) develop written policies and procedures for grant management, and (3) determine staffing needs. The $8 billion in ARRA funding exacerbated these vulnerabilities as it accelerated implementation. In addition to implementing the HSIPR program, FRA must balance its increased workload under PRIIA with prior legislative requirements, including its oversight of Amtrak. While FRA has made several steps toward meeting these challenges, it has recognized that more resources are needed to successfully carry out its mandate.

HSIPR Success Depends on an Effective Implementation Strategy

To ensure HSIPR project grantees follow sound management practices, FRA must develop a sound implementation strategy. First, FRA must develop guidance for forecasting project ridership, revenue, costs, and public benefits for high-speed and intercity passenger rail. According to DOT's Office of the Secretary (OST), FRA has developed detailed evaluation criteria to determine a proposed project's merit and feasibility. However, FRA has yet to issue formal guidance for grant applicants to use in preparing forecasts.

Second, FRA must develop written policies and practices to guide the program’s grant lifecycle process and oversight activities. We identified certain risks associated with awarding grants without a fully documented program implementation strategy and grant lifecycle process. As a result, FRA delayed the awards until early 2010. However, according to OST, FRA is still in the process of reviewing its grants management manual for final approval and developing monitoring plans and grant administration standard operating procedures.

Finally, FRA must obtain a sufficient number of staff with the skills needed to oversee program implementation. To address its initial lack of capacity to start up and effectively manage the HSIPR program, FRA has completed a workforce assessment, which we have yet to validate. As a result of that assessment, FRA requested and received funding for 27 additional staff resources in its fiscal year 2010 budget. However, FRA has been slow to fill these vacancies.

ARRA’s tight deadlines for spending funds have greatly accelerated FRA's rollout of HSIPR, exacerbating program challenges. Deadlines for obligating funds under Track 1 ("ready to go" projects") and Track 2 ("corridor development programs") are September 2010 and September 2011, respectively. Within 10 months after ARRA's enactment, FRA issued a strategic plan, established interim guidance, and processed all Track 1 and 2 applications, as required.

Managing Other New and Traditional Legislative Responsibilities Further Challenge FRA

Balancing new PRIIA responsibilities with its traditional responsibilities create additional challenges for FRA. With regard to PRIIA, FRA must coordinate with hundreds of public and private stakeholders to establish a national rail plan that addresses interconnectivity with other modes of transportation and recognizes the need for a sustainable funding mechanism. As the market for intercity passenger rail carriers grows, tracking and reporting their performance results could become a challenge for FRA. For example, FRA will have to establish a standardized mechanism for collecting performance data from multiple carriers who may have different procedures than currently used for reporting the proposed metrics and standards.

At the same time, FRA must continue to carry out its prior administrative responsibilities for its existing grant and loan programs. Specifically, FRA must effectively manage the Rail Line Relocation discretionary grant program, the Railroad Rehabilitation and Improvement Financing loan program, and the Amtrak grant program. Together, these programs account for 37 percent of FRA’s $4.374 billion fiscal year 2010 budget.

Effectively managing these critical rail programs in the face of the public scrutiny of the HSIPR program will require sustained focus and oversight by FRA and OIG. OIG has begun to shift resources to provide the appropriate level of oversight in order to inform FRA's efforts and monitor its progress. For example, our evaluation of best practices for forecasting high-speed ridership, revenue, and public benefit should assist FRA in its efforts to assess the economic and financial viability of proposed projects and ensure Federal investments are allocated to the most worthy projects. Our audit of the risks private freight railroads pose to the HSIPR program should help FRA ensure that access agreements adequately address cost, schedule, and performance goals, and that HSIPR benefits are achieved. Finally, our quantitative analysis of the causes of Amtrak delays will inform efforts by Amtrak and the freight railroads to improve Amtrak's on-time performance and clarify the relative value of investing Federal funds to expand freight rail capacity as a means to address delays.

AMTRAK HAS MADE IMPROVEMENTS IN FINANCIAL MANAGEMENT

Our work on Amtrak's financial management is extremely relevant to the HSIPR program, given the important role Amtrak will play in FRA's development of intercity passenger rail service. Since we began reporting regularly to Congress[2] on Amtrak's operating performance and its progress in reducing Federal operating subsidies, Amtrak has shifted its financial management approach from implementing various strategic reform initiatives (SRI) to establishing key performance indicators (KPI). The KPIs appear to be a more efficient way for management to monitor operating performance. Results of our mandated audit on Amtrak's Five-Year Capital Planning, which we are finalizing, also indicate that Amtrak has made significant improvement to its long-term capital planning including a more transparent prioritization process.

Management's New Approach to Measuring Reform Initiatives through Key Performance Indicators Appears Reasonable

Since fiscal year 2006, we have reported on Amtrak's savings achieved as a result of

[2] The Transportation/HUD Division of the Consolidated Appropriations Act of 2010, P.L. 111-117 changed OIG's reporting requirement on Amtrak's savings from quarterly to semi-annually.

operational SRIs at the corporate level, by business line, and at the route level.[3] The SRIs were intended to improve Amtrak's operating efficiencies and lower its dependence on Federal operating subsidies. For example, one SRI aimed to reduce losses through enhanced service flexibility and the outsourcing of certain services, such as food and beverage. The SRI approach was established to provide a comprehensive analysis of potential and realized operating savings for the longer term provision of a more efficient and financially feasible intercity passenger rail service. However, as we stated in our fiscal year 2009 fourth quarter report, Amtrak did not include any new savings from operational reform initiatives in its fiscal year 2009 budget.

Amtrak's 2009 Strategic Guidance provided further details on possible savings from future operational reforms through KPIs—criteria that will measure both the efficiency and effectiveness of Amtrak's operational and financial performance. For example, Amtrak established cost recovery ratio KPIs to measure the proportion of Amtrak expenses covered by revenues and ridership growth. Recently, officials told us that because the KPIs are derived from the annual budget and Amtrak operates to its budget targets, the KPIs provide a more streamlined way of evaluating performance to budget.[4] Amtrak officials also noted that because KPIs are linked to monthly financial statements, KPIs are tracked and updated much more frequently, allowing management to react quicker to changes in operating and financial conditions. The updates should also allow management to drill down into KPI detail in real-time to determine what is driving any changes, and consequently react quicker, rather than waiting until the next month for the next round of financial statements. The Strategic Guidance states that KPIs will be used to evaluate management and to ensure that leadership’s attention and effort are properly focused.

While Amtrak’s new approach appears to be a more efficient way to monitor and

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[3] Transportation, Treasury, Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations Act (TTHUD), 2006; Pub. L. No. 109-1 15.

[4] March 31, 2010, semi-annual review.

improve operating and financial performance, Amtrak has continued to pursue improvement initiatives tied to the original SRIs. Further, Amtrak officials stated that management will not measure the net impact of individual initiatives because it is too difficult to determine the incremental impact of any given initiative or project on one metric. For example, if Amtrak's marketing department invests additional funds to promote *Acela* and revenues increase for that route, there is no clear way to determine if or what portion of the increase is due to higher gasoline prices, deteriorating airline service, or the marketing campaign. Instead, executives will discuss the results of improvement initiatives, and when intended outcomes are not achieved, they will require the relevant departments to take action to address the targeted KPIs. If the departments achieve the KPIs, then the improvement initiatives will be deemed successful.

Because the KPIs have only been in place for 6 months, the ultimate success of this new approach has yet to be determined. As we stated in our fiscal year 2009 fourth quarter report, in addition to reporting on a semi-annual basis Amtrak's financial performance, we will track and evaluate Amtrak's efficiency KPIs. Our Amtrak semi-annual report, which will be issued next month, will provide more detail on our evaluation of Amtrak's operating performance through March 2010.

Progress Has Been Made in Long-Term Capital Planning, but the Measure of Success will be Determined through Implementation

Since 1999, we have also reported[5] on Amtrak's progress in determining its long-term capital needs. Previous reviews by our office, GAO, and Amtrak's OIG have looked at various aspects of Amtrak's capital budget and requirements and outlined concerns, including a number of which focused on Amtrak's lack of a comprehensive long-term planning strategy with clearly defined goals, as well as a process for monitoring performance.

[5] OIG Report CE-1999-116, Report on the Assessment of Amtrak's Financial Needs Through FY 2002. Issued July 21, 1999.

In our current review, we have found a number of operational changes that have been implemented to improve Amtrak's long-term capital planning process, which are primarily due to legislative requirements dictated by PRIIA and leadership from its Board of Directors and senior management. Specifically, Amtrak has developed long-term plans for its fleet and infrastructure, a transparent process for prioritizing its capital needs, and guidance on conducting post-reviews of its capital projects. However, the success of these efforts depends on Amtrak's ability to effectively implement and sustain many of its new policies and procedures. We look forward to issuing our full report within the next couple of months. Our office is also in various stages for other PRIIA mandated reviews, which are planned for issue over the next 12 months.

CONCLUSION

High-speed intercity passenger rail is expected to greatly enhance the Nation's transportation system. Yet meeting the goals of PRIIA, RSIA, and ARRA will be a significant challenge, especially given the transformation required of FRA. While ARRA was enacted to jump start the U.S. economy, FRA's decision to move forward deliberately is prudent and should help it make the most of its ARRA funds. Further, it has given OIG a unique opportunity to ensure proper oversight controls are built into the program. We have begun to position ourselves to oversee FRA developments while continuing our ongoing and newly mandated work on Amtrak. However, we are hopeful that Amtrak's OIG, under new leadership, will pick up appropriate work, allowing us to dedicate additional resources to oversee FRA's implementation of the HSIPR program.