

OVERSIGHT HEARING ON THE ELIMINATION OF WASTE, FRAUD, AND ABUSE IN MANDATORY TRANSPORTATION PROGRAMS

(108-38)

HEARING BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

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ELIMINATION OF WASTE, FRAUD, AND ABUSE IN MANDATORY TRANSPORTATION PRO- GRAMS

Tuesday, July 22, 2003

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, WASHINGTON, D.C.

The committee met, pursuant to call, at 11:00 a.m. in room 2167, Rayburn House Office Building, Hon. Don Young [Chairman of the committee] presiding.

Mr. PETRI. The Committee will come to order. Our Chairman, Mr. Young, is here.

Mr. YOUNG. I thank the gentleman from Wisconsin, Mr. Petri.

This is a hearing on elimination of waste, fraud, and abuse in mandatory transportation programs. I want to thank the witnesses for being here today to testify to this important issue, the elimination of waste, fraud, and abuse in Government programs, unfortunately something that is too prevalent in Government today. Tax dollars must be managed for the purpose for which they are intended, to provide public services.

Although the subject of eliminating waste and fraud is appropriate for any of the programs under this Committee's jurisdiction, this particular hearing will focus on specific mandatory spending programs.

Our first panel of witnesses all address Federal aid highways, Federal Transit Administration programs, essential air service programs, and those witnesses include Administrator Mary Peters from the Federal Highway Administration, Mr. Ken Mead of the Department of Transportation, Inspector General, and Mrs. JayEtta Hecker from the GAO.

Our second panel of witnesses will address railroad retirement programs. Those witnesses include the Railroad Retirement Board Inspector General, Marty Dickman, and Michael Schwartz, Chairman of the Board. Mr. Schwartz will be accompanied by Mr. V. M. Speakman and Mr. Jerome Kever, and other members of the Railroad Retirement Board. We have asked the Board to present a joint statement, which will be delivered by Chairman Schwartz.

Before we hear from our first witness, let me take a minute to emphasize the importance of the hearing. Of all the responsibilities of members of Congress as elected officials, ensuring the appropriate use of taxpayers' money is one of the most important. The current economic climate also heightens that importance. Often we hear people in Washington talk about Government funding being spent for Government programs. It gives the impression that Beltway insiders believe that it is actually the Government's money,

and forget that in reality it is the people's money. We have a duty to make sure U.S. citizens know their representatives are spending their hard dollars wisely.

When Federal managers are forced to trim their budgets, the immediate reaction all too often is that the public services will be reduced. But that assumes the Government programs are operating at 100 percent efficiency. Such a leap of logic defies reality and fails to realize that creative and dedicated people often can find ways to accomplish the same goals with fewer resources. It assumes that no opportunity exists for eliminating waste or fraud, and that any money taken from a program will automatically have to come out of the funds used for the public. It requires an assumption that is completely false.

The members of this Committee and the Federal employees eliminating the programs under this jurisdiction must do what any other person does when the family budget gets tight: figure out how to use resources more efficiently. And that is why we are here today.

What we will hear this morning are opportunities to save money and stretch Federal dollars. This is particularly important to this Committee because of the tremendous need for investment in our Nation's transportation infrastructure. Highways, railroads, and air service represent a viable, tangible, and useful return for the public investment. Transportation is also in an area where the need is greater than the funds available, thus highlighting the importance of using available funds as efficiently as possible.

Again, I want to thank the members and the witnesses for being here today, and I will turn to Ranking Member Mr. Lipinski to make an opening statement.

Mr. LIPINSKI. Thank you, Mr. Chairman. I want to associate my remarks with the Chairman's, and I would like to simply start the hearing by saying that I am going to read the first paragraph of Ranking Member Oberstar's statement that I am going to ask unanimous consent to have the rest of it placed in the record.

The Transportation and Infrastructure Committee has a long and proud history of pursuing an active oversight agenda. Over the years, this agenda has improved the quality of the many programs within our jurisdiction and has produced opportunities to improve program efficiency and, when possible, save increasingly limited tax dollars. In the tradition of our Committee, these efforts have been bipartisan, with the focus on making our programs more effective and efficient.

And I am sure under Chairman Young, the bipartisan atmosphere will continue, as it has been a bipartisan approach to all problems since he became the Chairman of this Committee.

And now I ask unanimous consent to include Mr. Oberstar's entire remarks in the record.

Mr. YOUNG. Without objection, so ordered.

Mr. LIPINSKI. And, Mr. Chairman, I yield back the balance of my time, after I welcome all the witnesses here this morning.

Thank you for your attendance.

Mr. YOUNG. I thank the gentleman.

Any other opening statements? If not, at this time I will call on Ms. Peters, the first up to testify.

TESTIMONY OF MARY E. PETERS, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION; HON. KENNETH M. MEAD, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION; AND JAYETTA Z. HECKER, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GENERAL ACCOUNTING OFFICE

Ms. PETERS. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member Lipinski, and members of the Committee, thank you so much for the opportunity to testify before you today. I plan to speak to Federal Highway Administration actions to curtail fraud in the highway program, to prevent the loss of Highway Trust Fund revenues to tax evasion, and to eliminate waste and maximize the return on Federal funds invested in highway infrastructure.

Secretary Mineta has, before this Committee, as have I, expressed our deep commitment to improving accountability in the Administration's programs. Mr. Chairman, I think you said it very well: it is the people's money, not our money that we are entrusted with. The Secretary has asked that I provide you with a letter describing the emphasis that he has placed on these issues and some of the successes that have been accomplished under his leadership at the Department. I ask that my full statement, as well as the Secretary's letter, be made a part of the record for this hearing.

Mr. Chairman, any waste of taxpayer dollars is of serious concern and must be addressed, and I commend the Committee for holding a hearing on this important topic. I would be remiss, however, if I did not begin my statement today by addressing the enormous cost of nearly 43,000 highway fatalities and more than 3 million injuries on the Nation's highways every year. The economic impact of these motor vehicle crashes exceeds \$230 billion annually. But the true cost to society, the cost to communities, to families, simply cannot be quantified. Improving highway safety and saving lives, as well as preventing injuries, is the first priority of this Administration. Our SAFETEA proposal will provide important program reforms and new resources to meet this challenge.

Improving accountability for Federal funds is a priority in our SAFETEA proposal as well. Our stewardship and oversight provisions build on lessons learned from early major projects and best practices, as well as recommendations from Inspector General Ken Mead and the General Accounting Office's Ms. Hecker. And I have to say that I consider myself very fortunate to have found Ken Mead at the Department of Transportation when I arrived there just two years ago, and have had the opportunity to work with him to improve our programs.

Some of the provisions that we are proposing include preparation of annual financial plans for any project that exceeds \$100 million in Federal financial assistance, project management plans for projects receiving over \$1 billion, and verification of States' management capabilities and internal controls for large project management.

With a new focus on process oversight, rather than specific projects, we are structuring the Federal Highway Administration to be more multi-disciplinary to increase our skills in areas such as financial management, program planning, and other areas to supplement our traditionally strong engineering expertise within the

agency. To promote more cost-effective project delivery, SAFETEA proposes a number of important programmatic changes that will give States more flexibility in prioritizing and financing their projects for the most effective transportation solutions, and will reduce duplication in environmental processes for more efficient project delivery.

Key to our oversight responsibility is the detection and the prevention of fraud in the Federal highway program. We have clarified responsibilities for reporting potential fraud and strengthened our provisions for suspension and debarment within our reauthorization proposal. We will aggressively pursue cost recovery and take proactive actions, including suspension and debarment where it is warranted to do so. Our reauthorization proposal would mandate the suspension of contractors who are indicted for highway program fraud and the debarment of those who are convicted of fraud, and would allow States to share in monetary recoveries from these actions.

Reducing fuel tax evasion has the potential to increase resources for transportation. The Administration proposes to reduce motor fuel tax evasion by providing additional resources and opportunities for collaborative enforcement by State and Federal agencies.

We must strive for the greatest return on each dollar entrusted to us to be invested in transportation. SAFETEA provisions would strengthen accountability for Federal funds, promote cost-effective project delivery and program administration, and continue the progress to date in combating fraud in the highway program.

I look forward to continuing to work with this Committee to eliminate waste, fraud, and abuse in the surface transportation programs. Mr. Chairman, this concludes my statement, and I would be pleased to answer any questions you may have at the appropriate time. Thank you.

Mr. YOUNG. Thank you, Ms. Peters.

Mr. Mead, welcome back to the Committee again. I hope it doesn't take as long today as it did last time I saw you here.

Mr. MEAD. Mr. Chairman, I was thinking of how to open my statement, and you have said it for me. I feel likewise.

You know, whether funds are lost to cost overruns, schedule delays, idle highway money, fuel tax avoidance, or outright fraud, the result is the same; fewer resources are available for important projects. And just to put that in perspective, here is the back of the envelope figure. If the efficiency with which the 500 billion that the states and the Feds combined spent on highways over the last 6 years were improved by only 1 percent, that would yield an additional \$5 billion, which is enough to cover 4 of the 15 largest highway projects in the United States. Whether or not Congress decides to increase funding, I think there are very significant opportunities to stretch the Federal dollar, especially at a time of declining trust fund revenues.

I do want to say that as for Secretary Mineta and Administrator Peters, I couldn't ask for better professional or personal colleagues; very supportive, and the direction they have the ship going in I think is the right one, and as testimony to that are the provisions of the SAFETEA proposal which they submitted. If the Committee is ultimately faced with the decision not to enact a 6 year reauthor-

ization and the proposal has to be abridged, then I think some of the oversight and stewardship anti-fraud provisions in the proposal should be enacted anyway.

I have four major action items I would like to share with the Committee. First, I think that the Federal Highway Administration and the states need to be more vigilant in putting idle funds to use. We found \$238 million in obligated funds that the states no longer needed on the projects for which they had been obligated. We found in Connecticut, \$54 million of highway funds sitting idle for 16 years. The project wasn't going anywhere. There is some money to be had there. We have another review ongoing now, and I can tell you the problem persists.

Second, we can get more for our transportation dollars by strengthening project management and financial oversight. There are several sub-elements of this. One is reliable cost estimates. We have seen some problems here. Probably the best known example is the Central Artery. That project went from \$2.5 billion to \$14.5 billion. Right here at home very recently the Springfield Interchange Project, went from about \$250 million to about \$650 million. The major problems here are that the estimates are prepared too early; they are floated out to the public, sent to the financial markets before the design is substantially complete, and sometimes known factors, like inflation, are just excluded.

Another area, Ms. Peter mentioned this, are finance plans. Right now, this Committee directed that they be required for projects over \$1 billion. I think if you are going to spend \$100 million or more of taxpayer money, the least we can have is a finance plan that states how much the project is going to cost and where the money is going to come from.

Statewide transportation plans are another matter. This Committee required those. They are not supposed to be wish lists. We found a number of instances where they have been wish lists. Basically, they are supposed to be representations to the taxpayers of the projects that are going to be undertaken, not just a list of projects that may or may not be undertaken.

Another area I think we can do better on is recovering overpayments from contractors and resolving construction claims. An example here, Central Artery, a \$14.5 billion project. Their cost recovery efforts there have yielded \$30,000 in seven or eight years. I think Massachusetts is now trying to get a firmer handle on this.

A final overarching item is the direction Ms. Peters is trying to take FHWA. They need staff that are more multi-disciplined, that have different skill sets, that are more in tune with today's modern highway project. Most of our staff are engineers, and that may have been appropriate in the interstate era, but now we need a more multi-disciplined staff.

Fraud. This is a third action area. We are not seeing fraud on the scale that we saw in the 1960s or 1970s, but the warning signs are there. We have seen highway and transit-related fraud indictments triple, convictions double, and monetary recoveries exceeding \$80 million. We now have 100 ongoing investigations of infrastructure projects or contracts in 35 States. What we are seeing out there are: bid-rigging, collusion among competing competitors, product substitution of inferior products that don't meet the specs,

shorting of the quantities that have been ordered, outright false claims, and we are seeing too many incidents of kickbacks, and bribery of inspectors.

The DBE Program, Disadvantaged Business Enterprise Program. This is becoming a serious problem. Mark my words, it is not just isolated in one State. I think Administrator Peters would second that. It is an area we really need to get a handle on. This program is going to be in trouble if we don't stop seeing fraud in that area.

And, finally, I also want to second what Ms. Peters said about the efforts to combat fuel tax evasion. Our office, the Inspector General's Office, and the Federal Highway Administration some years ago had a very, very active effort in this area, and, in fact, Congress closed a number of loopholes in the law and the revenues picked up. But now I think that people have found additional loopholes, and one of them is where jet fuel is taxed. Most people don't realize that jet fuel can actually be used in trucks. Commercial jet fuel is taxed at about four cents on the gallon. Diesel fuel is taxed at twenty-four cents on the gallon. So you can see the disparity there offers room for profit-taking. But where jet fuel is taxed is not the same place that diesel fuel is taxed, and, as a result, we believe that people are taking kerosene, then saying that it is destined for commercial aviation use, and diverting it simply to highways.

I would like to commit my office to doing a lot more in this area. Some people are estimating \$1 billion or more in taxes, but the Department is going to need this Committee's help if you want to get the yield on that \$1 billion a year.

That concludes my statement, Mr. Chairman.

Mr. YOUNG. Thank you, Mr. Mead.

Ms. Hecker?

Ms. HECKER. Thank you, Mr. Chairman. I am pleased to be here and to have this opportunity to speak to you and the other members of this Committee. I also have a PowerPoint presentation to walk you through a few of the points.

As an overview, I might say the importance of this hearing and the importance of focusing on assuring the benefits of long-term spending is absolutely critical, as you said, to ensure that we get the mobility benefits and the improved safety benefits from the significant Federal spending in this area. While long-term spending is well matched to the long life and high cost of infrastructure, long-term funding creates challenges for efficient oversight since so much of the money flows almost automatically to States.

First, I would like to provide an overview of the four programs that I am summarizing today and some of the key oversight challenges in each area. The four recent areas that we have reported on are highway construction programs, highway safety programs, the New Starts program, and the Essential Air Service program. Each of these are actually very different in terms of the sources and flow of funding, but they all face fundamental challenges in terms of assuring the efficient use of resources, whether the challenge is cost growth, assuring the effectiveness of State highway safety programs, assuring the selection of the best transit projects, or assuring that there is an appropriate adaptation to changing conditions in the Essential Air Service programs.

I would like to briefly go through each of these areas and highlight some of the unique challenges and strategies underway within the Administration and under consideration in the Congress and in the Administration's reauthorization proposal.

The Federal Highway program, as you well know, has four major stages: planning, environmental review, design, and property acquisition and construction. As you can see from this chart, the States have the primary role, particularly in the planning phase, the design and acquisition phase, and the construction phase. In fact, the statute is clear that this is a State program that is federally assisted. So this program of nearly \$30 billion is State-administered, State-overseen, rather than a Federal program with Federal goals, Federal management, and active Federal oversight.

The challenges in this area I am focusing on for purposes of this hearing are cost growth and oversight. There isn't much tracking at the Federal level of the cost growth or the reasons for cost growth--only recently do we have a systematic tracking of even the major \$1 billion plus projects. We also have the problem that Ken mentioned, the reliability of cost estimates. When cost estimates are produced and released, they are not complete or reliable. The third area, related to this being a State program with a Federal role, is the challenge of actively promoting cost containment practices. The Administration has taken very important steps, as outlined in the Administration's reauthorization proposal, to improve the reliability of cost estimating and to have a more structured approach with more specific annual and periodic oversight.

In our view, there are opportunities for the Congress, in your reauthorization, to build on those proposals in two particular areas: clarifying the Federal role and authority. Basically, there is a concern when we go out in the field, and this has been the case for as long as we have been doing highway work, that the Federal Highway people have such a strong view that this is a partnership that there is less of an oversight role than there is a partnership in the administering of the program. I think the view that this is the people's money contrasts with the view that this is the States' money. There is a fundamental issue of the Federal Highway role and its authority, and there is an opportunity, I think, to clarify that.

The other opportunity is to promote a more results-oriented approach to Federal Highway oversight. Cost containment is not even in this program's performance plan, and if you want more attention to that, I think it belongs there.

The next program I would like to discuss is the transit program, which has challenges related to the review, the evaluation, and rating process for new transit projects. The money for this program is not apportioned; it is awarded through a competitive process on a project-by-project basis, and there is a comprehensive and well-designed process to yield a financial performance rating that lead to FTA's final recommendation to the Congress.

However, our recent work has raised some concerns about the extent of this process and its ability to actually prioritize projects and assure that the most cost-effective projects are identified, particularly when we have observed, as I am sure you are aware, that there are many major transit projects that continue to experience

cost schedule and performance problems. In our view, we need a better understanding of the limits of this process to assure that scarce Federal Transit dollars are appropriately dedicated to the most cost-effective and sound projects, yielding the major mobility benefits that are so critical.

I will skip over the safety program today and close with the review of the Essential Air Service program. The challenge there is that costs have tripled just since 1995, from 37 million to 113 million in 2003, all the signs are that the total subsidy costs are likely to continue to escalate. There is a demand side and a supply side. The supply side is that carrier costs are increasing, largely due to the new safety regulations that cover the small aircraft. The cost of operating small airplanes that serve these communities has increased substantially.

The other side is the demand side. There is very, very limited use of this service. And, in fact, use has declined over the past decade. The third factor affecting costs is that the number of eligible communities increasing at a rapid rate.

On this next map, the different colored chart dots indicate the proximity of different EAS communities from different sized airports. Basically, the main point is that half of the subsidized communities are within 125 miles or less than a two hour drive of a hub airport, and, as a result, in our survey of communities, we heard that typically EAS communities are able to capture less than 10 percent of the local traffic. People are making a choice not to use those airports. The data show that less than 10 people a day board planes in these communities, and that an average there are less than three people a plane, as usually these communities have three departures a day.

Our work identified four strategies to address the challenges related to EAS: better match capacity to use, target more remote communities, consolidate service to regional airports, and provide grants to communities.

This Committee is to be commended for your FAA reauthorization bill, H.R. 2115, which includes three of the four options that we have identified to try to strengthen air service to small communities and improve the performance and productivity of the essential air service program. I think you know very well the Administration's approach was to dramatically cut the funding of the program and substantially alter the terms under which it would operate.

In conclusion, oversight is absolutely critical to maximizing the performance of Federal transportation programs, and we appreciate the opportunity to continue to support this Committee in your oversight role.

That concludes my statement, Mr. Chairman.

Mr. YOUNG. I thank you, Ms. Hecker.

I want to compliment the witnesses. I have a couple questions, and then Mr. Petri is going to take over the meeting.

What idle money, Mr. Mead? How do we address the idle money? Is it just sitting there, or what happens?

Mr. MEAD. It is basically sitting there.

Mr. YOUNG. Excuse me. Is it sitting in our treasury or in the State treasury? Where is it?

Mr. MEAD. It is sitting in our treasury, obligated, but there has been no claim to pay it back because there is no project underway. And what we do when we go out is different than I think what Federal Highways does when it goes out. They look at whether money has been sitting there for 12 months. We have a more conservative test; we look for 18 months. If it has been sitting there for 18 months, we go to the State and say do you plan to use the money. And the numbers I cited were ones where the States said, no, that project is not going anywhere.

Mr. YOUNG. Would you do me the honor of providing a list of what monies are sitting idle? Because Mr. Lipinski has said he will take and I have said I will take it, so we would like a provision in our bill that will take care of this problem, because I happen to agree with you. So we would like that list, if possible.

Mr. MEAD. Yes, sir.

[Information received from Mr. Mead follows:]

The following list of inactive obligations represents amounts that may no longer be needed by FHWA grantees. The list includes funds for projects that states have agreed to deobligate as a result of our recent audit of inactive obligations and projects for which the status and need for the future are unknown as of September 5, 2003.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration					
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status
Alabama					
AL	8500008	\$1,776,000.00	12/21/1998	NONE	AL - Work on the grade, drain, base, pavement, and bridge on South Bypass from east of Triana Blvd to west of Triana Blvd. State agreed to deobligate.
AL	7220001	\$2,115,809.59	08/01/1998	05/02/2001	AL - Emergency repairs from March flood on County maintained Federal highway. State agreed to deobligate.
		\$3,891,809.59			
Alaska					
AK	0537001	\$1,105,335.00	08/01/1998	NONE	AK - Utility and Right-of-Way acquisition for Dowling Rd to Huffman Rd. Status unknown.
		\$1,105,335.00			
Arizona					
AZ	0401086	\$4,820,581.00	10/27/1999	08/17/2001	AZ - Work on I-40, Walnut Creek to Mc Cormico. State agreed to deobligate.
		\$4,820,581.00			
California					
CA	5950182	\$1,037,792.00	11/14/2000	NONE	CA - Overlay on various streets in Northeast Bakersfield. State agreed to deobligate.
CA	5934046	\$1,050,477.97	10/26/1999	08/15/2000	CA - Rehabilitation work to Railroad in San Francisco. State agreed to deobligate.
CA	8051074	\$1,054,240.05	PRE-11/93	01/10/1997	CA - Right-of-Way Acquisition & Utility work for North of Division Street to Home Ave. State agreed to deobligate.
CA	3112001	\$1,207,425.32	08/18/1997	11/19/1997	CA - Emergency Relief - 1997, emergency repair from storm damage in various locations in Napa County. State agreed to deobligate.
CA	5204006	\$1,254,752.65	10/01/1992	09/19/2000	CA - Right-of-Way and modification to interchange on SR-204 Airport Drive in Bakersfield. State agreed to deobligate.
CA	000C176	\$1,260,124.06	06/25/1998	12/06/1999	CA - Bridge Inspection Program 1197/98 & 1998/99, statewide bridge inspection and management. State agreed to deobligate.
CA	5004096	\$1,283,685.00	11/01/1999	NONE	CA - Extension to Carroll Canyon Road. State agreed to deobligate.
CA	3030001	\$1,296,194.20	09/06/1995	04/17/1997	CA - Emergency Relief - 1995, emergency opening of CA-95-2 in Monterey County. State agreed to deobligate.
CA	5012040	\$1,302,230.00	06/06/2001	NONE	CA - State agreed to deobligate.
CA	00PE091	\$1,350,000.00	10/01/1992	09/13/1996	CA - Statewide preliminary engineering. State agreed to deobligate.

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration					
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status
CA	3664007	\$1,483,251.95	11/19/1998	10/11/2000	CA - Emergency Relief - 1998; emergency opening and restoring damaged roadway on S. Mountain Road at 2.2 to 2.4 pm. State agreed to deobligate.
CA	P101711	\$1,509,736.75	10/13/1998	05/02/2001	CA - Modification to 0.4 miles of E Mulholland - 0.5 miles W Mulholland. State agreed to deobligate.
CA	00PE099	\$1,558,362.85	08/18/1998	09/05/2000	CA - State agreed to deobligate.
CA	3071020	\$1,563,576.84	03/29/1994	12/03/1998	CA - Work on 10 bridges on Rte 8, from W Midway Dr to E Presidio Park. State agreed to deobligate.
CA	2928002	\$1,683,243.00	06/19/2000	NONE	CA - ER - 1995; restoration of Route 1 in Sonoma County. State agreed to deobligate.
CA	2705001	\$1,908,000.00	05/16/1995	02/27/1996	CA - Emergency Relief - 1995; remedy slides, slipouts, etc at various routes and locations in Humboldt county. State agreed to deobligate.
CA	6207010	\$1,975,484.89	07/11/1996	02/02/2000	CA - Addition of HOV lane in each direction on Rte 14 in San Fernando. State agreed to deobligate.
CA	1518001	\$3,267,703.00	06/01/1995	NONE	CA - Emergency Relief - 1990; traffic mitigation for construction due to damage from Loma Prieta (an earthquake in San Francisco Bay Area). State agreed to deobligate.
CA	2853001	\$3,692,290.00	04/01/1994	NONE	CA - Emergency Relief - 1995; statewide. State agreed to deobligate.
CA	P101727	\$4,252,657.00	06/19/2000	NONE	CA - State agreed to deobligate.
CA	P001202	\$5,281,155.00	06/19/2000	NONE	CA - Emergency Relief; Devil's Slide; legal/environmental issues holding-up project. State agreed to deobligate.
CA	0052789	\$6,394,355.18	10/01/1992	NONE	CA - Interstate project. State agreed to deobligate.
CA	6065078	\$7,500,000.00	11/07/2000	NONE	CA - State agreed to deobligate.
CA	3648001	\$7,799,397.79	10/21/1998	12/28/1999	CA - Emergency Relief - 1998; emergency opening for various county federal aid roads. State agreed to deobligate.
		\$61,966,135.50			
District of Columbia					
DC	2952153	\$25,496,094.75	10/01/1992	NONE	DC - Anacostia Access Roads and Regional Parking Lot. State agreed to deobligate.
		\$25,496,094.75			
Florida					
FL	9105001	\$1,383,089.60	10/01/1992	05/08/1998	FL - Preliminary engineering to US-1/Biscayne Blvd from Miami River to NE 24th St. State agreed to deobligate.
		\$1,383,089.60			

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration						
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status	
Georgia						
GA	0202133	\$1,600,000.00	12/12/1996	NONE	GA - Widen Parker Road Bridge over I-20. State agreed to deobligate.	
GA	0000717	\$3,181,592.00	05/01/2001	06/25/2001	GA - Transportation Technology. State agreed to deobligate.	
GA	2851148	\$3,606,793.21	10/01/1992	03/05/2001	GA - Right-of-Way, preliminary engineering, and pavement to Electrical Facility at SR 407 and I-85. State agreed to deobligate.	
GA	9265004	\$4,082,781.32	06/17/1993	04/02/2001	GA - Preliminary engineering, Right-of-Way acquisition, and widening to Carroll Ave from New Peachtree Rd to Buford Hwy. State agreed to deobligate.	
GA	9073014	\$5,333,408.00	06/24/1999	03/20/2000	GA - Right-of-Way acquisition for SR 14 from US-29 to Peters St. State agreed to deobligate.	
		\$17,806,574.53				
Guam						
GQ	0981016	\$1,410,838.12	05/11/2001	NONE	GQ - Preliminary engineering and construction for Shoreline Revetment; Route 4 Talofofo Shore Protection from South. Status unknown.	
GQ	0981018	\$1,600,000.00	05/09/2001	NONE	GQ - Construction for Shoreline Revetment ; Route 11 Commercial Port Rd on Cabras Island Secti. Status unknown.	
GQ	0016106	\$2,760,101.00	09/06/1994	09/02/1999	GQ - Right-of-Way acquisition for reconstruction to Route 16. Status unknown.	
GQ	0004101	\$4,327,670.00	09/04/1998	10/05/2000	GQ - Reconstruction and widening to 4 lane for Route 4 from Yona to Ylig Bridge. Status unknown.	
		\$10,098,609.12				
Hawaii						
HI	0200802	\$1,295,996.00	11/17/1999	NONE	HI - Construction for a Pedestrian Bridge from Kalakaua Ave Bridge at Ala Wai Canal. State agreed to deobligate.	
HI	7311001	\$1,593,228.69	09/30/1996	03/21/2000	HI - Construction for widening of Salt Lake Blvd from Luapele to Bougainville Dr. State agreed to deobligate.	
HI	0011216	\$3,412,466.38	10/01/1992	06/21/2001	HI - Deobligated. Preliminary engineering and Right-of-Way for additional lane to Route H-1 Eastbound Off Ramp to Pali Highway. State agreed to deobligate.	
		\$6,301,691.07				
Idaho						
ID	5110135	\$1,086,789.00	09/28/2000	NONE	ID - Railroad repair to US-95, N Ferry Hill. State agreed to deobligate.	
ID	5110120	\$1,768,314.00	08/16/2000	NONE	ID - Reconstruction/realignment to US -95 from MP 527 to Canadian Border. Status unknown.	
		\$2,855,103.00				

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration					
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status
Indiana					
IN	0951019	\$1,124,073.71	12/18/2000	NONE	IN - New Road Construction for SR 237/37 from Lincoln Trail Bridge to SR 37. State agreed to deobligate.
		\$1,124,073.71			
Kentucky					
KY	8816003	\$1,170,841.22	05/07/1997	01/17/2001	KY - Right-of-Way Acquisition for work on Central Ave from 4th to Floyd in Louisville. State agreed to deobligate.
KY	0751059	\$2,610,853.34	03/15/1999	03/20/2001	KY - Pavement Rehabilitation and bridge deck overlay on 75 from Tennessee St N to US-25W in Corbin. State agreed to deobligate.
		\$3,781,694.56			
Maryland					
MD	5011013	\$1,773,039.00	02/15/1995	10/12/1999	MD - Appraisal and Right-of-Way acquisition for work on MD 28 from Gude Drive to I-270. State agreed to deobligate.
MD	3230011	\$1,839,707.59	01/27/1997	01/27/1997	MD - Federal Land Project. State agreed to deobligate.
MD	8500004	\$2,908,746.00	01/28/1998	02/16/2001	MD - Reconstruction of 4 lane divider and railroad crossing on MD 205 from US-301 to MD 5. State agreed to deobligate.
		\$6,521,492.59			
Massachusetts					
MA	250901199	\$2,204,554.77	02/16/2001	03/07/2001	MA - Boston I-90 I-93, Spectacle Island. State agreed to deobligate.
MA	250931297	\$1,520,000.00	11/10/1999	NONE	MA - Stem line relocation of I-93/I-90, Boston. State agreed to deobligate.
MA	250931297	\$2,782,338.12	03/29/1999	03/01/2001	MA - Stem line relocation of I-93/I-90, Boston. State agreed to deobligate.
MA	250931451	\$1,760,439.26	10/24/1992	08/15/2000	MA - State agreed to deobligate.
MA	250931457	\$2,229,668.50	01/04/2001	02/01/2001	MA - Work on bridge ramp for I-93 I-90. State agreed to deobligate.
MA	250931463	\$2,048,039.16	02/06/1998	05/30/2001	MA - Utility relocation for work in Boston. State agreed to deobligate.
MA	254959027	\$4,771,380.83	12/11/1996	04/25/2001	MA - Resurfacing and related work on I-495 in Middleborough. State agreed to deobligate.
		\$17,316,440.64			
Montana					
MT	0002062	\$2,290,864.57	12/12/1995	10/11/2000	MT - Upgrade to signs and bridge on Interstate in Butte. Status unknown.

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration					
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure "	Description and OIG Review Status
New Jersey					
		\$2,290,864.57			
NJ	340035130	\$1,150,000.00	10/01/1992	10/01/1992	NJ - Advanced acquisition of Rte. 206 from Griggstown road to Old Somerville. State agreed to deobligate.
NJ	340036126	\$1,132,396.20	04/01/1998	03/16/2000	NJ - Utility relocation for Fairview Ave. State agreed to deobligate.
NJ	340036126	\$1,267,489.00	09/01/1997	06/29/2000	NJ - Utility relocation for Fairview Ave. State agreed to deobligate.
NJ	344036106	\$2,651,488.49	06/03/1999	06/28/2001	NJ - Reconstruction, and widening to Greentree Rd Section in Glouce County. Status unknown.
NJ	347628102	\$2,831,184.00	05/09/2000	NONE	NJ - Resurfacing, Milling, and resurfacing of Broad Street. Status unknown.
NJ	347811108	\$2,300,625.00	08/01/2000	NONE	NJ - Resurfacing of John F. Kennedy Boulevard. State agreed to deobligate.
NJ	347890101	\$1,000,000.00	08/03/2000	NONE	NJ - Construction on Hudson R. Waterfront Walkway at Castlepoint. State agreed to deobligate.
NJ	34A008637	\$1,737,000.00	06/11/2001	NONE	NJ - Construction to the Computerized Signal System. State agreed to deobligate.
NJ	34TCS-SP004	\$1,103,913.00	06/13/2001	NONE	NJ - Rte 31, Park Ave Realignment. Status unknown.
NJ	34TCS-SP006	\$1,879,000.00	06/13/2001	NONE	NJ - Work to Hudson River Waterfront Walkway in Hudson County. State agreed to deobligate.
		\$17,053,095.69			
New Mexico					
NM	0403097	\$1,102,803.62	12/14/1998	02/24/2000	NM - Reconstruction to Rio Grande Bridge. State agreed to deobligate.
NM	0255082	\$2,779,200.00	06/12/2000	NONE	NM - Resurfacing of MP 344.9 TO MP 367.6. State agreed to deobligate.
		\$3,882,003.62			
New York					
NY	CN00002	\$1,088,001.00	06/09/2000	04/03/2001	NY - Canal Operations, 67/00-3/31/01. State agreed to deobligate.
					NY - Construction Access Improvements for NYC Staten Island's St. Serorge Ferry Terminal. State agreed to deobligate.
NY	X822094	\$1,149,955.00	01/10/1997	01/27/2000	NY - Preliminary engineering for Bridge Rehabilitation on Route 25 over Sunnyside Yards. State agreed to deobligate.
NY	0371104	\$1,200,049.00	10/01/1992	05/10/2001	NY - Bridge Replacement on Brooklyn Bridge. State agreed to deobligate.
NY	5051104	\$1,315,599.00	10/01/1992	06/09/1999	NY - Preliminary engineering for Reconstruction on Route 16 in Brookhaven County. State agreed to deobligate.
NY	5322303	\$1,525,440.00	11/15/1995	04/26/2000	NY - Pavement/maintenance resurfacing in Suffolk County. State agreed to deobligate.
NY	0757258	\$1,546,455.00	09/28/1999	04/17/2001	NY - Hwy Trip Characteristics Database - NYC. State agreed to deobligate.
NY	X500018	\$1,600,954.00	10/08/1997	10/17/1997	NY - Hwy Trip Characteristics Database - NYC. State agreed to deobligate.

* "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration					
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status
NY	4902300	\$1,657,274.00	07/15/1993	07/21/2000	NY - Reconstruction of I-490 in Brighton/Pittsford. State agreed to deobligate.
NY	X822091	\$2,692,871.00	09/01/1996	11/19/1997	NY - Purchase and installation of remote traffic sensors in NYC. State agreed to deobligate.
NY	8559002	\$3,702,062.00	10/01/1992	06/09/1999	NY - Preliminary engineering for Advance Traffic Controller in NYC. State agreed to deobligate.
NY	7073300	\$4,320,990.00	12/26/1993	01/23/2001	NY - Reconstruction to Tompkins Avenue, Flushing Ave in NYC. State agreed to deobligate.
NY	0952042	\$4,417,091.00	04/12/1993	07/20/1999	NY - Bridge Replacement. State agreed to deobligate.
NY	0371115	\$8,768,804.00	12/23/1992	05/02/2000	NY - Bridge Rehabilitation. State agreed to deobligate.
		\$34,985,545.00			
North Carolina					
NC	0771111	\$1,044,313.00	02/24/1999	05/11/2001	NC - I-485 Interchange W/177 from W/177 West Nationsford Rd. State agreed to deobligate.
		\$1,044,313.00			
Ohio					
OH	000M082	\$1,199,814.86	06/25/1999	07/14/1999	OH - Provide ferry boat terminal to Brenne Marina in Toledo. Status unknown.
OH	0033012	\$1,524,278.57	01/24/1997	09/09/1998	OH - Relocate US-250 from Harrison County line to CR-10. Status unknown.
OH	G999067	\$2,409,047.93	04/15/1999	04/04/2001	OH - Resurfacing from SR 4 East to 1.159km of SR 72. State agreed to deobligate.
OH	0035047	\$2,455,382.97	01/24/1997	02/09/2000	OH - Relocation of US-250 from 1.09 miles south of CR-38 to Belmont County line. Status unknown.
		\$7,588,524.33			
Oklahoma					
OK	0442350	\$1,137,955.93	10/23/1997	04/10/2001	OK - Work to I-44 at bridges over Sheridan and Market RR in Tulsa. State agreed to deobligate.
OK	0010021	\$1,223,389.57	01/08/1998	08/04/1999	OK - Statewide planning program FY 1998. State agreed to deobligate.
OK	2353002	\$3,344,466.51	10/01/1992	06/11/1999	OK - Right-of-Way acquisition for I-235 from junction W 1-35 north. State agreed to deobligate.
		\$5,705,812.01			
Pennsylvania					
PA	X061119	\$1,000,000.00	02/09/1999	06/01/2000	PA - Construction of concrete median barrier and reset guide rail on North Rich Road in Bucks County. State agreed to deobligate.
PA	G051001	\$1,117,723.11	10/01/1992	09/05/2000	PA - Replacement of West 34 Street Bridge over Amtrak. State agreed to deobligate.
PA	X063138	\$1,186,300.00	04/17/2001	NONE	PA - Installation of railroad warning devices to Clifton Heights borough crossing in Clifton in Upper Darby township. State agreed to deobligate.

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration					
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status
PA	4768069	\$1,267,013.69	10/01/1992	09/29/1998	PA - Latex existing bridges, signing, and noise barriers for North Radnor and Lower Merion Townships. State agreed to deobligate.
	X055120	\$1,300,000.00	04/09/2001	NONE	PA - Historic preservation of canal locks in Delaware State Park in Williams Township. Money handled by a sister agency which is not billing FHWA. State agreed to deobligate.
	X065181	\$1,467,200.00	06/08/2001	NONE	PA - Alternately fueled employee shuttle for Philadelphia from State and Ashburn to Front and Hunting. Status unknown.
	5791001	\$3,869,388.18	10/01/1992	06/01/1999	PA - Right-of-Way acquisition & clearance for I-479 Crosstown Blvd in Pittsburgh. State agreed to deobligate.
		\$11,207,624.98			
Puerto Rico					
PQ	0099001	\$2,000,000.00	08/13/1999	NONE	PR - Grant to be used by the PR Port Authority. State agreed to deobligate.
		\$2,000,000.00			
South Carolina					
SC	FWBM007	\$1,065,816.20	03/04/1999	07/21/2000	SC - Widening of 26 from Exit 99 to Chas County Line. State agreed to deobligate.
SC	CHMB015	\$1,190,662.88	04/17/2000	06/14/2001	SC - Preliminary engineering of US 78 from Berlin Myers to Jedburg Rd. State agreed to deobligate.
SC	WCCB002	\$1,568,077.11	05/24/2000	03/12/2001	SC - Preliminary engineering of US 521 from Clarendon County Line to US 52. State agreed to deobligate.
SC	0096002	\$1,848,045.72	08/09/1999	NONE	SC - State agreed to deobligate.
		\$5,672,601.91			
Tennessee					
TN	0057007	\$1,808,155.96	10/01/1992	07/25/1995	TN - Preliminary engineering, Right-of-Way, and Utility of Nonconah Parkway from Winchester Rd to SR-57. Status unknown.
TN	001A037	\$2,207,252.67	02/12/2001	02/21/2001	TN - Statewide - FY 2000 (PT 1), ENG & E.C. Investigation. Status unknown.
		\$4,015,408.63			
Texas					
TX	2001096	\$1,000,000.00	01/11/2001	NONE	TX - Safety inspections at various locations. State agreed to deobligate.
TX	2000138	\$2,517,816.00	02/01/2000	NONE	TX - National Highway. State agreed to deobligate.

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration					
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status
TX	0099236	\$3,923,306.00	11/18/1999	07/12/2000	TX - State agreed to deobligate.
		\$7,441,122.00			
Utah					
UT	0051001	\$1,625,500.00	06/21/1995	10/25/1995	UT - Right-of-Way for 5600 west/4400 south. Status unknown.
		\$1,625,500.00			
Virgin Islands					
VQ	0066008	\$1,600,000.00	03/15/1999	NONE	VI - Work to Christened Bypass in St. Croix. Status unknown.
		\$1,600,000.00			
Virginia					
VA	515138112	\$1,000,580.00	03/15/2001	NONE	VA - Preliminary engineering for South Lane Road in Manchester. State agreed to deobligate.
VA	510378001	\$1,185,230.00	11/05/1997	06/01/2000	VA - Preliminary engineering for 4 lanes on Route 81 S and Route 522. State agreed to deobligate.
VA	511171113	\$1,399,910.00	06/24/1993	11/16/1999	VA - Right-of-Way acquisition for construction of 4 lane road in Warrenton. State agreed to deobligate.
VA	510952329	\$1,412,566.00	10/01/1992	08/04/1999	VA - Work to HOV lanes and bridges on Pohick and Franconia Roads. State agreed to deobligate.
VA	510366001	\$1,441,042.00	03/19/1996	06/07/2001	VA - Preliminary engineering for Upriver Crossing Feasibility Study at the York River in Gloucester. State agreed to deobligate.
VA	510029004	\$1,468,000.00	03/07/2001	NONE	VA - Preliminary engineering for 2 lanes on 4 lane road in Montgomery, 0.67km East of Route 723 to Rte 81. State agreed to deobligate.
VA	510812216	\$1,488,974.00	11/23/1998	07/26/1999	VA - Preliminary engineering for major widening from Route 640 to 1.6km North of Route 11. State agreed to deobligate.
VA	510812217	\$1,499,454.00	11/23/1998	11/07/2000	VA - Preliminary engineering for major widening from 1.9km north of Rte 460/11 to Route 636 north. State agreed to deobligate.
VA	510812212	\$1,499,806.00	11/23/1998	07/26/1999	VA - preliminary engineering for major widening from 1.6km north Route 220 to Route 640. State agreed to deobligate.
VA	510811285	\$1,500,000.00	12/15/1998	NONE	VA - Preliminary engineering for widening Route 636 north to Roanoke County line to 8 lanes. State agreed to deobligate.
VA	510952341	\$1,648,845.00	10/01/1992	11/24/1998	VA - Work to HOV lanes and bridges on Pohick and Franconia Roads. State agreed to deobligate.

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

Inactive Obligations by State Projects with Unexpended Balances \$1 Million or Greater Federal Highway Administration						
State	Project Number	Unliquidated Obligations as of 12/31/02	Date of First Obligation	Date of Last Expenditure ^a	Description and OIG Review Status	
VA	511031118	\$1,656,779.00	10/01/1992	08/01/2000	VA - Preliminary engineering for Right-of-Way and construction of a viaduct in City of Norfolk. State agreed to deobligate.	
VA	515403517	\$1,814,800.00	12/08/1997	04/25/2000	VA - Preliminary engineering for reconstruction of 6 lanes Tidewater drive to Shore Drive. State agreed to deobligate.	
VA	510952367	\$1,957,337.00	10/24/1992	06/01/2000	VA - Right-of-Way acquisition, relocation, and utility for Horner Rd interchange 0.51miles south to 0.72 miles north in Prince William County. State agreed to deobligate.	
VA	510952331	\$2,156,777.00	10/01/1992	12/28/2000	VA - Right-of-Way acquisition and work to HOV lanes and bridges 0.23 miles south Route 611 to 0.25 miles north Route 638. State agreed to deobligate.	
VA	510811247	\$2,169,015.00	10/01/1992	12/08/1999	VA - Preliminary engineering for widening Route 460 (Christiansburg) to 6 lanes. State agreed to deobligate.	
VA	510372119	\$2,270,585.00	12/01/1992	02/11/2000	VA - Preliminary engineering for constructing interchanges at Greenbrier Drive, Rio Road, and Hydraulic Road. State agreed to deobligate.	
VA	514601002	\$2,809,002.00	07/17/1998	NONE	VA - Preliminary engineering to relocate along the 609 corridor from the Kentucky state line to existing Route 40. State agreed to deobligate.	
VA	510812177	\$2,999,478.00	10/01/1992	10/12/1999	VA - Preliminary engineering to widen to 6 lanes from Montgomery County line to Botetourt County line. State agreed to deobligate.	
VA	519999000	\$3,668,103.90	PRE-10/94	10/19/1994	VA - State agreed to deobligate.	
VA	510811246	\$5,289,389.00	10/01/1992	02/23/2001	VA - Preliminary engineering to widen 2.3km from Tennessee State line to RTE 58 (Abingdon). State agreed to deobligate.	
		\$42,335,672.90				
	GRAND TOTAL:	\$312,916,813.30				

^a "NONE" denotes no expenditure was reported in the Department Accounting System.

[Information received from Ms. Peters follows:]

AN EXPLANATION OF INACTIVE PROJECTS

The Department of Transportation Office of Inspector General has issued a number of reports and statements regarding inactive Federal-aid highway projects and the related issues of idle and excess funds. It is important to understand that an inactive project is generally defined as a project where the State has not submitted a request for reimbursement to the Federal Highway Administration for a period of time, such as 12 months, 18 months, or other determined period. However, a lack of reimbursement does not necessarily mean that the project itself is inactive.

There are numerous reasons why a project may be on the inactive list. Examples include litigation involving contractor disputes or environmental issues, delays in receiving required permits, and resolution of property settlements. Another reason relates to the way Federal-aid projects are authorized. A State project may be made up of more than one Federal-aid project. In other words, multiple Federal-aid projects are approved for individual segments or phases of work on one State project. In this case, one of the Federal-aid projects may appear inactive because the current work on the State project, and therefore Federal-aid payments, is limited to other phases of the State project.

FHWA has a number of initiatives designed to encourage the expeditious completion of projects. However, FHWA's authority in this regard is specifically limited by legislation. For example, the States have a sovereign right to determine which projects are to be Federally financed (23 USC 145). FHWA cannot require States to withdraw projects because they are slow in advancing. A project is allowed to remain in the engineering phase for 10 years before FHWA can take action (23 USC 102) and 20 years in the right-of-way phase (23 USC 108).

FHWA's primary concern is that the amount of Federal funds obligated on projects is appropriate. FHWA works with the States on a continuous basis to assure that funds are properly obligated. On an annual basis, FHWA conducts a national review of projects that have \$1 million or more in unexpended obligations and have no billing activity for the prior year, to determine if the obligated amount is justified. The review conducted in 2003 identified \$145 million of obligations that will be released. This amount represents 0.07 percent of the total active obligations on Federal-aid projects.

FHWA is currently managing more than 140,000 projects. Many of these projects, at some point, will be over-obligated or under-obligated as changes to the projects occur, taking into account the time required to process a revised obligation amount. It has been stated that having excess amounts obligated on some projects results in other projects being delayed. However, as a general statement, this is incorrect. First, these excess amounts could easily be reprogrammed to ongoing projects where the costs have exceeded the amounts obligated, if a State finds such action necessary. Second, States currently have more than \$30 billion of advance construction projects. These are projects

advanced with State funds that are eligible for Federal funding. The States are clearly advancing the program well beyond the available Federal funding.

In summary, FHWA and the States have an ongoing program to monitor project obligations and release excess obligations when appropriate. Amounts identified as excess represent a very small portion of total obligations and do not result in projects being delayed on a national basis.

Mr. YOUNG. The other question I had is how in the world did the Springfield spaghetti bowl get so out of whack as far as estimate and final numbers and the big dig? Where were we during that period of time?

Mr. MEAD. I think basically, Mr. Chairman, they came up with an estimate that was discussed in the public back in the early days, and this is true for both Springfield and the Central Artery, and before they really knew what the scope of that project was going to be. That was one problem. And so that estimate gets out there and it takes on a life of its own. People say, oh well, Springfield is only going to cost \$250 million or \$275 million, and people begin to rely on that. The State transportation plan is built around the assumption that Springfield is only going to cost that much money, and all these other projects are built into the plan on the assumption that they will be able to get underway because Springfield will be cheap.

Mr. YOUNG. What you are telling me is they were given a golden estimate when really it was much larger than that.

Mr. MEAD. Yes.

Mr. YOUNG. And they should not have done that. How do we correct that?

Mr. MEAD. I say that number one, you ask that estimates be provided only after a certain percentage of design has been complete and, number two, you ask the Federal Highway Administration to promulgate cost estimating standards so that all the States are doing it in a uniform way. I believe Administrator Peters is doing that anyway.

Mr. YOUNG. Ms. Peters, if in fact, can you set the estimate? Can you say that, no, the estimate is being purveyed publicly or wrong, and this is what is right? Can you do that?

Ms. PETERS. Certainly, sir, if we believe that the estimate that has been presented to the public is erroneous, we will do that. In fact, we sent a letter to the Virginia DOT just about a year ago on a component of the Springfield Interchange and the cost, when we felt that they had not correctly represented the full cost. So we certainly can do that.

The process that I prefer is that the State prepare the estimates based on cost estimating guidelines, which we are providing to them, as well as a study that has been prepared by the National Cooperative Highway Research Program. So there is some good documentation out there on how to prepare good, complete cost estimates, and to do it, as Inspector General Mead said, at the appropriate time. If the State misrepresents the cost and our validation of that cost shows it, we most certainly will tell them that.

Mr. YOUNG. Now, do we have to do it or do we have to write additional legislation in our bill, the reauthorization, to make sure it is done?

Ms. PETERS. Sir, no, I don't believe you need additional authorization to ensure it is done. States are required right now to produce fiscally constrained transportation plans. That is in law today. By fiscally constrained we mean that they have estimated the projects correctly, they have estimated the revenue that will be available to them correctly, and they have correctly matched the projects that they are proposing to do within the available reve-

nues. So we have the authority today by law to go in and look at those plans and make sure that they have followed the good cost estimating guidelines.

Mr. YOUNG. Okay, I will finish this up.

Ms. Hecker, Essential Air Service is crucial politically, as you are well aware of, and any advice you can give to us to try to make sure this program works as it should work in the remote areas, we would gladly try to accept some kind of language, because it is an expensive program. More areas are eligible, but the big thing is we have some members that are very dependent upon, not because of passenger services, because of ability to move product from their community and receive product by air. And so this is a very touchy issue. It doesn't affect my State because every area in my State needs Essential Air because we don't have any roads. But these other States, Pennsylvania, you know, Montana, Wyoming, you know, States like that, the members come to me and say we are not going to destroy Essential Air Service. So I need your help on that.

We have a series of votes, and I will let Mr. Petri, if he would like to, conduct a few questions. Or Mr. Lipinski first. I am sorry.

Mr. LIPINSKI. Thank you, Mr. Chairman.

Mr. Mead, how much money, all together, is in the highway money that hasn't been utilized for 24 months or greater?

Mr. MEAD. I can't tell you an answer to that because when we do our work, we pull a sample. And that is the information I am going to communicate to the Committee pursuant to Mr. Young's request. But we don't have the resources to do it for all 50 States, so when we go out, we take 10 States one year, 10 States another year. And we are doing that again this year, and the numbers I just gave you are based on fiscal 2001 numbers. So what we will be coming out with soon is going to be numbers on fiscal 2002, and we will have some additional States in that sample. But every State should be doing this, I mean, it is their money.

One of the States we looked at in 2001 was California. Everything I have been reading suggests they are having problems; they need every penny they can get. And they had over \$100 million sitting idle.

Mr. YOUNG. Would the gentleman yield for a moment?

Mr. LIPINSKI. Yes, Mr. Chairman.

Mr. YOUNG. I was one of those people who got some money in the last TEA-21 for a community, and the State decided not to spend it, nor the community, so I conveniently moved the money to another community that spent it very quickly.

Mr. LIPINSKI. I have done the same thing, Mr. Chairman. I want to make sure that we focus in on this because if this money is not being utilized, I would certainly like to see it reprogrammed in the bill we are working on at the present time. And I understand this money is in the Highway Trust Fund at the present time, it simply has not been called upon by the States to do the projects that they were supposed to do.

Mr. MEAD. Yes, sir. Another strange thing about this is that it is not as though the States are going to lose the money. They can apply it to other projects. It is only if the State says, no, I don't

have any use for the money, that it gets forfeited to the U.S. Treasury.

Mr. LIPINSKI. But there is no question that in our legislation, if need be, we could write legislation saying that you have X number of years to use this, and if you fail to do so, then we can reprogram it to some other needy cause.

Mr. MEAD. Yes, sir.

Mr. LIPINSKI. Do you do the same thing for transit programs?

Mr. MEAD. Yes, we do.

Mr. LIPINSKI. Okay. And do you have any figures on any transit programs available today?

Mr. MEAD. I don't have the figures with me, sir.

Mr. LIPINSKI. Well, I am sure that the Committee would also be very interested in receiving the same information about transit programs that we are going to receive about highway programs. I don't know how interested the Chairman is in transit, but I am enormously interested in transit, coming from the area that I come from. So I would like to go into that also.

Mr. MEAD. But there is a problem there too. I mean, highways is not alone in this issue.

Mr. LIPINSKI. No, I am well aware of that. There is some money that we have had reprogrammed over the course of the last five years or so for transit projects, and, unfortunately, there still hasn't been a full funding agreement reached between the agency and the Federal Government and that money is still sitting there, and I don't want to see that wind up being reprogrammed. But sometimes it is very difficult to ascertain where the problem lies with the State or with the Transit Agency or lies with the regional office or lies out here in Washington. I have a particular situation at the present time, and it seems like I have been involved deeply in it for the last couple weeks, and everybody I talk to blames somebody else about it. But the problem is it is not getting done.

Let me move to Essential Air Service. You were saying that it has decreased by 20 percent in the last five years, the use of Essential Air Service, is that correct?

Ms. HECKER. I am not sure the 20 percent was the decrease of the use.

Mr. LIPINSKI. Okay, well, here is my problem. Based upon information that I have here, the GAO is saying that subsidized communities decreased about 20 percent between 1995 and 2000, seeing the number of enplanements fall from 592,000 to 477,000. But the Department of Transportation, in their data that has been released, contends that there has been an increase by 46 percent since 1995, from 554,000 to 810,000 in 2002. There is obviously quite a discrepancy. One entity is saying that it has fallen, I estimate, 20 percent; another entity is saying that it has risen 46 percent. It seems to me that the GAO and DOT should get together on this particular issue because, as the Chairman mentioned, there are some States in this Country where politically this is enormously important, and I think we need to really know exactly what the facts are pertaining to this.

Ms. HECKER. Well, certainly when we finalize our reports, I think you know very well that it is given time with the Agency for very detailed review. So the facts in our report were validated and con-

firmed by the Agency. It could be that we are looking at some different count, and I would be happy to reconcile that and provide it for the record. But everything in our report was cleared and confirmed by DOT. The Essential Air Service is run by the Secretary's Office, and all of the data in there I think was validated. So I would be happy to reconcile that.

Mr. LIPINSKI. I think that we should get that reconciled because, as I say, I think it is a very important political issue.

Thank you, Mr. Chairman.

[Information received from Mr. Mead follows:]

The following list of inactive obligations represents amounts that may no longer be needed by FTA grantees. The list includes funds for projects that states have agreed to deobligate as a result of our recent audit of inactive obligations and projects for which the status and need for the future are known as of September 5, 2003.

Inactive Obligations by Period of Inactivity			
Projects with Unexpended Balances Exceeding \$1 Million			
Federal Transit Administration			
Project #	Project Description	Unliquidated Balance	Date of Last Expenditure
AL030019	Purchase Buses -City of Mobile, AL	\$1,265,346	18-May-99
CT030097	Norwich Transportation Center - Intermodal Terminal Site/Acquisition & Design, CT	3,413,959	2-Aug-00
WA90X190	Construct Bremerton, WA Transportation Center	1,151,746	28-Jan-00
NC030023	HOV lane construction - City of Charlotte, NC	7,717,376	2-Dec-98
	Thirty-six Months Inactive Subtotal	\$13,548,427	
OH90X343	Southwest Ohio van and bus procurement	2,405,669	19-Mar-01
PR90X094	Municipality of Vega Baja Corridor Between East & West Terminals, Puerto Rico	1,110,695	27-Aug-01
MN90X139	Metro Council, Minneapolis, MN acquirement of land	3,500,000	19-Mar-01
WA90X236	Bus Purchase -Central Puget Sound Transit Authority	2,044,000	4-May-01
	Twenty-four Months Inactive Subtotal	\$9,060,364	
	Total Inactive Obligations	\$22,608,791	

Mr. YOUNG. Thank you.

I had one question, and then I will have Mr. Petri, if he wishes, ask question, then I think we ought to go over and vote. In fact, we might do that anyway.

What about the jet fuel use, and have you communicated with our staff on how to write language? Because one of our components of getting the 375 is the recovery of \$4 billion of lost money on not collecting the tax or avoiding the tax. And I am not happy with the Treasury Department right now. I don't know who else is in charge of that. They have not enforced it as they should. So any language you can offer to make sure this can be done. I think it is unfair to have someone avoiding the tax when they are still using the highways.

Mr. MEAD. We will do that. And if I might just make two quick points about this, indicating how you could help us. First, we are ready and willing in the IG's Office, and I know Highways is as well, to really move out on this, but we are handicapped. We don't have access to tax records. Only the IRS does, and they guard that prerogative. And the level of interest at the Department of the Treasury in this, to put it mildly, could be higher; and if it is not, we cannot do an investigation without the active involvement of the Internal Revenue Service at the present time. So this money is mythical unless we are given the tools to go after it.

Mr. YOUNG. Well, you know, Mr. Mead, I have told you before I am going to give you as many tools as we possibly can to get the money to me to put in our infrastructure, and that will have to be part of our program with Bill Thomas, and he ought to support this, especially if I give him a percentage of it in his district. But reality is there have been people out there just not paying their taxes, and that is not correct.

Can I ask does anybody at this table know, Ms. Peters, probably, how do we know what money we are collecting? I know there was a case where we tried to get an estimate of off-road vehicles and what they were paying for so we could build some trails under our bill, and we never did get it. How do we get this information? How do we know what money we are collecting?

Ms. PETERS. Mr. Chairman, it is difficult to determine how much evasion is occurring and where off-road versus on-road use is occurring, because so much of that is dependent on voluntary reporting by the users of that fuel in many cases. The Inspector General talked about certain cases that deal with aviation fuel, where I think there are some evident things we can do. Off-road use is a little more difficult because State laws, as well as Federal laws, govern how the reporting mechanisms apply for off-road versus on-road use of that fuel.

I can talk to staff, we can try to get back to you on the record, sir, with anything else we can provide to you that would give you a way to get a feel for what that type of use would be.

Mr. YOUNG. Well, I would appreciate that because, you know, I keep hearing from OMB that the Fund hasn't got the monies, and I can't even get an answer from anybody to tell me what estimate the amount of dollars are coming in on. You know, we know how much fuel we are burning; we are not burning less fuel, we are burning more fuel at a higher cost, and yet they keep saying we

don't have the money. And I am saying where are the figures? And nobody will give me the figures. I haven't got any figures from anybody yet.

Ms. PETERS. I do understand, sir. We have a limit to what we have available to us within the DOT as well, but we will share whatever we have with you.

Mr. YOUNG. And tell me where the rest of it is, and we will see if we can't get that.

[Information received from Ms. Peters follows:]

OFF ROAD FUEL USE

Authoritative information on the amount of fuel used off-road is sparse. Diesel fuel used off road is not subject to Federal excise tax. When diesel fuel is removed from bulk storage for nonhighway purposes, it is dyed red as an aid to tax enforcement, but the Internal Revenue Service (IRS) does not track or keep records on amounts of dyed fuel.

Off road use of gasoline is even more challenging. The Federal tax on gasoline is imposed at the time the gasoline is withdrawn from the bulk storage and distribution system. At this point, the use to which the gasoline will be put is not known. The Federal tax on off-road business use of gasoline is subject to refund or credit. When businesses claim their refunds or credits, they report that the amount claimed is due to off-highway business use, but do not specify the type of use. Since the amount is recorded on the tax form, presumably the amounts could be captured. Generally the IRS summarizes refunds and credits by type of fuel rather than the reason for the refund or credit.

Off road nonbusiness use of gasoline is subject to Federal tax and the proceeds are initially deposited in the Highway Trust Fund. The proceeds from aviation gasoline are then transferred from the Highway Trust Fund to the Airport and Airways Trust Fund. As required by law, the Department of the Treasury estimates the amounts of gasoline taxes collected as a result of use in boats and small engine outdoor power equipment, such as lawnmowers, chainsaws, and snow blowers. These estimated amounts are transferred to the Aquatic Resources Trust Fund and to the Land and Water Conservation Fund.

The Highway Trust Fund retains taxes from off road nonbusiness use other than those described above. Examples of such uses include use in snowmobiles, all terrain vehicles, and off-road use of sport utility vehicles. The amounts of such use cannot be identified from Federal tax records, because these uses occur after the point where the tax is imposed.

The Federal Highway Administration (FHWA) estimates the highway use of gasoline in each State. As part of this effort, FHWA collects fuel tax information from State tax agencies. State fuel tax laws vary considerably, and the amounts reported by State tax agencies often include nonhighway uses of gasoline. To bring State data to a consistent and uniform result, FHWA estimates off-road use of gasoline when State data does not identify highway use criteria (diesel data is relatively consistent). The results of these estimation procedures are displayed in Table MF-24, entitled Non-highway Use of Gasoline (copy attached).

In addition, FHWA models recreational fuel used by motorized vehicles on recreational trails or backcountry terrain. Fuel use by vehicles such as light duty trucks (sport utility vehicles and pickups), motorcycles, all terrain vehicles and snowmobiles is estimated by multiplying the population of these types of vehicles in a State by an estimation of the

fuel use for each type of vehicle. The amount of rural terrain in a State is also factored into the estimate. Last year, the estimated off road use for recreational purposes was approximately 1.8 billion gallons.

PRIVATE AND COMMERCIAL NONHIGHWAY USE OF GASOLINE - 2001 1/

JANUARY 2003 (THOUSANDS OF GALLONS) TABLE MF-24

STATE	AGRICULTURE 2/	AVIATION 2/	INDUSTRIAL AND COMMERCIAL	CONSTRUCTION	MARINE	MISCEL- LANEOUS 3/	TOTAL
Alabama	17,787	4,229	17,312	7,408	22,867	-	69,603
Alaska	794	12,588	1,038	1,386	3,428	28,516	47,750
Arizona	3,299	9,846	23,285	12,151	14,327	-	62,908
Arkansas	19,325	9,390	17,412	2,978	11,886	-	60,991
California	42,753	27,554	94,590	55,064	44,571	171	264,703
Colorado	14,272	13,905	25,478	9,946	6,628	-	70,229
Connecticut	3,068	3,996	11,266	8,406	10,739	11,280	48,755
Delaware	1,099	3,185	1,714	1,386	7,143	1,019	15,546
Dist. of Col.	-	90	630	4,700	262	10,450	16,132
Florida	28,343	24,842	38,232	34,066	102,811	5,712	234,006
Georgia	19,994	4,754	58,769	20,452	23,198	431	127,598
Hawaii	1,085	2,484	3,190	905	1,755	-	9,419
Idaho	11,019	2,888	10,558	2,259	6,577	707	34,008
Illinois	26,748	5,803	43,937	17,988	26,320	6,211	127,007
Indiana	20,302	3,444	15,412	10,386	13,828	8,319	71,691
Iowa	35,108	2,946	12,056	3,818	10,539	21,680	86,147
Kansas	27,917	10,088	8,557	4,673	4,464	1,925	57,624
Kentucky	25,131	4,815	40,627	7,237	15,559	-	93,169
Louisiana	4,842	14,717	38,638	5,857	28,785	38,585	131,424
Maine	2,237	2,976	5,049	1,868	6,746	-	18,876
Maryland	6,884	5,387	18,092	8,445	19,936	-	58,744
Massachusetts	2,058	4,111	19,491	17,198	11,205	1,755	55,818
Michigan	20,432	4,082	41,293	16,137	69,820	15,018	166,782
Minnesota	37,858	4,893	15,418	8,885	31,589	-	98,643
Mississippi	22,089	5,429	21,009	2,993	24,114	372	76,006
Missouri	29,960	7,504	36,154	7,963	30,503	11,744	123,828
Montana	13,991	5,587	8,195	978	2,677	95	31,623
Nebraska	27,584	4,427	9,818	3,031	3,983	7,931	56,774
Nevada	1,596	4,509	10,875	6,864	5,325	-	29,169
New Hampshire	1,952	3,273	8,329	2,373	7,418	387	23,732
New Jersey	4,216	3,115	20,390	16,211	39,920	709	84,561
New Mexico	6,657	4,054	15,788	4,300	4,875	28,174	63,848
New York	19,677	12,802	26,906	27,325	55,873	3,991	146,574
North Carolina	39,576	7,784	28,967	17,142	32,447	8,373	134,289
North Dakota	18,001	4,401	3,484	872	2,495	-	29,253
Ohio	18,969	7,574	42,461	18,096	37,862	4,936	129,898
Oklahoma	25,273	4,120	23,583	4,952	19,047	-	76,975
Oregon	11,801	11,636	16,268	6,162	11,828	3	57,698
Pennsylvania	15,878	6,300	23,218	18,754	24,689	1,640	90,479
Rhode Island	408	742	2,102	978	3,728	1,424	9,382
South Carolina	11,780	3,681	16,025	6,676	31,216	102	69,480
South Dakota	21,316	2,236	4,454	996	2,568	849	32,419
Tennessee	15,104	3,067	13,256	12,148	22,451	-	66,026
Texas	43,621	24,034	112,609	40,372	47,314	-	267,950
Utah	5,681	3,887	10,822	4,714	8,158	-	33,262
Vermont	2,924	2,247	3,702	582	1,746	-	11,201
Virginia	18,260	8,477	25,172	15,015	24,113	2,691	93,728
Washington	17,255	7,614	14,083	12,798	21,844	4,326	77,920
West Virginia	3,458	1,775	8,294	1,677	4,070	-	19,274
Wisconsin	25,451	12,029	16,344	8,547	26,636	1,109	90,116
Wyoming	6,719	10,767	10,801	564	1,954	1,653	32,458
Total	801,552	355,884	1,095,153	506,682	993,837	232,288	3,985,396
Percentage	20.11	8.93	27.48	12.71	24.94	5.83	100.00

1/ This table is one of a series giving an analysis of motor-fuel consumption. A complete and uniform classification of nonhighway use is not possible due to differences among the States as to what classes of nonhighway use are eligible for exemptions or refunds and because some eligible refunds are not applied for. In order to make the data uniform and complete, nonhighway uses of gasoline were estimated by the Federal Highway Administration or data were obtained from other sources. These estimates may not be comparable to data for prior years due to revised estimation procedures. All data are subject to review and revision.

2/ Excludes aviation jet fuel.

3/ An amount is shown in this column only when reported by the State and when it could be determined that the State-reported figure did not include fuel represented in other categories.

Mr. YOUNG. I think we ought to go over and vote, gentleman, and when we come back Mr. Petri will be chairing the meeting. And with that we are in recess until the votes are over.

[Recess.]

Mr. PETRI [ASSUMING CHAIR]. The full Committee will reconvene, and we will call on Dr. Burgess for questioning.

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. Mead, of course, you and I met much earlier this year, I believe it was in March, and you covered a lot of these issues with me that day, and I very much appreciate your taking your time to do that, and I appreciate your being back here today. I visited just yesterday with a lab not in my district, but in North Texas, that is using a new type of molecular fingerprint, a new type of technology, and they are in fact currently monitoring an oil company's supply line, monitoring for where there might be dilution of their product and where the company's product may be diverted. And certainly it strikes me that some of these same technologies, if applied to our supply chain in the fuel system, could certainly identify or help identify the degree of tax revenue that is being diverted.

I was also interested in what you said about the issue of diversion of jet fuel, and I guess the question that I have for you, and obviously that technology could be useful as well in jet fuel or off-road diesel or on-road diesel. But currently it is my understanding that the diesel that is non-taxed, that that is available for off-road use, such as farm machinery, is actually now tagged with a red dye, and some of that dye is in fact making its way back in as a contaminant into the aviation supply, as well. And is that red dye in any way harmful to the life of our jet engines?

Mr. MEAD. I don't know. I don't know the answer to that question. I have heard the same story you have, and I have heard the same concern, but I cannot tell you categorically that it is yes.

Mr. BURGESS. Well, suffice it to say, though, that utilizing new technologies to ensure that our fuel supply is properly taxed and not diverted and not given to uses other than it was intended would be to everyone's benefit, and certainly I hope that we on the Committee work with you and I hope we write the type of language that you need to ensure that this happens.

Mr. MEAD. Absolutely, because, you know, I know there is an issue about indexing taxes and increasing taxes. Here we are talking about money we are already entitled to, that should be going into the coffers. And we just need some vigorous enforcement, and I really, I know Administrator Peters feels likewise, would appreciate your help in getting the tools, especially if we are going to count on that revenue coming in so we can spend it.

Mr. PETRI. Thank you.

Mr. Ehlers, any questions?

Mr. EHLERS. Thank you, Mr. Chairman.

I just want to thank all of you for being here. This is not a big surprise to me, since I worked in the construction industry years ago as a student, and have been on a local county commission that had to deal with similar situations.

It seems to me on the fuel tax issue, the best thing to do, if we can get the agreement to do that, is transfer the enforcement over to the Department of Transportation. In my experience, enforce-

ment works best when the enforcers have a personal interest in the outcome. And I suspect the Internal Revenue Service does not have any particular personal interest in that, as compared to corporate taxes and individual taxes, which they are more familiar with; and they may not particularly want to go slogging around in gas stations and airports and so forth to find out. But I think that strict enforcement will not result in very many prosecutions, but it will certainly result in a change in behavior, which is what you really want. So I hope we can pursue that.

I also want to commend you, Mr. Mead, for your diligence in this; I think that is the primary function of your jobs. And I know most IGs are pointing out what Government does wrong, which is also a useful function, but at the very least we have to make certain that we get rid of fraud, which is the worst possible thing you can have in a democratic system of government.

So I thank you all for your efforts on that. And with that I have to go vote on a markup, so I yield back the balance of my time.

Mr. PETRI. Thank you.

I would like to add my voice to that of Mr. Ehlers in saying how important this is. We need adequate investment in our infrastructure, but, of course, one of the factors as to whether people are willing to fund it or not is whether they feel they are getting value for the dollar spent. And so at least the assurance that we can't expect a perfect world, but that we can do the best we can, and that we are working hard to make sure that, in fact, people do get value for dollar spent is very important.

I have one area I wonder if I could ask you about. The structure of the program is referred to in your testimony as being largely State, rather than Federal, and that makes some difference in the way you audit and review, and so on. That can be a strength, as well, in the sense that States are spending their own money, as well as Federal money; they must vary considerably. There must be kind of a best practices or different techniques are tried in different States. Are we making an effort to review that? Are there any States that are doing particularly well in adjusting to the challenge of changing efforts to rip the system off? I noticed some reference to some changes Florida recently made, as one example, to increase their revenue. Could one of them talk about that a little bit, or do you have any comments? I know you used to be a State transportation director, so you are very familiar with this. I suspect they have meetings all the time to discuss what each other is doing and trying, and what works and what doesn't work.

Ms. PETERS. Absolutely, Mr. Chairman. I will start and then invite my colleagues to come in as well. But there certainly are some States, Florida is among them, who are doing a very good job of project management, and cost estimating. And what we are trying to do working through AASHTO, the American Association of State Highway Transportation Officials, that committee structure, as well as through our Federal Highway Administration division administrators, is migrate those best practices from one State to another.

I talked to this Committee earlier about major projects, and there are some States who have never done a major project before, or they may be doing one for the very first time. So having, then,

the benefit of experience of other States who have done that and learned how to manage these big projects is an example of how we can bring best practices from one State to another.

We are working within our agency, with AASHTO, as well as the Cooperative Research program, to define best practices for cost estimating and best practices for project management, not only on these mega-projects, but on the everyday run-of-the mill projects as well.

But, Mr. Chairman, I do think that it is a strength that it is a state administered, Federally-assisted program. Our obligation on the Federal level is to make sure that the States have the tools and the knowledge they need to administer their programs appropriately.

Mr. MEAD. I would like to mention a couple of best practices that I would encourage the Committee to consider in its legislation as well. One is some States have a very robust effect in the audit area, the fraud detection area, and other States do not, and I think a more robust area ought to be encouraged in the legislation. The second area is when we find a case of fraud, usually it is the State that has been damaged, and under Federal law the State doesn't get to keep the money, it comes back to us; not to the Highway Trust Fund, it goes back to the U.S. Treasury. It seems to me that it is a good incentive for a State to stay on top of this and have vigorous fraud efforts if there is some return for them.

And I think we have had a couple cases where we have managed to get part of the recovery sent back to the State. One is in Louisiana, where we found a buried culvert that didn't have the proper laminate on it, and there is a \$30 million recovery there just as a result of that one effort. But we managed to get the judge to send some of the money back to the State because, after all, they had been damaged. But let me tell you it was a tortuous and energy intensive effort to get the machinery of government to agree to give this money back to Louisiana. And so the Administration's proposal, I believe, has a provision in it that would allow these recoveries to be shared with the States.

Mr. PETRI. Thank you.

A number of members have had to go over to vote and not come back, but we will keep the record open and submit questions in writing so as to cover a number of areas.

There is one area the staff was particularly interested in getting your advice on, and that is in the area of contract authority, as opposed to obligation limitation. What would be the impact on the budget and the Highway Trust Fund if the contract authority were reduced to bring it more in line with the obligation limitation?

Ms. PETERS. Mr. Chairman, if those two numbers were more in line with each other, I think it could benefit the States. I think that it is a misnomer, and I have heard this talked a little bit, to maybe shave off what is called excess contract authority and try to reuse that. I think that would be very difficult for the States to deal with because in situations such as we may be dealing with in a month or so here, where a State can carry forward a balance of contract authority in some accounts until the obligation authority becomes available, it gives the States more flexibility to manage their programs. But, if those two numbers were brought more in

line with each other, that could be helpful. However, I would be hesitant to suggest that we should reduce contract authority to the States.

Mr. MEAD. Since 1992, the amount of carry over contract authority, the difference between the obligation limitation and the contract authority is running in the neighborhood of \$25 billion to \$30 billion over the 10-year period. And that is a very substantial difference, and I think it would be helpful, if for no other reason than the accounting for it, if there was more of a correlation.

Mr. PETRI. Thank you.

Mr. TAYLOR. Any questions?

Mr. TAYLOR. I am curious, and I will open this up to the panel. The other day, kind of jokingly, a friend came up to me, he happens to be blonde hair, blue eyes, and had gone to work for a "minority" contractor and was joking that he was now Hispanic. And what I have often suspected, and would like to hear your thoughts on, is that on an all-too frequent basis a fairly well heeled individual puts a face on his company that is either Hispanic, black, Native American, or a female, and it is a well heeled individual, but he is now suddenly a minority. To what extent has that ever been investigated? Because I am sure this guy was just making light the other day, but I think I have heard it too many times. I have actually heard of a story in my own congressional district, where someone bid on a \$500,000 job. One guy bid 400,000, the other guy bid 500,000. Because of the set-aside, it was given to the guy who bid 500,000, who immediately turned around and hired the guy who bid 400,000 to do the work. So, in effect, he pockets \$100,000 for doing nothing.

To what extent is that looked into? Because I do believe in giving folks a chance. I honestly believe in giving everybody a chance, but I think it ought to be based more on income and real need rather than on some sort of a front.

Mr. MEAD. This is a serious problem, and if we don't come to grips with it, it is going to get even more serious. Fully one-third of our criminal caseload in the highway transit area is dealing with criminal DBE cases of the type that you mentioned and of the type, frankly, that are even more serious, involving, in some instances, very large contractors who have managed to secure government contracts because they come in with a requisite DBE. The DBE percentage is part of their offering and the DBEs turn out to be a front.

Mr. TAYLOR. Help me out. What is a DBE?

Mr. MEAD. Pardon me?

Ms. PETERS. Define DBE.

Mr. MEAD. Disadvantaged business enterprise.

Mr. TAYLOR. Thank you. Okay.

Mr. MEAD. Which I think was what you were referring to.

Mr. TAYLOR. Yes, sir.

Mr. MEAD. In the last three years we have criminally prosecuted two of the largest disadvantaged business enterprise cases in American history in the highway program, one out of New York, another out of West Virginia. And I think this is a major area of emphasis, and Administrator Peters, I am certain she would like to add to that.

Ms. PETERS. Congressman Taylor, I think you bring up a very good point. In the real world, the way the program should be operated, who ever owns the firm has to meet certain income caps in order to qualify as a disadvantaged business enterprise, as well as be part of certain ethnic groups that are categorized in law as disadvantaged business enterprises. So there are several criteria that have to be met.

Where we have problems, and perhaps what this fellow was suggesting to you, is where a front is set up, where this person really is the owner of the firm, but he is putting someone of color, or someone who has an earnings under the cap in the position as owner of the firm. That situation should be dealt with very comprehensively in the certification process. Sometimes it is not.

I have, as the Inspector General indicated, put a big emphasis on this program and on the integrity of the program. It is the law, and when people disobey the law or abuse this program, they are depriving legitimate disadvantaged business enterprises from obtaining this work. So what we are doing is working with our division administrators to go in and do a real hard scrub of the programs in States. What are they doing to certify firms? Are they following the right processes?

I was fortunate, when I was the State Administrator for Transportation in Arizona, that I had a very good person running my program, and I think we had a very solid program; perhaps not perfect, but a very solid program. She and her staff would go on site; they would visit these firms; they would ask questions. They would probe to determine whether the person who was set up as the owner of the firm was really the owner of the firm, was really the person who was making decisions. They would look at bank accounts; they would look at payroll records; they would look at a variety of data. And, in a good, well-administered program, that is what they do to determine there isn't a front in terms of the certification process itself. That is an important part of it.

But even before that is whether the State has established a good program. Do they have a program where they have well qualified people, experienced people in there who are doing the reviews and doing the certifications so that they are qualified to do that? So there are three areas I have asked our staff to look at: the first, how is the program established, does the State have a good process for doing that, and is it in compliance with Federal law; the second is the certification, are they doing due diligence to make sure that firms who are certified as disadvantaged businesses are indeed disadvantaged businesses; and the third is to verify that the people who get the contract as a DBE are actually doing the work in the field. Go out in the field; look at things.

We are working with the Inspector General and others to put on training courses so that we can get both State and Federal staff and contractors more up to speed about what our expectations are in these programmatic areas and, again, I have asked my field staff to make this a priority area, to go out and look very hard at these State programs and make sure that they are administered correctly. As the Inspector General said, it is something that we are working very closely on because we are alarmed at the number of

cases that are coming up where it would appear that there is fraud in the DBE program.

Mr. TAYLOR. If I may, Mr. Chairman, because apparently not a lot of folks are waiting to ask questions.

How often do you tweak the rules? You know, I have been around here just long enough to see how people shut this door, they jump through the window; you shut the window, they come up through the basement. How often do you tweak the rules as people find ways to game the system?

Ms. PETERS. We review our rules fairly frequently, sir, at least about every two or three years, looking at those rules, looking at risk analysis. There were major changes in the rule when the law changed the disadvantaged business enterprise program. Three or four years ago I think were the last major changes, so there were major rewrites of the rules at that time.

What I have asked our field staff to do, working very closely with my Chief Counsel and the head of our Civil Rights Unit, is to go out; do an analysis of what we are finding where people are abusing the program; and then go back and look at our programmatic guidance and our rules to make sure that we are covering those areas. That happens, I would say, almost on a continual basis, sir. But certainly every two to three years, we do a comprehensive review of those rules and make sure that they are dealing with things the way that they should be.

Too often, though, it isn't a fact of the rules or the regulations not being clear, it is a fact that someone is just out to abuse the program. In fact, Ken and I were both astonished when we read a deposition recently of a firm who we believe may have perpetrated fraud in the DBE program, and in the deposition acknowledge: "yeah, that is the way we do business." We were shocked to read that. That is not the way we do business.

Mr. MEAD. I know this hearing is about highways and transit, mostly, but you talk about tweaking rules. We are trying to tweak one now at FAA. It turns out that to be a DBE, disadvantaged business enterprise, that gets a concessions contract at the airport. Under the FAA rules there is no limit on how much money you can make and what your personal net worth is. Your house is totally exempt, you can earn an unlimited amount of money, and be considered disadvantaged; and I think there is something wrong with that picture.

Mr. TAYLOR. Well, I would agree with you, and I would actually use the instance, for what it is worth, I was once approached by an all-pro football player who wanted to get a contract under a minority set-aside. You know, he was a great football player and a wonderful human being who made a lot of money. I don't think he was disadvantaged any longer. And I am not so sure the taxpayers should have been paying him X percent extra. And, quite frankly, it probably is at the expense of someone who truly is disadvantaged, who may look just like him, who didn't make millions playing football.

But I would certainly encourage you. I would welcome your suggestions on that, and if you have a copy of those two cases, I would like to see that, because when people are just laughing about the system and gaming the system that blatantly, something has got

to change. And I can tell you they are laughing about it and they are gaming the system blatantly. I am talking about the country club crowd has figured this game out, and they are the ones who are benefitting from it; it is not the guy who is trying to get a start on life.

Thank you, Mr. Chairman.

[Information received from Mr. Mead follows:]

Response to Congressman Gene Taylor (MS)
(Insert for the record: Testimony before the Committee on Transportation and
Infrastructure, Jul 22, 2003, on pg 53 Lines 1123 -1127)

The Department of Transportation (DOT) has had in effect for more than 20 years a policy of helping small businesses owned¹ and controlled² by socially and economically disadvantaged individuals, including minorities and women, in participating in contracting opportunities created by DOT financial assistance programs. The DBE program is DOT's most important tool for promoting equal opportunity in Federal transportation contracting since it was first signed into law by President Reagan in 1983.

The Department, through its Operating Administrations, distributes in excess of \$20 billion annually to help finance thousands of projects across the country. Approximately 85% of the assistance dollars is for construction. The major portion of the construction funds is allocated to State highway and transportation agencies for highway construction. The balance is provided to local public transit and airport authorities for mass transit and airport facilities.³

In 1983, Congress enacted the first DBE statutory provision. This provision required the Department to ensure that at least 10% of the funds authorized for the highway and transit financial assistance programs be expended with DBEs. In 1987, Congress re-authorized and amended the statutory DBE program. In the transportation legislation of that year, Congress, among other changes, added women to the groups presumed to be disadvantaged.⁴ Since 1987 DOT has established a single DBE goal, encompassing both firms owned by women and minority group members.

¹ The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. (49 C.F.R. 26.69)

² In determining whether a potential DBE is an independent business, relationships must be scrutinized with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. The owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. (49 C.F.R. 26.71)

³ <http://osdbuweb.dot.gov/business/mmp/mihtml123.html>

⁴ Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States who is: 1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; 2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration. (49 C.F.R. 26)

Primarily three major DOT operating administrations are involved in the DBE program. They are the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA) and the Federal Transit Administration (FTA). The DOT DBE program is carried out by state and local transportation agencies under the rules and guidelines in the Code of Federal Regulations.⁵

The DBE Program

While the nation has made great progress towards true equal opportunity, much remains to be done. This is especially true in the transportation-related construction industries. While minorities represent more than 20% of the population, they own only 9% of all construction firms and receive only about 5% of construction receipts. While women represent over 50% of the population, women-owned construction firms receive only 48 cents of every dollar that we would expect them to receive given their availability in the marketplace. The DBE program works to remedy these inequalities.⁶

The DBE regulations provide a narrowly tailored DBE program which serves a compelling governmental interest. The following are several key elements of the DBE program:

- Quotas are prohibited.
- Recipients must set goals based on local evidence of the actual availability of qualified DBEs.
- Recipients must use race-neutral methods (like outreach and technical assistance) to meet as much as possible of their overall goals.
- Business owners with a personal net worth of more than \$750,000 (excluding the value of the primary residence and the ownership interest in the business) may not participate in the program.
- Firms owned by socially and economically disadvantaged white males must be allowed to participate as DBEs.
- In order to minimize burden on non-DBEs, recipients must address "over concentration" of DBEs in certain fields and ensure that bidders who make good faith efforts to obtain DBE participation will not lose contracts.
- Recipients have substantial flexibility to adapt the program to local conditions, including a program waiver provision that allows recipients to seek Secretarial approval for alternative ways of running the program.
- Individual firms must graduate from the program if they exceed the small business size caps or if the firm's owner exceeds the personal net worth cap.

⁵ (Title 49, Parts 23 and 26)

⁶ <http://osdbuweb.dot.gov/business/dbe/Fact.html>

How the Program Works

Among other things, DOT DBE regulations require recipients of DOT Federal financial assistance, namely, state and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

Each DOT-assisted State and local transportation agency is required to establish narrowly-tailored DBE goals. Then these DOT-assisted agencies evaluate their DOT-assisted contracts throughout the year and establish contract specific DBE subcontracting goals where these goals are needed to ensure nondiscrimination in Federally-assisted procurements. The level of DBE subcontracting goals may vary from their approved DBE goal, however, at the end of the year the amount of contract/subcontract awards to DBEs should be consistent with the overall goal.

In order for small disadvantaged firms, including those owned by minorities and women, to participate in the DOT-assisted contracts of State and local transportation agencies they must apply for and receive certification as a DBE. To be certified as a DBE, a firm must be a small business owned and controlled by socially and economically disadvantaged individuals. Recipients get information about firms through on-site visits, personal interviews, reviews of licenses, stock ownership, equipment, bonding capacity, work completed, résumés of principal owners, financial capacity, and type of work preferred.

Manifestations of DBE Fraud and Abuse

Fraud involving the DBE Program for minority and women contractors who are used as “front”⁷ companies is an area with serious enforcement and compliance problems that appears to be nationwide in scope and requires more attention. This type of fraud often involves prime contractors who conspire with sham (front) DBE firms to fraudulently meet required DBE participation criteria in order to obtain contracts. In such cases, DBEs either do not perform the work or yield total control of personnel and operations to the prime contractors. This crime defrauds the integrity of the DBE Program and harms legitimate DBEs who abide by the law.

The following is an illustrative list of some issues associated with DBE fraud or abuse:

- wrongful and/or fraudulent certifications;

⁷ A person or group that serves to conceal the true identity or activity of the person or group in control.

- work “committed” to DBEs is performed by prime contractor or other, non-DBE sub-contractors;
- fronts and/or shell companies deprive legitimate DBEs of opportunities to develop their capabilities and capacities
- DBEs who do not provide a commercially useful function⁸, whether properly or wrongfully certified, undermine the integrity of the program;
- predatory business practices by prime contractor and sub-contractors such as: “shorting” checks for progress payments and/or retainage; exorbitant charge-backs for rented tools and equipment; not employing written sub-contracts; obtaining work by word-of-mouth commitments which are not kept; and obtaining work on change orders for which the prime contractor is paid, but the DBEs—or other involved sub-contractors are not;
- dismissal of DBE with no replacement;
- over-reliance on one or a limited number of DBEs, sometimes allowing success and over-commitment to drive them out of business;
- almost exclusive reliance on one segment of the DBE community to the exclusion and detriment of others;
- paying DBEs for signing contracts on which they do not perform work to allow the work to be performed by the prime contractor;
- falsifying data employed to set overall and contract-specific goals;
- falsifying reports by prime contractors, subcontractors, and State program managers;
- DBEs using equipment or employees of prime contractor; and
- prime contractors or other subcontractors responsible for supervision of DBEs’ ostensible employees.

OIG Investigations

When conducting investigations of alleged DBE fraud, focus is generally on certain aspects such as: false claims to the government; false certifications and/or representations to the government; fraudulent use of labor; “no-show” labor; false books and records; payoffs or kick-backs; and bribery. Associated violations include the following from Title 18 of the U.S. Code: False Statements, False Claims, Mail Fraud, Wire Fraud, Conspiracy, Bribery, and Money Laundering.

⁸ A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. (49 C.F.R. 26.55)

Below are the two DBE investigations that Inspector General Mead briefed at the Committee hearing. Since these are on-going investigations, we are limited in the amount of detail we can provide at this time on them:

- A DBE contractor working on a \$30 million Central Artery Tunnel (CA/T) Project subcontract is alleged to be a “front” for two other firms. FHWA funds the CA/T project. The contractor was awarded a CA/T Project subcontract, but is not believed to have the necessary financing to complete the work. A non-DBE company was observed performing the work on the DBE’s contract. Investigation has disclosed that the DBE and non-DBE company is considered the same company. There are additional allegations that the contractor may not be executing its duties under the sub-contract, including performing, managing, and supervising the work involved.
- A New York-based prime contractor is alleged to have utilized four “front” companies to fraudulently qualify as a DBE on \$257 million worth of Federally-funded roadway improvement projects in the New York City metropolitan area. The four “fronts” supposedly received approximately \$23.5 million, but did not perform any work on these projects. All supervision, labor, and materials were supplied by the prime contractor and/or third party contractor who are not certified DBEs. The DBE merely acted as a payroll processing service so that it appeared that laborers and supervisors on the projects were employees of the DBE, when in fact, they were employees of the prime contractor or third party contractor.

Inspector General Mead believes DBE fraud is a priority and is making an effort to ferret out this type of criminal activity.

Mr. PETRI. Thank you.

Mr. Pearce, any questions?

Mr. PEARCE. Thank you, Mr. Chairman.

Coming from a district with about 50 percent minority, I hope that you reach the balance that we need. We have got a lot of minority firms that are capable and qualified, and so I just hope that we keep that in mind as we go through the process.

When we find offending people that create fraud in one State in your system, do you have a website that posts these people on? A lot of times people simply move their office over and do the same fraud in another State. Do you provide that informational service to other States?

Ms. PETERS. Congressman, yes, we do. We have a website, and what we have done on that website is list instances of DBE fraud so that we know what firms are doing it, so they are not moving from one State to another, but also to educate our staff on what type of a game was being played so that people can be on their toes and look for that in other places as well. And we would be pleased to provide you the site address for that website.

Mr. PEARCE. I would like that very much.

[Information received from Ms. Peters follows:]

REQUESTED WEBSITES

The official site for Federal Government-wide suspension / debarment is the General Service Administration's Excluded Party List (EPL) (<http://epls.arnet.gov/>). It currently lists about 30,000 individuals and firms who are excluded from direct Federal and Federally assisted programs. State DOTs must use this list when approving any contract, subcontract, consultant agreement, or any other contract for services using Federal-aid highway funds. The FHWA's policies concerning suspension and debarment actions are in 49 CFR Part 29 and FHWA procedures are listed in Order 2000.2a - "FHWA Nonprocurement Suspension and Debarment Process (Federal-aid Program)" (<http://www.fhwa.dot.gov/legregs/directives/orders/20002a.htm>).

The current suspension, debarment or voluntary exclusion actions taken by the FHWA are listed at:
<http://www.fhwa.dot.gov/programadmin/contracts/actions.htm>.

Our summary of State "Precluded from Bidding Information Web Sites" (including State suspensions, debarments, removal from the approved State bidding list, removal of a prequalification rating, etc.) is listed at:
<http://www.fhwa.dot.gov/programadmin/contracts/sdlinks.htm>. Note that inclusion on this list will not necessarily result in an inclusion on the Federal EPL.

In addition, to promote an effective Disadvantaged Business Enterprise (DBE) program, most States list certified DBEs on their web page for prime contractors to contact during the bidding process. For example, the Georgia DOT provides such a list at (http://tomcat2.dot.state.ga.us/ContractsAdministration/uploads/dbe_dir.pdf).

Mr. PEARCE. The comment that the fraud is on the increase, that you are saying, Mr. Mead, a dramatic rise in cases, any recognition why that would be occurring?

Mr. MEAD. I think we are seeing now the initial impact of the big plus-up in the aviation bill and the highway bill. There was a very substantial tick-up in the dollars that were being made available. Where there is more money, I think you would not be surprised to find this type of activity.

At the same time I think up until about two and a half years ago, roughly when the Administrations changed, the Federal Highway Administration had basically turned into, I don't want to use the wrong terminology, but it seemed to us that they were not emphasizing a lot of oversight. It was becoming more of a cash and carry operation. And also states had cut back on the amount of audit resources that they were applying. And one of the clear initiatives of this Administration, I believe, is to begin to shift that pendulum back.

And somebody was mentioning earlier that even though you go out and do a fraud case and maybe you send somebody to jail for two or three years, and you have a \$500,000 fine, that sends a message; it gets out there in the community. And that is very, very important, to send a message, because just that one fine really has a multiplier effect, I think, in people's awareness that something is being watched.

Mr. PEARCE. Mr. Mead you said you had documentation on which States do a good job and which do not. Is it possible to get a list of those and which States have an aggressive to an assertive fraud task force or audit program?

Mr. MEAD. Yes, it is, and with your permission, I would like to collaborate with Administrator Peters to compile that.

[Information received from Mr. Mead follows:]

Response to Congressman Steve Pearce (NM)

(Insert for the record: Testimony before the Committee on Transportation and Infrastructure, July 22, 2003, on page 56, line 1190)

The U.S. Department of Transportation (DOT) is responsible for ensuring that firms competing for federally assisted DOT contracts and grants are not disadvantaged by discrimination. Through its Disadvantaged Business Enterprise (DBE) program, DOT fosters equal opportunity in transportation contracting for small businesses owned and controlled by socially and economically disadvantaged individuals.

Inspector General Mead is committed to ferreting out DBE fraud impacting Department of Transportation funds and programs. This type of fraud often involves prime contractors conspiring with illegitimate DBE firms to fraudulently meet required DBE participation criteria in order for the prime contractor to obtain federal-aid contracts. In such cases, DBEs either do not perform the work or yield total control of personnel and operations to the prime contractors. This crime defrauds the integrity of the DBE Program and harms legitimate DBEs who abide by the law.

The Office of Inspector General (OIG) currently does not maintain a list of good/bad state DBE programs. However, we can offer statistical information regarding the number of DBE investigations and their locations.

Since 1989, the OIG has conducted a total of 85 DBE investigations. Over 50% of those investigations were initiated since 2001. In fact, from 2000 to 2001, we saw the number of DBE investigations initiated double from 7 in 2000 to 14 in 2001. Since then, we have seen a continual rise in the number of DBE investigations initiated each year.

In 1999, the Attorney General issued a policy statement urging the Federal Government to prosecute small and disadvantaged business fraud. In response, OIG intensified its efforts on contract and grant fraud to include DBE fraud. This strong signal from the Department of Justice and OIG's response correlates with the increase in investigations beginning in 2000.

The following is a list of our DBE investigations in 32 different states since 1989:

Table 1. States Containing Past and Present DBE Fraud Investigations

Arkansas	1	Maryland	3
Alabama	1	Michigan	2
California	6	Minnesota	1
Colorado	1	Montana	1
District of Columbia	3	New Jersey	1
Delaware	1	New York	12
Florida	4	Ohio	2
Georgia	1	Oklahoma	1
Iowa	1	Pennsylvania	5
Idaho	1	South Carolina	1
Illinois	4	South Dakota	1
Indiana	1	Tennessee	1
Kansas	3	Texas	5
Kentucky	2	Virginia	9
Louisiana	2	Washington	1
Massachusetts	5	West Virginia	2

The states are the first line of defense in preventing DBE fraud, and we have been working closely with a number of state Inspector General and state auditors on our fraud investigations. For example, the States of Missouri, Florida, New Mexico and the Commonwealth of Virginia have an Inspector General for Transportation.

We will continue to aggressively pursue DBE fraud in DOT programs. In addition to violating the integrity of the DBE program, DBE fraud can often lead to increased costs associated with DOT programs. For example, prime contractors who share profits with illegitimate DBE companies may pass on added costs to the government. At a time when fewer resources are available for important transportation projects, we must reduce waste, fraud, and abuse impacting DOT programs.

Ms. PETERS. Sure. We would be happy to do that.
[Information received from Ms. Peters follows:]

Best Practices in Administration of DBE Programs (provided by FHWA)

The Federal Highway Administration (FHWA) and the Department of Transportation Office of Inspector General (OIG) have found, based on collective experience, that there are certain practices employed by State transportation departments that improve a State's ability to prevent the occurrence of Disadvantaged Business Enterprises (DBE) Program fraud or to increase the likelihood of early detection. An effective DBE program would typically contain the following elements:

- Active monitoring of project sites using construction personnel. Having project inspectors and engineers at construction sites talking to people, observing the work, looking at and recording equipment, and documenting problems or questionable activities on a daily basis are extremely effective ways of detecting fraud or the failure of a DBE to perform a commercially useful function on the project.
- Annual training of field staff (construction engineers and DBE program staff) on fraud prevention and detection. With the frequent turnover experienced by some State agencies, periodic training helps to establish and maintain a competent, professional staff.
- Effective certification as an important first step to assuring only legitimate DBEs participate in a program. Instead of relying on individual investigators assigned to review information presented by an applicant, a State can establish a certification committee to make final decisions. While not foolproof, a properly run certification committee can provide greater objectivity and additional oversight to guard against wrongful certifications.
- Aggressive and active enforcement. An active State monitoring effort by both contract administrators and DBE program staff is an important preventative measure, but is only effective if the available enforcement mechanisms are aggressively and actively applied. Administrative remedies provided for in the DBE program and in contract provisions, such as levying monetary penalties, the suspension of bidding privileges, loss and/or reduction of prequalification status, decertification of DBE status, and debarment can provide significant deterrents for combating fraud.
- Strong leadership. Strong commitment to the program and strong leadership at the top positively affect program administration in immeasurable ways. Administrator Peters, on behalf of FHWA, has stated on numerous occasions, including this hearing, her commitment to maintaining the integrity of the DBE program and the emphasis she is placing on division offices working with States to improve DBE program processes.

Ms. PETERS. And, Congressman, I think you ask a very good question: What is it that is causing this higher instance of fraud? And some of the issues that we know, as Ken said, are the increase in the size of the program. But another issue that we are looking at, and we really are looking at this systemically and, in fact, I have asked our Ddirectors of Field Services, there are three nationally, to look at this program systemically and come back and tell me what they are seeing. Another area where I have determined there is a problem is there aren't enough DBE firms in a certain area or they don't have the types of expertise that are needed for contracts. The State still sets a goal that perhaps can't be met given the current complement of firms. They set the goal too high, so people game the system to try to get the contract anyway.

That is something we have seen a bit of here. This analysis is ongoing that I spoke about, and when we get that completed, I would be happy to sit down with you and kind of walk both you and Congressman Taylor, if you would decide to do so, what we are learning from the systemic analysis.

Mr. PEARCE. I would decide to do so, and if you would just tell my staff, I think they will know.

If I were to ask a question, Ms. Hecker, on the Essential Air Service, you had mentioned that the increases have been dramatic. Is that increased flight hours or increased departures, or just increased funding for the same number of flights?

Ms. HECKER. There has been an increase in the cost per passenger; there has been an increase in the cost per community; and there has been an increase in the costs by carrier. Basically, the program is a subsidy to the carrier. In general every measure of the system has had an increase in costs.

Mr. PEARCE. Okay. And, Mr. Chairman, if I could ask one more question, it would be off-road fuels of Ms. Peters on that.

My district has a tremendous amount of off-road vehicles. The oil and gas. They drive off-road most of the places. It is just dirt roads that they travel on. One of the suggestions has frequently come up that everyone pays tax, and then you have to apply to get that back. Can you tell me the status of that? It would be very problematic for people in our district. And I will close with that.

Ms. PETERS. Yes, sir. And having come from your neighboring State in Arizona, I do understand the challenge that is. All gasoline is taxed when it leaves the rack, so we are really dealing with diesel fuel for the most part. Diesel fuel that is intended for off-road use or non-highway use is dyed red. I think looking at it from that perspective, and trying to get a feel for the system that way, rather than going to the everyone pays and then refund, would probably be, and I am speaking from my own experience in Arizona as opposed to the Department's official position, would be the better way to go. I think we can get a better handle on off-road use and then, through enforcement, determine if that dyed fuel is then being used on the road or where it should not be being used on the road. I think that I would prefer to suggest that we go at it that way, rather than the tax first and refund later.

We did, when I was in Arizona, in working with the sovereign nations, the tribal governments, go to a pay first, refund later, but we negotiated compacts where we were making that refund on a

macro basis instead of a micro basis. That seemed to work well with the tribal governments, but I am not sure that I would want to do that with off-road use.

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. PETRI. Thank you.

Thank you all for your testimony.

The second panel consists of the Honorable Marty Dickman, Inspector General of the Railroad Retirement Board; Michael S. Schwartz, Chairman of the Railroad Retirement Board; and he is being accompanied by Mr. Speakman and Mr. Kever, who were with the Railroad Retirement Board. And we will begin with Mr. Dickman.

TESTIMONY OF MARTIN J. DICKMAN, INSPECTOR GENERAL, RAILROAD RETIREMENT BOARD; MICHAEL S. SCHWARTZ, CHAIRMAN, RAILROAD RETIREMENT BOARD, ACCOMPANIED BY V. M. SPEAKMAN, JR., LABOR MEMBER, RAILROAD RETIREMENT BOARD, AND JEROME F. KEVER, MANAGEMENT MEMBER, RAILROAD RETIREMENT BOARD

Mr. DICKMAN. Good morning, Mr. Chairman and members of the Committee. My name is Martin Dickman. I am the Inspector General of the United States Railroad Retirement Board.

At this time I would ask that my written testimony be made part of the record and that I be allowed to summarize its contents.

Mr. PETRI. It will be made part of the record, and we look forward to your summary.

Mr. DICKMAN. Thank you.

There are three major areas of concern concerning the Railroad Retirement Board that I would present today. The first is improper payments; second is our strategic initiatives; and the third is Medicare fraud.

The Railroad Retirement Board pays out approximately \$8.6 billion a year in retirement and survivor benefits to approximately 684,000 beneficiaries, plus \$99 million in unemployment and sickness insurance benefits. They also pay, on their Part B Medicare benefits, about \$788 million to approximately 571,000 retired and disabled railroad workers.

The improper benefits payments, concern payments made to an annuitant after the death of that annuitant, which consist of approximately \$33 million. The Railroad Retirement Board is doing an excellent job in recovering those erroneous payments. Approximately 90 percent of the payments made in error after the death of the annuitant are recovered by the Railroad Retirement Board.

The second item concerns the strategic initiatives that the Inspector General has proposed. I have said up front to the Board this is not a panacea, we don't consider this to be the one and only method of what we consider innovation in changing the methods or the methodology of how the Board is constructed and how they do business. But, moreover, I think it is incumbent upon every inspector general, as the Inspector General Act of 1978 says, that we promote economy and efficiency in government. I believe that the Inspector General should be at the forefront of innovation in putting out new ideas for people to consider. In that light we put these ini-

tiatives out in 1995 and revised them in line with the President's strategic initiatives.

Basically, there are four components to those strategic initiatives. Number one is reducing the amount of field offices; number two concerns reducing the layers of management and bureaus within the Railroad Retirement Board. Going back to the field offices, presently they have approximately 53. We think based upon the demographics and the use of electronic processing and technology that they could be reduced to six regional offices in the most populous states which account for over 90 percent of where the beneficiaries and employees reside.

Going back to the reduction in management layers, there are, at the present time, approximately 20 bureaus within this agency, which has about 1100 employees. We think reducing these levels would be a much more efficient way of conducting business and would help the overall control environment, as has been cited in previous audits. It would provide more transparency, greater communication, and greater use of resources within the agency. We projected that you could have an annual savings of about \$2 million. Reducing the field offices, we project the savings would be \$18 million.

Now, when I say annual, that is erroneous on my part; it would really be a one-time savings, because if these things were implemented, they would not be recurring items.

The third item in our strategic initiatives would be the transfer of the so-called Tier I portion, which is the social security equivalent. The Board pays about \$6.3 billion on behalf of the Social Security Administration to put the beneficiaries of the Railroad Retirement Board in the same position as if they were under social security. We think that should be spun back to Social Security since it is such a major portion of the funding that the Railroad Retirement Board receives and also obviously distributes.

The fourth thing that we would consider, if all these other items were imposed, would be to reduce the size of the Board even further to a government corporation to make it more manageable, maintaining the structure of the Management Member, the Labor Member, and the Chairman, but in a more advisory capacity with the reduction of the Board.

Again, these strategic initiatives have been out there and I don't consider it to be the one and only method or way of making the Board become more efficient and manageable. I think that it is incumbent upon the Inspector General to put these things out for discussion and for people to review.

The third item concerns the Medicare fraud investigations. The strategic initiatives, as I have stated, would not be recurring; whereas, Medicare fraud would be recurring, and where the majority of the money is. From 1989 to 1996, the Inspector General of the Railroad Retirement Board was involved in Medicare fraud investigations. After that time, language was inserted by the Labor HHS subcommittee on appropriations, which permanently prohibited us from doing that. The subcommittee at that time felt and continues to feel that the limited resources of the Inspector General could be better used to oversee the fraud and abuse within the beneficiary programs of the Railroad Retirement Board, and not to use

those limited resources towards Medicare fraud. I obviously respectfully disagree with that program.

The Railroad Retirement Board administers a separate Part B contract for all of its beneficiaries throughout the whole United States; it is a very unique contract. The Board receives approximately \$5 million a year from CMS to administer that program. The Railroad Retirement Board Inspector General, when we were doing the investigations, received approximately \$500,000 from CMS, or HCFA at that time, to proceed with these investigations.

During that time, from 1989 to 1996, we recovered approximately \$320 million in monetary accomplishments, and had approximately 68 criminal convictions. It constituted approximately 10 percent of our workload. In 1996, before we transferred the cases to HHS-IG, we had 131 active cases with estimated losses of \$25 million.

GAO still considers Medicare fraud to be a high risk area. The amount of fraud estimated by GAO is approximately 6.3 percent. An estimated \$400 billion in the prescription drug benefits that is going to be added over the next 10 years, or \$40 billion more a year. The FBI and other law enforcement agencies used to do Medicare fraud investigations along with HHS, ourselves, Postal, Secret Service, Department of Defense-IG. The FBI obviously has said that we have to re-prioritize, and more of our resources are going to be taken away from white collar crime and towards homeland security, which obviously since 9/11 makes a lot of sense. So in light of that, that is another reason why I think that we should be able to get back and do the Medicare fraud investigations.

And that concludes my summary of my testimony. I would be happy to answer any questions.

Mr. PETRI. Mr. Schwartz?

Mr. SCHWARTZ. Thank you, Mr. Chairman, distinguished members of the Committee. We appreciate the opportunity to appear before you this morning to discuss issues that have been raised by the Railroad Retirement Board's Inspector General. We will also briefly highlight actions that we have taken in recent years to improve the administration of our programs while reducing costs. I would like to submit our entire joint statement for the record.

Mr. PETRI. It will be made a part of the record.

Mr. SCHWARTZ. In reviewing the Inspector General's recommendations, we continually return to a few central thoughts. First, the Railroad Retirement Board has long prided itself in providing high quality and timely service to its customers. Second, the Railroad Retirement Board's principal customers are railroad employers and employees, and railroad retirees and their families. The interests of these customers are protected in part by the fact that two members of the three-member Board that heads the agency are appointed upon the recommendation of railroad labor and railroad management. Moreover, it is railroad employers and railroad employees who are the primary source of funding of the railroad retirement and railroad unemployment insurance programs. Finally, the Railroad Retirement Board has already taken several actions to address at least some of the recommendations and issues raised by the Inspector General.

The Board has made several changes in recent years to improve and centralize management and decision-making within the agen-

cy. Day-to-day operations are managed by a six-member executive committee comprised of senior executives who head the agency's major organizational components. The Board appointed a Senior Executive Officer who reports directly to the Board and is responsible for oversight and direction of the executive committee. We feel this organizational structure has worked very effectively by combining the strength of diverse backgrounds and perspectives in operational decision-making, while providing for centralized control and accountability through the Senior Executive Officer.

Changing the overall structure of the Railroad Retirement Board removes the agency's principal stakeholders, railroad labor and railroad management, from close involvement in the administration of the programs entrusted to the agency. We see this involvement as a strength of the Railroad Retirement Board. Close involvement of railroad labor and railroad management results, in our view, in the high quality service delivered by the agencies to our customers and provides greater assurance that the railroad retirement and railroad unemployment insurance programs will be run effectively and efficiently.

The Inspector General has recommended that the agency eliminate much of its field service and utilize technology in the delivery of service to our customers. Our review of this recommendation suggests that the level of savings that could be achieved by limiting virtually all of our in-person service is considerably lower than has been suggested, and that the quality and timeliness of service to our customers would be diminished considerably. The Railroad Retirement Board does not have in place costly technology that would be needed to handle the work being done by our field employees. The work would have to be done elsewhere by relocated field employees or new hires. Closure of field offices would result in a denigration of service to our customers, and we do not support such a recommendation.

Concerning the Inspector General's recommendation with respect to transferring responsibility for payment of Tier I benefits from the Railroad Retirement Board to the Social Security Administration, we note that similar recommendations have been made in the past. These recommendations have been dismissed because of the complex issues that would be faced in transferring this responsibility, including differences in eligibility conditions between the two systems, as well as the diminished level of service that would result from beneficiaries having to deal with two Federal agencies, rather than just one as under current law.

Moreover, because the work necessary to pay benefits would still have to be done, and because adjudication that is currently done by one agency would have to be done by two agencies, it is not clear that transferring this responsibility to the Social Security Administration would save money. But it is clear that such a change would be a burden to our annuitants.

The last point I would like to touch upon briefly is the Inspector General's request that his office again be allowed to conduct investigations and audits of the Medicare program. His office has been prohibited from doing so by Appropriations Act language. The Labor Member of the Board supports the Inspector General's request, and the Management member is opposed to the Inspector

General again having authority to conduct Medicare investigations and audits. I was just recently sworn in as Chairman of the Board, and I have just begun the process of evaluating this request.

That concludes my remarks. We are here to answer any questions.

Mr. PETRI. Thank you very much.

Any questions, Mr. Taylor?

I have just a few.

Mr. SCHWARTZ. Sure.

Mr. PETRI. First of Mr. Dickman.

The Social Security Administration has reported fraud and abuse that is perpetrated in its disability programs. Does the Railroad Retirement Board face similar issues in the disability program that it administers and, if so, what is the Board's strategy for preventing that fraud and abuse?

Mr. DICKMAN. Yes, the Board also has problems with disability fraud that we investigate. At the present time, we have approximately 510 cases, with an estimated fraud loss of over \$8.5 million. A portion of that is disability fraud, and that involves about 182 cases, with an estimated loss of about \$2.5 million. So we are actively investigating disability fraud throughout the United States.

Mr. PETRI. Could you provide details of any audits or reviews that you completed which examine program integrity of the Board's disability programs?

Mr. DICKMAN. We constantly do audits. At the present I don't have that information available with me, but I would be happy to provide it to the Committee.

Mr. PETRI. Thank you.

Mr. DICKMAN. I might add that we have excellent cooperation with the Board when we do our investigations.

Mr. PETRI. Does the Inspector General have any concerns about the findings of the 2000 audit conducted by the Board's Advisory Committee, which pointed out various problems in the implementation of the Board's disability regulations that took effect back in 1998?

Mr. DICKMAN. I really have not reviewed that, and I could not give you an answer at the present time, Mr. Chairman. But, again, I would be happy to review it and provide that information to you.

Mr. PETRI. Thank you.

And, Mr. Schwartz, you may have mentioned this in your summary, but what is your opinion of the Inspector General's recommendations to further reduce the number of field offices and either transfer components of the program to the Social Security Administration?

Mr. SCHWARTZ. Well, the problem with reducing the field offices is we have already reduced field offices from 89 to 53, and in reducing those field offices from 89 to 53 we felt like we achieved some savings there and we could still provide excellent service. In looking at the 53 field offices we have now, we feel that right now we need those to provide service to our annuitants. We have over 650,000 annuitants around the Country, and these front-line people basically talk to people about their benefits, and we think it is important to have that front-line presence.

As far as turning Tier I over to Social Security, the problem there is there are really different requirements. For example, the law passed by Congress in 2001, the Reform Act, lowered the age that someone could receive full Tier I benefits from 62 to 60, so now, at 60 years old, a person in the railroad retirement system can receive full Tier I benefits. As you know, in Social Security, at 62 it would be 80 percent and at 66 or 67 you would get 100 percent. That is one problem.

Another problem would be that according to a commission that was formed in the early 1990s Social Security would probably have to hire 300 to 600 FTEs to do it, and it would cost a lot of money, as much as maybe \$50 million to convert the computer systems. We feel like the program is running well right now, and we think that more people, more money, and some confusing requirements would be a little too much.

The last thing is right now our annuitants receive one check; they receive their Tier I and Tier II benefits from the Railroad Retirement Board. If in fact we switched Tier I over to Social Security, they would have to deal with two Federal agencies and get two checks, and we think that would be a problem.

Mr. PETRI. Thank you.

Thank you all for your testimony, and this hearing is adjourned. [Whereupon, at 12:50 p.m., the Committee was adjourned, to reconvene at the call of the Chair.]

CONGRESSMAN MICHAEL C. BURGESS, M.D.
HOUSE TRANSPORTATION & INFRASTRUCTURE COMMITTEE
HEARING: U.S. DEPARTMENT OF TRANSPORTATION –
WASTE, FRAUD, AND ABUSE
JULY 22, 2003

Mr. Chairman, I want to thank you for holding today's hearing. I want to add my voice to my committee colleagues calling for increased efficiency in the U.S. Department of Transportation. I believe we should work to protect precious dollars taken from the taxpayer by streamlining and improving our federal government. Savings in transportation programs, such as federal-aid highways and Federal Transit Administration programs, will mean more money invested efficiently for our country's transportation infrastructure.

As a member of this Committee, I wanted to make sure the U.S. Department of Transportation was ensuring the most efficient business practices within the agency. On March 19, 2003, I met with Inspector General Kenneth Mead to discuss the business practices of the agency and how the Congress can better facilitate the decrease of inappropriate expenditures in relation to transportation spending. Inspector General Mead and I discussed the need for greater stewardship and oversight of all of DOT's programs. In fact, we discussed several of the initiatives that the Committee addresses in its report to the House Budget Committee.

The U.S. Department of Transportation officials before us today – Inspector General Mead and Administrator Peters – intend to outline several ways in which we can make the most of federal dollars used in state transportation projects. One option is improving financial management and increasing revenue collections by stopping fuel tax evasion. For example, it has come to the attention of Congress that enforcement efforts in certain areas of tax collection lag behind the efforts of the criminal element to beat the system and reap untold criminal profits from our government coffers. Specifically, fuels excise tax enforcement technologies have not kept up with aggressive organized crime group's methods to adulterate fuels and deny the appropriate collection of taxes. These uncollected tax dollars should be going directly to fund programs that are critical to the maintenance and development of our nation's transportation infrastructure.

I recently visited a company in my district called Isotag to learn about their progressive technologies. Isotag's mission as a science and technology company is to deliver comprehensive authentication solutions to defeat brand compromise. Isotag's comprehensive authentication solutions allow companies to identify, deter and remediate problems in their supply chains and ultimately recover significant revenue being lost to fraudulent activities. This company has invented invisible molecular and near-infrared markers that are impossible to counterfeit, cost effective, and legally defensible as evidence in court proceedings. I believe Isotag's technology is one such example of a cost-effective measure that the U.S. Department of Transportation could investigate in relation to stopping fuel tax evasion.

I certainly hope that in addition to examining the issues of waste, fraud, and abuse in mandatory transportation programs that the Committee also considers methods that will allow for the increased enforcement necessary to stop fraud of all types. I look forward to hearing from Administrator Peters on this important issue, concerning ongoing efforts to analyze emerging technologies and implement programs to keep our enforcement efforts one step ahead of the criminal element. We need to work together to ensure our federal government is more effective and efficient for the American taxpayer. I believe the Committee's report and ongoing work with the U.S. Department of Transportation is one step closer toward that goal.

Congressional Testimony - July 22, 2003

**U. S. House of Representatives
Committee on Transportation and Infrastructure**

**Statement for the Record
Martin J. Dickman
Inspector General, Railroad Retirement Board**

Good morning, Chairman Young, Ranking Member Oberstar and other members of the Committee. It is a pleasure to appear today to discuss areas in which efficiencies can be realized in the day to day operations of the Railroad Retirement Board (RRB).

The Office of Inspector General (OIG) at the RRB is responsible for promoting economy, efficiency and effectiveness, and for identifying and preventing fraud, waste and abuse in agency programs. The RRB administers comprehensive retirement-survivor and unemployment-sickness insurance benefit programs for the nation's railroad workers and their families. In Fiscal Year (FY) 2002, the agency paid \$8.6 billion in retirement and survivor benefits to about 684,000 beneficiaries, and \$99 million in net unemployment and sickness insurance benefits to some 39,000 claimants. The RRB also administers the Medicare Part B Program, the physician services aspect of the Medicare program, for qualified railroad beneficiaries. In FY 2002, the RRB paid annual Medicare benefits totaling \$788 million to some 571,000 retired and disabled railroad workers.

In FY 2002, the RRB established \$96 million in new receivables for both the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) programs. The agency collected about \$91 million (\$67 million through the debt recovery program and \$24 million in returned payments).

Under the Inspector General Act, the Office of Inspector General performs audits and management reviews of RRB programs and operations, and conducts investigations to prevent and detect fraud, waste and abuse. Our reviews identify weaknesses in program operations and offer recommendations for improvements and cost savings. The decision to implement our recommendations rests with agency management.

Because of the nature of agency programs, any efforts to realize cost savings should be focused on the operational costs incurred to administer the benefit programs.

Potential Savings – Improper Benefit Payments

The railroad retirement and unemployment/sickness insurance programs are funded by dedicated collections from employees and employers rather than appropriations from general revenues. The reduction of improper payments in the programs administered by the RRB would translate into savings that improve program solvency.

An analysis of current agency accounts receivable and quality assurance information indicates improper payments in the RRA and RUIA programs result primarily from out-of-date information. Changes in a beneficiary's personal status such as death, divorce, re-marriage, return to employment or recovery from disability will end entitlement to benefits. An overpayment occurs when payments continue to be disbursed after entitlement ends. In addition to the RRB's efforts to recover monies, the OIG conducts investigations to identify instances of fraudulent receipt of benefits by ineligible beneficiaries. The OIG's current open fraud case inventory totals 510 with estimated fraud losses of over \$8.5 million.

The single largest category of established receivables, 77%, results from payments released after the death of an annuitant. However, in this category, more than 90% of the overpayments are recovered within the first year.

Strategic Initiatives

In March 2003, the Office of Inspector General issued a report entitled "Strategic Initiatives Related to the President's Management Agenda," in which we presented four recommendations to improve the agency's management and operational performance. The continued decline in railroad employment and the resulting reduction in the number of annuitants receiving payments warrant major changes in the agency's operating environment.

- We proposed a reduction in the current management layers (a reduction in the number of operating bureaus from 20 to 5), the delegation of decision-making authority to a Chief Executive Officer, and that the three-member Board concentrate on the strategic issues facing the agency. The overall control environment has repeatedly been cited as a material weakness in internal control in our audits of the RRB's financial statements. The current structure is a contributing factor to this condition. The consolidation of major organizational bureaus and the elimination of management layers could result in annual savings of over **\$2 million**.
- We recommended a reduction in the number of field office locations. It is our position that the agency should employ greater use of technology and automated systems for the delivery of services to its constituents. We estimated that the elimination of 255 field service positions would provide annual savings of over **\$18 million** in salaries and related expenses.

For example, other agencies conduct nationwide benefit programs without an extensive field service network. The Office of Personnel Management, an agency that also administers retirement and disability benefits for two million retired or disabled beneficiaries and administers medical insurance benefits for two million Federal workers. That agency principally conducts its operations from two locations, a headquarters in Washington, D.C. and a facility in Boyers, PA.

- The Railroad Retirement Act of 1974 established a two-tiered benefit system for railroad workers. Tier I benefits are the equivalent of social security benefits while the tier II benefits are parallel to other industrial defined benefit retirement plans. The similarities between tier I annuities and social security benefits requires the RRB to duplicate calculation and record keeping functions that the Social Security Administration (SSA) uses. During FY 2002, the RRB issued \$5.1 billion in tier 1 payments and \$1.2 billion in payments made on behalf of SSA. These benefits constituted 63% of the total benefits paid by the RRB in that year.

To eliminate the duplication and development of separate employer reporting procedures and forms, we recommended that the agency transfer the tier I program to SSA. The advantages of the transfer are significant. Employer reporting for tier I and Social Security wages would be simplified, coordination and jurisdictional problems between the two agencies would be eliminated, and the financial interchange, the annual funds transfer between the RRB and SSA that was established to place the social security trust funds in the same position they would have been if railroad employment has been included under social security, could be abolished. In FY 2002, the RRB received approximately \$3.2 billion from the financial interchange.

There is no reason for both agencies to continue to develop and improve technologies to provide service. The RRB's Chief Information Officer has warned that changes in agency systems and infrastructure will be necessary in order for operations to continue. The RRB is currently replacing its database management system to more adequately support its overall operations of mainframe and LAN-based applications. In addition, the agency will be required to replace its mainframe because the operating system will no longer be supported by the vendor after September 2004.

It seems prudent for the SSA, an agency with 46 million beneficiaries, to assimilate the 684,000 beneficiaries who received RRB retirement and survivor benefits in FY 2002. The RRB beneficiaries would also benefit from the extensive network of some 1,300 SSA offices throughout the country. To continue duplicating efforts is not cost-effective or efficient use of government resources.

- We also recommended that the RRB pursue a revision in its basic entity structure to become a government corporation. With the transfer of the tier I program, the agency could focus on providing tier II benefits and administering the Railroad

Unemployment Insurance Act programs. Both employees and employers pay tier II taxes that are used to finance railroad retirement benefit payments over and above social security levels.

Railroad Medicare

The RRB manages a nationwide contract for processing Medicare Part B claims for all railroad beneficiaries that, in FY 2002, paid over \$788 million benefits to approximately 571,000 retired or disabled railroad workers and their dependents. The agency is responsible for enrollment, premium collection, responding to beneficiary inquiries, conducting the Annual Carrier Performance Evaluation, and ensuring that benefits are paid out in an effective and efficient manner. We also believe oversight by this office could improve the operations of another major agency activity, the Railroad Medicare Program.

From 1989 through 1996, we had a significant role in major health care fraud cases that resulted in 68 criminal convictions and civil judgements, and over \$320 million in monetary accomplishments. In FY 1997, this office was prohibited from using appropriated funds to conduct any audit, investigation or review of the Railroad Medicare Program. Oversight of this program currently rests with the Department of Health and Human Services-Office of Inspector General (DHHS-OIG). That office estimates that 6.3% of all Medicare payments in FY 2002 were erroneous; application of the percentage to Railroad Medicare results in **\$49.6 million** in estimated erroneous payments. Given the size and complexity of the Medicare Program administered by the Centers for Medicare and Medicaid Services, it may be difficult for the DHHS-OIG to focus much attention or resources on the Railroad Medicare Program. I would point out that DHHS-OIG has welcomed our assistance in working joint cases and has supported our past efforts to remove this prohibition.

We believe that the current restriction does not allow this office to meet its statutory responsibilities under the Inspector General Act of 1978, as amended. We have a proven record in conducting audits and investigations of this important program, as evidenced by our efforts from 1989 through 1996.

The General Accounting Office continues to identify Medicare as a high risk program "due to the program's size and complexity." The Administration and Congress have repeatedly expressed the need to reduce fraud in this significant Federal program. The addition of the proposed prescription drug benefit program to Medicare translates to a cost of over \$400 billion over ten years. This significant increase in benefits will create additional potential fraud in a program that is already extremely susceptible to waste, fraud and abuse. In addition, traditional Federal law enforcement agencies, such as the Federal Bureau of Investigation, are redirecting resources to combat terrorism since September 11th.

Our investigative agents have developed considerable expertise concerning health care fraud matters. As of September 30, 1996, this office had 131 open Medicare fraud investigations. These cases covered a wide spectrum of health care providers and had estimated losses that exceeded \$25 million. Before the prohibition was imposed, Medicare-related cases constituted 10% of our investigative workload. There would be no additional cost to the agency to resume these investigations.

The utilization of experienced personnel to identify fraud, waste and abuse in a major program seems sensible. I ask the Committee for its support in ensuring the current prohibition is removed.

Conclusion

I want to assure the Committee Members that the Office of Inspector General will continue to identify weaknesses and recommend improvements in agency programs to ensure efficiencies are realized.

Thank you, and I would be happy to answer any questions.

United States General Accounting Office

GAO

Testimony
Before the Committee on Transportation
and Infrastructure, House of
Representatives

For Release on Delivery
Expected at 11:00 a.m. EDT
Tuesday July 22, 2003

TRANSPORTATION PROGRAMS

Opportunities for Oversight and Improved Use of Taxpayer Funds

Statement of JayEtta Z. Hecker, Director
Physical Infrastructure Issues



GAO-03-1040T



Highlights of GAO-03-1040T, a testimony before the Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

It is important to ensure that long-term spending on transportation programs meets the goals of increasing mobility and improving transportation safety. In this testimony, GAO discusses what recently completed work on four transportation programs suggests about challenges and strategies for improving the oversight and use of taxpayer funds. These four programs are (1) the federal-aid highway program, administered by the Federal Highway Administration (FHWA); (2) highway safety programs, administered by the National Highway Traffic Safety Administration (NHTSA); (3) the New Starts program, administered by the Federal Transit Administration (FTA); and (4) the Essential Air Service (EAS) program, administered out of the Office of the Secretary of Transportation.

Differences in the structure of these programs have contributed to the challenges they illustrate. The federal-aid highway program uses formulas to apportion funds to the states, the highway safety programs use formulas and grants, the New Starts program uses competitive grants, and the EAS program provides subsidies. For each program, GAO describes in general how the program illustrates a particular challenge in managing or overseeing long-term spending and in particular what challenges and strategies for addressing the challenges GAO and others have identified.

www.gao.gov/cgi-bin/getrpt?GAO-03-1040T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact JayEtta Hecker at (202) 512-2834 or heckerj@gao.gov.

July 22, 2003

TRANSPORTATION PROGRAMS

Opportunities for Oversight and Improved Use of Taxpayer Funds

What GAO Found

The federal-aid highway program illustrates the challenge of ensuring that federal funds (nearly \$30 billion annually) are spent efficiently when projects are managed by the states. GAO has raised concerns about cost growth on and FHWA's oversight of major highway and bridge projects. Recent proposals to strengthen FHWA's oversight are responsive to issues and options GAO has raised. Options identified in previous GAO work provide the Congress with opportunities to build on recent proposals by, among other things, clarifying uncertainties about FHWA's role and authority.

NHTSA's highway safety programs illustrate the challenge of evaluating how well federally funded state programs are meeting their goals. Over 5 years, the Congress provided about \$2 billion to the states for programs to reduce traffic fatalities, which numbered over 42,000 in 2002. GAO found that NHTSA was making limited use of oversight tools that could help states better implement their programs and recommended strategies for improving the tools' use that NHTSA has begun to implement. The administration recently proposed performance-based grants in this area.

FTA's New Starts program illustrates the challenge of developing effective processes for evaluating grant proposals. Under the New Starts program, which provided about \$10 billion in mass transit funding in the past 6 years, local transit agencies compete for project funds through grant proposals. FTA has developed a systematic process for evaluating these proposals. GAO believes that FTA has made substantial progress by implementing this process, but our work has raised some concerns, including the extent to which the process is able to adequately prioritize the projects.

The Essential Air Service (EAS) program illustrates the challenge of considering modifications to statutorily defined programs in response to changing conditions. Under the EAS program, many small communities are guaranteed to continue receiving air service through subsidies to carriers. However, the program has faced increasing costs and decreasing average passenger levels. The Congress, the administration, and GAO have all proposed strategies to improve the program's efficiency by better targeting available resources and offering alternatives for sustainable services.

Key Challenges and Strategies for Managing Four Federal Transportation Programs

Program	Highway construction	Highway safety	New Starts transit	Essential Air Service
Challenges	Managing cost growth on major highway and bridge projects	Enhancing effectiveness of state safety programs	Selecting best projects for limited funds	Adjusting program to changing conditions
Strategies	Improve oversight and reporting	Improve use of monitoring tools	Establish sound selection process	Restructure program to improve viability

United States General Accounting Office

Mr. Chairman and Members of the Committee:

It is an honor to be here today to participate in your hearing on strategies to reduce or prevent waste, fraud, and abuse in transportation programs. As requested, I will be discussing what our recently completed work on four transportation programs suggests about challenges and strategies for improving the oversight and use of taxpayer funds to ensure that long-term spending on transportation programs meets the goals of increasing mobility and improving transportation safety.

As you know, many transportation programs rely on dedicated long-term funding to achieve specified program objectives. Such funding, which generally comes from a trust fund financed by user fees, is designed to match the long life, ongoing maintenance needs, and replacement and rehabilitation expenditures of large transportation projects. However, long-term funding creates certain challenges related to the effective oversight and management of the programs, particularly because in some cases, funds flow automatically to states, which use the funds to implement their own projects. Without effective oversight, investments of scarce federal funds in these transportation programs may not achieve maximum mobility and safety benefits.

Transportation legislation has sought to balance the federal interest in effective management and oversight with state and local interest in flexibility to tailor decisions to local priorities. Transportation legislation has also sought to promote multimodal systemwide decision-making while continuing distinct modal trust funds. Recently, the Comptroller General testified before the House Budget Committee on opportunities for improving the oversight and use of taxpayer funds for such spending programs.¹ He described three tiers of review, one of which—improving

¹*Federal Budget: Opportunities for Oversight and Improved Use of Taxpayer Funds*, (GAO-03-952T, June 2003)

economy, efficiency, and effectiveness in mandated federal spending programs—is especially pertinent to the programs we will be discussing.²

As agreed with your office, my remarks today will focus on four federal transportation programs: (1) the federal-aid highway program, (2) highway safety programs, (3) the New Starts transit program, and (4) the Essential Air Service program. The size and structure of these programs vary considerably. For each program, I will discuss in general how the program illustrates a particular challenge in managing or overseeing long-term spending programs and in particular what challenges and strategies for addressing these challenges we and others have found in evaluating these programs.

Before I discuss each individual program, I'd like to point out how structural differences in these programs have contributed to different oversight challenges for each. For example, the federal-aid highway program uses formulas to apportion federal funds to the states in several distinct categories for the purpose of constructing and improving highway facilities. Ensuring efficient expenditures of federal funds for what can be large, long-term construction projects is an important challenge that has grown as the Federal Highway Administration (FHWA) has increasingly devolved its oversight responsibilities to the states in recent years. The highway safety programs, administered by the National Highway Traffic Safety Administration (NHTSA), also use formulas and other criteria to apportion funds for state programs designed primarily to improve safety through changes in drivers' behavior. Determining the effectiveness of the states' efforts is a key challenge for these programs, together with assessing the efficiency of their expenditures. In contrast, the New Starts transit program relies on financial and project justification criteria to evaluate and select grant proposals for transit projects through a competition for federal funds administered by the Federal Transit

²The three levels of review the Comptroller General discussed also included addressing vulnerabilities to fraud, waste, abuse, and mismanagement, particularly in high-risk federal programs; and a fundamental re-examination of programs, policies, activities, and processes. Because the programs we are discussing today are not on our high-risk list and our work in these areas has not focused on fraud or abuse, we are discussing them in the context of the longer-term goals of efficiency and effectiveness, which are key to appropriately targeting scarce federal resources. Our scope today does not encompass a fundamental re-examination of programs, which is also critical to ensuring the effective use of federal funds.

Administration (FTA).³ While oversight of funded projects is important for this program, a key challenge that our work has addressed is how grant proposals should be evaluated to identify the best projects for funding. Finally, the Essential Air Service (EAS) program is statutorily based in the Airline Deregulation Act of 1978. Administered out of the Office of the Secretary of Transportation, it subsidizes air carriers' operations to guarantee that certain isolated small communities served by air carriers before deregulation continue to receive some scheduled air service. As the aviation industry has changed over the years, questions have arisen about the program's sustainability and efficiency.

My statement is based on a body of GAO reviews of these and other transportation programs, many completed at the request of your Committee or legislatively mandated. A complete list of related reports appears in appendix I.

In summary:

- The federal-aid highway program illustrates the challenge of ensuring that federal funds are spent efficiently through formula-based programs that finance projects that are then largely managed and overseen by the states. The program makes nearly \$30 billion available to the states for their transportation programs annually, including funding for major highway and bridge projects. Over the years, we have documented cost growth and management deficiencies on these major highway and bridge projects, as have the Department of Transportation's Inspector General and state audit and evaluation agencies. Additionally, in 1997, we found that FHWA had done little to ensure that containing costs was an integral part of states' project management—in part because FHWA did not believe that encouraging or requiring practices to control costs and better manage projects was part of its oversight mandate. Since then, FHWA has developed strategies to strengthen its oversight, including requirements for annual finance plans and greater use of risk-based factors to focus its oversight efforts. The administration's reauthorization proposal also includes strategies for strengthening FHWA's oversight, and we believe these are positive steps that are responsive to many of the issues we've raised in the past. Should the Congress determine that enhancing federal oversight of major highway and bridge projects is needed and appropriate,

³In contrast to the New Starts program, there are other transit programs that are formula funded; however, we have not evaluated these programs and therefore do not include them in our discussion today.

in previous work we have identified options that provide the Congress opportunities to build on the administration's proposal during the reauthorization process by, among other things, clarifying uncertainties about FHWA's role and authority.

- The highway safety programs administered by NHTSA illustrate the challenge of evaluating how well federally funded and assisted state programs are meeting their goals, as well as how efficiently the federal funds are being spent. During fiscal years 1998 through 2002, the Congress provided about \$2 billion to the states for programs designed to reduce the number of traffic fatalities, which totaled over 42,000 in 2002. NHTSA has tools for overseeing these programs, including improvement plans to help states meet their safety goals and management reviews to assess the programs' performance and use of federal funds. However, evaluating how well the state programs are meeting their highway safety goals is difficult because NHTSA's guidance does not establish a consistent means of measuring progress. Moreover, NHTSA's regional offices have made limited and inconsistent use of improvement plans and management reviews, in part because NHTSA's guidance does not specify criteria for conducting them. When NHTSA's regional offices have conducted management reviews of the state programs, they have sometimes found inefficient spending and weak controls over federal funds. In April 2003, we recommended strategies for improving NHTSA's use of these tools, including developing better guidance on when they should be used. NHTSA has begun to implement these recommendations. The administration's recent proposal to reauthorize the Transportation Equity Act for the 21st Century (TEA-21) calls for changes in the program that would provide even further flexibility to states in using these funds. It would also create grant programs based on state performance in two areas—reductions in fatalities and safety belt laws and usage.
- FTA's New Starts transit program illustrates two management oversight challenges: the challenge of developing effective federal processes for evaluating grant proposals as well as the already described challenge of overseeing projects' implementation. Under the New Starts program, which provided about \$10 billion in mass transit funding for fiscal years 1998-2003 and was authorized by TEA-21, local transit agencies apply and compete for project funds on the basis of specific financial and project justification criteria. FTA reviews the grant applications and then notifies the Congress that it intends to commit New Starts funding to certain

projects through full funding grant agreements.⁴ Because many transit projects compete for New Starts funding, and FTA awards relatively few full funding grant agreements each year, it is crucial that the most promising projects are selected. FTA is also responsible for overseeing funded projects. FTA has implemented strategies to address the twin challenges of evaluating projects and overseeing their implementation. First, it developed a systematic process for evaluating potential New Starts projects competing for federal funding that provides a framework for evaluating and selecting projects. We believe that FTA has made substantial progress by implementing this process, but our work in recent years has raised some concerns, including the extent to which the process is able to adequately prioritize the projects. Second, FTA has improved the quality of its transit grants management oversight program by upgrading its guidance and training of staff and grantees and by strengthening oversight procedures. However, oversight remains an area of concern, as major transit projects continue to experience cost, schedule, and performance problems. The administration's fiscal year 2004 budget proposal contains several initiatives that have both advantages and disadvantages, with implications for the cost-effectiveness and performance of proposed projects.

- The Essential Air Service (EAS) program illustrates the challenge of considering modifications to statutorily defined programs in response to changing conditions. Under the EAS program, small communities that received scheduled commercial air service prior to the deregulation of the airline industry in 1978 and that meet certain additional criteria are guaranteed to continue receiving air service. Although the program was originally intended to end in 1988, the Congress later permanently authorized it. As the airline industry has evolved over the past 25 years, however, the EAS program has faced increasing challenges to remain viable. Costs have tripled since 1995 because carriers' costs have increased and revenues have declined as passenger ridership has fallen; passengers often prefer to drive to other larger airports nearby for better air service. In addition, the number of communities eligible for EAS subsidies has increased and may continue to grow in the near term. Within the past year, the Congress, the administration, and we have all proposed various strategies to improve the EAS program's overall efficiency and effectiveness by better targeting available resources and offering alternatives for sustainable services, such as allowing communities to

⁴A full funding grant agreement is a multiyear contractual agreement between FTA and project sponsors for a specified amount of funding. The full amount of funding is committed to the projects over a set period.

spend subsidy funds on individually-tailored transportation options that better meet their needs.

Options Exist to Address the Federal-Aid Highway Program's Oversight Challenges

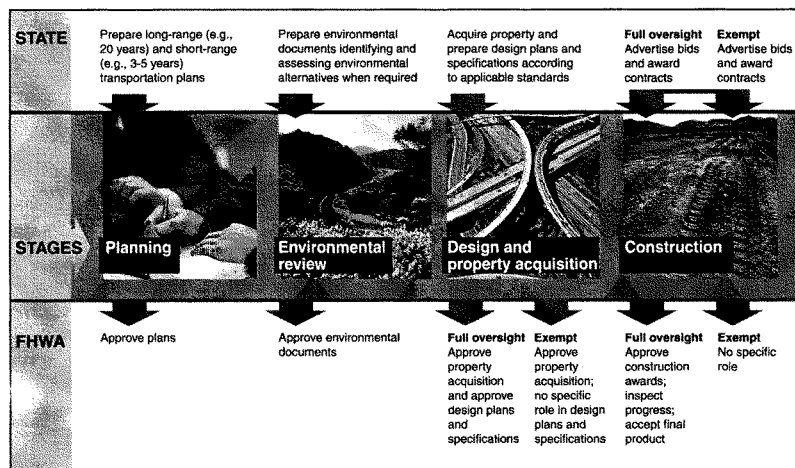
The federal-aid highway program provides nearly \$30 billion annually to the states, most of which are formula grant funds that FHWA distributes through annual apportionments according to statutory formulas; once apportioned, these funds are generally available to each state for eligible projects.⁵ The responsibility for choosing which projects to fund generally rests with state departments of transportation and local planning organizations. The states have considerable discretion in selecting specific highway projects and in determining how to allocate available federal funds among the various projects they have selected. For example, section 145 of title 23 of the United States Code describes the federal-aid highway program as a federally assisted state program and provides that the authorization of the appropriation of federal funds or their availability for expenditure, "shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed."

A major highway or bridge construction or repair project usually has four stages: (1) planning, (2) environmental review, (3) design and property acquisition, and (4) construction. While FHWA approves state transportation plans, environmental impact assessments, and the acquisition of property for highway projects, its role in approving the

⁵How formulas are designed to distribute federal funds can itself affect the extent to which federal funds encourage or leverage the Nation's total level of highway investment and promote the most efficient funding of transportation projects. These issues are outside the scope of this testimony's discussion; however, our recent reports *Trends in Federal and State Capital Investment in Highways* (GAO-03-744R) and *Trends in State Capital Investment in Highways* (GAO-03-915SP) provide information on federal, state, and local investment in highways, and variations in states' levels of investment and effort over time. Our follow-on work to that report will more closely examine the interaction between levels of federal and state investment, including how the design of formulas may affect this interaction.

design and construction of projects varies.⁶ The state's activities and FHWA's corresponding approval actions are shown in figure 1.

Figure 1: State and FHWA Actions on Highway Projects



⁶FHWA exercises full oversight only of certain high-cost Interstate system projects. On projects subject to "full" oversight, FHWA prescribes design and construction standards, approves design plans and estimates, approves contract awards, inspects construction progress, and renders final acceptance on projects when they are completed. States either may assume or are required to assume responsibilities for all other types of projects. See U.S. General Accounting Office, *Transportation Infrastructure: Cost and Oversight Issues on Major Highway and Bridge Projects*, GAO-02-702T (Washington, D.C.: May 1, 2002) for a more complete description of FHWA's and the states' responsibilities.

Challenges

Given the size and significance of the federal-aid highway program's funding and projects, a key challenge for this program is overseeing states' expenditure of public funds to ensure that state projects are well managed and successfully financed. Our work—as well as work by the DOT Inspector General and by state audit and evaluation agencies—has documented cost growth on numerous major highway and bridge projects. Let me provide one example. In January 2001, Virginia's Joint Legislative Audit and Review Commission found that final project costs on Virginia Department of Transportation projects were well above their cost estimates and estimated that the state's 6-year, \$9 billion transportation development plan understated the costs of projects by up to \$3.5 billion. The commission attributed these problems to several factors, including, among other things, not adjusting estimates for inflation and expanding the scope of projects.

Our work has identified weaknesses in FHWA's oversight of projects, especially in controlling costs. In 1997, we reported that cost containment was not an explicit statutory or regulatory goal of FHWA's oversight.⁷ While FHWA influenced the cost-effectiveness of projects when it reviewed and approved plans for their design and construction, we found it had done little to ensure that cost containment was an integral part of the states' project management. According to FHWA officials, controlling costs was not a goal of their oversight, and FHWA had no mandate in law to encourage or require practices to contain the costs of major highway projects. More recently, an FHWA task force concluded that changes in the agency's oversight role since 1991—when the states assumed greater responsibility for overseeing federal-aid projects—had resulted in conflicting interpretations of the agency's role in overseeing projects, and that some of the field offices were taking a “hands off” approach to certain projects. In June 2001, FHWA issued a policy memorandum, in part to clarify that FHWA is ultimately accountable for all projects financed with federal funds. As recently as last month, a memorandum posted on FHWA's Web site discussed the laws establishing FHWA and the federal-aid highway program, along with congressional and public expectations that FHWA “ensure the validity of project cost estimates and schedules.” The memorandum concluded, “These expectations may not be in full agreement with the role that has been established by these laws.”

⁷U.S. General Accounting Office, *Transportation Infrastructure: Managing the Costs of Large-Dollar Highway Projects*, GAO/RCED-97-27 (Washington D.C.: Feb. 27, 1997).

In addition, we have found that FHWA's oversight process has not promoted reliable cost estimates. While there are many reasons for cost increases, we have found, on projects we have reviewed, that initial cost estimates were not reliable predictors of the total costs and financing needs of projects. Rather, these estimates were generally developed for the environmental review—whose purpose is to compare project alternatives, not to develop reliable cost estimates. In addition, FHWA had no standard requirements for preparing cost estimates, and each state used its own methods and included different types of costs in its estimates. We have also found that costs exceeded initial estimates on projects we have reviewed because (1) initial estimates were modified to reflect more detailed plans and specifications as projects were designed and (2) the projects' costs were affected by, among other things, inflation and changes in scope to accommodate economic development over time. We also found that highway projects take a long time to complete, and that the amount of time spent on them is of concern to the Congress, the federal government, and the states. Completing a major, new, federally funded highway project that has significant environmental impacts typically takes from 9 to 19 years and can entail as many as 200 major steps requiring actions, approvals, or input from a number of federal, state, and other stakeholders.⁸

Finally, we have noted that in many instances, states construct a major project as a series of smaller projects, and FHWA approves the estimated cost of each smaller project when it is ready for construction, rather than agreeing to the total cost of the major project at the outset. In some instances, by the time FHWA considers whether to approve the cost of a major project, a public investment decision may, in effect, already have been made because substantial funds have been spent on designing the project and acquiring property, and many of the increases in the project's estimated costs have already occurred.

Strategies

Since 1998, FHWA has taken a number of steps to improve the management and oversight of major projects in order to better promote cost containment. For example, FHWA implemented TEA-21's requirement that states develop an annual finance plan for any highway or bridge

⁸U.S. General Accounting Office, *Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects*, GAO-03-534 (Washington D.C.: May 2003).

project estimated to cost \$1 billion or more and established a major projects team that currently tracks and reports each month on 15 such projects. FHWA has also moved to incorporate greater risk-based management into its oversight in order to identify areas of weakness within state transportation programs, set priorities for improvement, and work with the states to meet those priorities.

The administration's May 2001 reauthorization measure contains additional proposed actions. It would introduce more structured FHWA oversight requirements, including mandatory annual reviews of state transportation agencies' financial management and "project delivery" systems, as well as periodic reviews of states' practices for estimating costs, awarding contracts, and reducing project costs. To improve the quality and reliability of cost estimates, it would introduce minimum federal standards for states to use in estimating project costs. The measure would also strengthen reporting requirements and take new actions to reduce fraud.⁹

Many elements of the administration's proposal are responsive to problems and options we have described in past reports and testimony.¹⁰ Should the Congress determine that enhancing federal oversight of major highway and bridge projects is needed and appropriate, options we have identified in prior work remain available to build on the administration's proposal during the reauthorization process. However, adopting any of these options would require balancing the states' right to select projects and desire for flexibility and more autonomy with the federal government's interest in ensuring that billions of federal dollars are spent efficiently and effectively. Furthermore, the additional costs of each of these options would need to be weighed against its potential benefits. Options include the following:

⁹In particular, the measure requires states or project sponsors to prepare a project management plan for projects estimated to cost \$1 billion or more that would detail processes in place to provide timely information needed to manage projects' scope, costs, schedule, and federal requirements. It would also extend the requirement for annual finance plans to projects receiving \$100 million or more in federal funds, although approval of those plans could be delegated to the states. In addition, among other provisions, the proposal would require mandatory debarment of contractors convicted of fraud related to federal-aid highway or transit programs, and the suspension of contractors indicted for fraud.

¹⁰See, for example, U.S. General Accounting Office, *Federal-Aid Highways: Cost and Oversight of Major Highway and Bridge Projects—Issues and Options*, GAO-03-764T (Washington, D.C.: May 8, 2003); GAO-02-702T; and GAO/RCED-97-27.

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- Have FHWA develop and maintain a management information system on the cost performance of selected major highway and bridge projects, including changes in estimated costs over time and the reasons for such changes. Such information could help define the scope of the problem with major projects and provide insights needed to fashion appropriate solutions.
 - Clarify uncertainties concerning FHWA's role and authority. As I mentioned earlier, the federal-aid highway program is by law a federally assisted state program, and FHWA continues to question its authority to encourage or require practices to contain the costs of major highway and bridge projects. Should uncertainties about FHWA's role and authority continue, another option would be to resolve the uncertainties through reauthorization language.
 - Have the states track the progress of projects against their initial baseline cost estimates. The Office of Management and Budget requires federal agencies, for acquisitions of major capital assets, to prepare baseline cost and schedule estimates and to track and report the acquisitions' cost performance. These requirements apply to programs managed by and acquisitions made by federal agencies, but they do not apply to the federal-aid highway program, a federally assisted state program. Expanding the federal government's practice to the federally assisted highway program could improve the management of major projects by providing managers with information for identifying and addressing problems early.
 - Establish performance goals and strategies for containing costs as projects move through their design and construction phases. Such performance goals could provide financial or other incentives to the states for meeting agreed-upon goals. Performance provisions such as these have been established in other federally assisted grant programs and have also been proposed for use in the federal-aid highway program. Requiring or encouraging the use of goals and strategies could also improve accountability and make cost containment an integral part of how states manage projects over time.
 - Consider methods for improving the time it takes to plan and construct major federal-aid highway projects—a process that we reported can take up to 19 years to complete. Major stakeholders suggested several approaches to improving the timeliness of these projects, including (1) improving project management, (2) delegating environmental review and permitting authority, and (3) improving agency staffing and skills. We have recommended that FHWA consider the benefits of the most promising

approaches and act to foster the adoption of the most cost-effective and feasible approaches.¹¹

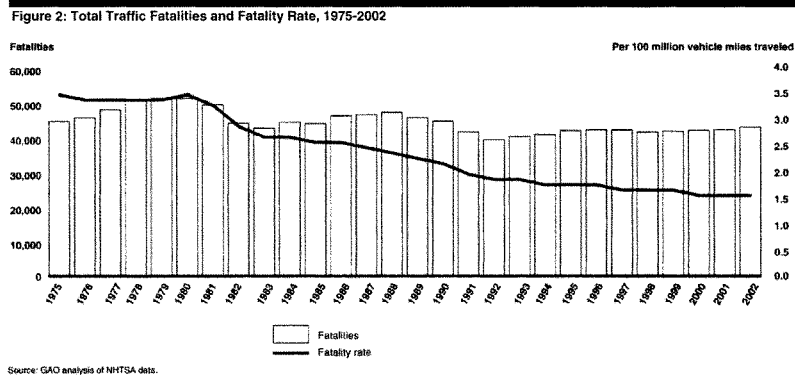
- Reexamine the approval process for major highway and bridge projects. This option, which would require federal approval of a major project at the outset, including its cost estimate and finance plan, would be the most far-reaching and the most difficult option to implement. Potential models for such a process include the full funding grant agreement used by FTA for the New Starts program, and, as I testified last year, a DOT task force's December 2000 recommendation calling for the establishment of a separate funding category for initial design work and a new decision point for advancing highway projects.¹²

NHTSA Makes Inconsistent and Limited Use of Oversight Tools

Over the last 25 years, more than 1.2 million people have died as a result of traffic crashes in the United States—more than 42,000 in 2002. Since 1982, about 40 percent of traffic deaths were from alcohol-related crashes. In addition, traffic crashes are the leading cause of death for people aged 4 through 33. As figure 2 shows, the total number of traffic fatalities has not significantly decreased in recent years.

¹¹GAO-03-534; GAO-03-308; GAO-02-1067T.

¹²GAO-02-702T.



To improve safety on the nation's highways, NHTSA administers a number of programs, including the core federally funded highway safety program, Section 402 State and Community Grants, and several other highway safety programs that were authorized in 1998 by TEA-21. The Section 402 program, established in 1966, makes grants available for each state, based on a population and road mileage formula, to carry out traffic safety programs designed to influence drivers' behavior, commonly called behavioral safety programs. The TEA-21 programs include seven incentive programs, which are designed to reduce traffic deaths and injuries by promoting seatbelt use and reducing alcohol-impaired driving, and two transfer programs, which penalize states that have not complied with federal requirements for enacting repeat-offender and open container laws to limit alcohol-impaired driving. Under these transfer programs, noncompliant states are required to shift certain funds from federal-aid highway programs to projects that concern or improve highway safety. In addition, subsequent to TEA-21, the Congress required that, starting later this year, states that do not meet federal requirements for establishing 0.08 blood alcohol content as the state level for drunk driving will have a percentage of their federal aid highway funds withheld. During fiscal years 1998 through 2002, over \$2 billion was provided to the states for highway safety programs.

NHTSA, which oversees the states' highway safety programs, adopted a performance-based approach to oversight in 1998. Under this approach, the states and the federal government are to work together to make the nation's highways safer. Each state sets its own safety performance goals and develops an annual safety plan that describes projects designed to achieve the goals. NHTSA's 10 regional offices review the states' annual plans and provide technical assistance, advice, and comments.¹³ NHTSA has two tools available to strengthen its monitoring and oversight of the state programs—improvement plans that states not making progress towards their highway safety goals are to develop, which identify programs and activities that a state and NHTSA regional office will undertake to help the state meet its goals; and management reviews, which generally involve sending a team to a state to review its highway safety operations, examine its projects, and determine that it is using funds in accordance with requirements.

Challenges

Among the key challenges in this area are (1) evaluating how well the federally funded state highway safety programs are meeting their goals and (2) determining how well the states are spending and controlling their federal highway safety funds. In April 2003, we issued a report on NHTSA's oversight of state highway safety programs in which we identified weaknesses in NHTSA's use of improvement plans and management reviews.¹⁴ Evaluating how well state highway safety programs are meeting their goals is difficult because, under NHTSA's performance-based oversight approach, NHTSA's guidance does not establish a consistent means of measuring progress. Although the guidance states that NHTSA can require the development and implementation of an improvement plan when a state fails to make progress toward its highway safety performance goals, the guidance does not establish specific criteria for evaluating progress. Rather, the guidance simply states that an improvement plan should be developed when a state is making little or no progress toward its highway safety goals. As a result, NHTSA's regional offices have made limited and inconsistent use of improvement plans, and some states do not have improvement plans, even though their alcohol-related fatality rates

¹³The Federal Motor Carrier Safety Administration also has an oversight role in highway safety for motor carrier transportation.

¹⁴U.S. General Accounting Office, *Highway Safety: Better Guidance Could Improve Oversight of State Highway Safety Programs*, GAO-03-474 (Washington, D.C.: Apr. 21, 2003).

	<p>have increased or their seat-belt usage rates have declined. Without a consistent means of measuring progress, NHTSA and state officials lack common expectations about how to define progress, how long states should have to demonstrate progress, how to set and measure highway safety goals, and when improvement plans should be used to help states meet their highway safety goals.</p> <p>To determine how well the states are spending and controlling their federal highway safety funds, NHTSA's regional offices can conduct management reviews of state highway safety programs. Management reviews completed in 2001 and 2002 identified weaknesses in states' highway safety programs that needed correction; however, we found that the regional offices were inconsistent in conducting the reviews because NHTSA's guidance does not specify when the reviews should be conducted. The identified weaknesses included problems with monitoring subgrantees, poor coordination of programs, financial control problems, and large unexpended fund balances. Such weaknesses, if not addressed, could lead to inefficient or unauthorized uses of federal funds. According to NHTSA officials, management reviews also foster productive relationships with the states that allow the agency's regional offices to work with the states to correct vulnerabilities. These regions' ongoing involvement with the states also creates opportunities for sharing and encouraging the implementation of best practices, which may then lead to more effective safety programs and projects.</p>
Strategies	<p>To encourage more consistent use of improvement plans and management reviews, we made recommendations to improve the guidance to NHTSA's regional offices on when it is appropriate to use these oversight tools. In commenting on a draft of the report, NHTSA officials agreed with our recommendations and said they had begun taking action to develop criteria and guidance for using the tools.</p> <p>The administration's recent proposal to reauthorize TEA-21 would make some changes to the safety programs that could also have some impact on program efficiencies. For example, the proposal would somewhat simplify the current grant structure for NHTSA's highway safety programs. The Section 402 program would have four components: core program formula grants, safety belt performance grants, general performance grants, and impaired driving discretionary grants. The safety belt performance grants would provide funds to states that had passed primary safety belt laws or achieved 90 percent safety belt usage. In addition, the general performance grant would provide funds based on overall reductions in (1) motor</p>

vehicle fatalities, (2) alcohol-related fatalities, and (3) motorcycle, bicycle, and pedestrian fatalities. Finally, the Section 402 program would have an impaired driving discretionary grant component, which would target funds to up to 10 states that had the highest impaired driving fatality numbers or fatality rates. In addition to changing the Section 402 program, the proposal would expand grants for highway safety information systems and create new emergency medical service grants. The proposal leaves intact existing penalties related to open container, repeat offender, and 0.08 blood-alcohol content laws, and establishes a new transfer penalty for states that fail to pass a primary safety belt law and have safety belt use rates lower than 90 percent by 2005.

The proposal would also give the states greater flexibility in using their highway safety funds. A state could move up to half its highway safety construction funds from the Highway Safety Improvement Program into the core Section 402 program. A state would also be able to use 100 percent of its safety belt performance grants for construction purposes if it had a primary safety belt law, or 50 percent if the grant was based on high safety belt use. States could also use up to 50 percent of their general performance grants for safety construction purposes.

The New Starts Transit Program Has Faced Challenges in Selection and Oversight of Projects and Has Taken Steps to Address these Challenges

The New Starts transit program identifies and funds fixed guideway projects, including rail, bus rapid transit, trolley, and ferry projects. The New Starts program provides much of the federal government's investment in urban mass transportation. TEA-21 and subsequent amendments authorized approximately \$10 billion for New Starts projects for fiscal years 1998 through 2003. The administration's proposal for the surface transportation reauthorization, known as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), requests that about \$9.5 billion be made available for the New Starts program for fiscal years 2004 through 2009.

Unlike the federal highway program and certain transit programs, under which funds are automatically distributed to states on the basis of formulas, the New Starts program requires local transit agencies to compete for New Starts project funds on the basis of specific financial and project justification criteria. To obtain New Starts funds, a project must progress through a regional review of alternatives, develop preliminary engineering plans, and meet FTA's approval for final design. FTA assesses the technical merits of a project proposal and its finance plan and then notifies the Congress that it intends to commit New Starts funding to certain projects through full funding grant agreements. The agreement

establishes the terms and conditions for federal participation in the project, including the maximum amount of federal funds—no more than 80 percent of the estimated net cost of the project.¹⁵ While the grant agreement commits the federal government to providing the federal contributions to the project over a number of years, these contributions are subject to the annual appropriations process. State or local sources provide the remaining funding. The grantee is responsible for all costs exceeding the federal share, unless the agreement is amended.

To meet the nation's transportation needs, many states and localities are planning or building large New Starts projects to replace aging infrastructure or build new capacity. They are often costly and require large commitments of public resources, which may take several years to obtain from federal, state, and local sources. The projects can also be technically challenging to construct and require their sponsors to resolve a wide range of social, environmental, land-use, and economic issues before and during construction.

Challenges

It is critical that federal and other transportation officials meet two particular challenges that stem from the costly and lengthy federal funding commitment associated with New Starts projects. First, they must have a sound basis for evaluating and selecting projects. Because many transit projects compete for limited federal transit dollars—there are currently 52 projects in the New Starts “pipeline”—and FTA awards relatively few full funding grant agreements each year, it is crucial that local governments choose the most promising projects as candidates for New Starts funds and that FTA uses a process that effectively selects those projects that most clearly meet the program's goals.

Second, FTA, like FHWA, has the challenge of overseeing the planning, development, and construction of selected projects to ensure they remain on schedule and within budget, and deliver their expected performance. In the early 1990s, we designated the transit grants management oversight program as high risk because it was vulnerable to fraud, waste, abuse, and

¹⁵In response to language contained in a conference report prepared by the House Appropriations Committee, FTA adopted a 60 percent preference policy, which in effect generally reduced the level of New Starts federal funding share for projects from 80 percent to 60 percent.

mismanagement.¹⁶ While we have removed it from the high-risk designation because of improvements FTA has made to this program, we have found that major transit projects continue to experience costs and schedule problems. For example, in August, 1999, we reported that 6 of the 14 transit projects with full funding grant agreements had experienced cost increases, and 3 of those projects had experienced cost increases that were more than 25 percent over the estimates approved by FTA in grant agreements.¹⁷ The key reasons for the increases included (1) higher than anticipated contract costs, (2) schedule delays, and (3) project scope changes and system enhancements. A recent testimony by the Department of Transportation's Inspector General indicates that major transit projects continue to experience significant problems including cost increases, financing problems, schedule delays, and technical or construction difficulties.¹⁸

Strategies

FTA has developed strategies to address the twin challenges of selecting the right projects and monitoring their implementation costs, schedule, and performance. First, in response to direction in TEA-21, FTA developed a systematic process for evaluating and rating potential New Starts projects competing for federal funding.¹⁹ Under this process, FTA assigns individual ratings for a variety of financial and project justification criteria and then assigns an overall rating of highly recommended, recommended, not recommended, or not rated. These criteria reflect a broad range of benefits and effects of the proposed projects, including capital and operating finance plans, mobility improvements, environmental benefits, operating efficiencies, cost-effectiveness, land use, and other factors. According to FTA's New Starts regulations, a project must have an overall rating of at least "recommended" to receive a grant agreement. FTA also considers a number of other "readiness" factors before proposing funding

¹⁶U.S. General Accounting Office, *Mass Transit: Challenges in Evaluating, Overseeing, and Funding Major Transit Projects* (GAO/T-RCED-00-104, Washington, DC: Mar. 8, 2000).

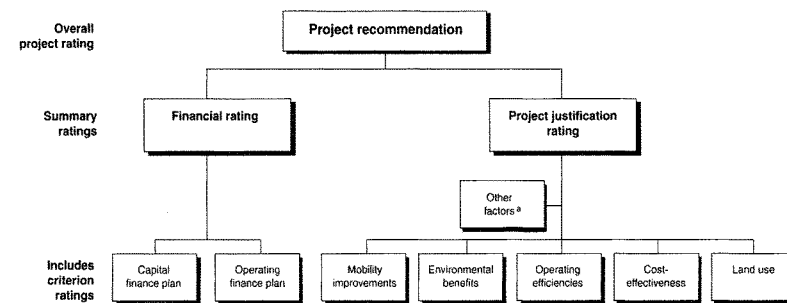
¹⁷U.S. General Accounting Office, *Mass Transit: Status of New Starts Transit Projects With Full Funding Grant Agreements*, GAO/RCED-99-240 (Washington, D.C.: Aug. 19, 1999).

¹⁸See U.S. Department of Transportation, Statement of the Honorable Kenneth M. Mead, Inspector General, *Management of Large Highway and Transit Projects* (Washington, D.C.: May 1, 2002).

¹⁹The exceptions to the ratings process are projects that are statutorily exempt because they request less than \$25 million in New Starts funding.

for a project. For example, FTA proposes funding only for projects that are expected to enter the final design phase and be ready for grant agreements within the next fiscal year. Figure 3 illustrates the New Starts evaluation and ratings process.

Figure 3: New Starts Evaluation and Ratings Process



Source: FTA.

Note: According to FTA, the optional criterion of "other factors" gives grantees the opportunity to provide additional information about the likelihood of a project's overall success.

While FTA has made substantial progress in establishing a systematic process for evaluating and rating potential projects, our work has raised some concerns about the process. For example, to assist FTA in prioritizing projects to ensure that the relatively few full funding grant agreements go to the most important projects, we recommended in March 2000 that FTA further prioritize the projects that it rates as highly recommended or recommended and ready for New Starts funds.²⁰ FTA has not implemented this recommendation. We believe that this recommendation is still valid because the funding requested for the many

²⁰U.S. General Accounting Office, *Mass Transit: Challenges in Evaluating, Overseeing, and Funding Major Transit Projects*, GAO/T-RCED-00-104 (Washington, D.C.: Mar. 8, 2000).

projects that are expected to compete for grant agreements over the next several years is likely to exceed the available federal dollars. A further concern about the ratings process stems from FTA's decision during the fiscal year 2004 cycle to propose a project for a full funding grant agreement that had been assigned an overall project rating of "not rated," even though FTA's regulations require that projects have at least a "recommended" rating to receive a grant agreement.²¹ Finally, we found that FTA needs to provide clearer information and additional guidance about certain changes it made to the evaluation and ratings process for the fiscal year 2004 cycle.²²

In work that addressed the challenge of overseeing ongoing projects once they are selected to receive a full funding grant agreement, we reported in March and September 2000 that FTA had improved the quality of the transit grants management oversight program through strategies that included upgrading its guidance and training of staff and grantees, developing standardized oversight procedures, and employing contractor staff to strengthen its oversight of grantees. FTA also expanded its oversight efforts to include a formal and rigorous assessment of a grantee's financial capacity to build and operate a new project and of the financial impact of that project on the existing transit system. These assessments, performed by independent accounting firms, are completed before FTA commits funds for construction and are updated as needed until projects are completed. For projects that already have grant agreements, FTA focuses on the grantee's ability to finish the project on time and within the budget established by the grant agreement.

The administration's fiscal year 2004 budget proposal contains three New Starts initiatives—reducing the maximum federal statutory share to 50 percent, allowing non-fixed-guideway projects to be funded through New Starts, and replacing the "exempt" classification with a streamlined ratings

²¹According to FTA officials, this project could not be rated because its local travel forecasting data and models did not support calculation of a new benefits measure required for the fiscal year 2004 cycle. The officials told us that they decided to select this project for a proposed grant agreement because they believed that the data problems would be corrected, and the project would be able to achieve a "recommended" rating and be ready for a grant agreement by the end of fiscal year 2004. They said that other proposed projects that received overall ratings of "recommended" or higher would not be ready at that time.

²²U.S. General Accounting Office, *Mass Transit: FTA Needs to Provide Clear Information and Additional Guidance on the New Starts Ratings Process*, GAO-03-701 (Washington, D.C.: June 23, 2003).

process for projects requesting less than \$75 million in New Starts funding. These proposed initiatives have advantages and disadvantages, with implications for the cost-effectiveness and performance of proposed projects. First, the reduced federal funding would require local communities to increase their funding share, creating more incentive for them to propose the most cost-effective projects; however, localities might have difficulties generating the increased funding share, and this initiative could result in funding inequities for transit projects when compared with highway projects. Second, allowing non-fixed guideway projects to be funded under New Starts would give local communities more flexibility in choosing among transit modes and might promote the use of bus rapid transit, whose costs compare favorably with those of light rail systems;³³ however, this initiative would change the original fixed guideway emphasis of New Starts, which some project sponsors we interviewed believe might disadvantage traditional New Starts projects. Finally, replacing the "exempt" classification with a streamlined rating process for all projects requesting less than \$75 million might promote greater performance-oriented evaluation since all projects would receive a rating. However, this initiative might reduce the number of smaller communities that would participate in the New Starts program.

**DOT's Essential Air
Service Program
Faces Possible
Program
Modifications Due to
Changing Conditions**

The Congress established the Essential Air Service (EAS) program as part of the Airline Deregulation Act of 1978. The act guaranteed that communities served by air carriers before deregulation would continue to receive a certain level of scheduled air service. Special provisions guaranteed service to Alaskan communities. In general, the act guaranteed continued service by authorizing DOT to require carriers to continue providing service at these communities. If an air carrier could not continue that service without incurring a loss, DOT could then use EAS funds to award that carrier a subsidy. Subsidies are to cover the difference between a carrier's projected revenues and expenses and to provide a minimum amount of profit. Under the Airline Deregulation Act, the EAS program was intended to sunset, or end, after 10 years. In 1987, the Congress extended the program for another 10 years, and in 1998, it eliminated the sunset provision, thereby permanently authorizing EAS.

To be eligible for subsidized service, a community must meet three general requirements. It must have received scheduled commercial passenger

³³GAO-03-729T.

service as of October 1978, may be no closer than 70 highway miles to a medium- or large-hub airport, and must require a subsidy of less than \$200 per person (unless the community is more than 210 highway miles from the nearest medium- or large-hub airport, in which case no average per-passenger dollar limit applies).²⁴

Funding for the EAS program comes from a combination of permanent and annual appropriations. Part of its funding comes from the Federal Aviation Reauthorization Act of 1996 (P.L. 104-264), which authorized the collection of user fees for services provided by the Federal Aviation Administration (FAA) to aircraft that neither take off nor land in the United States, commonly known as overflight fees. The act also permanently appropriated the first \$50 million of such fees for EAS and safety projects at rural airports. In fiscal year 2003, total EAS program appropriations were \$113 million.

Challenges

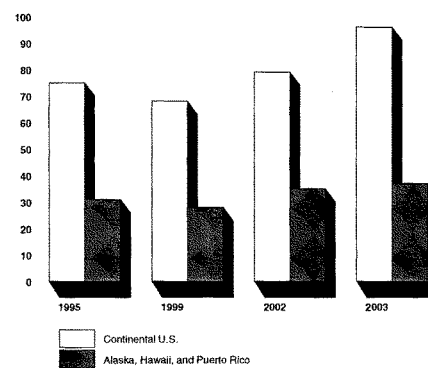
As the airline industry has evolved since the industry was deregulated in 1978, the EAS program has faced increasing challenges to remain viable. Since fiscal year 1995, the program's costs have tripled, rising from \$37 million to \$113 million, and they are likely to continue escalating. Several factors are likely to affect future subsidy requirements. First, carriers' operating costs have increased over time, in part because of the costs associated with meeting federal safety regulations for small aircraft beginning in 1996. Second, carriers' revenues have been limited because many individuals traveling to or from EAS-subsidized communities choose not to fly from the local airport, but rather to use other larger nearby airports, which generally offer more service at lower fares. On average, in 2000, each EAS flight operated with just over 3 passengers.

Finally, the number of communities eligible for EAS subsidies has increased over time, rising from a total of 106 in 1995 to 114 in July 2002 (79 in the continental United States and 35 in Alaska, Hawaii, and Puerto Rico) and again to 133 in April 2003 (96 in the continental United States

²⁴The nation's commercial airports are categorized into four main groupings based on the number of passengers boarding an aircraft (enplaned) for all operations of U.S. carriers in the United States. A nonhub has less than 0.05 percent of the total annual passenger enplanements in the United States in any given year. A small hub has at least 0.05 percent, but less than 0.25 percent, of total enplanements. A medium hub has at least 0.25 percent and less than 1.0 percent of total U.S. enplanements, and a large hub has 1.0 percent or more of total U.S. enplanements. These definitions are contained in statute.

and 37 in Alaska, Hawaii, and Puerto Rico). The number of subsidy-eligible communities may continue to grow in the near term. Figure 4 shows the increase in the number of communities eligible for EAS-subsidized service between 1995 and April 2003.

Figure 4: Increase in EAS-Subsidized Communities between 1995 and April 2003



Source: GAO.

Note: Data for April 2003 show the number of communities receiving EAS-subsidized service and those where proposed subsidies are under negotiation.

Strategies

Over the past year, the Congress, the administration, and we have each identified a number of potential strategies generally aimed at enhancing the EAS program's long-term sustainability. These strategies broadly address challenges related to the carriers' cost of providing service and the passenger traffic and revenue that carriers can hope to accrue.

In August 2002, in response to a congressional mandate, we identified and evaluated four major categories of options to enhance the long-term

viability of the EAS program.²⁵ In no particular order, the options we identified were as follows:

- Better match capacity with community use by increasing the use of smaller (i.e., less costly) aircraft and restricting little-used flight frequencies.
- Target subsidized service to more remote communities (i.e., those where passengers are less likely to drive to another airport) by changing eligibility criteria.
- Consolidate service to multiple communities into regional airports.
- Change the form of the federal assistance from carrier subsidies to local grants that would allow local communities to match their transportation needs with individually tailored transportation options.

Each of these options could have positive and negative effects, such as lowering the program's costs but possibly adversely affecting the economies of the communities that would lose some or all of their direct scheduled airline service.

This year's House-passed version of the FAA reauthorization bill, H.R. 2115, also includes various options to restructure air service to small communities now served by the EAS program. The bill proposes an alternative program (the "community and regional choice program"), which would allow communities to opt out of the EAS program and receive a grant that they could use to establish and pay for their own service, whether scheduled air service, air taxi service, surface transportation, or another alternative.

The complementary Senate FAA reauthorization bill (also H.R. 2115) also includes specific provisions designed to restructure the EAS program. This bill would set aside some funds for air service marketing to try to attract passengers and create a grant program under which up to 10 individual communities or a consortium of communities could opt out of the existing EAS program and try alternative approaches to improving air service. In addition, the bill would preclude DOT from terminating, before the end of

²⁵U.S. General Accounting Office, *Options to Enhance the Long-term Viability of the Essential Air Service Program*, GAO-02-997R (Washington, D.C.: Aug. 30, 2002).

2004, a community's eligibility for an EAS subsidy because of decreased passenger ridership and revenue.

The administration's proposal would generally restrict appropriations to the \$50 million from overflight fees and would require communities to help pay the costs of funding their service. The proposal would also allow communities to fund transportation options other than scheduled air service, such as on-demand "air taxis" or ground transportation.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you or other members of the Committee may have.

Contact and Acknowledgments

For future contacts regarding this testimony, please contact JayEtta Hecker at (202) 512-2834. Individuals making key contributions to this testimony included Robert Ciszewski, Steven Cohen, Elizabeth Eisenstadt, Rita Grieco, Steven Martin, Katherine Siggerud, Glen Trochelman, and Alwynne Wilbur.

Appendix 1: Related GAO Products

Federal-Aid Highways

Federal-Aid Highways: Cost and Oversight of Major Highway and Bridge Projects—Issues and Options. GAO-03-764T. Washington, D.C.: May 8, 2003.

Transportation Infrastructure Cost and Oversight Issues on Major Highway and Bridge Projects. GAO-02-673. Washington, D.C.: May 1, 2002.

Surface Infrastructure: Costs, Financing, and Schedules for Large-Dollar Transportation Projects. GAO/RCED-98-64. Washington, D.C.: February 12, 1998.

DOT's Budget: Management and Performance Issues Facing the Department in Fiscal Year 1999. GAO/T-RCED/AIMD-98-76. Washington, D.C.: February 12, 1998.

Transportation Infrastructure: Managing the Costs of Large-Dollar Highway Projects. GAO/RCED-97-27. Washington, D.C.: February 27, 1997.

Transportation Infrastructure: Progress on and Challenges to Central Artery/Tunnel Project's Costs and Financing. GAO/RCED-97-170. Washington, D.C.: July 17, 1997.

Transportation Infrastructure: Central Artery/Tunnel Project Faces Financial Uncertainties. GAO/RCED-96-1313. Washington, D.C.: May 10, 1996.

Central Artery/Tunnel Project. GAO/RCED-95-213R. Washington, D.C.: June 2, 1995.

Highway Safety

Highway Safety: Research Continues on a Variety of Factors That Contribute to Motor Vehicle Crashes. GAO-03-436. Washington, D.C.: March 31, 2003.

Highway Safety: Better Guidance Could Improve Oversight of State Highway Safety Programs. GAO-03-474. Washington, D.C.: April 21, 2003.

Highway Safety: Factors Contributing to Traffic Crashes and NHTSA's Efforts to Address Them. GAO-03-730T. Washington, D.C.: May 22, 2003.

Mass Transit

Federal Transit Administration: Bus Rapid Transit Offers Communities a Flexible Mass Transit Option. GAO-03-729T. Washington, D.C.: June 24, 2003.

Mass Transit: FTA Needs to Provide Clear Information and Additional Guidance on the New Starts Ratings Process. GAO-03-701. Washington, D.C.: June 23, 2003.

Mass Transit: FTA's New Starts Commitments for Fiscal Year 2003. GAO-02-603. Washington, D.C.: April 30, 2002.

Mass Transit: FTA Could Relieve New Starts Program Funding Constraints. GAO-01-987. Washington, D.C.: August 15, 2001.

Mass Transit: Project Management Oversight Benefits and Future Funding Requirements. GAO/RCED-99-240. Washington, D.C.: August 19, 1999.

Mass Transit: Implementation of FTA's New Starts Evaluation Process and FY 2001 Funding Proposals. GAO/RCED-00-149. Washington, D.C.: April 28, 2000.

Mass Transit: Challenges in Evaluating, Overseeing, and Funding Major Transit Projects. GAO/T-RCED-00-104. Washington, DC: Mar. 8, 2000.

Mass Transit: Status of New Starts Transit Projects With Full Funding Grant Agreements. GAO/RCED-99-240. Washington, D.C.: Aug. 19, 1999.

Mass Transit: FTA's Progress in Developing and Implementing a New Starts Evaluation Process. GAO/RCED-99-113. Washington, D.C.: April 26, 1999.

Essential Air Service

Commercial Aviation: Issues Regarding Federal Assistance for Enhancing Air Service to Small Communities. GAO-03-540T. Washington, D.C.: March 11, 2003.

Commercial Aviation: Factors Affecting Efforts to Improve Air Service at Small Community Airports. GAO-03-330. Washington, D.C.: January 17, 2003.

Commercial Aviation: Financial Condition and Industry Responses Affect Competition. GAO-03-171T. Washington, D.C.: October 2, 2002.

Options to Enhance the Long-term Viability of the Essential Air Service Program. GAO-02-997R. Washington, D.C.: Aug. 30, 2002.

Commercial Aviation: Air Service Trends at Small Communities Since October 2000. GAO-02-432. Washington, D.C.: August 30, 2002.

Essential Air Service: Changes in Passenger Traffic, Subsidy Levels, and Air Carrier Costs. T-RCED-00-185. Washington, D.C.: May 25, 2000.

Essential Air Service: Changes in Subsidy Levels, Air Carrier Costs, and Passenger Traffic. RCED-00-34. Washington, D.C.: April 14, 2000.

STATEMENT OF JEROME F. KEVER
MANAGEMENT MEMBER
U. S. RAILROAD RETIREMENT BOARD

July 22, 2003

Committee on Transportation and Infrastructure
U. S. House of Representatives

Good morning, Mr. Chairman and Members of the Committee. As the Management Member of the Board, I represent the interests of the Board's rail carrier stakeholders. Chairman Schwartz has indicated that I am opposed to participation of the Railroad Retirement Board OIG in Medicare audits and investigations, and that is because I believe Congress has appropriately directed the focus, energy, and resources of this OIG toward his own agency's primary mission and vision – not that of another agency.

I fully recognize and support the importance of the OIG's efforts to curtail waste, fraud, and abuse in RRB programs. Nothing in my remarks today is intended to undermine the value of the OIG's office or its mission, and as a Medicare stakeholder, I am appreciative of the attention and resources Congress continues to dedicate to the daunting task of controlling Medicare fraud. Rather, I intend only to explain why, from a stewardship perspective, it is reasonable for Congress to ask the RRB's OIG to focus on mission-critical programs, and not on activities that supplement the Medicare, rather than the RRB, trust funds.

The premise of my position is simply that the RRB does not pay "\$788 million in benefits to 571,000 retired railroad workers" on an annual basis. Similarly, the RRB does not process or adjudicate those claims, nor does it select health care delivery or durable medical equipment providers. Rather, the RRB provides Medicare *service delivery support* with two distinct characteristics, neither of which, in my view, imposes a fiduciary responsibility on the part of the RRB or the RRB OIG to safeguard the Medicare trust funds from health care provider and durable medical equipment fraud.

First, the RRB provides service support to the Centers for Medicare and Medicaid Services by enrolling beneficiaries, collecting Part B premiums and premium

overpayments, handling certain types of beneficiary inquiries, and adjudicating eligibility and arrearage appeals. CMS reimburses the RRB for the costs of these activities. It is also important to note that the RRB would provide these support services *even if it did not administer* a Part B carrier contract. The distinction is relevant because the Social Security Administration provides the very same support services to CMS as well as adjudication on a broader range of Medicare appeals. It is my understanding that the SSA OIG has focused its vision and mission on improving and safeguarding the mission-critical programs of SSA, and that the SSA OIG now refers Medicare fraud allegations to the DHHS OIG.

The second type of service that the RRB provides to CMS is the selection and monitoring of a Medicare Part B carrier. The RRB's Part B contract is one of 47 such contracts funded and audited by CMS. Pursuant to budgetary guidance from CMS, the RRB selects a Part B carrier and then tracks the carrier's performance under the contract, including claims processing charges, carrier timeliness, claims volume, and other day-to-day budgetary operations. It performs an Annual Carrier Performance review. The RRB is reimbursed by CMS for all of its payroll and other costs associated in administering the contract. All other substantive matters, including selection of and interaction with health care delivery providers, processing, adjudication, and payment of Part B claims -- all of these are performed by the carrier under the oversight of CMS and the DHHS OIG. The carrier is audited by CMS.

I might add that the RRB handles a very small number of Part A claims for Canadian annuitants. In FY 2002, for example, the RRB paid a total of 17 Canadian Part A claims representing \$58,675 in benefits. As mentioned previously, however, the RRB does not actually pay any other type of Medicare benefit. If that were the case, I would support the OIG's position; but CMS, not the RRB, funds the Part B carrier from its own appropriations and pays any and all Part B benefits. The carrier receives its funding directly from CMS. Benefits are paid by CMS. The RRB is not a "middle man" in that regard.

It has been put forward for this Committee's consideration that since 6.3% of all Medicare payments in 2002 were erroneous, there must be some \$49.6 million in estimated erroneous payments attributable to Medicare payments under railroad retirement. From a stewardship perspective, I would like for this Committee to be aware of the basis for that estimate and why it is not a reliable predictor of additional savings from railroad-related Medicare payments. The DHHS-OIG audit¹ which reported the 6.3% Medicare error rate examined a sample of 1,030 claims from 8 contractors. Four of the contractors were strictly Part A intermediaries – contractors who process claims related to hospital care, skilled nursing facilities, and home health agencies. Two of the contractors processed both Part A and Part B claims, and the remaining two contractors processed Part A, Part B, and durable medical equipment claims. Accordingly, the sample was heavily weighted toward Part A and it included durable medical equipment claims which the RRB's Part B carrier does not process. Second, while the audit concluded that these 1,030 claims "did not comply with Medicare laws and regulations," the auditors also noted that the contractors ***had already disallowed and recovered many of the overpayments*** identified in the sample through their normal claims adjudication process. Third, the auditors noted that while certain "erroneous claims did not meet Medicare reimbursement rules regarding documentation, ***we cannot conclude that the services were not provided or were otherwise wasteful.***" And finally, the audit identified both underpayments and overpayments, as well as payments that were properly made but simply improperly documented. Accordingly, to the extent that the \$49.6 million in estimated erroneous payments includes overpayments already recovered under the carrier's procedures, underpayments, payments properly made but improperly documented, and payments properly made but improperly coded; and to the extent the sample is weighted toward the types of claims that are more prone to error, there would be a reduction in net savings.

The Congressional directive to focus on RRB programs and resources was reasonable in FY 1997 and continues to be reasonable today. The RRB has no oversight over physicians, pharmacies, and durable medical equipment providers. Monetary returns

¹ Report No. A-17-02-02202, "Improper Fiscal Year 2002 Medicare Fee-for-Service Payments," DHHS-OIG, January 2003, available on the DHHS-OIG website.

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from such investigations consequently do not benefit the RRB trust funds. Although the Health Care Financing Administration has, in the past, reimbursed the RRB for the OIG's costs, the fact remains that Medicare investigations do not improve the bottom line for the RRB – they do not improve the management and efficiency of the RRB. They do not improve the programs of the RRB. They do not safeguard the RRB trust funds. The more performance-oriented an agency becomes, the more focused it must be on vision and mission. Who can say what opportunities to assist the RRB and the RRB trust funds are missed because an OIG has diverted his energy and attention, and that of his staff, away from mission-critical programs and spending?

This is a complex issue, but from a stewardship perspective, my view is simply that the Railroad Retirement Board Inspector General can and does fulfill his statutory mandate when he focuses his audit and investigative resources on improving and protecting his own agency's programs.

I appreciate the time and willingness of this Committee to hear my views on this subject.

**Before the Committee on Transportation and Infrastructure
United States House of Representatives**

For Release on Delivery
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Tuesday
July 22, 2003
CC-2003-148

**Controlling Costs and Improving the
Effectiveness of Federal Highway
Administration and Federal Transit
Administration Programs**

**Statement of
The Honorable Kenneth M. Mead
Inspector General
U.S. Department of Transportation**



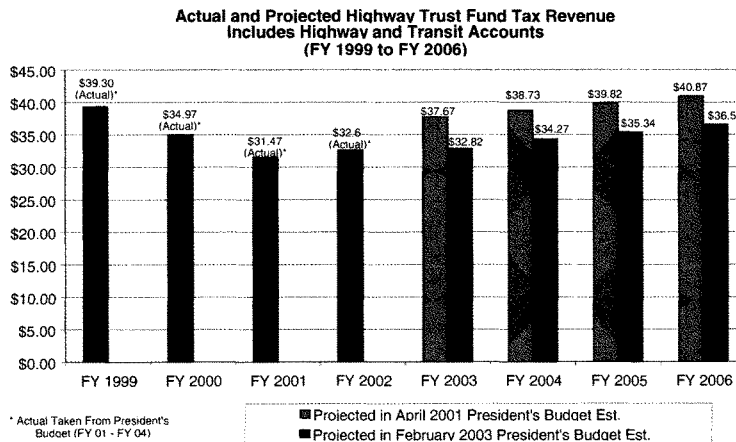
Chairman Young, Ranking Member Oberstar, and other members of the Committee:

We appreciate this opportunity to testify today on controlling costs and improving the effectiveness of Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) Programs. Whether funds are lost to cost overruns, schedule delays, or fraud, the result is the same—fewer resources are available for important transportation projects. To illustrate, if the efficiency with which the \$500 billion invested by the Federal Government and states over the last 6 years on highway projects had been improved by only 1 percent, an additional \$5 billion would be made available—enough to fund 4 of the 15 active major highway projects.

The Concurrent Resolution on the Budget for Fiscal Year (FY) 2004 requires House and Senate authorizing Committees to identify opportunities to eliminate waste, fraud, and abuse in mandatory programs under their jurisdiction. The Senate and House Budget Committees' savings target for the House Transportation and Infrastructure Committee totaled \$491 million, or about 1 percent of the Department's overall FY 2004 budget request.

On the one hand, it is important to reduce spending, and eliminating waste, fraud, and abuse should be the first step in efforts to control costs. On the other hand, to address unmet needs and important national priorities, the Congress recently authorized spending increases in some critical programs, including national defense and homeland security.

A number of proposals have also been made to increase funding for highway and transit infrastructure programs at a time when Highway Trust Fund tax receipts have declined 20 percent from \$39.3 billion in FY 1999 to \$31.5 billion in FY 2001. Current estimates show that from FY 2003 through FY 2006, Highway Tax Fund revenues will be about \$18 billion less than projected in April 2001, and are not expected to return to the FY 1999 level until FY 2008.



Whether or not this Congress ultimately decides to increase funding for surface transportation investments, we believe significant opportunities exist to (1) use funds more efficiently and effectively, (2) avoid unnecessary cost increases, (3) cut costs and reduce losses to fraud and abuse, and (4) increase revenues to the Highway Trust Fund by strengthening efforts to prevent fuel tax evasion.

From FY 1997 through the first half of FY 2003, we identified over \$2.6 billion in recommended funds that FHWA and FTA could put to better use and questioned more than \$33.6 million in costs. While the extent of fraud we are seeing today is not on the scale seen during the 1960s and 1970s, during the last 4½ years, indictments for highway and transit-related fraud have tripled and convictions have doubled. Currently we have over 100 ongoing investigations of infrastructure projects or contracts in 35 states.

Secretary Mineta, Deputy Secretary Jackson, Administrator Peters, and Administrator Dorn have also emphasized the need to improve oversight to get more value from the Federal investment. Their commitment to improve stewardship and oversight is clearly demonstrated in the recently submitted reauthorization proposal—the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, or SAFETEA. Enacting the proposal's various provisions, many of which respond directly to recommendations we have made, will go a long way to stretch Federal dollars by helping ensure that funds are spent cost-effectively, and increasing Highway Trust Fund revenues through strengthened enforcement and investigative efforts to detect and prevent fuel tax fraud.

We recognize that the Congress may not complete its consideration of the reauthorization bill this year. Some members have discussed the possibility of a “bridge” reauthorization for 1 or 2 years. Should this option be chosen, we believe you should consider incorporating SAFETEA’s proposed stewardship, oversight, and revenue protection provisions into the bridge reauthorization, which would immediately begin to improve the effectiveness of our investments and provide key tools to increase revenues by attacking fuel tax evasion schemes.

Today I will discuss the following four key areas where our audits and investigations have highlighted opportunities to improve the efficiency and effectiveness of transportation investments, achieve cost savings, and increase revenues to the Highway Trust Fund.

- ***Putting Idle Funds to Use on Important Projects***
- ***Getting More for the Transportation Dollar by Strengthening Project Management and Financial Oversight***
 - *Preparing Reliable Project Cost Estimates*
 - *Preparing Finance Plans to Identify Cost, Schedule, Funding and Risks to Projects*
 - *Ensuring That Statewide Plans Properly Represent to the Taxpayer How Funds Will Be Spent*
 - *Recovering Overpayments From Contractors and Resolving Construction Claims*
 - *Implementing More Cost-Effective Engineering Alternatives*
 - *Refocusing FHWA Efforts on Project Management and Financial Oversight*
- ***Detecting and Preventing Fraud***
 - *Strengthening Debarment Authority*
 - *Enhancing State Oversight*
 - *Sharing of Federal Recoveries with the States*
- ***Combating Fuel Tax Evasion—Securing Tax Revenue to Which the Highway Trust Fund Is Entitled***

Putting Idle Funds to Use on Important Projects

To its credit, FHWA performs annual reviews of funds that States have obligated, but not used. However, in FY 2001 we found \$238 million that States no longer needed on projects to which they had been obligated. Of this amount, \$54 million

had been idle for 16 years on a freeway project in Connecticut that had never been started. Funds that are no longer needed by States should be made available for use on other projects or returned to the U.S. Treasury. We will continue to work with Administrator Peters and her staff to ensure that idle funds are identified so that they can be used on important projects.

Getting More for the Transportation Dollar by Strengthening Project Management and Financial Oversight

We have reviewed a number of major projects that stand as examples of good project management—projects such as Utah’s I-15 and the Alameda Corridor in California. In contrast, we have reviewed projects, such as the Central Artery in Massachusetts and the Springfield Interchange in Virginia, in which management and oversight were ineffective, leading to significant cost increases, financing problems, schedule delays, or technical or construction difficulties. Our audits have identified the following measures for ensuring that we get more for each project dollar spent:

- Preparing reliable project cost estimates;
- Preparing finance plans to identify project cost, schedule and funding risks;
- Ensuring that statewide plans properly represent to the taxpayer how funds will be spent;
- Recovering overpayments from contractors and resolving construction claims;
- Implementing more cost-effective engineering alternatives; and
- Refocusing FHWA efforts on project management and financial oversight.

Preparing Reliable Project Cost Estimates

One problem we have repeatedly seen is that cost estimates on major highway and transit projects have been unreliable and resulted in substantial cost increases. For example, we found the Virginia Department of Transportation understated project cost estimates by \$236.5 million, or 35 percent, on the Springfield Interchange Project by not including estimates for some known and planned costs. In addition, the baseline estimate was prepared far too early and was based on plans that were only 15 to 20 percent complete. Cost estimating problems also occurred on the San Francisco Bay Area Rapid Transit Airport Extension. Our April 2000 report noted that the project’s cost had increased by \$316 million over the initial cost estimate.

When initial costs are unreliable, decision-makers do not have the information needed to choose the most cost-effective transportation solutions. In addition, subsequent cost increases erode the public's trust in Federal, State, and project officials' ability to act as good stewards of public funds. We note that as part of the financial integrity provisions of SAFETEA and consistent with our prior recommendation, FHWA will develop minimum standards for estimating project costs.

Preparing Finance Plans to Identify Cost, Schedule, Funding and Risks to Projects

Another problem is that finance plans are not usually required for highway projects under \$1 billion, although such projects can also burden a State's management resources. A finance plan is a management tool that is vital in providing project managers and the public with information on how much a project is expected to cost, when it will be completed, whether adequate funding is committed to the project, and whether there are risks to completing the project on time and within budget.

In our opinion, finance plans should be prepared for projects costing \$100 million or more, and responsibility for approving those plans should be delegated to the States, with the Secretary reserving the right to review any plan. If the States are going to spend \$100 million of taxpayer money, it is reasonable to require them to develop an approved finance plan that identifies project costs, milestones, and funding sources. The Department has incorporated this new requirement in its reauthorization proposal.

Ensuring That Statewide Plans Properly Represent to the Taxpayer How Funds Will Be Spent

Under Code of Federal Regulations, Title 23, States are required to prepare financially constrained 3-year transportation plans and submit these plans concurrently to FHWA and FTA for joint approval. These plans are representations to the taxpayers of how the States intend to use the taxpayers' money to meet their transportation needs and identify which projects will be funded, their costs, and funding sources. This is particularly important in States that have large projects ongoing, because cost increases on one large project can put pressure on the State's ability to fund its other transportation needs.

We reviewed one State's plans covering the years 1994 to 2000 and found that, in large part, the plans were unrealistic. For example, of 152 interstate, primary and urban construction projects included in the plans, only 30 percent were started on

time, 57 percent were delayed, and 13 percent were eliminated. One of the reasons this occurred was the cost estimates included in the plan understated the actual cost of the projects, making the funding identified for the overall highway construction program insufficient. We also found that FHWA had approved the plans. FHWA must ensure that Statewide plans are realistic and achievable and include reliable cost estimates and funding commitments to complete the projects identified. Without reliable cost estimates and funding commitments, the Statewide plans have little value.

Recovering Overpayments From Contractors and Resolving Construction Claims

Change orders to contracts are initiated by the project or contractors in response to changes in the project's scope or differing site conditions. However, some change orders are a result of design errors or omissions caused by consultant engineers. Recovery of funds paid on these change orders offers an opportunity to reduce project costs, which benefits the Federal and State governments. Maintaining tight control over change orders and promptly resolving outstanding construction claims are key in controlling project costs. For example, the \$14.62 billion Central Artery/Tunnel Project in Boston might be able to reduce costs by aggressively pursuing opportunities to recover costs of design errors or omissions caused by engineering consultants.

To date, the Project's cost recovery efforts have been anemic. First, 8 years of cost recovery efforts have led to only \$30,000 in recoveries from a single consultant, even though 76 cost recovery items, involving \$53.7 million in change orders, have been reviewed and resolved to date. The \$30,000 represents less than one-tenth of 1 percent (.056 percent) of the amount in question.

Second, the Project's cost recovery efforts have not resulted in the timely resolution of many change orders. For example, the Project currently has approximately 295 unresolved change orders, valued at \$188 million, of which 76 have been outstanding for 2 to 7 years. Timely resolution of change orders in the Cost Recovery Program is important, because the longer the issues remain unresolved, the more difficult it becomes for project officials to determine whether the change orders were caused by design errors.

Implementing More Cost-Effective Engineering Alternatives

Obtaining the best value for an investment requires an analysis of various alternatives. Since 1970, many industries and Government agencies have successfully employed Value Engineering (VE) programs to control costs on major projects. The purpose of these programs is to objectively review all

reasonable alternatives during the design phase to find more cost-effective alternatives. FHWA's VE program, established in 1997, requires that a study be performed on all Federal-aid National Highway System projects with an estimated cost of \$25 million or more, and on other projects where using VE has a high potential for cost savings.

According to FHWA's FY 2001 Annual Federal-aid Value Engineering Summary Report, the latest report available, the States conducted 378 VE studies that included 2,013 recommendations estimated to save \$2.4 billion. FHWA Division personnel approved about 50 percent of the recommendations made in FY 2001, saving approximately \$865 million, or 36 percent of the total value of VE recommendations. While FHWA and the States have realized some savings, we identified other VE opportunities which were not implemented.

For example, in 2002 Maryland officials, who manage the Wilson Bridge Project, rejected a VE proposal to change from one type of girder to another, which would have saved up to \$59 million. Maryland officials claimed that the VE proposal would cause significant delays that could result in additional costs. However, our review found that the rejected proposal was technically feasible and would not result in a cost increase. After FHWA advised the State to more objectively reexamine the rejected VE proposal, project officials accepted it as a design change and saved \$59 million.

Refocusing FHWA Efforts on Project Management and Financial Oversight

Our work has shown that FHWA's oversight of Federal-aid Highway projects has been ineffective at times because, until recently, FHWA managers rarely focused on program and major project management and financial oversight. Historically, FHWA has taken a partnership approach in exercising its oversight role of Federal-aid Highway projects, with FHWA channeling money for highways to the States and working with State personnel to administer highway contracts. This partnership is important, but it is equally important that FHWA be willing to step back and make the hard calls when necessary. As a result of the partnership, FHWA has sometimes missed larger management issues. For example, at the time the Central Artery announced a \$1.4 billion cost increase in 2000, FHWA officials had approved thousands of engineering design changes. Nonetheless, they were caught unaware when a cost increase was announced, even though they had just approved the project's finance plan.

Further, FHWA's expertise is limited in emerging technologies, such as financing, cost-estimating, program analysis, environmental processes, and schedule management. This is because FHWA's workforce is primarily structured

around engineering skills that were in greater demand during construction of the interstate system. Of FHWA's workforce of 2,860 employees, 1,130, or approximately 40 percent are engineers. Yet in the remaining 60 percent, or 1,750 employees, specialist skills, needed to oversee State management processes, are in short supply. For example, FHWA employs 88 financial specialists, who primarily perform financial management tasks internal to FHWA, rather than analyzing project finance plans and evaluating state financial management processes.

Many of the needed oversight improvements our work has identified are addressed in the Administration's SAFETEA proposal. For example, the stewardship and oversight provisions of SAFETEA require the Secretary to establish an oversight program focused on financial integrity and project delivery. Under these provisions, the Department is required to perform annual reviews of States' financial management and project delivery systems to effectively oversee federally assisted projects. Further, Administrator Peters is working to restructure FHWA's workforce to bring the right set of skills to bear on oversight activities.

Detecting and Preventing Fraud

During the last 4½ years, highway and transit-related fraud indictments have tripled, convictions have doubled, and monetary recoveries totaled more than \$80 million. However, the extent of fraud we are seeing today is not on the scale seen during the 1960s and 1970s. We currently have over 100 ongoing investigations of infrastructure projects or contracts in 35 States.

Fraud schemes we commonly see today include bid-rigging and collusion among contractors, false claims for work or materials not provided on the project, product substitution by contractors or vendors who provide substandard or inferior materials, and bribery of inspectors to look the other way on their duty to ensure quality of work or materials. Examples of investigations we have been working on during the past year include:

- A case in Massachusetts involving the alleged "shorting" of construction related materials (asphalt, stone and sand) by a construction contractor, who falsified weight tickets on numerous Federal-aid Highway projects, including the Central Artery/Tunnel Project. This contractor currently has \$40 million worth of contracts with the State of Massachusetts.
- A Connecticut-based engineering firm with approximately \$38 million in highway and bridge construction contracts awarded by various State transportation departments within the last 5 years whose president was

indicted in January 2003 for inflating over \$1.9 million in time and labor charges.

- In California, three specialty construction contractors conspired to rig bids and share the market of federally-funded bridge design and construction projects. Our investigation led to criminal prosecution of the contractors, two of whom have agreed to civil fines totaling almost \$1 million.

Fraud involving the Disadvantaged Business Enterprise (DBE) Program for minority and women contractors who are used as “false front” companies is an area with serious enforcement and compliance problems that appears to be nationwide in scope and requires more attention. Our current caseload includes over 30 ongoing DBE investigations in 16 States. This type of fraud often involves prime contractors who conspire with sham (false front) DBE firms to fraudulently meet required DBE participation criteria in order to obtain contracts. In such cases, DBEs either do not perform the work or yield total control of personnel and operations to the prime contractors. This crime defrauds the integrity of the DBE Program and harms legitimate DBEs who abide by the law. Examples of recent DBE investigations include:

- A subcontractor working on a \$30 million FHWA-funded Central Artery/Tunnel demolition project alleged to be a “front” for two other non-DBE qualified demolition firms.
- A New York-based prime contractor alleged to have utilized four “front” companies to fraudulently qualify as a DBE on \$257 million worth of federally-funded roadway improvement projects in the New York City metropolitan area. The four “fronts” supposedly received approximately \$23.5 million, but did not perform any work on these projects.

To her credit, Administrator Peters has initiated several efforts to combat DBE fraud, such as providing State Department of Transportation (DOT) staff with DBE fraud training material, establishing a website for the exchange of DBE Program information and successful practices in deterring this kind of fraud, and coordinating DBE reviews with my office.

Beyond our criminal investigative efforts however, additional measures can be taken to protect the Government’s interest against fraud on transportation projects, such as strengthening debarment authority, enhancing State oversight, and sharing monetary recoveries from Federal judgments with States whose programs are damaged by the fraud.

Strengthening Debarment Authority

In our opinion, when contractors are convicted of fraud, they should be debarred from participating on future federally-funded projects for an appropriate period of time depending on the severity of the case and culpability of the company and/or its corporate principals. Debarred contractors are excluded from receiving prime contracts or serving as subcontractors. However, under current regulations, FHWA has wide discretion in determining whether or not to debar convicted contractors, and contractors are allowed to appeal debarments to FHWA at any time and continue to work on their contracts, even though they have been convicted of fraud against the Federal-aid Highway Program.

For example, in 2001 three major construction companies in the New York City area, co-owned by the Scalumandre brothers, pled guilty to felony fraud charges involving payoffs to organized crime to influence labor unions on FHWA-funded road projects. Because debarment is not mandatory under the current Federal-aid rules, it took over 6 months after the company was convicted to obtain a 3-year debarment. Now, 1 year after debarment, the firms are appealing to FHWA to lift their debarment. Should FHWA turn down this appeal, the firms can file subsequent appeals with FHWA, further burdening the agency by requiring its expenditure of time and legal resources to defend its action.

Making debarment mandatory when the principals of a firm are convicted of fraud will increase the protection of taxpayer's money and the deterrent effect of debarment actions. At our recommendation, FHWA is examining a potential regulation change mandating debarment.

Enhancements to State Oversight Needed

Congress, the Federal Government, and State governments are all concerned with preventing fraud and abuse in transportation projects. For example, we co-sponsored two National Fraud Conferences on Highway Construction and Related Programs with the American Association of State Highway Transportation Organizations, American Public Transportation Association, FHWA, FTA, and the Missouri and Georgia Departments of Transportation to enhance contract oversight at the State level. Outreach initiatives like these conferences provide opportunities to increase State awareness of critical issues and to share investigative techniques with State auditors and investigators. In recent years we have joined forces with State investigative agencies to conduct highway construction fraud cases, achieving significant results.

However, because the States are the first line of defense in preventing and detecting fraud in transportation projects, more needs to be done to help strengthen

State oversight. Specifically, the States should be encouraged to expand their internal audit and investigative capabilities in order to increase the number and frequency of project audits, and ensure the timely referral of suspected fraud to FHWA and our office.

Sharing Federal Recoveries With the States

States are the first line of defense in preventing and detecting fraud in transportation programs, and more needs to be done to strengthen State oversight. Since the States' programs are damaged by the fraud, sharing in the recoveries would help them restore their programs and provide support for further fraud deterrence and detection efforts. However, States normally do not receive a portion of any monies recovered in successful fraud prosecutions because generally fines and recoveries from such Federal case judgments must be returned to the Federal Treasury.

The sharing of monetary recoveries occurred in a civil settlement with Contech Construction Products, Incorporated, and Ispat-Inland, Incorporated, involving a product substitution case in Louisiana. The companies substituted substandard polymer-coated steel culvert pipe used in highway and road construction projects from 1992 through 1997. Under the settlement agreement, the United States and Louisiana shared in a \$30 million recovery, with Louisiana directly receiving \$5.2 million to compensate for the cost of the investigation and losses due to the product substitution. In addition, Louisiana received another \$5.4 million as a credit to its unobligated FHWA balance for use on future projects.

The Administration's SAFETEA proposal would require that portions of monetary judgments won in Federal criminal and civil cases against contractors perpetrating highway or transit program fraud be shared with the State or locality injured by the fraud. We believe that adopting this provision would help States restore their programs damaged by fraud.

Combating Fuel Tax Evasion—Securing Tax Revenue to Which the Highway Trust Fund Is Entitled

Fuel tax fraud creates a drain on Highway Trust Fund revenues, which FHWA estimates costs at least \$1 billion annually. Although fuel excise taxes represent less than 2 percent of total Federal tax revenues, they are a critical funding source for Department of Transportation programs. Taxes on gasoline, diesel and other fuels provide about \$33 billion each year, or 89 percent of the Highway Trust Fund revenues used to finance highway and transit projects nationwide. Increased

tax collections mean increased revenues for funding additional highway and transit projects.

Highway Trust Fund revenue losses to fuel tax evasion were much worse at the Federal level in the late 1980s and early 1990s before Congress took steps to prevent evasion schemes, many of which were perpetrated by the Russian mafia and New York organized crime families. During the 1990s, we conducted numerous cases with the Internal Revenue Service (IRS) involving “daisy chain” schemes. Typically in those cases, perpetrators created multiple paper transfers of fuel among fictitious companies to conceal the party liable for remitting the tax to the Government. The entity in the chain with liability for the tax often existed only on paper or disappeared. The statutory shift in the point of taxation from the wholesale level to the terminal rack,¹ expanded enforcement, and other improvements to detect tax evasion schemes (for example, dyeing untaxed fuel for ready identification by law enforcement authorities) have reduced the opportunity for daisy chain schemes and increased revenues.

While legislative changes made inroads in the motor fuel tax evasion problem, there are still a variety of ways fuel taxes may be evaded or underpaid, and tax evaders have quickly adapted fraud schemes to take advantage of the remaining loopholes. More can be done, especially at the State level, to strengthen enforcement and investigative efforts directed at profitable tax evasion schemes, such as cross-border bootlegging of fuel. This type of scam typically occurs when bordering States have a significant difference in their motor fuel tax rates. Essentially, the bootleggers steal the difference between taxes charged in low-tax and high-tax jurisdictions by purchasing fuel—and paying the associated tax—in a low-tax jurisdiction, and then smuggling the fuel into a high-tax jurisdiction where they sell it and pocket the difference in taxes. This type of fraud affects both the State and Highway Trust Fund revenues. This fraud also occurs when untaxed motor fuels are smuggled into the country, or when “tax exempt” fuel (such as fuel intended for use on Native American reservations) is instead sold as “tax paid” fuel.

For example, as a result of a joint investigation we conducted with Texas State officials and the Federal Bureau of Investigation, two owners of several trucking companies and convenience stores located in the Lubbock, Texas area, were convicted and recently sentenced for their involvement in a scheme to avoid paying State motor fuel excise taxes on several million gallons of fuel that they purchased and resold. The scheme involved the purchase of motor fuel falsely

¹ The Tax Reform Act of 1986, effective January 1, 1988, changed the point of taxation for gasoline tax collection from the wholesaler/distributor to the fuel terminal (or “rack”), which is the last “bulk storage” point in the distribution chain. The Omnibus Budget Reconciliation Act of 1993, effective January 1, 1994, similarly changed the point of taxation for diesel fuels from the wholesaler to the fuel terminal (or “rack”).

represented as being for resale to the Navajo Reservation, which is exempt from State motor fuel taxes. The trucking company owners then created false drivers' logs and transport manifests to make it appear as though the fuel was being transported for resale to the Navajo Reservation. Instead, the fuel was being used by their trucking companies and sold in their convenience stores without payment of the required State motor fuel taxes. In August 2002, the defendants were sentenced to 42 and 18 months in prison, respectively, followed by 36 months of supervised release, after they pleaded guilty to felony mail and wire fraud charges. In addition, the defendants' associated companies also pleaded guilty to wire and mail fraud and were ordered to pay \$5.5 million in restitution.

Possible actions to prevent tax evasion at the State level include the States changing the point of collection for State fuel taxes similar to the change made by the Federal Government in the early 1990s; better documentation of fuel sold for tax exempt purposes (for example, fuel for non-highway use such as agriculture); and strengthening State enforcement efforts to catch and deter bootleggers and other tax evaders.

At the Federal level, aviation "jet" fuel tax evasion is an area several independent petroleum industry analysts allege is possibly costing billions of dollars of lost tax revenues and which requires further examination. It is the only major category of transportation fuel not currently subject to Federal excise tax at the rack. Instead, this fuel is sold tax-free to wholesalers and is not taxed until sold to an end user such as an airline. Jet fuel used for commercial purposes, taxed at a considerably lower rate than diesel fuel (4.4 cents versus 24.4 cents per gallon), is in effect chemically the same as kerosene, and can readily be used in on-road diesel trucks. Tax evasion opportunities exist when jet fuel is diverted to diesel truck use similar to the evasion schemes seen in the late 1980's and early 1990's, prior to the statutory shift in the point of gasoline and diesel taxation from the wholesale level to the terminal rack. Taxing jet fuel at the rack would bring it into conformity with Federal gasoline and diesel fuel taxes and help reduce tax evasion opportunities.

For example, according to a recent KPMG consulting analysis, 1 year after the State of Florida began taxing jet and diesel fuels at the rack in 1996, the State experienced a 21.4 percent increase in jet fuel tax collections and a 13.2 percent increase in diesel fuel tax collections. While Florida's experience is not conclusive, it does illustrate the potential to increase tax collections by moving the point of taxation to the rack and reducing tax evasion opportunities.

The overall impact of fuel tax evasion losses to the Highway Trust Fund is amplified, because Highway Trust Fund revenues are down while demands on highway capacity have reached unprecedented levels, and replacement and

rehabilitation costs for existing infrastructure have greatly increased. This is an especially important issue today as Congress considers Transportation Equity Act for the 21st Century (TEA-21) reauthorization and is searching for ways to increase Highway Trust Fund revenues and transportation spending without raising taxes. When fuel taxes are not paid, those dollars are not available for the construction and upkeep of our Nation's roads and bridges.

An ongoing commitment to fuel tax fraud enforcement is needed to continue progress made in combating fuel tax evasion—increased tax compliance means increased revenues. FHWA needs to continue its commitment to the Joint Fuel Tax Compliance Project by promoting enforcement activities and developing new strategies to encourage compliance to help ensure all taxes are collected and remitted to the Highway Trust Fund.

In addition, although the DOT has perhaps the greatest interest in reducing the evasion of fuel taxes at the Federal level, only the IRS is authorized to enforce fuel tax compliance and investigate related evasion schemes. While IRS has worked with the DOT Office of Inspector General (OIG) on joint task forces in the past, the DOT OIG lacks the authority and access to records necessary to initiate investigations of its own, and the IRS does not devote extensive resources to fuel tax enforcement. For example, according to the IRS, today it has approximately 20 active criminal investigations nationwide involving all forms of excise taxes, only 2 of which involve gasoline or diesel fuel, and none which involve jet fuel. Also, since many States do not tax jet fuel, they do not consider investigating jet fuel-related tax evasion schemes to be a priority.

To more effectively combat fuel tax evasion, we believe further legislative changes are needed including:

- Establishing a nationwide intergovernmental program financed by the Highway Trust Fund to direct the coordination of intergovernmental efforts to prevent and detect fuel excise tax evasion schemes.
- Amending the tax code to allow intergovernmental law enforcement agencies, such as State and local fuel tax enforcement officers and DOT OIG special agents, access to motor and jet fuel-related excise tax records.
- Taxing jet fuel at the terminal rack to bring it into conformity with Federal gasoline and diesel fuel taxes to help reduce tax evasion opportunities.

- Increasing FHWA oversight of the Joint Fuel Tax Compliance Project to promote enforcement activities, develop new strategies to encourage compliance, and better monitor IRS and State fuel tax activities funded by the Highway Trust Fund.

This concludes my statement, Mr. Chairman. I would be pleased to address any questions you or members of the Committee might have.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
ELIMINATING WASTE, FRAUD AND ABUSE IN THE
COMMITTEE'S MANDATORY SPENDING PROGRAMS
FULL COMMITTEE HEARING
JULY 22, 2003

The Transportation and Infrastructure Committee has a long and proud history of pursuing an active oversight agenda. Over the years, this agenda has improved the quality of the many programs within our jurisdiction and has produced opportunities to improve program efficiency, and when possible, save increasingly limited tax dollars. In the tradition of our Committee, these efforts have been bi-partisan, with the focus on making our programs more effective and efficient.

I chaired the Committee's Oversight and Investigations Subcommittee in the 99th and 100th Congress and know first-hand of the Committee's dedication to increasing program efficiency and ensuring that taxpayers get the most for their money. However, I have serious concerns about the process that precipitated today's hearing. Section 301 of H. Con. Res. 95, the Concurrent Resolution on the Budget for FY2004, requires that authorizing Committees identify "changes in law within their jurisdictions that would achieve the specified level of savings through the elimination of waste, fraud, and abuse." That puts the cart before the horse.

The budget resolution sets forth an arbitrary dollar amount for each committee and then directs each committee to justify that number by identifying areas of waste, fraud and abuse that somehow, magically, add up to that amount. Further, the Budget Resolution directs the committees to identify waste, fraud, and abuse in mandatory programs only, thereby ignoring potentially large sources of waste, fraud, and abuse in other areas, such as the tax code, or in discretionary budget programs. While the House Republican Leadership may feel this is necessary to offset the costs of their ill-considered tax cuts; the projected savings of this exercise will do little to stem the tide of the multi-trillion dollar debt that is now projected over the next decade.

Having said that, I believe that we should be constantly vigilant in looking for new, innovative ways to improve program efficiency and generate savings, and I am proud of this Committee's commitment to do just that. I look forward to hearing from today's witnesses regarding efficiency improvements in their programs. This hearing will focus on three of our largest mandatory spending programs: the Federal-aid Highways and Federal Transit Administration programs, the Essential Air Service Program, and the Railroad Retirement program.

For the past year, the Transportation Committee has been working on the reauthorization of the Transportation Equity Act for the 21st Century (TEA 21). The

Federal-aid Highway program authorized in that Act provides funding to states for construction and improvements projects and the Federal Transit programs provide funding for transit projects. While developing this reauthorization legislation, the Committee is committed to identifying ways to improve these programs and to promote increased efficiency, particularly through strengthening project management and oversight and increasing efforts to detect and prevent fraud.

This year the Committee reexamined the Essential Air Service (EAS) program and proposed some reforms to improve the effectiveness of the EAS program, as the cost of the program has risen over the years. These reforms were proposed in H.R. 2115, Flight 100 - The Century of Aviation Reauthorization Act, which recently passed the House. A Community and Regional Choice Program was proposed as an alternative to the EAS program; rather than receiving service from an airline subsidized by the Department of Transportation (DOT), the community could receive a grant from DOT to establish and pay for the type of transportation service that best meets the its needs. For example, a community might choose on-demand taxi service, fractional ownership of an aircraft, surface transportation to a larger airport, or any other approach approved by DOT.

The Railroad Retirement Board (RRB) administers comprehensive retirement-survivor, unemployment-sickness insurance, and Medicare Part B benefit programs for

our country's railroad workers and their families. The RRB ensures that these funds are properly managed and equitably dispersed with excellent customer service. In recent years, the RRB has instituted some reforms to increase operating efficiency and they remain committed to continued improvement.

Finally, the General Accounting Office, the Inspector Generals of these mandatory spending programs, and even some of the agencies who oversee these programs have identified various options for improving program efficiencies and achieving some funding savings. We welcome their assistance and input as we all have the same ultimate goal: to ensure that the programs under our Committee's jurisdiction are effective, run smoothly, continue to improve over the years and achieve funding savings whenever possible.

I welcome all the witnesses and look forward to hearing their testimony.

STATEMENT OF
MARY E. PETERS, ADMINISTRATOR
FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION
BEFORE THE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
ELIMINATION OF WASTE, FRAUD, AND ABUSE IN MANDATORY
SPENDING PROGRAMS
JULY 22, 2003

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on Federal Highway Administration (FHWA) actions to prevent loss of Highway Trust Fund (HTF) revenues to tax evasion, curtail fraud in the highway program, and maximize the return on investment of Federal funds in highway infrastructure. Highway use and fuel tax compliance must be increased and our highway dollars must be stretched as far as possible, in order to most efficiently use available resources to address our surface transportation needs.

Secretary Mineta has consistently challenged the Department of Transportation (the Department) to raise the standard of accountability for its operations, and I have personally promised Congress that I would strengthen stewardship and oversight for funds administered by FHWA. Greater accountability for investment and management of the public resources entrusted to us was a guiding concern for the Administration's surface transportation reauthorization proposal--the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 or "SAFETEA"--and will characterize FHWA's performance in implementing the new legislation. SAFETEA provisions that improve Federal stewardship of surface transportation funds, enhance State flexibility to address transportation priorities, increase efficiency in program administration, and refine environmental review processes, will ensure that every dollar spent under SAFETEA will yield the maximum benefit in terms of saved lives, reduced congestion, and increased mobility.

In addition to describing ongoing FHWA activities, I also want to highlight some of the Administration's proposals in SAFETEA that will lead to more cost-effective delivery of projects; will improve detection, elimination, and prevention of fraud, waste, and abuse in the highway program; and will provide additional tools and resources to combat the continuing problem of highway tax evasion.

COST EFFICIENT PROJECT DELIVERY

Program Oversight and Major Project Management.

With increased funding provided by the Transportation Equity Act for the 21st Century (TEA-21) came increased stewardship responsibilities for both FHWA and the State departments of transportation (DOT). States received expanded authorities for most

project-specific decisionmaking, but FHWA remained ultimately accountable for effective investment of Federal funds and for project compliance with Federal laws. Accordingly, FHWA oversight has evolved to focus primarily on process oversight instead of specific project oversight. This shift also reflects instructions from Congressional committees and recommendations from the Department of Transportation's Inspector General (IG) and the General Accounting Office (GAO) for improved management of highway projects based on their reviews and audits. We are working with our State partners to strengthen their management capabilities and to verify that they have adequate internal control processes in place to effectively oversee Federally assisted projects.

In the case of major projects-- projects over \$1 billion in total estimated costs -- TEA-21 expanded FHWA's oversight role. We are using lessons learned from the early major projects, best practices, and recommendations from the IG and GAO to craft strategies for managing large projects as seamlessly as possible throughout their entire life cycle, from concept to completion.

On reviewing our stewardship responsibilities, we recognized that we needed to develop a more multidisciplinary approach--especially for large project management. Engineering expertise continues to play a critical role, but we must increase skills in such areas as financial management and program planning if our workforce is to meet the needs of the 21st century. Our restructuring is, again, responsive to our IG's recommendations.

Indeed, the principal stewardship and oversight provisions of SAFETEA were developed in response to recommendations from the IG and from GAO. SAFETEA would require the Secretary to establish an oversight program for monitoring the effective and efficient use of title 23-authorized funds, with a specific focus on financial integrity and project delivery. Under this provision, the Secretary will perform annual reviews that address elements of States' financial management systems and project delivery systems. Risk assessment procedures will be used to identify areas for review.

Accurate and reasonable cost estimates are critical to project success, and to maintaining public confidence and trust throughout the life of a large project. Early identification and quantification of "risk" on major projects has emerged as a significant cost estimate issue, and the use of contingencies based on risk analyses is an essential planning tool. As part of the SAFETEA-proposed financial integrity oversight, the Secretary will develop minimum standards for estimating project costs. States' practices for estimating project costs, awarding contracts, and reducing project costs will periodically be evaluated. These requirements will lead to more reliable and consistent project cost expectations. FHWA is also currently evaluating cost estimating processes on a nationwide level. The results will be used to formulate national best practices and guidance for cost estimating.

Additionally, under the SAFETEA oversight program, States would be required to determine that sub-recipients of Federal funds have sufficient accounting controls and project delivery systems, and the Secretary would periodically review the States' monitoring of sub-recipients.

Under current law, title 23 projects with an estimated total cost of \$1 billion or more are required to submit an annual financial plan to the Secretary. Our SAFETEA stewardship provision would add a requirement that these projects submit project

management plans as well. Also, the Secretary would be given the authority to require a project with an estimated total cost of less than \$1 billion to submit an annual financial plan and an annual project management plan. The project management plan would ensure adequate procedures for providing timely information to project decisionmakers for management of scope, costs, schedules, and Federal quality requirements of the project, and would define the role of the agency leadership and management team in the delivery of the project. Using project management plans, we will focus on integrated rather than segmented project management. FHWA will provide a template and guidance for development of the plans.

As recommended by the IG, the SAFETEA stewardship and oversight provision would require preparation of an annual financial plan for any project that receives \$100 million or more in Federal financial assistance.

At the end of the day, our responsibility is to improve oversight and accountability for the expenditure of public funds, without negatively impacting the ability of States and local government to deliver their programs. We believe that the stewardship and oversight requirements proposed in SAFETEA would assist us in fulfilling this responsibility.

Increased Efficiency in Program Administration and Project Delivery.

SAFETEA proposes a number of important programmatic changes that will allow States more flexibility in prioritizing and financing projects for the most effective transportation solutions and that will reduce duplication in environmental review processes for more efficient project delivery.

Program Flexibility. A central concept of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and TEA-21 was increased flexibility for State and local officials to determine how their Federally-apportioned funds could best be invested. SAFETEA expands upon this principle by giving States and localities even more discretion in key program areas. States would be granted new flexibility to transfer safety funds among the diverse safety programs administered by the Department if they develop performance-based, comprehensive, strategic highway safety plans. SAFETEA would also increase State flexibility to administer funds by eliminating most discretionary highway grant programs and making these funds available under the core highway formula grant programs. States and localities have great flexibility and certainty of funding under the core programs, which better enable them to meet their own specific needs.

SAFETEA would establish a variable toll pricing program that would permit States, under certain conditions, to toll any highway, bridge, or tunnel, including facilities on the Interstate System, to manage existing high levels of congestion or reduce emissions in nonattainment or maintenance areas. SAFETEA also modifies the TEA-21 Interstate System Rehabilitation and Reconstruction Pilot Program to facilitate participation.

SAFETEA would establish a new highway pilot program--the Surface Transportation System Performance Pilot Program--intended to test the concept of a performance-based management approach in the obligation of Federal funding under the Federal-aid Highway Program. Under this pilot, up to five States could manage the bulk of their core formula highway program funds on a systematic, performance basis across

the programmatic lines by which the Federal-aid Highway Program is normally structured. This program gives States more flexibility to make effective investments by focusing on program outcomes rather than program categories. Another benefit of this program is that it would authorize the Secretary to assign, and a State to assume, some of the Secretary's responsibilities under Federal laws or requirements. The State would be deemed to be a Federal agency to the extent the State is carrying out the Secretary's responsibilities under the National Environmental Policy Act (NEPA), title 23 of the United States Code, or other Federal law. This program would test whether allowing States to assume such responsibilities can lead to more efficient execution of the Federal-aid Highway Program.

Financing Flexibility. In order to meet growing capacity and maintenance demands on our highway infrastructure with the limited resources available, SAFETEA would increase flexibility for innovative financing methods, so that States and municipalities can leverage the power of Federal funds and encourage greater private sector investment in transportation infrastructure. SAFETEA would permit State and local governments to issue tax-exempt private activity bonds for highway and freight transfer facilities. Access to government loan assistance through the Transportation Infrastructure Finance and Innovation Act (TIFIA) program would be increased by lowering the program's project cost threshold from \$100 million to \$50 million and allowing rail freight projects to qualify for TIFIA assistance.

Refinements in Planning and Environmental Reviews. To alleviate congestion and improve safety, we know that transportation improvements must be delivered as quickly as possible. Although the Department has made progress administratively to reduce delay in the environmental review area, we believe that additional legislative modifications are necessary and are proposing several key changes in SAFETEA that, cumulatively, will make the review processes more efficient.

We would clarify the role of States or project sponsors in expedited review procedures, particularly regarding the establishment of time periods for environmental reviews, the initiation of dispute resolution procedures, and the preparation of environmental impact statements. We propose giving planning studies "standing" in the NEPA process, so they do not have to be recycled and recreated. Authority for categorical exclusion approvals would be delegated to the States. Our proposal would clarify, consistent with recent court decisions that adopt a balancing approach, the factors the Secretary shall consider for determinations under 49 U.S.C. 303 (former section 4(f) of the Department of Transportation Act of 1966) as to whether an alternative is "prudent and feasible." The current duplication between section 106 of the National Historic Preservation Act and "section 4(f)" would be eliminated by allowing compliance with section 106 to satisfy section 4(f) requirements for historic properties. We would relieve the Interstate Highway System from being treated as an historic property under the National Historic Preservation Act and 4(f), unless the Secretary applies section 106 to individual elements. We propose establishing a six-month statute of limitations for appeals on the adequacy of projects' environmental impact statements and other environmental documents to ensure timely filing of legal challenges. We would also expand the ability of States to provide Federal-aid highway funds to other Federal agencies to expedite the environmental review process.

In recognition of the need to increase our focus on the transportation planning and programming process, we included in SAFETEA provisions to strengthen this process. SAFETEA would provide for enhanced planning funding for States and metropolitan planning organizations (MPOs) and a Planning Capacity Building Initiative. Through this Initiative, we would assist States and MPOs in developing and advancing transportation plans and programs that are balanced and efficient through the inclusion of sound travel modeling, effective public involvement, balanced consideration of multiple modes of travel and freight needs, early consideration of environmental values, and efficient operation and management of existing infrastructure.

Carryover Contract Authority. The ability to use carryover contract authority is an existing tool that contributes to increased efficiency in the Department's program administration. As you know, while most Federal programs operate using appropriated budget authority, requiring a two-step process for use of funding, the Federal-aid Highway Program relies on the mechanism of "contract authority." Based on the provisions of our current authorization act, funds for contract authority programs can be obligated in advance of appropriations, although an appropriations act is needed to provide the cash to liquidate the obligations.

The use of contract authority was first legislated for the highway program in the Federal-Aid Highway Act of 1921. This mechanism gives the State advance notice of the size of the Federal-aid program at the time an authorization act is enacted and eliminates much of the uncertainty of the usual authorization-appropriation sequence. The stable flow of Federal-aid apportionments to the States under a multi-year authorization act provides the certainty States need to make the long-term commitments of resources necessary for infrastructure safety, condition, and operational improvements. The extended periods of availability of the funds, combined with title 23 transferability provisions, allow each State to manage resources to best meet its needs.

Although the annual obligation ceiling--Congress' method of imposing budget controls on a contract authority program--limits the amount of funding a State may obligate in a fiscal year, the ceiling still allows States flexibility. Within its overall limitation, a State can obligate program funds based on its priorities. Obligation limitations do not take back funds already provided to the States, only slow the rate of obligations. This does mean, however, that a State may carry forward a balance of contract authority in some accounts until such time as obligation authority becomes available. In certain cases, this can also mean that a State obligates funds on lower priority but ready-to-go projects, in order to use all available obligation authority and avoid funds lapsing, when preferred projects are delayed.

In periods of uncertainty, such as at the end of an authorization cycle, States can look to the availability of unobligated balances of contract authority in some programs for possible relief. If legislation is enacted permitting continued outlays from the highway trust fund, States can tap these balances to sustain critical programs and projects until a new authorization bill is enacted.

"Inactive Obligations." Under title 23, it is the sovereign right of a State to determine which eligible projects within that State will be Federally-financed. Under certain circumstances this can lead to balances of funds obligated for a specific project being carried forward for many years--often because of delays in the environmental review processes on a project the State considers a priority. These reviews must be

accomplished more efficiently, so that the funds available for a project are not tied up year after year, but can be used as intended for transportation benefits that are needed, desired, and have been paid for by highway users. SAFETEA would provide tools necessary to make such process improvements. Of course, it is also the responsibility of FHWA to monitor inactive obligations and to work with States to deobligate funds when appropriate. In fact, FHWA performs an annual review of inactive projects in cooperation with the States to confirm the validity of the unexpended obligations. Any amounts identified as excess are deobligated by the State and reobligated for active projects.

DETECTION AND PREVENTION OF FRAUD

Key to our oversight responsibility is the detection and prevention of fraud in our Federal highway program.

Because of the large amount of public funds involved, construction programs are inherently high-risk areas and, as State and local agencies expand the use of consultant services and implement new contracting procedures, FHWA must continually review the risks and revise our project management procedures to manage these risks.

Fraud within the Disadvantaged Business Enterprises (DBE) program is of particular concern to me. Inspector General Mead has warned of increased activity involving abuse of the DBE program and called for additional efforts to address the problem. DBE fraud makes it more difficult for all legitimate firms to operate, robs legitimate DBEs of opportunities to succeed, subverts the intent of Congress, and undermines the integrity of the DBE and Federal-aid Highway programs.

To assist State DOT staff members in better preventing and detecting fraud in the DBE program, FHWA is providing training material on DBE fraud and establishing a DBE program web page for the exchange of successful practices and basic DBE program implementation information. We will continue coordinating reviews and investigations of DBE program implementation with the Office of Inspector General (OIG), to leverage resources and share information.

Recent Efforts to Combat Fraud. Suspension and debarment are discretionary administrative actions that protect the Federal Government from conducting business with individuals and firms who have a record of unsatisfactory business practices. The suspension and debarment actions are administered government-wide and are only imposed for the government's protection and not for purposes of punishment. A person or firm excluded by one Federal agency is excluded from doing business with all Federal agencies. Suspension temporarily excludes individuals from participating in Federal assistance programs while a debarment action is being processed, an investigation is pending, or until criminal proceedings are concluded. Causes for suspension include adequate evidence of a cause for debarment, such as an indictment. A debarment generally should not exceed 3 years, although a longer period may be imposed.

FHWA is currently working to strengthen our suspension and debarment program. On April 1 of this year, the Associate Administrator for Infrastructure issued a memorandum to all of our Division Administrators and Directors of Field Services to reemphasize their responsibilities for monitoring actions that may be potential causes for

suspension and debarment and for providing recommendations for debarment in a timely fashion according to internal procedures revised in an agency order issued in June 2000. The order revised FHWA suspension and debarment procedures to, among other things, make clear that FHWA will consider the suspension of any person who has been indicted. When circumstances warrant, suspension action can be taken prior to indictment to protect the Federal Government where there is adequate evidence that a cause for debarment or conviction for fraud may exist and the integrity of the program would be affected if administrative action is not taken. Also, FHWA has been working closely with the IG's office in an effort to strengthen our suspension and debarment program by improving the lines of communication between our offices in matters that may be cause for suspension or debarment and looking for ways to utilize the IG's services to investigate matters for administrative action whenever no criminal referral is imminent.

Since January of 2002, we have suspended 30 persons (contractors, principals, and employees) and, of these suspensions, 13 have resulted in debarment, 2 in modified debarment through an exclusion agreement, and 12 are still pending. FHWA now posts current suspension and debarment actions on our website. Also posted are State suspensions, debarments, and removal from bidding opportunity actions for the information of all State DOTs. Such postings are in addition to the government-wide list on the General Services Administration's website of "Parties Excluded from Federal Procurement and Nonprocurement Programs."

FHWA has been working closely with our IG's office and the American Association of State Highway and Transportation Officials (AASHTO) to increase awareness of fraud in the highway program, including co-sponsoring the highly successful 2000 and 2002 National Fraud Conferences. We highlight fraud indicators and bring in OIG investigators as instructors in the FHWA Contract Administration Core Curriculum, a training course that is presented to approximately 20 contracting agencies each year. As part of this course, we discuss fraud indicators, bid collusion, anti-collusion software programs, and suspension and debarment activities. The training course also includes the OIG video on "Bribery Awareness" which presents an excellent overview of this problem. Through closer cooperation with the OIG investigators we are building a network to assist State offices in detecting and investigating potential instances of fraud and encouraging more direct communication between the States and the Department's OIG.

SAFETEA Proposals. The Administration's reauthorization proposal contains a number of provisions to promote more frequent use of suspension and debarment actions to discourage perpetration of fraud on the highway program. The stewardship and oversight section of SAFETEA, mentioned above, would mandate debarment of contractors who have been convicted of fraud, related to Federal-aid highway or transit programs, and would mandate suspension of contractors who have been indicted for offenses relating to highway program fraud. This provision codifies mandatory debarment of convicted contractors, which, under current law is a discretionary measure.

SAFETEA would also require that portions of monetary judgments won in Federal criminal and civil cases against contractors perpetrating highway or transit program fraud be shared with the State or local transit agency that was injured by the fraud. This proposal would help States fund additional transportation programs and increase oversight activities

FHWA must continue to find ways to fulfill its responsibilities to the traveling public by efficiently delivering the very best in safe, secure, operationally efficient, and technically advanced highway facilities, while accommodating our Nation's many other vital public and community needs. This is a mission requiring absolute corporate and individual integrity and a complete refusal to tolerate fraudulent activities.

At the Federal, State, and local level, we must send a strong message that we will only do business with responsible contractors. FHWA is ratcheting up our response to fraudulent practices and will aggressively pursue cost recoveries and take protective actions, including suspension and debarment, when warranted.

HIGHWAY USE AND FUEL TAX COMPLIANCE

Secretary Mineta has called evasion of Federal motor fuel taxes "a serious and growing problem that requires a serious Federal response" and Inspector General Mead has identified fuel tax fraud as a significant drain on the Highway Trust Fund (HTF). The HTF finances virtually the entire Federal investment in our Nation's highways, as well as a major portion of Federal transit programs. The HTF itself is supported by the users of the highway system through payment of Federal excise taxes on gasoline, gasohol, and diesel fuels, on sales of large trucks, trailers, and truck tires, and the special highway use tax on heavy trucks. By far the most significant portion of revenues is derived from fuel taxes--projected at roughly 88 percent of revenues into the HTF over the next 10 years. Loss of motor fuel taxes is detrimental to both Federal and State programs.

Fuel tax evasion exists because illicit profits on sales of untaxed fuel can dwarf profits made on legitimate sales. To illustrate, profit on a gallon of diesel fuel is usually just a few cents but, if taxes can be evaded, profit can be as much as 45 cents per gallon higher (24.4 cents Federal diesel tax per gallon plus 20 cents average State tax). Thus, one truckload of fuel could potentially yield about \$3600 in additional profits if both Federal and State diesel taxes are evaded (45 cents x 8000 gallons). Furthermore, the fuel tax compliance problem is exacerbated by the complexity of motor fuel distribution processes.

While legislative changes have made substantial inroads in the motor fuel tax evasion problem, fraud schemes have quickly adapted to take advantage of any remaining loopholes. Additional measures must be instituted to encourage compliance.

The Administration proposes to reduce motor fuel tax evasion through improved tax compliance and a vigorous and more collaborative enforcement effort by State and Federal agencies. For example, SAFETEA calls for a 6-year, \$202 million program that would allocate funds to the States and the IRS to increase their investigations, audits, and other enforcement programs to curb motor fuel and highway use tax evasion. SAFETEA would dedicate \$2 million per year in funding for intergovernmental enforcement efforts, including research and training, to encourage cooperation among the States, the OIG, and other Federal agencies such as Customs and the Coast Guard. By providing additional financial resources, SAFETEA would increase opportunities for joint Federal/State activities to combat schemes such as cross-border bootlegging, which involves the smuggling of fuels across State, Tribal, or international (Canada and Mexico) borders, to

take advantage of price differentials between high and low tax jurisdictions. Bootlegging is particularly a threat to State fuel tax collections.

An ongoing commitment to enforcement, including dedication of additional resources as outlined above, is needed to maintain the progress already being made in combating fuel tax evasion. As Secretary Mineta has pointed out, if we are successful in curbing fuel tax evasion, it has the potential to increase resources for investment in the transportation system.

EXPIRATION OF TEA-21

I wanted to take this opportunity to mention an important, related issue regarding the highway program. When TEA-21 expires on September 30, 2003, we need SAFETEA, or a similar multi-year surface transportation reauthorization bill in place: to provide predictable funding to States, at a sustainable level; to intensify efforts to reduce highway fatalities; to increase State flexibility to address transportation priorities; to reduce congestion and improve mobility; to facilitate timely project delivery; and to ensure more efficient and effective oversight of Federal investments. Without legislative action, FHWA will not be able to continue program delivery after TEA-21 authorizations end on September 30, 2003.

The Federal-aid highway program is faced with a different operational environment at the end of the current authorization period compared to the environment that existed at the end of ISTEA. This is because TEA-21 amended title 26, the Internal Revenue Code, to prohibit expenditures from the HTF for liquidation of obligations made after September 30, 2003. Any expenditures that relate to liquidation of new obligations, including obligations of carryover contract authority by States for projects, or by FHWA for administrative expenses, after September 30, 2003, would violate this provision. If expenditures are made in violation of the provision, the Department of the Treasury is required to cease depositing highway excise taxes into the HTF. Thus, FHWA would be in violation of the Antideficiency Act by approving or incurring any obligations against the HTF after September 30, 2003. Such a violation of the Antideficiency Act would occur both for new obligations incurred by a State and for expenses incurred by FHWA in the processing of payments on existing obligations.

After September 30, 2003, FHWA would not be able to approve any new projects or allow the States to incur any new obligations of contract authority, and FHWA would not be able to carry on operations to reimburse States for expenses incurred against existing obligations, because FHWA itself could not obligate carryover contract authority for administrative expenses after September 30.

A new authorization law, or a provision in a Revenue Act or amending title 26, that allows expenditures from the HTF after September 30, 2003, must be enacted before October 1, 2003, or the Federal-aid highway program will shut down.

The TEA-21 amendment to title 26 explicitly states that the provision of law limiting expenditures from the HTF after September 30, 2003, can be modified only: (1) by an amendment to title 26 or (2) by a provision in a Revenue Act, and cannot be waived by any other type of later-enacted provision.

CONCLUSION

Congress and the American public rightfully hold FHWA accountable for ensuring that Federal highway funds are used in the most efficient and effective manner possible. We must strive for the greatest return on each dollar invested in transportation. SAFETEA provisions would strengthen accountability for Federal funds and promote cost-effective project delivery and program administration. SAFETEA would also continue the progress already made in combating fraud in the highway program and fuel tax evasion.

These are challenging times for the Department of Transportation, the Congress, and the entire transportation community. We must work together for enactment of surface transportation programs that will maximize resources for improved surface transportation safety, while improving infrastructure conditions and operation, and enhancing the quality of life in our communities. Enactment of SAFETEA is critical not only for funding stability, but to implement programmatic reforms that will provide more revenue dollars without raising taxes and produce cost savings through more efficient investment of the dollars that are made available.

I am optimistic about the future of our transportation system and I look forward to working with you to enact SAFETEA.

Mr. Chairman and Members of the Committee, this concludes my statement. I again thank you for the opportunity to testify today and I will be pleased to answer any questions you may have.



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

July 22, 2003

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I want to thank you for holding today's hearing on the topic of waste, fraud, and abuse in Federal spending programs. Given the size and scope of our Department's various funding programs, there are few things more important to me as Secretary than ensuring that every Federal dollar that goes out our door is used appropriately, cost-effectively and for its designated purpose.

I would also like to recognize Ken Mead, the U.S. Department of Transportation Inspector General (IG), for his tireless efforts in this area. Together, we are making enormous strides in maintaining public confidence in how hard-earned tax dollars are being spent on Federal transportation projects.

With the recent introduction of the Administration's proposal to reauthorize Federal surface transportation programs – the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 or "SAFETEA" – and with the expiration of the existing authorization legislation, the Transportation Equity Act for the 21st Century (TEA-21) right around the corner, the timeliness of this hearing could not be better.

Federal Highway Administrator Mary Peters will describe in detail many of the initiatives SAFETEA contains to improve Federal oversight of surface transportation programs. It is no coincidence that the phrase "Accountable" appears in the title of our proposal. The proposals we have made in SAFETEA will make a strong, positive difference in the Department's ability to guarantee that our customers – the American people – get what they pay for.

The legislative proposals contained in SAFETEA represent just the latest Departmental oversight efforts. Administrator Peters and I have been hard at work to improve substantially management of two of the biggest transportation projects in our history, the Central Artery/Tunnel (CA/T) project in Massachusetts and the Woodrow Wilson Bridge project in the Washington Metropolitan area.

As you know, the Federal Highway Administration (FHWA), the Massachusetts Turnpike Authority, and the Massachusetts Highway Department executed a Project Partnership Agreement in 2001 that provides specific oversight guidance and requires full and complete access to information by other State and Federal oversight agencies.

Changes were made in the Project Management Monthly reporting system to insure proper tracking and reporting of project activities and factors that could affect project costs and schedule. The Massachusetts Division of FHWA now makes an annual independent project cost estimate and schedule review. In addition to on-site staff in Boston, FHWA's project team and senior management visit the site and review the project on a quarterly basis for detailed briefings on costs, schedule, and other important project elements.

FHWA has looked at consultant errors and omissions as a part of contract administration. In particular, FHWA has focused on ensuring that the State has systems in place to address and correct consultant errors and omissions. To date, under the CA/T Project's "Cost Recovery" procedure covering errors and omissions, 90 instances of potential consultant design errors or omissions have been evaluated and resolved.

In 2002, FHWA called on the State to renew its focus on this issue because of the minimal time being spent reviewing potential design errors. The State completed revisions to its procedure, which FHWA accepted in January 2003. Subsequently, the State added an independent cost recovery team to manage the cost recovery program. FHWA just completed a process review of the CA/T project's errors and omissions program and provided recommendations to the State. The review and recommendations are intended to ensure all potential consultant errors and omissions are resolved in a timely and fair manner.

To educate other States about the lessons learned from the CA/T project, FHWA, through its Massachusetts Division, has developed the Innovations and Advancements Program. The Program has identified 12 lessons that are grouped into three categories: Project Management Lessons, Operations Lessons, and Technology Lessons. These lessons learned have been widely publicized in the media and through outreach sessions. In addition, the CA/T project has hosted many visitors from the United States and around the world for on-site presentations on the lessons learned.

With respect to the Woodrow Wilson Bridge project, we have been working closely with Maryland, Virginia, and the District of Columbia to ensure proper management and accurate and reasonable cost estimates. On September 7, 2001, I approved the negotiated Ownership Agreement and Initial Finance Plan. On March 3, 2003, the Department approved the first annual update of the Finance Plan after seeking and obtaining resolution of a number of technical comments.

The Woodrow Wilson Bridge project is an excellent example of a project with improved procurement oversight and support. The original procurement approach called for the entire bridge superstructure to be bid as a single contract. However, after receiving a single high bid, the State of Maryland convened an Independent Review Panel to reexamine the State's estimate and the sole bid received and to develop a set of recommendations to increase competition in the bidding process and reduce costs.

Together, the Maryland State Highway Administration and FHWA decided to split the project into three procurement efforts and to undertake a substantial redesign of the superstructure to stimulate more competition. This decision resulted in more contractors bidding on all three procurement packages and bid amounts significantly closer to the State's original cost estimates.

To date there have been no major cost overruns on the active construction projects and the overall project is within the original finance plan budget. We believe that our efforts on this project made a difference and that we can transfer the lessons learned to other major projects.

Even though much of the attention is focused on FHWA oversight and stewardship efforts, reducing instances of fraud, waste, and abuse is one of my top initiatives Department-wide. Thanks in large part to the hard and capable work of the administrators of the DOT's various operating administrations, I believe we are creating a good record.

Federal Transit Administrator Jenna Dorn and I have encouraged the Federal Transit Administration (FTA) to take a hands-on, proactive approach to project management oversight. FTA's Project Management Oversight (PMO) program, which was created in 1985, has allowed the FTA to leverage the expertise of national engineering firms to monitor the progress of major projects.

The Project Management Oversight Contractors (PMOCs) bring a wide array of engineering and project management expertise to assist project sponsors in conducting value engineering, resolving highly complex engineering issues, and most importantly, avoiding potential pitfalls. The PMOCs have the capacity to assess project management plans, monitor implementation of those plans, and gauge whether the projects are proceeding on time, within budget, and in accordance with the approved plans and specifications. Indeed, of the 17 "New Starts" projects that began revenue service from 1998 through 2002, 16 of them were completed within budget and 14 were completed on schedule.

FTA's 15 PMOCs monitor the progress of more than 110 "New Starts" and fixed guideway modernization projects in various stages of preliminary engineering, final design and construction, which in aggregate represent approximately \$70 billion in project costs. The expertise brought to bear on projects by the PMOCs would be difficult if not impossible for the FTA to retain in-house.

By effectively implementing sophisticated private sector expertise in an oversight capacity, FTA has in the past been able to quickly identify substantial cost overruns and schedule slippage on "New Starts" in Boston, Los Angeles, San Francisco, and San Juan. In each instance, FTA withheld Federal funding for the project until the grantee developed an acceptable recovery plan, and required the grantee to commit additional, non-"New Starts" funds to cover the cost increases.

The Federal Aviation Administration (FAA) has made significant progress in its efforts to meet commitments for critical new runway projects. These vital projects represent the single largest contributors to capacity gains in the National Airspace System. Through the Runway Template Action Plans (RTAPs), the FAA has fostered partnerships with airports and airport stakeholders to establish joint goals for full operational capability, along with the accountability to ensure that all facilities, procedures and staffing required to provide those capabilities are delivered on time.

Each RTAP contains hundreds of tasks that are the basis for regular, detailed briefings regarding progress, key interdependencies and appropriate mitigation strategies. Since the RTAPs were created 23 months ago, two new runways have been commissioned in Detroit and Cleveland, four new runways are on track for commissioning in 2003 and no commissioning dates have been changed due to FAA inefficiencies.

The Maritime Administration (MARAD), in agreement with the IG, is working to significantly improve oversight and stewardship of the Title XI loan guarantee program. MARAD's efforts include: reducing the risk of loss to the Federal Government through stronger compensatory loan provisions; greater use of outside financial advisors in connection with complicated projects; and improving the financial monitoring process by, among other things, transferring oversight responsibility to the Office of Ship Financing, which now performs regular assessments of the financial health of each Title XI company.

In November 2001, the Transportation Security Administration (TSA) was established within the Department. We immediately recognized the potential for fraud, waste, and abuse in a new organization whose budget grew from zero to \$5 billion, and a workforce that grew from zero to nearly 70,000 employees in a matter of several months. To mitigate the risks and to force attention on internal controls and diligent management of TSA assets, the Department engaged an independent auditing firm to conduct an audit of TSA's financial records. This audit resulted in an extremely impressive "Clean" Opinion on the TSA Financial Statements. The Department is very proud that despite its infancy and size, TSA was transferred to the Department of Homeland Security with its financial house in order.

In addition to effectively using the Single Agency Audit process to provide annual audits of State grantees, the National Highway Traffic Safety Administration's (NHTSA) regional staff monitors State programs and activities on a periodic basis to assure there is no waste, fraud or abuse of the agency's grant funds. In response to recent recommendations from the General Accounting Office, NHTSA is also standardizing its criteria and guidance for its Regional Offices to assure that management reviews of each State's grant programs occur at least every three years.

The traveling public is at great risk when fraud enters into the issuance of commercial driver's licenses. A commercial driver's license in the wrong hands can mean a safety and security disaster. This is why the Federal Motor Carrier Safety

Administration (FMCSA) continues to work aggressively with its State partners and other Federal agencies to remedy inconsistencies in Commercial Driver's License programs and to strengthen Hazardous Materials permitting activities. Increased funds from Congress have made a tremendous difference in FMCSA's oversight capabilities and in our ability ensure that only qualified drivers can get and keep a commercial driver's license.

More than any other single factor, the level of commitment from the top officials at an agency determines the quality of oversight and stewardship. I can assure you that no previous Department of Transportation has been more committed than this one to protecting and defending the taxpaying consumer from waste, fraud, and abuse in Federal transportation programs. I commend this Committee's interest in improving oversight and accountability and look forward to working with all of you to develop legislative reforms to address current and future problems that may arise in this important area.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Norman Y. Mineta", written in a cursive style.

Norman Y. Mineta

**STATEMENT OF THE RAILROAD RETIREMENT BOARD BEFORE THE
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE OF THE UNITED STATES
HOUSE OF REPRESENTATIVES**

July 22, 2003

**Michael S. Schwartz, Chairman of the Board
V. M. Speakman, Jr., Labor Member of the Board
Jerome F. Kever, Management Member of the Board**

Mr. Chairman and members of the Committee, the members of the Railroad Retirement Board appreciate the opportunity to appear before you this morning. We fully recognize the seriousness and complexity of the issues facing this Committee and the entire Congress in connection with the budget of the United States over the next several years. In this context, we have reviewed recommendations for ways to reduce spending which have been made by the Railroad Retirement Board's Inspector General and we have found that substantial savings would not be achieved from those recommendations. In addition, many of these recommendations would reduce the quality and timeliness of service to our customers and reduce the very important role that rail labor and management play in administering the railroad retirement and railroad unemployment insurance systems. The Railroad Retirement Board has made significant strides in recent years in improving services to our customers while significantly reducing our staffing levels. We are doing more with less. We would like to convey to you what we have accomplished and give you our thoughts on several issues raised by the RRB Office of Inspector General.

Close Coordination with the Railroad Industry

As this Committee is aware, the Railroad Retirement Board is headed by a three-member Board, with the members appointed by the President with the advice and consent of the Senate. Two of the members, the Labor Member and the Management Member, are appointed based on recommendations made, respectively, by representatives of railroad employees and railroad employers. A review of the history of the railroad retirement system shows that the composition of the Board is appropriate. Issues which come before the Board involve both rail labor and rail management matters. In addition, funding for the railroad retirement and

railroad unemployment insurance programs comes primarily from the railroad employers and railroad employees. For these reasons, the Labor Member and Management Member, representing rail labor and management, have a direct stake in the effective and efficient administration of these programs. As the public Member of the Board, the Chairman, together with the other two Members, has a duty to maintain the strength and stability of a system in which all of the concerned parties have invested so heavily, and to protect the public interest of the agency and the integrity of the trust funds.

It is our firm belief that the composition of the Board allows the members to approach policy and adjudicative issues from the perspective of stakeholders. This, in turn, leads to sound decision-making and effective administration of the programs entrusted to the agency by the Congress. We would not favor any recommendation that would remove rail labor and rail management from direct involvement in administration of the Railroad Retirement and Railroad Unemployment Insurance Acts. The Inspector General has proposed as an alternative that the Railroad Retirement Board could be combined with the National Railroad Retirement Investment Trust, thereby maintaining involvement of rail labor and management in the railroad retirement and railroad unemployment insurance programs. However, Congress was quite clear in enacting the Railroad Retirement and Survivors' Improvement Act of 2001 that the Trust would be a separate entity from the Railroad Retirement Board. That legislation not only made no change in the status of the Railroad Retirement Board as a Federal agency, but also very clearly provides that the Trust is not a Federal agency.

Focus on Customer Service

The composition of the Railroad Retirement Board also leads to what has always been a defining strength of the agency – outstanding customer service. Our principal customers are railroad and labor organization employers, railroad employees, railroad retirees, and the families of railroad retirees. We have made vast improvements in customer service over the past 10 years through the automation of many of our claims operations. These improvements have not only allowed us to raise our standards for timeliness and accuracy of the benefits we administer, but also to enhance the quality and efficiency of the direct customer service we deliver through our field offices. Through thoughtful planning and aggressive management, we were able to achieve these improvements even as we were reducing our staffing levels by about 36 percent.

Our goal is to provide our customers with flexible customer service options to meet their needs in various situations. Feedback from railroad employees and railroad retirees has consistently shown that one of the most desirable service delivery options for our customers is the ability to have personal contact with an agency employee to address their needs and concerns.

In 2001 and 2002, we contracted with the American Customer Satisfaction Index, an independent entity, to survey our customers concerning their satisfaction with the service provided in our two major program areas. In both years, our scores for courtesy, professionalism and accuracy of information were at 90 or above, significantly higher than the overall rating for other Federal agencies. These surveys also confirmed that although some of our customers expressed an interest in using electronic services for certain matters, most still have a strong preference for maintaining the availability of our field offices.

In order to maintain our commitment to providing personal service in times of severe budget constraints in recent years, we have taken significant steps to reduce the costs associated with the service provided through our field offices. In fact, the Board reduced the number of field offices several years ago from 89 to 56, including 3 regional offices. The Inspector General has proposed to reduce the field structure to 6 service centers and to reduce our front-line service staff by about 80 percent based on fundamental changes involving new technology and customer self-service. Although we continually look for ways to further reduce costs, we will not support reductions that will dramatically deteriorate the level of service we believe is due our customers. In addition, it should be noted that the technology required to carry out the Inspector General's proposed structure is not currently available at the Railroad Retirement Board and would require a major investment of millions of dollars. Further, the proposal would not reduce the workloads of our field staff, and therefore, it is doubtful whether we would achieve significant staff savings as he suggests. In our view, a further drastic reduction in the number of field offices would be unacceptable from a customer service standpoint.

Coordination with the Social Security Administration

Another aspect of good customer service, and of good government overall, is that our customers need only deal with one agency concerning the railroad retirement and railroad unemployment insurance programs. Railroad retirees receive a tier I railroad retirement annuity amount which is computed using the employee's combined railroad retirement and

social security covered employment. A transfer of responsibility to the Social Security Administration would mean that our constituents would have to deal with two Federal agencies, and their different programmatic rules, not to mention the fact that they would receive two separate payments instead of one combined payment. This would increase the burden on beneficiaries and result in a significant decline in the service being offered to railroad retirees and their families, with no clear evidence that any overall savings would be achieved.

Although consideration has been given in the past to transferring to the Social Security Administration responsibility for payment of tier 1 (social security level) benefits, which would be based on combined railroad retirement and social security covered employment, such proposals have consistently been dismissed. Transferring responsibility for payment of tier 1 benefits would result in an overlap of adjudicative action between the Railroad Retirement Board and the Social Security Administration and lead to more complex coordination between the two Federal agencies. Tier 1 benefits are, in several respects, different from social security benefits. Eligibility rules are different between the two systems. Most importantly, however, in our view, the approach taken in current law to provide for payment by the Railroad Retirement Board of a single benefit based on an employee's combined railroad retirement and social security covered employment provides the best overall return on investment.

Organizational Structure of the Agency

With respect to the Inspector General's recommendations concerning the administrative organization of the Railroad Retirement Board, the Board has taken several actions in recent years to improve internal communication between organizations and increase organizational efficiency and effectiveness. Day-to-day operation of the agency is the responsibility of a six-member Executive Committee comprised of the heads of the agency's major organizations. The diverse backgrounds and perspectives of the members of the Executive Committee provide assurance that operational decisions are well thought-out from an agency-wide standpoint. To provide for more centralized control, the Board created the position of Senior Executive Officer who is responsible for oversight and direction of the Executive Committee. The Senior Executive Officer reports directly to the three-member Board and serves as the liaison between the Board and the Executive Committee members. We are satisfied that the position of Senior Executive Officer provides centralized control of day-to-day operations and results in an effective

and efficient management structure for the agency. We believe the current position of Senior Executive Officer appropriately addresses the concerns of the Inspector General regarding a Chief Executive Officer.

The Railroad Retirement Board recently conducted an analysis of the agency's workforce to identify unnecessary supervisory/managerial levels with the goal being to reduce layering where possible and direct more resources to front-line customer service. We are taking appropriate action to address the findings of that study and we continue to look for ways to reduce costs and improve service.

Ongoing Efforts to Reduce Erroneous Payments

Prevention of overpayments in the first instance and collection of overpayments when they are detected are embodied in objectives in our Annual Performance Plan. Overpayments not only constitute a potential drain on the trust funds we administer, but collection action can be disruptive for beneficiaries and increases administrative costs for the agency. We have conducted numerous studies to determine the causes of benefit overpayments and what actions could be taken to prevent those within our control. Changes adopted as a result of those studies have significantly reduced overpayments. In addition to seeking ways of reducing overpayments, we aggressively pursue debt recovery whenever overpayments are detected. Indeed, over the past 5 years, debts recovered amount to almost 96 percent compared to debts established for the railroad retirement and unemployment/sickness insurance programs.

The Board has taken and will continue to take appropriate action in areas identified by the Inspector General to reduce erroneous payments. For example, with respect to overpayments under the Railroad Retirement Act attributable to benefits continuing after the death of the beneficiary, we employ several methods of securing death information in a timely manner, including computer matches of lists of deceased persons. Although this is the largest single category of overpayments recorded under the railroad retirement program, most of these payments are recovered through returned payments and automated reclamation action by the Treasury Department.

Another major category of railroad retirement overpayments is attributable to social security entitlement. More than 70 percent of these overpayments are recovered quickly and efficiently through benefit offset. Improvements in this process have been possible in large part due to our continuing partnership with the Social Security Administration. We have a long and productive history of collaboration on many areas of common interest, including improved coordination to prevent erroneous payments. For example, Railroad Retirement Board adjudicators have on-line access to social security's master benefit record and our systems are linked through electronic interfaces that automatically process the required benefit offsets. Our staff continues to meet with the Social Security Administration and other benefit paying agencies such as the Centers for Medicare and Medicaid Services, to plan and coordinate work on new, interagency initiatives, such as e-Government initiatives that have the potential to share information, minimize duplicative services and streamline services to our common customers.

Under the Railroad Unemployment Insurance Act, the largest category of overpayments involves payments of sickness benefits to beneficiaries who later receive a personal injury award or settlement. These should not be confused with erroneously paid benefits, since they were legally due to the claimant when paid. The Railroad Unemployment Insurance Act specifically provides that sickness benefits may be paid to a person seeking a personal injury award or settlement, but that in such a case, the Board shall have a lien on the amount of the award or settlement in the amount of sickness benefits paid. Thus, the statute provides a means for the payment of these benefits and a means for recovery of the amounts paid. Another major category of overpayments in sickness or unemployment benefits results from an award of a retroactive railroad retirement annuity. Recovery in these cases is usually effected through administrative offset against benefit accruals and ongoing benefit payments.

Although we are taking action to reduce the numbers and amounts of overpayments in the categories mentioned by the Inspector General, we believe it is important to advise the Committee that potential savings that would be realized from reductions in some of these categories would not be substantial. Even with our elevated program integrity efforts, many of the current overpayments cannot be prevented, however, most of these are almost immediately recovered upon detection.

In the areas of reduction of erroneous payments and recovery of overpayments, we believe the record established by the Railroad Retirement Board speaks for itself. We have been steadfast in our efforts to reduce erroneous payments and we have been very aggressive in recovering overpayments that have occurred.

Proposed Audits of the Medicare Program

Finally, the Committee has requested the views of the Board Members concerning the request made by the Railroad Retirement Board Inspector General that his office again be allowed to conduct investigations and audits with respect to the Medicare program. The Inspector General has been prohibited by Congress since fiscal year 1997 from conducting audits and investigations concerning Medicare.

I was sworn in as Chairman of the Railroad Retirement Board on July 1, 2003. I have reviewed the Inspector General's request, but I have not, as yet, formed an opinion on his request.

I am advised that the Labor Member, V. M. Speakman, Jr., supports the Inspector General's request and that the Management Member, Jerome F. Kever, is opposed to the request. Both Mr. Speakman and Mr. Kever are here with me and available to answer questions on this issue.

Conclusion

While we understand that this Committee is looking for ways of reducing mandatory spending within its jurisdiction, as our statement suggests, the Inspector General's proposals will not provide significant reductions. The Railroad Retirement Board has taken many steps to reduce mandatory as well as discretionary spending. However, we always have serious concerns with initiatives that negatively impact the quality of services to our beneficiaries. It is railroad employers and employees who are the primary source of funding for the railroad retirement and railroad unemployment insurance programs. We want to assure the Committee that we will continue to look for ways to reduce the cost of the railroad retirement and railroad unemployment insurance systems. It is in our interest and that of our stakeholders to do so. We also want to assure the Committee that we will work with the Office of Inspector General to ensure that our program integrity efforts continue to be positive and productive.

That concludes our statement. We thank the Committee for the opportunity to appear this morning and I would like to submit this statement for the record. We would be happy to answer any questions.



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092

JUL 29 2003

BOARD MEMBERS:

MICHAEL S. SCHWARTZ, CHAIRMAN
V.M. SPEAKMAN, JR., LABOR MEMBER
JEROME F. KEVER, MANAGEMENT MEMBER

The Honorable Don Young
Chairman
Committee on Transportation and Infrastructure
United States House of Representatives
586 Ford House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find answers to the questions you submitted by letter dated July 23, 2003, to supplement my testimony before the House Transportation and Infrastructure Committee on July 22, 2003. I again would like to express my appreciation for the opportunity to appear before the Committee.

Sincerely,

A handwritten signature in cursive script that reads "Michael S. Schwartz".

Michael S. Schwartz
Chairman

Enclosures

Question 1. One of the recommendations made by the Inspector General is the creation of a Chief Executive Officer position to improve control and accountability of Board activities. What steps have been taken by the Board to address this recommendation?

The Board has taken several steps to strengthen the organizational structure of the agency and improve performance. Day-to-day operations of the agency are the responsibility of a six-member Executive Committee comprised of the heads of the major offices of the Railroad Retirement Board. The Executive Committee meets frequently to discuss issues of agency-wide significance and determine operational issues that cut across organizational boundaries. The Executive Committee members bring to the table varied perspectives. The composition of the Executive Committee ensures that everyone's ideas and concerns will be aired, but, in the final analysis, the Executive Committee members approach the difficult decisions before them in the spirit of doing what is right for the agency as a whole.

To provide greater centralized control and accountability for agency actions, the Board Members created the position of Senior Executive Officer. The Senior Executive Officer, who reports directly to the Board Members, oversees and directs the Executive Committee and is responsible for carrying out the policies, directions, and decisions of the Board. The current structure is effective and efficient and serves the interest of our customers very well.

Another important change that improves control and accountability of Board activities is the linkage of all Executive Committee members' performance appraisal plans to the goals set forth in the agency's Strategic Plan and Annual Performance Plan. The current organizational structure, together with the linked performance plans of our executives, have resulted in an organization that works together as a team with the interests of our customers driving agency decisions and actions.

Question 2. In your testimony, you mention the RRB's continued excellent performance in customer service surveys. To what do you attribute that service level, and how do you see the RRB continuing to improve service through the use of technology in the future?

The RRB's continued excellent performance is a result of our dedicated, dynamic staff and a concentrated focus on providing excellent customer service. The agency's focus is evident in its strategic goals and customer service plan. The importance of customer service is echoed at every level of the organization. However, ultimately it is our people who make the difference. They appreciate that it is life-altering circumstances that bring our customers to us – sickness, unemployment, retirement, death – and they strive to treat each customer with empathy, deference and respect. Our customers gain an immeasurable level of comfort and trust through the personal contact provided at the local level. When the USDA Graduate School's Leadership Development Academy benchmarked the RRB in 1999 as a Best Practices organization, they complimented the agency on a "culture that motivates excellent customer service."

We consider technology to be a valuable supplement to our in-person service. It greatly assists us in being more timely and responsive to all service requests and inquiries, and it allows us to process benefit payments with increasing timeliness and accuracy. Technology also allows our customers to select service options that are right for them. Our goal is to provide flexible service options to our customers, ensuring that the right solution exists for any circumstance. Automated telephone systems and Internet applications will free existing staff from routine inquiries, allowing them to assist with more complicated or sensitive situations. Technology will also help us better track customer inquiries, analyze complaints and trends, and provide standard answers to routine questions. We believe that the convenience and availability of technology-based services will eventually provide us the means to provide excellent service around the clock.

Question 3. To what extent do you attribute the RRB's success in recovering improper payments to the current RRB organizational structure?

Several years ago, the Board Members decided to separate the debt recovery function from the claims adjudication and payment function by moving debt recovery to the Bureau of Fiscal Operations. This structure has worked very well. The Debt Recovery Division of the Bureau of Fiscal Operations is staffed by debt recovery specialists whose responsibility it is to utilize the various debt recovery tools provided by law and regulation in recovery of overpayments under the two benefit programs administered by the RRB. Staff in the agency's Office of Programs can focus their efforts on paying benefits timely and correctly. Although the debt recovery and benefit adjudication and payment functions are located in separate organizations, they nevertheless coordinate their efforts to ensure that opportunities to reduce overpayments are identified and implemented and recovery actions are handled effectively and efficiently. Communication and cooperation between these organizations are fostered by the make-up of the Executive Committee, with the Director of Programs and the Chief Financial Officer as members, and by the linkage between the performance appraisal plans of the agency's executives.

Question 3.1. Do you foresee any negative impacts on the RRB's ability to combat waste, fraud, and abuse with any further reduction in field offices?

A further reduction in field offices would diminish the agency's ability to combat waste, fraud and abuse. A strong local presence is, in itself, a significant deterrent to fraudulent activity. Each field office maintains an active presence in the rail communities in its area, making the discovery of fraudulent activity much easier than long distance monitoring. These offices often discover problems that could otherwise go unnoticed. Local monitoring, investigations, attendance at work sites, railroad functions and events, knowledge of the area, and acquaintance with local officials allow our representatives to be effective guardians of the agency's trust funds. Finally, personal service plays an important role in increasing the understanding of our customers concerning events that may affect their benefit payments and the need to report such events to avoid overpayments.

Rep. Bill Shuster (PA-09)
House Committee on Transportation and Infrastructure
Waste, Fraud, and Abuse Report
July 22, 2003

Mr. Chairman, thank you very much for having this very important hearing today that identifies waste, fraud, and abuse in the government. I am concerned, however, that we are targeting a program that is very important for many rural communities across America. Today, we will discuss the merits of the Essential Air Service (EAS) program – a program that ensures that small, rural communities have reliable air service from their local airport and keeps rural communities connected to the nation's aviation and commerce system.

As you know, Essential Air Service funding increases a community's ability to retain air service - important for communities who are struggling with a difficult economy and where increased travel options have made it extremely difficult for many carriers to continue to serve small communities.

Mr. Chairman, without EAS funding, many small, rural communities will face the possibility of shuttering their local airport. This possibility

would be devastating to a community in my district, Blair County, where a recent study conducted by the Commonwealth of Pennsylvania concluded that the Altoona-Blair County airport contributes \$27.7 million to the local area in terms of jobs, tourism, business and consumer travel. Considering the economic benefits to small, rural communities across America like Blair County, I do not believe that the EAS program raises to the level of waste, fraud, or abuse. Instead, the EAS program must be continually strengthened so that rural communities remain connected to our national aviation system, and prosper by attracting new businesses who in turn create jobs.

I look forward to this hearing, and our discussion on the EAS program.