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# RECOVERY ACT

# Use of Transportation Funds, Outcomes, and Lessons Learned

Statement of Phillip R. Herr, Director
Physical Infrastructure

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# Highlights

Highlights of GAO-11-610T, a testimony before the Committee on Transportation and Infrastructure, House of Representatives

May 4, 2011

# RECOVERY ACT

## Use of Transportation Funds, Outcomes, and Lessons Learned

## Why GAO Did This Study

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided more than $48 billion to the Department of Transportation (DOT) to be distributed through existing programs and through two new competitive grant programs—high speed intercity passenger rail and the Transportation Investment Generating Economic Recovery (TIGER) program. As requested, this testimony addresses the (1) status and use of Recovery Act transportation funds, (2) outcomes and long-term benefits of Recovery Act transportation investments, and (3) lessons learned from DOT's and states' experiences implementing the Recovery Act. GAO reviewed prior and ongoing work, federal legislation, and guidance. GAO also analyzed Recovery Act data and interviewed federal, state, and local officials.

## What GAO Recommends

This testimony does not include new recommendations. In our past work, GAO recommended that the Secretary of Transportation take several actions, such as directing the Federal Highway and Federal Transit administrations to determine the data needed to assess the impact of Recovery Act projects; we recently recommended that the Federal Railroad Administration and DOT better document decisions regarding their competitive grant programs. DOT has addressed some GAO recommendations, but others remain open. We will continue to track them. GAO provided a draft of this statement to DOT and incorporated its comments where appropriate.

View GAO-11-610T or key components.
For more information, contact Phillip R.Herr at (202) 512-2834 or herrp@gao.gov or Susan A. Fleming at (202) 512-2834 or flemings@gao.gov

## What GAO Found

As of March 31, 2011, more than $45 billion (about 95 percent) of Recovery Act transportation funds had been obligated for over 15,000 projects nationwide, and more than $26 billion had been expended. States and other recipients continue to report using Recovery Act funds to improve the nation's transportation infrastructure. Highway funds have been primarily used for pavement improvement projects and transit funds have been primarily used to upgrade transit facilities and purchase new vehicles. Recovery Act funds have also been used to rehabilitate airport runways and improve Amtrak's infrastructure. DOT continues to obligate funds for its high speed intercity passenger rail and TIGER grant programs. As of March 31, 2011, DOT had obligated nearly all of the $1.5 billion in TIGER funds for 51 surface transportation projects.

The Recovery Act helped to fund transportation jobs, but long-term benefits are unclear. For example, according to available data, Recovery Act transportation projects supported about 50,000 full-time equivalents (FTE) in the three months from October through December 2010. The most recent data showed that highway projects accounted for about two-thirds of the transportation FTEs reported, and the remaining one-third of the FTEs were attributed to transit and other transportation projects. However, the impact of Recovery Act investments in transportation is unknown, and GAO has recommended that DOT determine the data needed to assess the impact of these investments. Although DOT has set broad performance goals for its high speed intercity passenger rail and TIGER programs—and is currently evaluating the best methods for measuring objectives and collecting data—it has not committed to assessing the long-term benefits of the Recovery Act investments in transportation.

Certain Recovery Act provisions meant to stimulate the economy, but not typically required under existing DOT programs, proved challenging. For example, GAO has reported on numerous challenges DOT and states faced in implementing the transportation maintenance-of-effort requirement, which required states to maintain their planned levels of spending over approximately 18 months or be ineligible to participate in the August 2011 redistribution of obligation authority under the Federal-Aid Highway Program. A January 2011 preliminary DOT report found that 29 states met the requirement while 21 states did not. In this report, DOT also discussed how the maintenance-of-effort provision could be improved. With regard to the high speed intercity passenger rail and TIGER programs, GAO found that while DOT generally followed recommended grant-making practices, DOT could have better documented its award decisions. For example, the Federal Railroad Administration could have developed clearer records for how it made award decisions. Without a clear record of selection decisions, DOT is vulnerable to criticism about the integrity of its decisions. Likewise, DOT did not clearly document its final decisions and rationale for selecting recommended TIGER projects.

Chairman Mica, Ranking Member Rahall, and Members of the Committee:

We are pleased to be here today to discuss our observations on Department of Transportation (DOT) programs funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act).[1] Congress enacted the Recovery Act in response to a serious economic crisis to, among other things, preserve and create jobs, promote economic recovery across the nation, and invest in transportation and other infrastructure to provide long-term economic benefits. We have noted that, given the nation's long-term fiscal challenges, any economic stimulus package should be timely, targeted, and temporary. The Recovery Act provided more than $48 billion for transportation investments just over a year after the onset of the recession, and stipulated that most of the funds be obligated by September 30, 2010. The Recovery Act targeted the majority of transportation funds for investments in infrastructure, including airports and air navigation facilities, roads and bridges, public transit systems, and high speed intercity passenger rail.[2]

The Recovery Act assigned several roles to GAO, including reviewing how selected states and localities used funds made available under the act. As part of those reviews, we examined how Recovery Act transportation funds are being used and whether they are achieving the act's stated purposes.[3] We also recently issued reports on two competitive grant programs funded under the Recovery Act, including the Federal Railroad Administration's (FRA) high speed intercity passenger rail program and the Transportation Investment Generating Economic Recovery (TIGER)

[1]Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

[2]Recovery Act, div. A, title XII, 123 Stat., 202.

[3]See GAO, *Recovery Act: Opportunities to Improve Management and Strengthen Accountability over States' and Localities' Use of Funds*, GAO-10-999 (Washington, D.C.: Sept. 20, 2010) and *Recovery Act: States' and Localities' Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability*, GAO-10-604 (Washington, D.C.: May 26, 2010). Additional reports on Recovery Act implementation can be found at http://gao.gov/recovery/related-products/.

grant program[4] administered by the Office of the Secretary of Transportation, both of which we discuss in this statement.[5]

Our statement is based on our recently completed and ongoing work, and addresses the (1) status and use of Recovery Act transportation funds, (2) outcomes and long-term benefits of Recovery Act transportation investments, and (3) challenges and key lessons learned from DOT's and states' experiences implementing the Recovery Act. We conducted all of our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to produce a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our statement today. Additional information on our scope and methodology is available in each issued report.

## Background

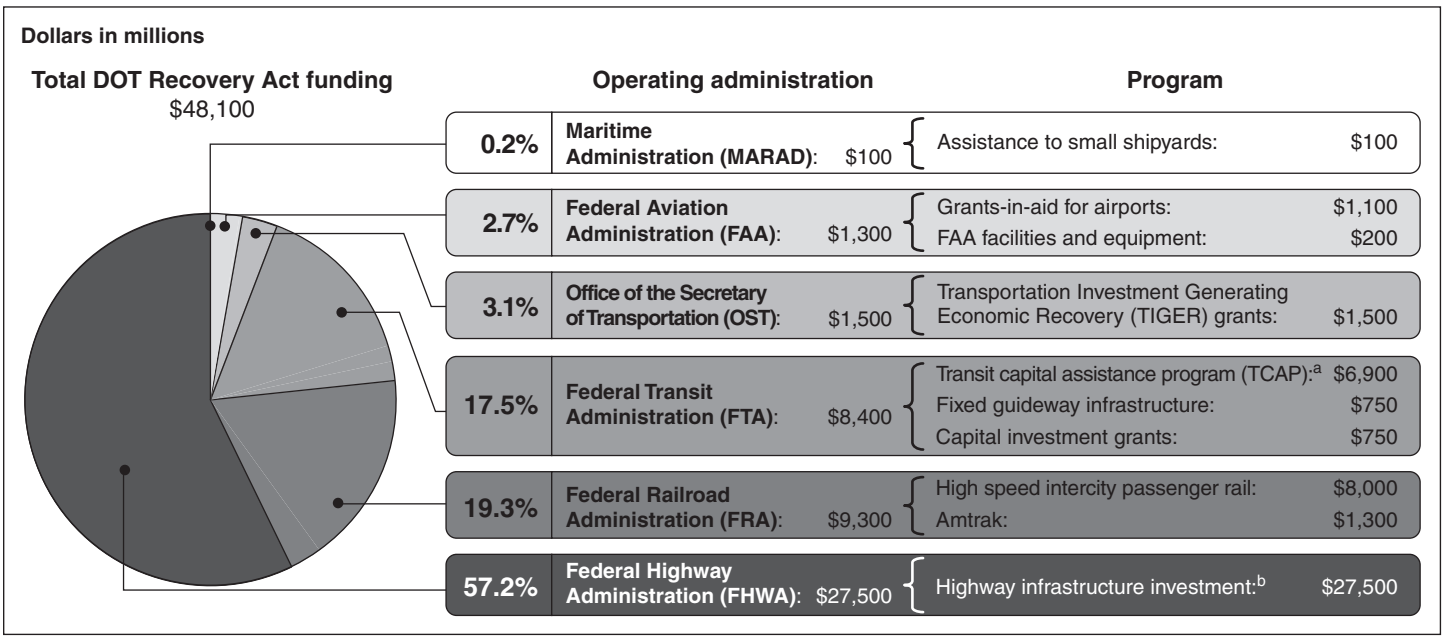
The vast majority of the $48.1 billion of Recovery Act funding for transportation programs went to the Federal Highway Administration (FHWA), FRA, and the Federal Transit Administration (FTA) for highway, road, bridge, rail, and transit projects. Indeed, more than half of all Recovery Act transportation funds were designated for the construction, rehabilitation, and repair of highways, roads, and bridges (see fig. 1). The remaining funds were allocated among other DOT operating administrations.[6]

[4]The high speed intercity passenger rail and TIGER grant programs are discretionary grant programs. Traditionally, federal surface transportation funding has been primarily delivered through formula grant programs based on distributions prescribed by federal statute. In a discretionary grant program, agency officials generally have the authority to determine which eligible applicants will receive awards and how much each will be awarded.

[5]GAO, *Intercity Passenger Rail: Recording Clearer Reasons for Awards Decisions Would Improve Otherwise Good Grantmaking Practices*, GAO-11-283 (Washington D.C.: Mar. 10, 2011) and *Surface Transportation: Competitive Grant Programs Could Benefit From Increased Performance Focus and Better Documentation of Key Decisions*, GAO-11-234 (Washington, D.C.: Mar. 30, 2011).

[6]The total amount of Recovery Act funds allocated to each program does not equal the total funds distributed. Most operating administrations, as allowed by the Recovery Act, retained a small percentage of the funds for oversight and administrative costs, and some fund allocations included set asides for other programs or activities. The Recovery Act also provided $20 million for salaries and expenses at the DOT Office of Inspector General to monitor DOT's Recovery Act programs.

**Figure 1: Recovery Act Funds Appropriated to DOT Programs**




Source: GAO analysis of DOT data.

[a]TCAP includes nonurban and urban formula funds, tribal grants, funds transferred from FHWA, and Transit Investment for Greenhouse Gas and Energy Reduction grants.

[b]Of the $27.5 billion the Recovery Act made available to FHWA, FHWA apportioned $26.6 billion to states for highway infrastructure investment and $105 million for the Puerto Rico highway program. Of the remaining funds, $550 million was allocated to Federal Lands and Indian Reservations, $20 million for Highway Surface Transportation Technical Training, $45 million for the Territorial Highway Program, and $60 million for the Ferry Boat Discretionary Program, among others.

DOT administered most Recovery Act funds through existing transportation programs. For example, highway funds were distributed under rules governing the Federal-Aid Highway Program generally and the Surface Transportation Program in particular.[7] DOT also established new grant processes to award high speed intercity passenger rail and TIGER grants. For these programs, DOT published selection criteria, solicited and

[7]The majority of federal-aid highway infrastructure funding is distributed through seven major projects, often referred to as core highway programs. These programs are the Surface Transportation Program, National Highway System Program, Interstate Maintenance Program, Highway Bridge Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program, and the Equity Bonus Program.

reviewed applications, and awarded grants to applicants that it judged best met the criteria and complied with legislative and regulatory requirements.

The Recovery Act included obligation deadlines to indicate the temporary nature of the funds and to facilitate their timely use. Therefore, the Recovery Act identified short deadlines for obligating most transportation funds, and it required that preference be given to projects that could be started and completed expeditiously. For example, highway and transit funds were to be fully obligated by September 30, 2010. All TIGER funds must be obligated by September 30, 2011, and all high speed intercity passenger rail funds must be obligated by September 30, 2012.

The Recovery Act also introduced new requirements for existing programs to help ensure that funds add to states' and localities' overall economic activity, and are targeted to areas of greatest need. For example, the Recovery Act required governors of each state to certify that their state will maintain its planned level of spending for the types of transportation projects funded by the act and also required states to give priority to projects in economically distressed areas.[8]

State and local agencies, contractors, and others that receive Recovery Act funding are required to submit quarterly reports on the number of jobs created or retained, among other data. These job calculations are based on the number of hours worked in a quarter and funded under the Recovery Act—expressed in full-time equivalents (FTE)—but they do not account for the total employment arising from the expenditure of Recovery Act transportation funds. That is, the data recipients report do not include employment at suppliers (indirect jobs) or in the local community (induced jobs).[9]

[8]Economically distressed areas are defined by the Public Works and Economic Development Act of 1965, as amended. To qualify, the areas must have (1) a per capita income of 80 percent or less of the national average, (2) a 24-month average unemployment rate that is 1 percent greater than the national average, or (3) "special needs" arising from actual or threatened severe unemployment or economic adjustment programs resulting from severe short- or long-term changes in economic conditions.

[9]Therefore, both the data reported by recipients and other macroeconomic data and methods are necessary to gauge the overall employment effects of the stimulus. The employment effects in any state will vary with labor market stress and fiscal condition.

## Most Recovery Act Transportation Funds Have Been Obligated, and Expenditures for Infrastructure Continue to Increase

According to DOT data, as of March 31, 2011, DOT had obligated more than $45 billion (about 95 percent) on over 15,000 projects and had expended more than $26 billion (about 59 percent) of the $48.1 billion it received under the Recovery Act (see table 1).[10]

**Table 1: Recovery Act Transportation Projects, Obligations, and Expenditures, as of March 31, 2011**

**Dollars** (in millions)

| | Number of projects | | Obligations | | Expenditures | |
|---|---|---|---|---|---|---|
| **Program** | **Awarded** | **Completed** | **Amount** | **Percent obligated** | **Amount** | **Percent expended** |
| **Federal Highway Administration** | | | | | | |
| Highway infrastructure investment[a] | 12,931 | 7,072 | $26,342 | 99.9% | $18,661 | 70.8% |
| **Federal Railroad Administration** | | | | | | |
| High speed intercity passenger rail | 57 | 0 | 5,354 | 67.1 | 94 | 1.8 |
| Capital grants to Amtrak | 154 | 89 | 1,291 | 100.0 | 1,180 | 91.4 |
| **Federal Transit Administration** | | | | | | |
| Transit capital assistance program (TCAP) | 1,010 | 146 | 7,829 | 100.0 | 4,265 | 58.5 |
| Fixed guideway infrastructure | 51 | 23 | 743 | 100.0 | 441 | 59.4 |
| Capital investment grants | 11 | 11 | 743 | 100.0 | 743 | 100.0 |
| **Office of the Secretary of Transportation** | | | | | | |
| TIGER grants | 51 | 0 | 1,489 | 99.3 | 77 | 5.2 |

[10]Programs administered by DOT and funded by the Recovery Act typically required DOT review and approval of proposed projects submitted by the states or other applicants, resulting in an obligation of federal funds. (An obligation is a commitment that creates a legal liability of the government for the payment of goods or services ordered or received.) States or other recipients then solicit for and select contractors to perform the work. Federal funds are expended when the state or other intended recipient submits invoices for completed work.

| **Dollars** (in millions) | | | | | | |
|---|---|---|---|---|---|---|
| | **Number of projects** | | **Obligations** | | **Expenditures** | |
| **Program** | **Awarded** | **Completed** | **Amount** | **Percent obligated** | **Amount** | **Percent expended** |
| **Federal Aviation Administration** | | | | | | |
| Grants-in-aid for airports | 372 | 364 | 1,088 | 99.1 | 1,043 | 95.9 |
| FAA facilities and equipment | 399 | 378 | 198 | 99.0 | 130 | 65.7 |
| **Maritime Administration** | | | | | | |
| Assistance to small shipyards | 70 | 30 | 98 | 100.0 | 76 | 77.6 |
| **Total** | **15,106** | **8,113** | **$45,175** | **95.5%** | **$26,710** | **59.1%** |

Source: GAO analysis of DOT data.

Notes: For information on total federal outlays for all programs administered by states and localities under the Recovery Act, see http://gao.gov/recovery.

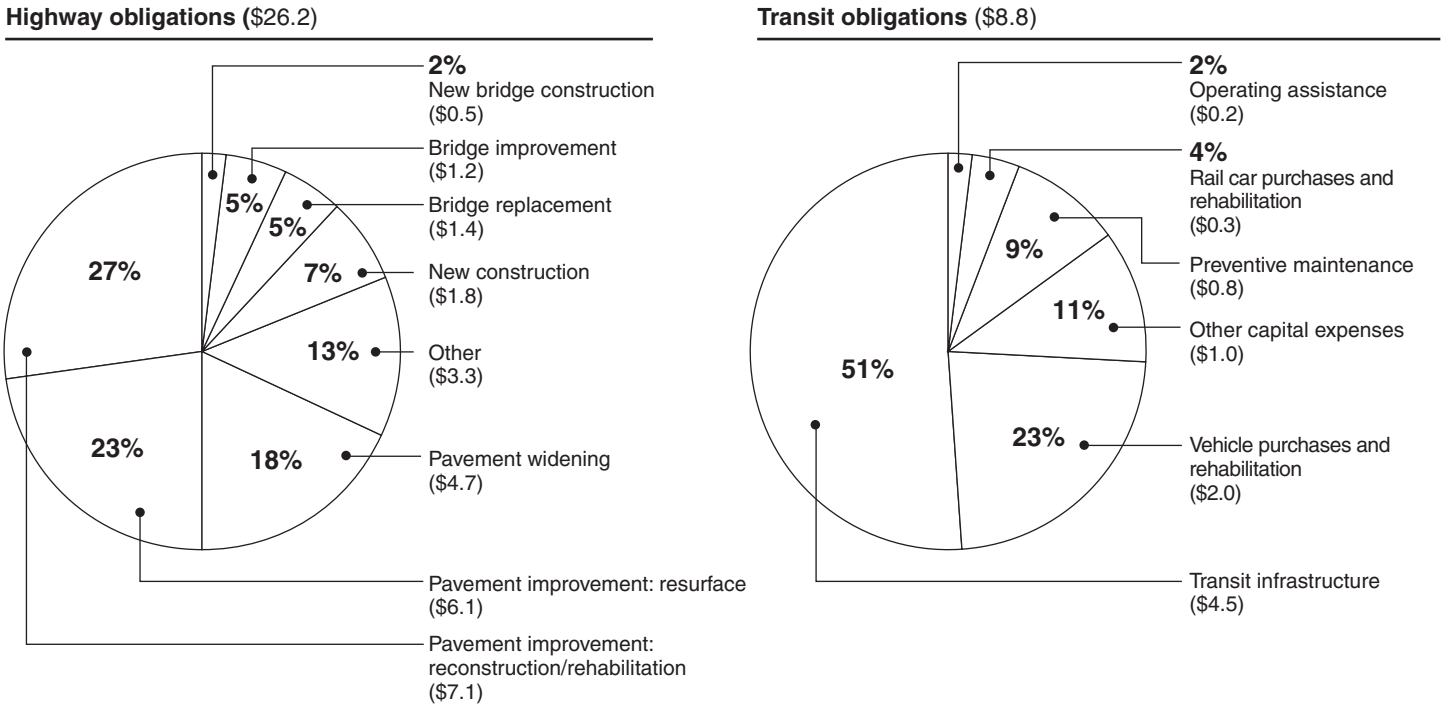
The percentage obligated is not based on the total Recovery Act funds each agency received but on the amount agencies allotted for distribution to projects. In most cases, this amount was less than the total amount of Recovery Act funds the agency received.

[a]Includes Puerto Rico and the other territories but not federal lands projects.

States and other recipients continue to report using Recovery Act funds to improve the condition of the nation's transportation infrastructure, as well as invest in new infrastructure. For example, according to DOT data, highway funds have been primarily used for pavement improvement projects, such as resurfacing, reconstruction, and rehabilitation of existing roadways, and public transit funds have been used primarily for upgrading transit facilities and purchasing new vehicles (see fig. 2).

**Figure 2: Highway and Transit Obligations, by Project Type**

**Dollars** (in billions)




Source: GAO analysis of DOT data.

Notes: Percentages may not add to 100 because of rounding.

Transit obligations include Recovery Act funds that were transferred from FHWA to FTA. The category "other" includes safety projects, such as improving safety at railroad grade crossings; engineering; right-of-way purchases; and transportation enhancement projects, such as pedestrian and bicycle facilities. "Transit infrastructure" includes engineering and design, acquisition, construction, and rehabilitation and renovation activities. "Other capital expenses" includes leases, training, finance costs, mobility management project administration, and other capital programs.

Highway data are as of December 31, 2010, and transit data are as September 30, 2010.

Recovery Act funding for aviation is reported to have gone to rehabilitating and reconstructing airfield runways and taxiways, as well as air navigation infrastructure such as air traffic control towers, engine generators, back-up batteries, and circuit breakers. The Recovery Act grant provided to Amtrak has been used to make infrastructure improvements and return cars and locomotives to service. Because high speed intercity passenger rail and TIGER were new grant programs, the Recovery Act allowed additional time for DOT to develop criteria, publish notices of funding availability for each program, and award grants. As a result, projects selected for high speed intercity passenger rail and TIGER

were announced about a year after enactment, and DOT has been making progress obligating Recovery Act funds for these programs. For example, DOT selected one intercity passenger rail project to rehabilitate track and provide service from Portland to Brunswick, Maine, at speeds up to 70 miles per hour. Another project was selected to initiate the first part of California's high speed rail system, which envisions service at more than 200 miles per hour between Los Angeles, San Francisco and the Central Valley, and eventually, San Diego. DOT's TIGER grants funded projects across different surface transportation modes, including highways, transit, rail, and ports. For example, the California Green Trade Corridor/Marine Highway project is a collaborative effort of three regional ports in California to develop and use a marine highway system as an alternative to existing truck and rail infrastructure for transporting consumer goods and agricultural products.

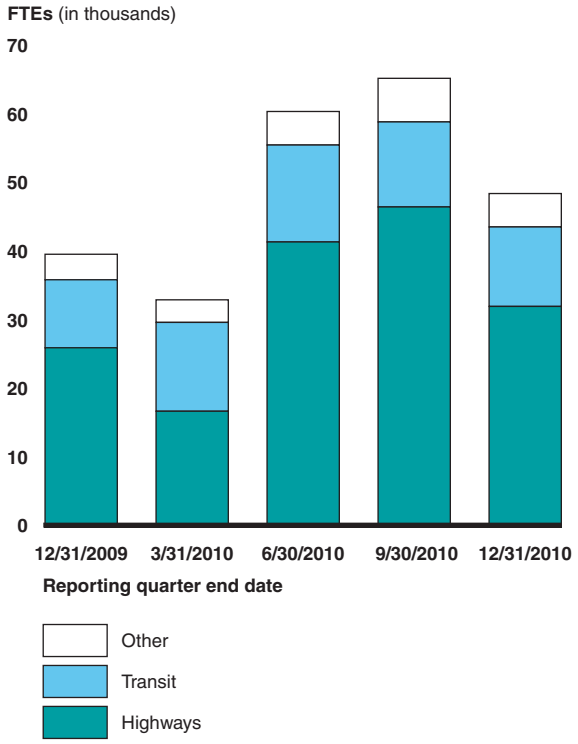
According to DOT, a variety of Recovery Act projects have been completed. Approximately 68 percent of the completed highway projects involve pavement improvement, according to FHWA, and completed transit projects generally included preventative maintenance activities and some vehicle purchases and facility construction, according to FTA. Amtrak had also completed a variety of projects, including construction station upgrades, right-of-way improvements, installing communications and signaling systems, and replacing aging bridges, among other things. While no high speed intercity passenger rail projects had been completed as of March 31, 2011, 15 projects were under way, according to FRA. These projects, which represent more than two-thirds of the allotted funding, include track and signaling work to improve reliability and increase operating speeds, improvements to stations, and the environmental analysis and preliminary engineering required to advance projects to construction.

## The Recovery Act Helped Fund Transportation Jobs, but Long-Term Benefits Are Unclear

Recovery Act funds helped pay for jobs across various transportation modes. At a time when the construction industry was experiencing historically high unemployment and many states could not afford to maintain existing infrastructure, transportation officials we met with told us that the Recovery Act helped to keep the transportation industry in operation while allowing states to tackle some of their infrastructure maintenance priorities. According to the most recent recipient reported data, Recovery Act transportation projects supported about 50,000 FTEs

from October 2010 through December 2010.[11] Transportation recipients reported the highest FTE counts during the quarter that ended September 2010, when many projects were under way (see fig. 3).

**Figure 3: FTEs Reported by Recovery Act Transportation Program Recipients for Quarters Ending December 2009 through December 2010**




Source: GAO analysis of recipient reported data from Recovery.gov.

Note: "Highways" includes FHWA projects funded for highway planning and construction. "Transit" includes FTA projects funded with capital investment grants, metropolitan transportation planning grants, formula grants (including grants for other than urbanized areas), and the capital assistance program for reducing energy consumption and greenhouse gas emissions. "Other" includes projects funded by FAA's Airport Improvement Program; FRA's Amtrak grant and high speed intercity passenger rail program; Maritime Administration's Assistance to Small Shipyards Program; and the Office of the Secretary of Transportation's Bonding Assistance Program and TIGER grants.

For the most recent reporting quarter, highway projects accounted for approximately two-thirds of the transportation FTEs reported, and the

[11]Recipient reported data for January 2011 through March 2011 was expected to be published on Recovery.gov on April 30, 2011.

remaining one-third of FTEs were attributed to transit and all other transportation projects. The relatively low portion of FTEs reported for all other transportation projects is expected to rise in future reporting quarters as more high speed intercity passenger rail and TIGER program funds are obligated and projects get under way.

While FTEs reported for the high speed intercity passenger rail and TIGER programs are expected to increase as these projects get under way, other program areas have reported fewer FTEs in the most recent reporting quarter. Recipient reported data for the quarter ending December 31, 2010, showed fewer recipients reporting than in the previous quarter across all program areas (highways, transit, and other). This may indicate that more projects were completed in the quarter ending December 31, 2010, than were started. Also in that quarter, the percentage of recipients that reported any FTEs decreased compared to the previous quarter, which may indicate that some projects are essentially completed but not closed out financially or may reflect interruptions in work due to winter weather for some projects in colder climates.

Although recipients reported jobs funded, other long-term impacts of Recovery Act investments in transportation are unknown at this point. Transportation officials in several states we visited told us that Recovery Act funds helped reduce backlogs of "shovel-ready" resurfacing projects. Some states have efforts under way to report on Recovery Act benefits, but federal and state officials told us that attributing transportation benefits to Recovery Act funds can be difficult, particularly when projects are funded from multiple sources or when historic performance data is not available for particular projects.

We recommended that DOT ensure that the results of Recovery Act projects are assessed and a determination is made about whether these investments produced long-term benefits.[12] Specifically, in the near term, we recommended that FHWA and FTA determine the types of data and performance measures needed to assess the impact of the Recovery Act and the specific authority they may need to collect data and report on these measures. DOT officials told us that they expect to be able to report on Recovery Act outputs, such as miles of roads paved, bridges built or

[12]GAO, *Recovery Act: States' and Localities Uses of Funds and Actions Needed to Address Implementation Challenges to Bolster Accountability*, GAO-10-604 (Washington, D.C.: May 26, 2010).

repaired, and transit vehicles purchased, which will help to assess the act's impact. DOT will not be able to report on outcomes, such as reductions in travel time. DOT has not committed to assessing the long-term benefits of Recovery Act investments in transportation. DOT stated that limitations in its data systems, coupled with the fact that Recovery Act funds represented only about one year of additional funding for some transportation programs, would make assessing the benefits of Recovery Act projects difficult. We continue to believe, however, that it is important for organizations to measure performance to understand the progress they are making toward their goals and to produce a set of performance measures that demonstrates results.

For Recovery Act high speed intercity passenger rail and TIGER grant programs, DOT has set broad performance goals and required recipients to identify potential project benefits. Specifically, FRA has outlined goals for developing high speed intercity passenger rail service in its strategic plan and national rail plan and evaluated grant proposals based on the potential project benefits they intended in their applications.[13] However, the identified goals are broad—such as providing for transportation safety and economic competitiveness—and do not contain specific targets necessary to determine how or when FRA will realize intended benefits. DOT also incorporated performance measures tailored to each TIGER grant awardee based on the project design and the capacity of the recipient to collect and evaluate data. DOT is evaluating the best methods for measuring objectives and collecting data and is working collaboratively with applicants to weigh options for measuring performance. As many TIGER projects are just being initiated, the effectiveness of these measures will not be clear for some time.

[13]Department of Transportation, *Vision for High-Speed Rail in America* (Washington, D.C., April 2009); FRA, *Preliminary National Rail Plan* (Washington, D.C., October 2009); and FRA, *National Rail Plan–Moving Forward: A Progress Report* (Washington, D.C., September 2010).

## Recovery Act Requirements Proved Challenging for DOT and Some States, Leading to Several Lessons Learned

Federal, state, and local transportation officials we contacted reported that while Recovery Act transportation funds provided many positive outcomes, they also provided lessons learned that may be relevant as Congress considers the next surface transportation reauthorization. In addition, our reports on high speed intercity passenger rail and the TIGER grant program identified a number of challenges and key lessons learned.

### Maintenance of Effort and Economically Distressed Area Requirements Proved Challenging

Certain Recovery Act provisions not typically required under existing DOT programs proved challenging for some states to meet. We found that it may have been difficult for states to meet these requirements for a number of reasons, including rapidly changing state economic conditions. Confusion among the states as to how to interpret and apply the new requirements was also a contributing factor.

- *Maintenance of effort*. We have reported that there were numerous challenges for DOT and states in implementing the transportation maintenance-of-effort provision in the Recovery Act. This provision required the governor of each state to certify that the state would maintain its planned level of transportation spending from February 17, 2009, through September 30, 2010, to help ensure that federal funds would be used in addition to, rather than in place of, state funds and thus increase overall spending. A January 2011 preliminary DOT report indicated that 29 states met their planned levels of expenditure, and 21 states did not. States had a monetary incentive to meet their certified planned level of spending in each transportation program area funded by the Recovery Act because those that fail will not be eligible to participate in the August 2011 redistribution of obligation authority under the Federal-Aid Highway Program.[14] States had until April 15, 2011, to verify their actual expenditures for transportation programs covered by the Recovery Act. DOT is reviewing this information to determine if any more states met their planned levels of spending.

The DOT preliminary report summarized reasons states did not meet their certified planned spending levels, such as experiencing a reduction in

[14]As part of the Federal-Aid Highway Program, FHWA assesses the ability of each state to have its apportioned funds obligated by the end of the federal fiscal year (September 30) and adjusts the limitation on obligations for federal-aid highway and highway safety construction programs by reducing it for some states while increasing it for others.

dedicated revenues for transportation due to a decline in state revenues or a lower-than-expected level of approved transportation funding in the state budget.[15] The preliminary report also identified a number of challenges DOT encountered in implementing the provision, such as insufficient statutory definitions of what constitutes "state funding" or how well DOT guidance on calculating planned expenditures would work in the many different contexts in which it would have to operate. As a result, many problems came to light only after DOT had issued initial guidance and states had submitted their first certifications. DOT issued seven pieces of guidance to clarify how states were to calculate their planned or actual expenditures for their maintenance-of-effort certifications.

DOT invested a significant amount of time and work to ensure consistency across states on how compliance with the maintenance-of-effort provision is certified and reported. As a result, DOT is well-positioned to understand lessons learned—what worked, what did not, and what could be improved in the future. DOT and state officials told us that while the maintenance-of-effort requirement can be useful for ensuring continued investment in transportation, more flexibility to allow for differences in states and programs, and to allow adjustments for unexpected changes to states' economic conditions, should be considered for future provisions. For example, the Recovery Act allows the Secretary of Education to waive state maintenance-of-effort requirements under certain circumstances and allows states to choose the basis they use to measure maintenance of effort.[16] The maintenance-of-effort requirement for transportation programs proved difficult for states to apply across various transportation programs because of different and complicated revenue sources to fund the programs. Many states did not have an existing means to identify planned transportation expenditures for a specific period and their financial and accounting systems did not capture that data. Therefore, according to DOT, a more narrowly focused requirement applying only to programs administered by state DOTs or to programs that typically receive state funding could help address maintenance-of-effort challenges.

[15]As of February 17, 2009, many states did not yet have an enacted budget for fiscal year 2010 and in response to anticipated changes in available funding, state legislatures adopted reduced budgets.

[16]See GAO, *Recovery Act: Planned Efforts and Challenges in Evaluating Compliance with Maintenance of Effort and Similar Provisions*, GAO-10-247 (Washington, D.C.: Nov. 30, 2009).

- *Consideration of economically distressed areas*. Our previous reports have identified challenges DOT faced in implementing the Recovery Act requirement that states give priority to highway projects located in economically distressed areas. For example, while an economically distressed area is statutorily defined, we found that there was substantial variation in how some states identified economically distressed areas and the extent to which some states prioritized projects in those areas. We reported instances of states developing their own eligibility requirements for economically distressed areas using data or criteria not specified in the Public Works and Economic Development Act.[17] Three states—Arizona, California, and Illinois—developed their own eligibility requirements or interpreted the special-needs criterion in a way that overstated the number of eligible counties, and thus the amount of funds, directed to economically distressed areas.[18] Officials in these three states told us that they did so to respond to rapidly changing economic conditions. In May 2010, we recommended that DOT advise states to correct their reporting on economically distressed area designations, and in July 2010 FHWA instructed its division offices to advise states with identified errors to revise their economically distressed area designations. In September 2010, we recommended that DOT make these data publicly available to ensure that Congress and the public have accurate information on the extent to which Recovery Act funds were directed to areas most severely affected by the recession and the extent to which states prioritized these areas in selecting projects for funding. DOT recently posted an accounting of the extent to which states directed Recovery Act transportation funds to projects located in economically distressed areas on its website, and we are in the process of assessing these data.

Most states we visited as part of our ongoing Recovery Act oversight considered the requirement to prioritize projects in economically distressed areas in addition to other immediate and long-term

[17]In response to a recommendation we made, FHWA, in consultation with the Department of Commerce, issued guidance on August 24, 2009, that provided criteria for states to use for designating special-need areas for the purpose of Recovery Act funding. The criteria align closely with special-need criteria used by the Department of Commerce's Economic Development Administration in its own grant programs, including factors such as actual or threatened business closures (including job loss thresholds), military base closures, and natural disasters or emergencies. FHWA issued "questions and answers" on Nov. 12, 2009, to further address implementation questions.

[18]As part of our Recovery Act oversight, we tracked the uses and accountability for Recovery Act funds in 16 states, including Arizona, California, and Illinois, and the District of Columbia.

transportation goals, as the Recovery Act required. For example, officials in Washington state said that they considered federally-recognized economically distressed areas as one of several criteria when selecting projects. Other criteria included state economic data and projects that would be ready to proceed in a short amount of time. However, state officials were also uncertain what the economically distressed area requirement was intended to accomplish, such as whether it was intended to provide jobs to people living in those areas or to deliver new infrastructure to those areas. The economically distressed area provision proved difficult to implement because of changing economic conditions, and it is unclear that it achieved its intended goal.

## Better Documentation Could Reduce Challenges to the Integrity of Selection Decisions for High Speed Intercity Passenger Rail and TIGER Grant Programs

We have reported that allocating federal funding for surface transportation based on performance in general, and directing some portion of federal funds on a competitive basis to projects of national or regional significance in particular, can more effectively address certain challenges facing the nation's surface transportation programs. In our recent reports on the high speed intercity passenger rail and TIGER programs, we found that while DOT generally followed recommended grantmaking practices, DOT could have documented more information about its award decisions.

The Recovery Act and the Passenger Rail Investment and Improvement Act of 2008 required FRA to implement a plan to award and oversee billions of dollars for high speed intercity passenger rail grants. This was challenging for FRA as it did not have a large-scale grantmaking infrastructure in place and had to develop that capability within a short time frame to meet Recovery Act goals. We mostly found that FRA substantially followed recommended practices for awarding these grants, including communicating key information to applicants and planning for the grant competition.[19] However, one area in which FRA could have done better is to develop clearer records for how it made final grant award decisions. Specifically, while FRA maintained detailed records on how officials evaluated applications on technical merit, the documented reasons for making final grant selections were typically vague and provided little insight into why projects were or were not selected. In addition, FRA provided only general reasons for adjusting applicants' requested funding amounts. We recommended that FRA should better document the rationales for award decisions in any future high speed and

[19] GAO-11-283.

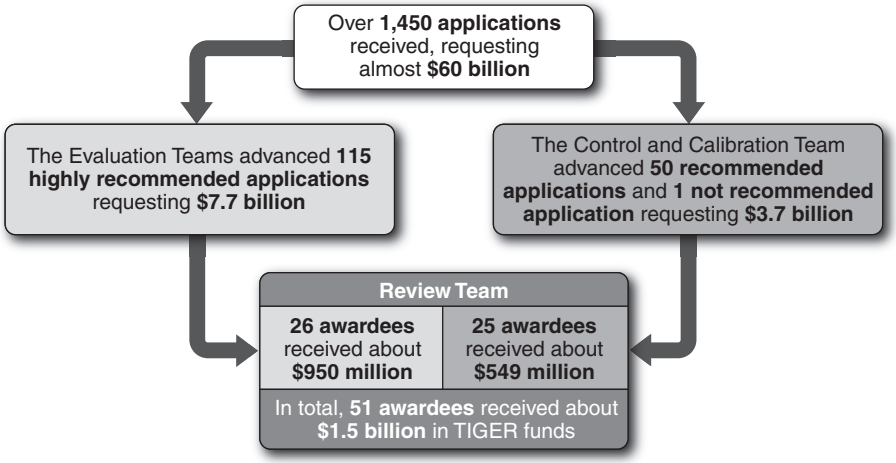
intercity passenger rail funding rounds by including substantive reasons why individual projects are or are not selected and for any changes made to requested funding amounts. Without a clear record of selection decisions, FRA is vulnerable to criticism about the integrity of its decisions. This is important because FRA has already been criticized for its award decisions and for providing incremental improvements to existing systems rather than providing more funds to meet the administration's expectations of developing a true national high speed rail intercity passenger network.

To evaluate the more than 1,450 TIGER grant applications it received, DOT developed criteria to assess the merits of these projects. We evaluated these criteria and concluded that DOT had followed key federal guidance and standards. The criteria clearly indicated that projects should produce long-term benefits, such as improving the state of repair of existing transportation infrastructure, reducing fatalities and injuries, and improving the efficient movement of workers or goods. To apply its criteria, DOT used 10 Evaluation Teams of five reviewers to conduct a technical review of all applications. The evaluators drafted narratives explaining their assessments, assigned ratings such as "highly recommended" and "recommended," and advanced those that best met the criteria for further review. A Control and Calibration Team, made up of senior staff from the Office of the Secretary of Transportation, also selectively reviewed and advanced applications throughout the process to ensure consistency across Evaluation Teams' ratings and to help meet statutory requirements such as an equitable distribution of funds. The Evaluation Teams advanced 115 highly recommended applications. The Control and Calibration Team advanced an additional 50 recommended applications as well as 1 application that was not recommended. Together, the teams advanced 166 applications for further review. The TIGER Review Team—composed of 12 senior DOT officials, such as the Deputy Secretary and cognizant operating administrators—reviewed those 166 applications. This team—which considered a broader set of factors than the Evaluation Teams, including project readiness and whether expected project benefits outweighed costs—developed a final list of 51 projects that it recommended to the Secretary of Transportation for award. All 51 projects were accepted by the Secretary, and the awards were announced on February 17, 2010.

Of the 51 applications that received awards, 26 were from the highly recommended applications advanced by the Evaluation Teams and the other 25, which received one-third of the TIGER funds, were from the

recommended applications advanced by the Control and Calibration Team (see fig. 4).

**Figure 4: Number of TIGER Applications Advanced and Selected**




Source: GAO analysis of DOT information.

While DOT thoroughly documented the Evaluation Teams' assessments and the Review Team's memorandum recommending projects to the Secretary of Transportation for award described the strengths of projects recommended for award, it did not document the Review Team's final decisions and its rationale for selecting recommended projects for half the awards over highly recommended ones. DOT officials told us that some highly recommended projects were not selected to achieve a more equitable geographic distribution of award funds, as required by the Recovery Act. Furthermore, our discussions with DOT officials indicated that the Review Team raised some valid concerns about some highly recommended projects, such as whether a project's economic benefits were overstated. However, without adequate documentation of final decisions, DOT cannot definitively demonstrate the basis for its award selections, particularly the reasons why recommended projects were selected for half the awards over highly recommended ones. Developing internal documentation is a key part of accountability for decisions, and DOT guidance states that officials should explain how discretionary grant projects were selected when projects with the highest priority in a technical review were not funded. The absence of documentation can give rise to challenges to the integrity of the decisions made, and DOT is vulnerable to criticism that projects were selected for reasons other than merit. We recommended that DOT document key decisions for all major

steps in the review of applications, particularly decisions in which lower-rated applications are selected for award over higher-rated applications, and, in consultation with Congress, develop and implement a strategy to disclose information regarding award decisions. [20]

Both the high speed intercity passenger rail and TIGER programs represent important steps toward investing in projects of regional and national significance through a merit-based, competitive process. We noted a natural tension between providing funding based on merit and performance and providing funds on a formula basis to achieve equity among the states as the formula approach can potentially result in projects of national or regional significance that cross state lines and involve more than one transportation mode not competing well at the state level for funds. Given that the Recovery Act was intended to create and preserve jobs and promote economic recovery nationwide, Congress believed it important that TIGER grant funding be geographically dispersed. As we noted in our recent report discussing the TIGER grant program, when Congress considers future DOT discretionary grant programs, it may wish to consider balancing the goals of merit-based project selection with geographic distribution of funds and limit, as appropriate, the influence of geographic considerations.

Chairman Mica, Ranking Member Rahall, and Members of the Committee, this concludes my statement. I would be pleased to respond to any questions at this time.

## GAO Contact and Staff Acknowledgments

For further information regarding this statement, please contact Phillip R. Herr at (202) 512-2834 or herrp@gao.gov or Susan A. Fleming at (202) 512-2834 or flemings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony were Steve Cohen, Assistant Director; Heather MacLeod, Assistant Director; James Ratzenberger, Assistant Director; Jonathan Carver; Matt Cook; John Healey; Joah Iannotta; Bert Japikse; Delwen Jones; SaraAnn Moessbauer; Josh Ormond; and Pamela Vines.

[20] GAO-11-234.

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