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# *Office of Inspector General*

# *Audit Report*

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## **FRA'S REQUIREMENTS FOR HIGH SPEED RAIL STAKEHOLDER AGREEMENTS MITIGATED RISK, BUT DELAYED SOME PROJECTS' BENEFITS**

*Federal Railroad Administration*

*Report Number: CR-2013-007*  
*Date Issued: November 1, 2012*





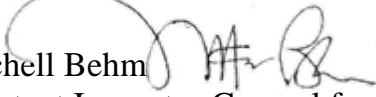
# Memorandum

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** FRA's Requirements for High Speed  
Rail Stakeholder Agreements Mitigated Risk, but  
Delayed Some Projects' Benefits  
Federal Railroad Administration  
Report Number: CR-2013-007

Date: November 1, 2012

From: Mitchell Behm   
Assistant Inspector General for Rail, Maritime,  
and Economic Analysis

Reply to  
Attn. of: JA-50

To: Federal Railroad Administrator

The Passenger Rail Investment and Improvement Act of 2008<sup>1</sup> (PRIIA) directed the Federal Railroad Administration (FRA) to establish a grant program to fund various types of intercity passenger rail improvements. Four months after PRIIA's enactment, the American Recovery and Reinvestment Act of 2009<sup>2</sup> (ARRA) appropriated \$8 billion to FRA to develop and implement a high-speed intercity passenger rail (HSIPR) grant program. FRA awarded the majority of the \$8 billion in ARRA funds to two types of HSIPR projects: short-term, "ready-to-go" projects—almost ready for construction—and long-term, corridor development projects. ARRA established aggressive timelines for FRA's obligations and grantees' expenditures for both types of projects.

Pursuant to PRIIA and ARRA, FRA issued interim guidance (Guidance) that details HSIPR project application requirements and communicates deadlines by which FRA must obligate and disburse ARRA funds to HSIPR projects. Based on PRIIA's requirements, the Guidance specifies terms upon which stakeholders<sup>3</sup> must reach written agreement before FRA will disburse funds. These terms are related to three primary areas<sup>4</sup>—service outcomes, maintenance, and construction.

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<sup>1</sup> P.L. No. 110-432, Div. B.

<sup>2</sup> P.L. No. 111-5.

<sup>3</sup> State grantees must reach agreement with other project stakeholders, including passenger rail operators (usually Amtrak) and the transit and commuter rail authorities that own or control existing tracks on which new or improved passenger rail service will operate.

<sup>4</sup> Additional terms that stakeholders must agree upon cover project property ownership; compensation for use of freight tracks by passenger rail service providers; protection of collective bargaining rights for railroad employees; and State grantee compliance with statutory liability requirements.

We are reviewing FRA's overall administration of the HSIPR Program.<sup>5</sup> In this audit, we assessed (1) FRA's development of stakeholder agreement requirements for long-term, corridor projects, and (2) the effects that the requirements' development had on short-term, ready-to-go projects.

To accomplish our objectives, we reviewed PRIIA and ARRA's HSIPR requirements and examined FRA's Guidance and requirements for the Program. We reviewed summary obligation data for 61 long-term and short-term projects that required various agreements and validated that summary data against FRA-approved agreements and other documentation for these projects. We met with FRA officials, State grantees, Amtrak officials, and freight rail stakeholders. We conducted this review in accordance with generally accepted Government auditing standards. A more detailed discussion of our scope and methodology is provided in Exhibit A.

## RESULTS IN BRIEF

FRA took an important step to mitigate risk by requiring Stakeholder service outcome agreements (SOA) for long-term HSIPR projects before fund obligation. However, the lack of clear FRA guidance on structuring the agreements has required the Agency to be more involved in negotiating them, resulting in a more challenging and time consuming process. Still, most long-term project grantees lack the maintenance and construction agreements required to receive their funds and start work, but FRA obligated funds to them nonetheless. If these projects' agreements continue to be delayed, funds obligated to them will sit idle instead of being made available for projects that have completed agreements and have a greater likelihood of success, which threatens the long-term goals of the HSIPR program.

FRA's focus on assisting in negotiations for long-term projects delayed the economic recovery benefits that short-term projects were intended to stimulate. Despite its own deadline of September 30, 2010 to complete short-term project obligations, FRA did not actually begin these obligations until September 2010, and by the end of March 2011, had completed few of its planned obligations. This delay in obligations in turn deferred the short-term projects' economic benefits. In addition, FRA's concentration on long-term projects also delayed its determination of agreement requirements for short-term projects. According to FRA officials, when FRA finally began focusing more on short-term projects, it established policy on these stakeholder agreement requirements on a project-by-project basis

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<sup>5</sup> OIG is also reviewing FRA's administration of major grant programs. We recently issued a report on the revenue and ridership forecasting practices used by HSIPR applicants, *FRA Needs to Expand Its Guidance on High Speed Rail Project Viability Assessments CR-2012-083*. A copy of this report is available at [www.oig.dot.gov](http://www.oig.dot.gov).

rather than through published guidance. Short-term grantees reported that without written guidance, they had difficulties understanding FRA's expectations regarding the terms for their project stakeholder agreements.

We are making recommendations to FRA on the development of policy and guidance to ensure that HSIPR projects achieve their intended benefits.

## BACKGROUND

ARRA requires FRA to obligate all ARRA funds awarded to HSIPR projects by September 30, 2012, and disburse them by September 30, 2017.<sup>6</sup> This timeline was established to ensure that the funds “jump start” the widespread improvement of high-speed intercity passenger rail service in the United States. ARRA also compressed FRA's time to develop HSIPR Program guidance from the 2 years allowed by PRIIA to 120 days from ARRA's enactment. Accordingly, FRA issued the Guidance in June 2009.

In January 2010, FRA awarded ARRA-funded grants for 38 short-term and 23 long-term projects.<sup>7</sup> Thirteen of these 23 long-term projects required SOAs. According to the Guidance, ARRA funding was intended to stimulate both economic recovery and provide passenger rail infrastructure investment. Grants to short-term projects were primarily meant to stimulate recovery. These grantees can immediately begin final design and construction because they have completed planning, and environmental and preliminary engineering activities. ARRA funding for long-term projects is intended to develop new high-speed rail corridor and passenger rail services or implement substantial upgrades to existing corridor services. These projects address ARRA's long-term reinvestment goals with long-term funding commitments for passenger rail infrastructure.

The Guidance does not require any stakeholder agreements to be in place prior to fund obligation. However, it does require grantees to reach agreement with stakeholders, prior to fund disbursement, on three types of terms:<sup>8</sup>

- **Service outcome related terms (Service Outcome Agreement (SOA)):**  
These terms define the intended benefits of new or improved passenger rail service and demonstrate the rail owning entity's commitment to the

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<sup>6</sup> FRA completed obligations by September 2011, but had disbursed little more than seven percent of these funds by June 2012.

<sup>7</sup> FRA obligated funds to 28 long-term projects, but 5 were eventually de-obligated.

<sup>8</sup> A single agreement or several may address these terms, but for ease of discussion in this report, we refer to each term as if it were addressed in a single agreement.

achievement of those benefits. Specifically, they address passenger rail service frequency, schedule and trip time, and maximum delay minutes;<sup>9</sup>

- **Maintenance related terms (Maintenance Agreement):** These terms address the financial and operational responsibilities for maintenance, and must indicate that project property will be maintained, for a period of at least 20 years, in a state of good repair at the level of utility that exists when project improvements are placed in service; and
- **Construction related terms (Construction Agreement):** These terms outline stakeholders' responsibilities with respect to how construction of assets will be managed and who will perform the construction.

The Guidance states that all obligations to short-term projects will occur no later than September 30, 2010 (2 years before the ARRA mandated deadline), and that these projects will be completed within 2 years of obligation. The Guidance also states that all obligations to long-term corridor projects will be completed no later than September 30, 2011 (1 year before the ARRA mandated deadline), and that these projects must be completed by September 30, 2017—the date after which funds will no longer be available.<sup>10</sup>

## **FRA REQUIRED SOAs FOR LONG-TERM PROJECTS PRIOR TO OBLIGATION, BUT OTHER REQUIRED AGREEMENTS ARE NOT COMPLETE**

FRA took an important step to mitigate risk by requiring SOAs for long-term HSIPR projects before fund obligation, but its lack of clear guidance on agreement structure has required the Agency to be more involved in agreement negotiations. However, the majority of grantees that FRA has obligated funds to have not yet completed all required agreements with their project stakeholders, and consequently, program success could be in jeopardy.

### **FRA Mitigated Risk by Requiring SOAs but Provided Unclear Guidance to Grantees on Agreement Structure**

After it completed its ARRA grant awards, FRA decided to require grantees of long-term HSIPR projects located on infrastructure owned by private railroad companies to have SOAs in place prior to fund obligation. FRA officials informed

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<sup>9</sup> Delay minutes refer to the average amount of time that a passenger train is delayed on a specified route and the identified cause of that delay for purposes of determining responsibility.

<sup>10</sup> 31 U.S.C. § 1552.

us that they had identified the SOA<sup>11</sup> as an important document for project risk mitigation because it ensures that all stakeholders have agreed on their roles in the project's expected passenger rail service benefits. Furthermore, ARRA's short timelines made it important for stakeholders to reach agreement on these terms as quickly as possible.

Project stakeholders, however, found the SOA negotiation process challenging, in part because FRA's Guidance provides little detail on how to structure stakeholder agreements.<sup>12</sup> Specifically, the Guidance states that the "form and structure" of the stakeholder agreements are at the grantees' "discretion." Due to the Guidance's limited detail, project stakeholders had no way of knowing what FRA deemed acceptable. Freight company officials we interviewed felt that in the absence of authoritative guidance from FRA, Amtrak (the passenger service operator) took control of the negotiations. Consequently, the companies had to consent to agreement terms that satisfied Amtrak.

The freight company officials also informed us that they found themselves engaged in a time consuming process of trial and error in which they drafted multiple versions of agreements which Amtrak repeatedly rejected. When it became aware of the problems with long-term project agreement negotiations, FRA intensified its assistance to these grantees. From the freights and State grantees' perspectives, however, the terms that FRA required the agreements to include were clarified only through lengthy back-and-forth reviews with the Agency. Officials from the freight railroads informed us that, due to the extensive negotiations required to produce agreements that were satisfactory to FRA, they had to expand their legal and audit staff to meet the increased workloads. Stakeholder representatives informed us that negotiations ran smoothly only when all parties came together with high level officials from FRA.

As of September 2011, after it had worked with project stakeholders, FRA obligated \$3.2 billion in ARRA funds for the 13 long-term corridor projects that required service outcome agreements. The stakeholders on 10 of these 13 projects had reached agreement on service outcome related terms prior to obligation. The three remaining projects were all associated with an existing passenger service for which the stakeholders had already reached agreement on service outcomes and needed only to amend the existing agreement for new services.<sup>13</sup>

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<sup>11</sup> Rather than update the Guidance in writing, FRA communicated the new requirements to grantees informally during agreement negotiation sessions.

<sup>12</sup> Complicating matters was FRA's May 2010 guidance, *High-Speed Intercity Passenger Rail Program – Stakeholder Agreements*, in which FRA attempted to specify "critical provisions to be included in these agreements." FRA rescinded this guidance, however, soon after it was issued in response to significant outcry from freight railroads.

<sup>13</sup> FRA informed us that for multiple projects within a single corridor, it considers post-obligation amendments to service outcome related agreements acceptable. However, since those terms are not finalized and the new service outcome terms with the transit authority were still being negotiated, the post-obligation amendments did not mitigate risks as FRA intended.

## **FRA's Decision to Obligate Funds to Projects Without All Required Agreements Could Negatively Impact Program Success**

FRA is working with State grantees and other project stakeholders to complete maintenance and construction agreements, which PRIIA requires for fund disbursement. FRA obligated all of the ARRA funds before September 30, 2011—one year ahead of the ARRA mandated deadline—to projects without all of these required agreements in place. Once FRA obligated the funds, grant recipients began signing contracts and starting work based on the expectation that they would receive those funds even though their required agreements were not complete. Consequently, FRA cannot readily shift the obligated funds away from delayed projects to other projects with greater likelihood of success without severely impacting the grantees that lose the funds.

The deadline for the expenditure of ARRA funds and completion of construction is September 30, 2017. While this is over 5 years away, the longer outstanding agreements remain incomplete, the shorter the time grantees will have to complete the major construction associated with their projects. Even if a grantee has already met agreement requirements, the short timeframe for project construction alone is challenging. For example, California has all required project stakeholder agreements in place. In a report, however, external peer reviewers expressed doubts that California could meet ARRA's 2017 deadline in order to receive reimbursements.<sup>14</sup>

If the funds that FRA has committed to projects that sit idle because the grantees do not complete the required stakeholder agreements cannot be readily shifted to other projects, then the long-term goals of the HSIPR program may not be achieved.

## **FRA'S DEVELOPMENT OF LONG-TERM PROJECT AGREEMENT REQUIREMENTS DELAYED SHORT-TERM PROJECT BENEFITS**

FRA's focus on long-term project agreement negotiations delayed short-term project benefits. From September 2010 through March 2011, the Agency completed few short-term project obligations—despite its own deadline of September 30, 2010, for these obligations—as it helped long-term project grantees negotiate agreements with their project stakeholders. These delays in turn delayed the economic benefits that the short-term projects were expected to stimulate. The concentration on long-term projects also meant that FRA delayed its determination of agreement requirements for short-term projects. In the absence of written

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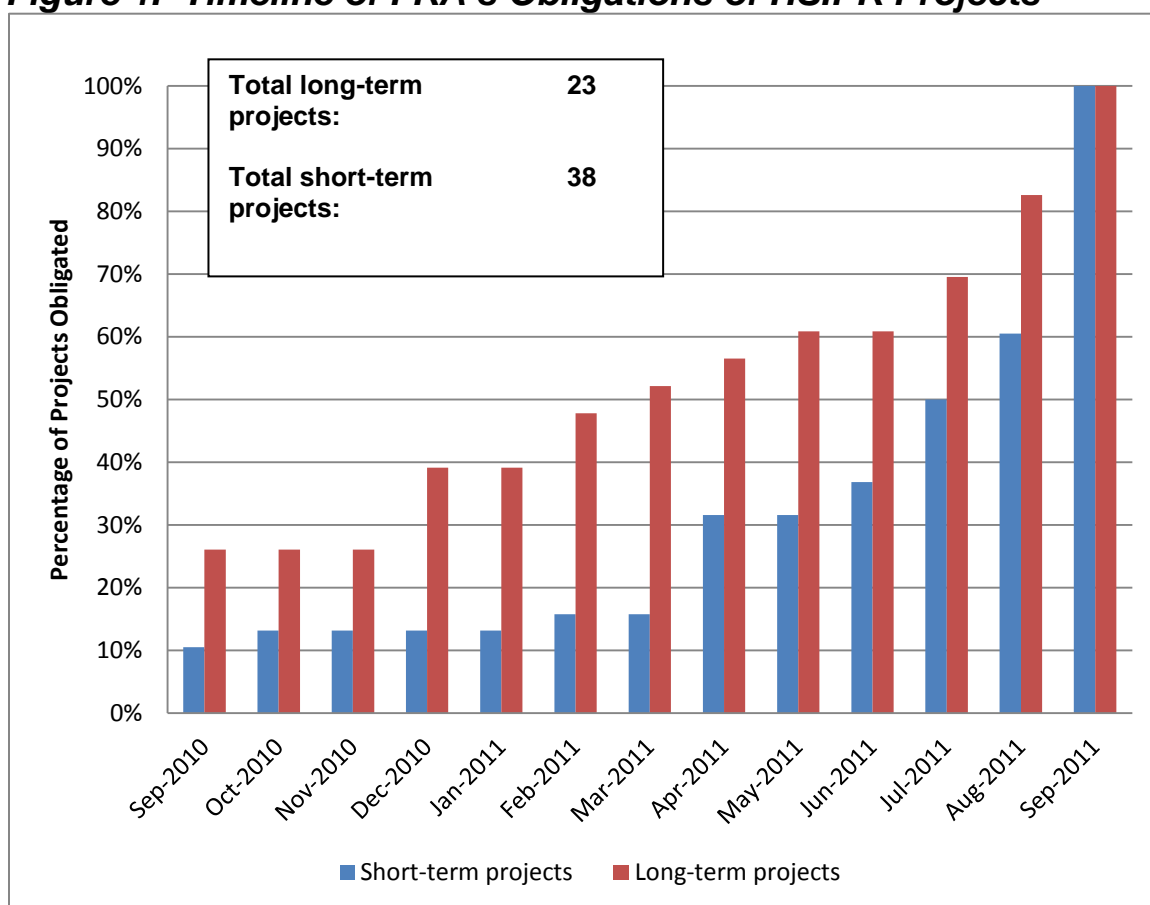
<sup>14</sup> California High-Speed Rail Peer Review Group Report to California State Legislature, January 3, 2012.

guidance, short-term project grantees have had difficulties in their communications with FRA regarding appropriate terms for their project stakeholder agreements.

### Due to Its Focus on Long-Term Projects, FRA Delayed Short-Term Projects' Obligations

FRA focused on long-term projects because agreement negotiations were challenging and amounts awarded to these projects represented the majority of ARRA funds for the HSIPR program. Due to this focus on long-term corridor projects, however, FRA delayed both obligating funds to and developing agreement requirements for short-term projects.<sup>15</sup> As depicted in Figure 1, as it focused on long-term projects from September 2010 through March 2011, FRA obligated few short-term projects. After it completed the majority of its work with long-term stakeholders in March 2011, FRA began to focus on short-term projects.

**Figure 1. Timeline of FRA's Obligations of HSIPR Projects**



Source: OIG analysis of information from FRA

<sup>15</sup> Because it had been focusing on long-term projects, FRA had obligated only 4 of its 38 short-term projects by its internal obligation deadline of September 30, 2010.



FRA's delay in obligating funds to short-term projects in turn delayed the economic stimulus benefits that these projects were intended to yield. Short-term project stakeholders noted that the delayed obligations significantly impacted their scheduling of construction cycles. If construction could not begin as planned, projects risked missing the entire construction season. Stakeholders noted that they could not let crews begin work when originally planned due to delayed obligations, and consequently, lost the immediate economic stimulus that they thought ARRA funding was intended to provide.

### **The Focus on Long-Term Projects Also Delayed FRA's Determination of Requirements for Short-Term Project Agreements**

FRA's focus on long-term projects also delayed its determination of agreement requirements for short-term projects. The Agency has not published guidance for these grantees that details agreement requirements, and has not outlined acceptable agreement formats specific to short-term projects.

FRA's Guidance indicates that the stakeholder agreement requirements for short-term projects and long-term projects are the same. However, before it obligated the majority of short-term projects, FRA re-assessed its requirement that all projects have agreements on service outcomes based on the challenges it experienced with long-term project negotiations. Agency officials informed us that they realized that because a freight railroad infrastructure owner is not always in a position to guarantee service outcomes for an entire corridor—even for projects that occur on segments of its own track—the railroad should not be held accountable for these service outcomes in a written agreement. For example, FRA initially required the stakeholders of a short-term project located within a 30-mile stretch of corridor in Chicago to execute an agreement on service outcomes for the corridor's entire 30 miles. The freight railroad, however, would not agree to ensure the project's service benefits, particularly on-time performance, because it believed that many factors outside its control could undermine services along the entire corridor. FRA eventually allowed the parties to execute an alternative agreement that addressed passenger service improvements within just the short-term project's section of the corridor.

FRA officials informed us that the Agency had developed policy on requirements that short-term project grantees must meet before obligation, and due to the diversity of HSIPR projects, those requirements vary depending upon project type, characteristics, and complexity. However, FRA did not make the policy available to grantees or the public. Instead, it informed each grantee individually of project requirements, but based on information from stakeholders, the requirements were sometimes conflicting. For instance, the Agency did not require agreements on

service outcomes to be in place at the time of obligation for projects that had cumulative costs to the Federal Government of less than \$10 million. For a project in Vermont, however, on a route covered by an existing agreement on service outcomes, also valued under \$10 million, FRA required the stakeholders to amend the existing agreement prior to obligation.

These conflicting requirements caused stakeholder confusion. For example, officials from one freight company were under the impression that all projects, regardless of size, required SOAs because FRA's Guidance did not specify otherwise. Those officials were frustrated by the need to dedicate resources for agreement negotiations on every project. Officials from a different freight company on another short-term project noted that the process that led to acceptable agreements was not scripted or predictable, but rather like a conversation during which compromise may be achieved. Consequently, they found it hard to prepare adequately to meet FRA's requirements. State grantees on these projects expressed similar concerns over FRA's lack of formalized process for stakeholder agreement negotiations. One State grantee noted that it had no idea what terms and conditions FRA expected the agreements to contain. Another grantee echoed those concerns, and added that it could not get timely responses from FRA to questions about how to fulfill agreement requirements to the Agency's satisfaction.

## **CONCLUSION**

The Administration's fiscal year 2013 budget allocates \$47 billion over 6 years to further develop the HSIPR program. HSIPR program investments present a unique challenge in that they fund improvements to privately owned railroad infrastructure—improvements that the private rail company will also own. It is FRA's responsibility to provide the oversight and guidance that will ensure that all stakeholders on these projects agree on their roles and responsibilities so that project benefits are achieved and tax dollars are protected.

## **RECOMMENDATIONS**

To help achieve the HSIPR Program's intended benefits, we recommend that FRA:

1. Require that State grantees submit all required stakeholder agreements that address all terms specified by PRIIA and FRA's Guidance prior to fund obligation.

2. Develop guidance on stakeholder agreements for short- and long-term projects that addresses the differences in the projects' scopes to ensure that the intended benefits of each HSIPR project can be achieved.

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

We provided a draft of our report to FRA on August 6, 2012, and received its response on October 3, 2012; the response can be found in its entirety in the appendix of this report. FRA concurred in part with our first recommendation. The Agency agrees that requirements and agreements for HSIPR projects need to be specific and clearly established to facilitate meaningful and objective oversight. However, FRA contends that it must maintain flexibility in applying a risk-based approach specific to each project when determining what requirements and agreements need to be in place prior to initiation of construction. We acknowledge the need for flexibility in this regard, but FRA must provide us with greater specificity on the risk-based approach it follows, and how that approach ensures that the Agency does not diminish its negotiating position when obligating project funds.

FRA concurred with our second recommendation. The Agency has adjusted its requirements for project stakeholder agreements as a result of industry's concerns that they more closely reflect differences in projects. While FRA has not finalized its approach in formal guidance, the Agency is committed to addressing the issue of further guidance if more funding becomes available for future projects. Therefore, given the uncertainties surrounding future funding of the HSIPR program, we believe that FRA's response and planned actions demonstrate a commitment to address the intent of our recommendation. Accordingly, in the event that future funding is provided for the program, we plan on reviewing FRA's actions to develop final guidance.

## **ACTIONS REQUIRED**

Based on FRA's response, we consider recommendation 1 open pending receipt of the additional information described above by December 31, 2012. We consider recommendation 2 resolved and closed.

We appreciate the courtesies and cooperation of Federal Railroad Administration representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-9970, or Yana Hudson, Program Director, at (202) 366-2985.

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cc: Audit Liaison, OST, M-1  
Audit Liaison, FRA, RAD-43

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

We conducted this self-initiated, performance audit from April 2010 through August 2012 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform an audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To assess FRA's development of stakeholder agreement requirements for long-term, corridor projects, we reviewed summary data from FRA that outlined obligation amounts and obligation dates for HSIPR projects that received ARRA funding obligations and validated this information against FRA-approved stakeholder agreement documents for all 23 long-term projects and public sources that identified obligation amounts and dates for these projects. We met with FRA officials in the Office of Passenger and Freight Programs to discuss development of guidance and their involvement in the process to ensure that stakeholders came to agreement on the required terms. We also discussed FRA's focus on service outcomes as the primary risk mitigation tool to be in place prior to obligation and its reasoning behind decisions to obligate when additional terms were not yet agreed upon. We interviewed State grantees to gather their perspectives on the agreement negotiation process, including FRA's role as facilitator in these negotiations. We also held discussions with freight companies and Amtrak to understand their perspectives on the agreements, the negotiation process, and the HSIPR Program. We visited Chicago, Illinois, to meet with stakeholders and see the Englewood Flyover project's location. At that time, the Englewood Flyover project was the only HSIPR project with construction underway. We also met with Chicago's regional transit agency—Metra—to understand that project's impact on Metra's passenger service operations.

To assess the effects that FRA's requirements' development for long-term, corridor projects had on short-term, ready-to-go projects, we reviewed summary data from FRA that outlined obligation amounts and completion dates for the short-term HSIPR projects that received ARRA funding obligations and validated this information against available FRA-approved stakeholder agreement documents for all 38 short-term projects and public sources that identified obligation amounts and dates for these projects. We compared the short-term project obligation dates against the obligation dates for long-term projects to validate FRA officials' claim that they focused on long-term project obligations before short-term project obligations. We discussed the impact of this decision on short-term projects with FRA officials in the Office of Passenger and Freight Programs, State project grantees and freight stakeholders. We also reviewed

internal FRA documents that outlined the Agency's approach to short-term project obligation, and reviewed that against information we received on various projects from FRA, State grantees, and freight company stakeholders.

**EXHIBIT B. ORGANIZATIONS VISITED OR CONTACTED**

Federal Railroad Administration (Office of Passenger and Freight Programs), U.S.  
Department of Transportation

National Passenger Railroad Corporation (Amtrak)

Illinois Department of Transportation

Washington State Department of Transportation

North Carolina Department of Transportation

Wisconsin Department of Transportation

Union Pacific Corporation

Norfolk Southern Corporation

Burlington Northern Santa Fe Railway Corporation

Metra Regional Transit Authority (Chicago, Illinois)

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

<b><u>Name</u></b>	<b><u>Title</u></b>
Yana Hudson	Program Director
Brendan Culley	Project Manager
Kristen Bidwell	Senior Analyst
Nancy Benco	Senior Analyst
Deanne Titus	Analyst
Olivia Starr	Analyst
Emily Vasile	Analyst
Susan Neill	Writer-Editor
Andrew Schick	Legal Intern



**U.S. Department  
of Transportation**

Federal Railroad Administration

# MEMORANDUM

Subject: INFORMATION: FRA's Requirements for High-Speed  
Rail Stakeholder Agreements

Date: October 3, 2012

From: Joseph Szabo   
Federal Railroad Administrator

To: Mitch Behm  
Assistant Inspector General for Rail, Maritime, and  
Economic Analysis

Reply to the  
Attn of: ROA-03

In the short time since Congress enacted the *American Recovery and Reinvestment Act* (ARRA) and fiscal year 2010 *Department of Transportation Appropriations Act*, the Federal Railroad Administration (FRA) has established one of the largest discretionary infrastructure investment programs in U.S. history. In so doing, FRA identified worthy projects, obligated almost \$10 billion in project funding using objective data-driven processes, applied innovative and appropriate risk management practices, and began effective grant oversight. FRA accomplished these actions within unprecedented resource constraints and within tight time limitations.

The Nation is already seeing tangible results from these investments: 27 projects (totaling \$1.5 billion in project funding) in 14 States are under construction or complete. Additionally, another 19 projects (totaling \$1.3 billion in project funding) in 3 additional States and the District of Columbia will likely begin construction before the end of December 2012. These activities are putting Americans back to work and reinvigorating railroad industries through constructive investments in U.S. infrastructure.

### **HSIPR Program Employed Grant Management Best Practices**

FRA prioritized its efforts in developing and implementing the High-Speed and Intercity Passenger Rail Program (HSIPR) program, focusing on the highest priority, most significant programmatic risks first. To increase the likelihood of project success and ensure promised benefits to taxpayers, FRA adopted a proactive, collaborative approach to delivering critical performance agreements early in HSIPR implementation. FRA prioritized the elements of stakeholder agreements that were critical to project effectiveness prior to grant obligation, while setting aside lower risk aspects that could be negotiated subsequent to obligation. In doing so, FRA adhered to all statutory requirements and responded flexibly to the unique and sometimes conflicting project concerns of host railroads, Amtrak, and States. While the rail industry's ownership structure is unique in the transportation sector, FRA was able to draw lessons from established grant management best practices, apply them with ingenuity and creativity, and create innovative mechanisms to safeguard project benefits.

FRA recognized that this new grant program required a flexible approach to fulfilling statutory requirements. The agency took an active role in the agreement negotiating process,



acknowledged the railroads' core business responsibilities and unique aspects of each project, and never wavered on the fundamental requirements for project success. FRA also recognized the importance of responsive program management, particularly as it moved rapidly to build and implement the program. While initial planning focused on concluding agreements for the smaller, "short-term" projects first, subsequent information indicated a course correction would be in the public's best interest. For example, the railroads were particularly concerned about their ability to comply with enforceable service agreements for smaller projects. FRA decided that continuing to push agreements for smaller projects first would yield less robust agreements and create a difficult precedent to overcome when negotiating the corridor agreements. FRA concluded that service improvements from corridor-wide investments could be tracked and managed more effectively, and thus decided to pursue those first.

With its flexible, interactive approach to program management, FRA ensured programmatic benefits to the taxpayers, both in the short and long term. FRA gained more rigorous stakeholder agreements by reprioritizing its activities and maximized the program's capabilities to demonstrate benefits from its investments. Rather than delaying project benefits, FRA's responsiveness to programmatic issues resulted in a program better able to identify achievable programmatic goals, measure their achievement, and demonstrate effective outcomes.

### **Focus On Outcomes Led to Clear Performance Goals and Effective Measures**

Within 2 years of grant selection, FRA and its partners established effective, enforceable, performance agreements for every major project, delivering the single most important underpinning of project success. With its focus on programmatic outcomes, FRA prioritized the elements of stakeholder agreements that were critical to project effectiveness, prior to grant obligation, while setting aside those aspects that represented lower risk and could be negotiated subsequent to obligation.

FRA prioritized service outcome agreements over other types of stakeholder agreements prior to obligation. While all stakeholder agreements need to be complete before grantees begin construction, FRA understands that the highest risk element is delivery of promised benefits. Concluding service outcome agreements, therefore, was the essential precursor to committing taxpayer dollars, and FRA ensured that no grant was obligated before such agreements were in place.

In prioritizing stakeholder agreements aimed at ensuring performance, FRA also relied heavily on recommendations from GAO and the DOT OIG from previous studies. GAO and OIG have repeatedly emphasized performance metrics and accountability as an essential element of grant program success. FRA embraced this perspective as it implemented HSIPR and used it to shape and focus our activities.

## **Recommendations and Responses**

OIG Recommendation 1: Require that State grantees submit all required stakeholder agreements that address all terms specified by PRIIA and FRA's Guidance prior to fund obligation.

FRA Response: Concur in part. FRA's HSIPR has been designed and implemented in a manner fully consistent with applicable statutes, including PRIIA and ARRA. FRA agrees that requirements and agreements need to be specific and clearly established to facilitate meaningful and objective oversight. At the same time, FRA must maintain flexibility to enable projects to succeed. As such, FRA has been clear that all stakeholder agreements need to be complete before grantees are authorized to enter the construction phase. FRA will continue to apply a risk-based approach that recognizes the specifics of each project. It has the tools for this in place and will carefully monitor their efficacy. As a result, no further action is planned on this recommendation and we ask that it be closed.

OIG Recommendation 2: Develop guidance on stakeholder agreements for short- and long- term projects that addresses the differences in the projects' scopes to ensure that the intended benefits of each HSIPR can be achieved.

FRA Response: Concur. The approach FRA used to complete the agreements offers greater potential for project success and taxpayer benefit than would have been achieved had we adhered to rigid guidelines, particularly early in HSIPR implementation. While FRA initially laid out firm guidelines for stakeholder agreements, FRA adjusted the approach in response to significant concerns from industry. If FRA receives additional funding for HSIPR projects, we will revisit the guidance issue. Until then, no further action is planned on this recommendation and we asked that it be closed.