



U.S. Department
of Transportation
**Federal Highway
Administration**

Federal Highway Administration Risk Management Plan

American Recovery and Reinvestment Act of 2009 (Recovery Act)

April 10, 2009



EXECUTIVE SUMMARY

FHWA Risk. FHWA has used its risk management framework to identify major risks in implementing the Recovery Act. We considered our 2008 risk assessment, the accountability risks identified by Office of Management and Budget; known vulnerabilities addressed through our national review program, Office of the Inspector General and Government Accountability Office reports; implementation risks identified in a February 2009 Recovery Act field survey and a Federal Lands assessment. The FHWA agency specific risks areas are:

Local Public Agency (LPA) Oversight – oversight by the State and lack of experience by LPAs in handling Federal-aid projects.

Plans, Specifications, and Estimates (PS&E) Quality – potential for errors and omissions leading to change orders, cost overruns, delays, permit violations, and substandard product.

Contract Administration – procurement, bidding, and management of contract terms and changes.

Quality Assurance – inadequate inspection and substandard material acceptance and construction leading to waste, fraud, or abuse, decreased service life, or environmental and safety concerns.

Disadvantaged Business Enterprise Program –difficulties in meeting DBE goals, inadequate industry capacity, attempts to avoid good faith efforts, and temptation to use front companies.

Eligibility/Improper Payments – weak internal controls for the segregation, expenditure, and billing of federal funds may lead to payment of ineligible costs.

Achievement of Program Goals – meeting high public expectations for economic recovery and delivery of transportation projects that yield long-term value.

Indian Reservation Roads Program – (Federal Lands Highway) funds are available to all 562 federally recognized tribes; political and sovereignty issues increase complexity; tribal expertise varies greatly; and recent reviews have found significant stewardship issues in certain regions.

Mitigation Strategies. FHWA identified eight strategies to respond to its Recovery Act risk. The strategies are appropriate to both the Federal-aid and the Federal Lands Highway programs. They consider the recipients of Recovery Act funding and their potential performance issues; the level of funding; desired program outputs and outcomes, and existing resources. They were identified through outreach to program and field offices, consideration of recent national review and audits, and leadership discussions. The strategies are cross-cutting, to address all risk areas.

1. ***Resource Enhancement*** – Provide additional staff at the national and division level.

2. **Communication & Education** – Outreach to all stakeholders on Federal-aid procedures, reporting, and lessons learned from disaster relief efforts, including fraud awareness.
3. **Sharing Risk** – Agreement and contract modifications to ensure oversight and reporting.
4. **Division Office Oversight** – Implement Division Office risk mitigation plans; perform visible monitoring and checking of key Recovery Act control documents; emphasize financial oversight through the FIRE Program.
5. **National Oversight** – Implement National Review Teams to carry out reviews in all States. Govern review frequency and location by program size, previously identified risk, and results from Division monitoring efforts.
6. **Measure, Monitor, and Review** – Define metrics, and develop systems and processes to monitor key OMB and FHWA risk measures and to assess progress of program goal measures.
7. **Information & Tool Development** – Provide Recovery Act guidance and monitoring strategies for risk areas and guidance stemming from national review and audit findings, including sub-recipient guidance; review guides to assist national review teams; checklists to assist local monitoring and oversight
8. **Reassessment and Feedback** – Revalidate both the risk assessment and the response strategies as we implement the Recovery Act and further integrate risk management with strategic and performance planning.

FHWA has taken a comprehensive approach to responding to the risks and vulnerabilities identified through our own offices and review programs, the President's Office of Management and Budget, the Government Accountability Office, and the Office of the Inspector General. We are confident that the eight response strategies contained in the plan will help us to effectively and efficiently administer the highway component of the American Recovery and Reinvestment Act of 2009 with unprecedented levels of transparency and accountability.

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I. INTRODUCTION AND OVERVIEW

On February 17, 2009 President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). This Act significantly increased the size of the federal highway program in an effort to jumpstart our economy, create or save millions of jobs, and begin to address the nation's challenges of the 21st century. This document describes how the Federal Highway Administration plans to respond to the risks identified with implementing the highway component of this critical program.

The scale of the program is unprecedented. The law appropriates a total of \$27.5 billion in Highway Infrastructure Investment funds for the next two years. Of that amount, \$26.6 billion in Federal-aid Highway funds will be apportioned to the States in addition to their existing 2009 apportionment of \$33.8 billion. Congress set aside \$550 million for investments in transportation on Indian Reservations and Federal lands, with the remaining funds designated for Puerto Rico, Territorial Highways, several smaller programs, and administration. The Act requires that priority be given to projects that can be completed quickly (within three years), those that are located in economically distressed areas, and that will maximize job creation and economic benefit. After identifying the projects, the States must move quickly to begin using this money. Within 120 days after the apportionment to a State, before June 30, 2009, 50% of the apportioned funds, excluding sub-allocated funds, must be obligated or that portion will be withdrawn and redistributed to other States that have obligated their funds in a timely manner. All apportioned funds must be obligated before March 2, 2010 or be withdrawn and redistributed. The goal is to get the highway projects underway and get Americans back to work. Effectively delivering this immense and complex program is vital to our nation's economic recovery.

The President has challenged us to deliver this program with new levels of transparency and accountability. To meet this challenge, the law and guidance require agencies to implement mechanisms to accurately track, monitor, and report on the use of recovery funds. The scope of this data collection effort is also unprecedented. While we can use existing systems to fulfill some data requirements, new systems will have to be developed quickly, deployed nationwide, and people trained to use them. We must work with the States to develop procedures, processes, and systems to collect data from all contractors, and then turn that data into useful information for monitoring the program and reporting to the public. This effort is vast in scope and complexity, but its successful execution is critical to meeting the President's vision that, *"Every American will be able to hold Washington accountable for these decisions by going online to see how and where their tax dollars are being spent."*

Stewardship and oversight of the tax dollars devoted to highways is the mission of the Federal Highway Administration. The Federal-aid highway program is a federally assisted State-administered partnership between FHWA and the States. Our FHWA Division Offices, located in every State, have been delegated the authority to function as the focal point in advancing Federal-aid highway projects. FHWA provides stewardship and oversight of the entire program, but does not select or let the contracts for individual projects. The States are responsible for implementation. We have moved quickly to prepare our partners and stakeholders to implement the Recovery Act as expeditiously

as possible. In addition to direct contact between all divisions and our State partners, we established a single Recovery Act web page (www.fhwa.dot.gov/economicrecovery) to provide all stakeholders with the latest information. We also developed and posted a list of actions that can be taken to expedite the Recovery Act delivery and encouraged all potential recipients of highway-related Recovery Act funding to review and move forward on those items that were applicable. These were only the initial steps in meeting our stewardship responsibilities.

The Federal Highway Administration recognized that the unprecedented scale and scope of the Recovery Act would magnify the risks inherent in providing effective stewardship and oversight of the Federal-aid and Federal Lands Highway programs. Using the existing FHWA risk management framework, we rapidly moved to formally identify these risks and respond to them. Risk identification came from four major sources (1) Recovery Act specific risks from a field survey, (2) accountability objectives, (3) known vulnerabilities or weaknesses, and (4) the 2008 FHWA risk assessment. In February the Directors of Field Services asked Division Offices to identify resource requirements, both people and general operating expenses to implement the Recovery Act. Then on February 17th, they surveyed division and program offices to identify the top risks to implementing the Recovery Act and their initial response strategies. The offices identified a range of risks particular to their States and programs and a host of response strategies. We used the input from these individual offices to identify the agency-wide risks and strategies that form the core of this plan. On February 19th, the Office of Management and Budget issued initial implementing guidance for the Recovery Act. That guidance established requirements for various aspects of planning and implementation and identified the crucial accountability objectives to meet those requirements. We reviewed the risk framework provided in that guidance and considered how the accountability objectives related to each of the FHWA identified risks and our draft strategies. FHWA is aware that OMB's guidance is continuing to evolve and will adapt this plan to accommodate those changes as they are published. Finally, we looked at our known vulnerabilities. We considered the results of recent national program reviews, Office of the Inspector General reports, and the results of our 2008 corporate risk assessment to further refine our risk identification into a comprehensive picture of the risks we face and to guide our response strategies.

The specific FHWA risks identified through this process include (a) the oversight of local public agencies (LPA) by the States and lack of experience by LPAs in handling Federal-aid projects; (b) the quality of plans, specifications, and estimates, where errors and omissions can lead to change orders, cost overruns, delays, permit violations, and substandard product; (c) contract administration, specifically procurement, bidding, and management of contract terms and changes; (d) quality assurance, where inadequate inspection and substandard material acceptance and construction could lead to waste, fraud, abuse, decreased service life, or environmental and safety concerns; (e) the Disadvantaged Business Enterprise (DBE) program, where there is potential for difficulties in meeting DBE goals, inadequate industry capacity, attempts to avoid good faith efforts by contractors, and temptation to use front companies; (f) eligibility of costs for federal funds and improper payments; (g) the risks associated with the high public

expectations for achieving program goals, and (h) the Indian Reservation Roads program, which Federal Lands Highway identified as their highest risk.

FHWA identified eight strategies to respond to its Recovery Act risk. The strategies are cross-cutting, to address all risk areas. They respond to the identified risk areas by building capacity, providing guidance and information, and ensuring oversight. They include (1) resource enhancement, adding to existing staff and redirecting staff at the national and local level; (2) communication and education to provide outreach, guidance, and lessons learned; (3) sharing the risk through agreement and contract modifications; (4) Division Office oversight, implementing local risk mitigation plans, increasing monitoring, and emphasizing financial controls; (5) national oversight, using national review teams in areas of identified risk; (6) measuring and monitoring key OMB and FHWA risk and program goal areas; (7) developing information and tools to support these strategies, and (8) reassessment and feedback of the risks and strategies. Figure 1 below illustrates the key risk sources and FHWA response strategies.

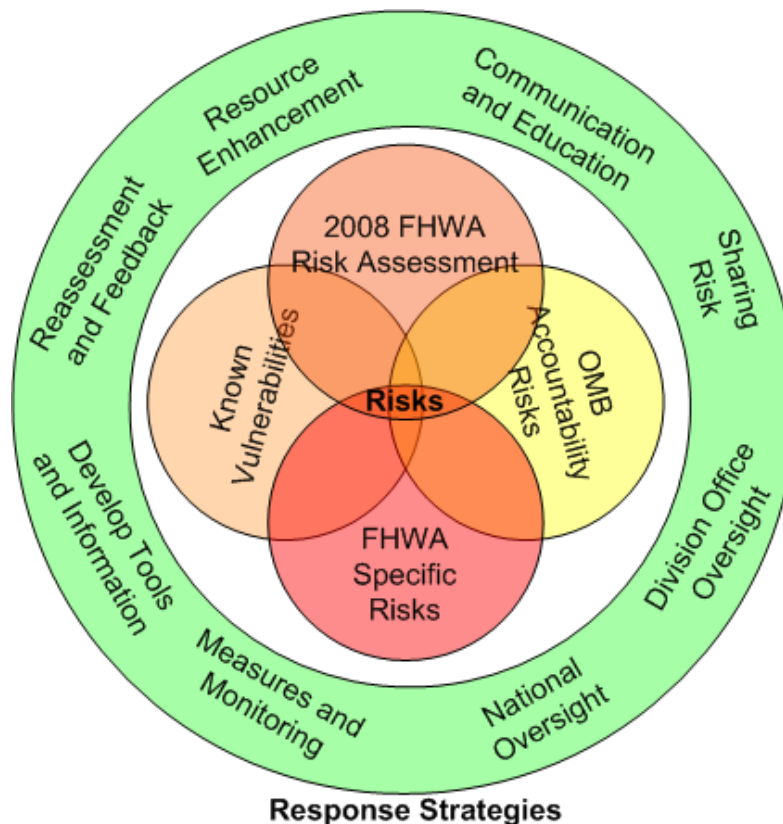


Figure 1 FHWA Recovery Act Risks and Response Strategies

FHWA has taken a comprehensive approach to responding to the risks and vulnerabilities identified through our own offices and review programs, the President’s Office of Management and Budget published guidance, the Office of the Inspector General, and the Government Accountability Office. We are confident that the eight response strategies contained in the plan will help us to effectively and efficiently administer the highway component of the American Recovery and Reinvestment Act of 2009 with unprecedented levels of transparency and accountability.

II. RISK IDENTIFICATION

FHWA used four major sources of information to identify the risks associated with the implementation of the Recovery Act in the Federal-aid highway program. Risk identification came from (1) the 2008 FHWA risk assessment cycle (2) known vulnerabilities or weaknesses, (3) the OMB accountability objectives, and (4) a survey of Federal-aid Division Offices requesting specific risks. The Office of Federal Lands Highway identified its major risks through coordination with Federal Lands Division Offices. We identified a range of risks particular to the States and programs.

1. The Federal-aid Highway Risk Identification Process. The Federal Highway Administration has a well established, agency-wide risk identification process that culminated in January of this year with the identification of several risks within each Federal Highway program area. The risk cycle began in the spring of 2008 with each Federal Highway Division Office engaging in a formal process of identifying both threats and opportunities in a number of program areas, and then rating them based on likelihood and severity of impact. (Federal Lands Highways conducts a separate assessment aligned to their mission.) Each Federal-aid Division Office identifies their top risks which are consolidated at Headquarters and distributed by subject matter to each of the FHWA program offices. Each program office is responsible conducting its own program wide risk analysis, and analyzing the risks submitted from the field. The program office results are then analyzed by a multidisciplinary, field and headquarters team to identify overarching agency issues and programmatic risks. These risks become key drivers in the annual strategic implementation planning process. The cycle finished in January of 2009 with the risk statements identified below. It is important to note that at the beginning of this process, the Recovery Act was not on the horizon.

a. **Construction.**

- (1) **Construction Management.** A growing area for risk in the Division Offices is oversight of construction; particularly balancing the amount of construction expertise gained through project oversight, versus the need for programmatic oversight. In anticipation of economic stimulus packages and expanded transportation funding, States will be encouraged to utilize consultant services for contract management; and if unencumbered by hiring ceilings will need to organize, and quickly hire and train people in the skills needed to properly oversee construction projects.
- (2) **Construction Quality.** The increased the risk of not having materials quality assurance and construction management could result in premature failures, and ineffective use of Federal-aid funds. This could also result in a loss of confidence by the public and exposure of the FHWA to negative findings from outside review agencies.

b. **Design Program.**

- (1) **Design Oversight.** A growing area for risk in the Division Offices is oversight of design; particularly in terms of design errors and errors to cost and scheduling. This reflects uncertainty in State DOT procedures and abilities

and management of oversight programmatically rather than on a project by project basis.

- (2) Use of Consultant Services. Consultant services are stressed by the program office and identified by the Division Offices because this risk has triggered an FHWA Program review of consultant services and the OIG audit of consultants and overhead costs. Results of the review and audit will be available in FY 2009. In response to this risk FHWA is developing a virtual consultant service team and a clearinghouse to access and share best practices. FHWA will be working closely with AASHTO to respond to review recommendations and to promulgate updated regulations.

c. Environment.

- (1) Climate Change. FHWA must exhibit national leadership in helping States and local communities understand and respond to the risks associated with climate change. This includes developing processes and strategies for addressing mitigation of climate change and adaptation to the impacts of climate change.
- (2) National Environmental Policy Act (NEPA) Process. Improvements to the project delivery process can be achieved by enhancing the linkage between planning and the environment. Integrating Context Sensitive Solutions into the transportation planning and project delivery process can help to improve this linkage. In addition, FHWA must take an active role in helping States and local communities build the capacity to make these linkages as one means of streamlining the environmental review and project development process. Continued improvement is needed in implementing the procedural provisions of SAFETEA-LU Section 6002 and in improvements to the overall NEPA process and the quality of NEPA documents.
- (3) Clean Air Act Requirements. FHWA must continue the leadership role to provide technical assistance, training and outreach to States with new non-attainment areas to ensure Clean Air Act requirements on plans, Transportation Improvement Plans and projects are met to avoid delays in program approvals and project delivery.

d. Finance.

- (1) Highway Trust Fund (HTF). A potential HTF cash shortfall in FY 2009 involves working with Congress and other stakeholders, as well as divisions and State DOTs. While largely viewed as a “pervasive constraint”, FHWA’s primary role in mitigating this risk will involve constant monitoring of HTF cash balances by the Office of the Chief Financial Officer and divisions working with their state partners to ensure efficient and effective use of HTF funds. These actions will prevent possible Anti-Deficiency Act violations and minimize impacts of a cash shortfall to transportation partners and stakeholders.

- (2) **Financial Oversight.** One of the most commonly recurring division risks relates to oversight of the Federal-aid highway program. As seasoned FHWA financial management staff continues to retire, the availability of knowledgeable, well-trained FHWA financial staff to help mitigate these risks becomes a growing concern. In that light, the OCFO is implementing a 6-12 month developmental program to enhance the skills and abilities of current financial specialists so that they are fully prepared to assume the duties of a Division Office Financial Manager. OCFO is also working with the Office of Human Resources to develop short term strategies to allow divisions to deliver the FAHP in the absence of qualified financial managers.

e. Operations

- (1) **Recognizing Benefits of Operations.** The most pressing risk facing the agency in the Operations program area is that our partners will fail to recognize the value of operational improvements and strategies in reducing congestion, enhancing freight movement, and improving the nation's ability to respond to emergencies. The importance of this risk area is directly related to the importance and prevalence of traffic congestion and inefficient freight movement on our nation's transportation system. If we fail to embrace operational improvements and strategies, these problems will persist and grow.

f. Planning

- (1) **Fiscal Constraint.** Public trust in the transportation planning and programming process is undermined by the need for better financial planning tools and processes for developing and managing a fiscally constrained transportation plan and program. Financial shortfalls cause delays in projects or projects being dropped from the program. The resulting lack of performance and follow through between the long range plan and implementation of projects results in a lack of public confidence in the STIP/TIP process.

g. Right of Way

- (1) **Relocation/Acquisition.** Risks are often related to inappropriate administration of some aspect of the program. This could include failure to follow written procedures, lack of compliance with laws, or insufficient oversight of local governments, among others. Inadequate staffing and training has also been frequently cited as a significant risk and contributes to the potential of improper administration of the program. The majority of the risks identified are related to some aspect of the relocation/acquisition process.
- (2) **Outdoor Advertising.** Other frequently occurring risk areas are concerned with administering the control of outdoor advertising, including potential conflicts between state and federal laws. Some risks have also been identified with increasing project size, new laws creating new procedural pressures, and the need for improved project cost estimating.

h. Safety

- (1) **Safety Data.** A continuous and growing priority is the need to maintain and expand as necessary FHWA oversight and guidance to safety data system improvement efforts, including participation FHWA Recovery Act Division Risk Guide; provide technical and program assistance to State and local safety data efforts; demonstrate leadership commitment, and encourage State leadership commitment, to assure that adequate resources are available.
- (2) **Implementation of the Highway Safety Improvement Program (HSIP) and Strategic Highway Safety Plans (SHSPs).** Priorities for improvement of the Safety program include the implementation of HSIP requirements at the national and state levels to assure that states are adequately responding to key program requirements and provide technical and programmatic assistance when needed. Also the encouragement of states to strive for improved HSIP project selection and prioritization using quality data and improved data systems. The increased programming of HSIP safety funds and promotion of HSIP funding as just one of many resources for funding safety improvements is also important. Corporate priority includes with respect to SHSPs providing tools, technical assistance, and guidance on SHSP implementation and evaluation. We must continue active engagement with internal USDOT and external partners to assure high level of support for SHSP implementation and maintenance at national and state levels.

i. Transportation System Preservation

- (1) **Bridge Condition.** The poor condition of bridges along with the need for consistent bridge inspection, and load rating and posting is recognized nationally and locally. This risk has grown the most over the past few years. There are promising opportunities for the application of new guidance on load and resistance factor ratings for bridges. Asset management principles would also prioritize spending needs and bridge conditions.

2. Vulnerabilities Identified in National Federal-Aid Reviews and Audits. FHWA uses an internal national review program to help to improve agency operations and internal controls. These national evaluations are generally conducted in program areas identified in the annual agency risk assessment. The reviews provide valuable information on program health and successful practices, and improve program effectiveness by identifying weak areas and recommending corrective actions. The OIG conducts investigations and reviews that focus on compliance issues and identify programmatic weaknesses. These areas of risk were considered:

- a. **Local Public Agency (LPA) Oversight** – FHWA has self-declared this area as a internal control material weakness as a result of an FHWA national review. Although twenty-seven field offices have reported that their State DOT partners have a comprehensive oversight program, nearly all offices report areas identified for improvement.
- b. **Quality Assurance in Materials and Construction** – A 2007 FHWA review identified specific weaknesses in oversight of contractor quality control, agency

acceptance, independent assurance, dispute resolution, laboratory accreditation and qualification, and personnel qualification/certification.

- c. **Management of Construction Contract Changes** – An FHWA national review found that while most State DOTs reviewed had well-documented procedures and FHWA Division Offices were actively involved in the contract change review and approval process, there are specific opportunities to make improvements in consistency, documentation, organization of FHWA guidance, and tracking.
- d. **Consultant Procurement & Administration of Engineering and Design Services** – Questionable procurement and administration practices in the State DOTs were identified by an FHWA national review. Some of the practices are the result of a good faith effort by States to interpret and implement Federal laws and regulations. However, there is widespread inconsistency, lack of efficiency, and non-compliance with Federal requirements.
- e. **Value Engineering** – Value engineering provides a substantial opportunity for the States to obtain the most value from Federal-aid funds by achieving savings on planned construction projects. The OIG estimated in a report that if the States conducted required National Highway System (NHS) value engineering studies and high-potential non-NHS value engineering studies, and accepted more recommendations, additional planned projects could have been started.
- f. **Indirect Costs for Design & Engineering Firms** – Not providing sufficient oversight, and given the one-time infusion of significant amounts of Federal dollars into the Federal-aid Highway Program, there may be a significant amount of unallowable consultant overhead costs in FY 2009 and beyond. The USDOT OIG has released an audit report that identifies potential weaknesses in oversight in this area.
- g. **Inactive Obligations** – The OIG has identified reduction of inactive obligations as a key component of funds management. Obligations that have an outstanding balance and no activity within the preceding 12 months are inactive. Divisions must review obligations to ensure that Federal funds are properly obligated and are being used effectively, and that unused funds are safeguarded or de-obligated to minimize misuse.

In March 2009, the OIG circulated the draft report “American Recovery And Reinvestment Act Of 2009: Oversight Challenges Facing The Department Of Transportation” describing the major challenges and related focus areas for DOT. These challenges and focus areas were were tailored based on OIG reports and known weaknesses with the DOT. The challenges included (1) ensuring that Recovery Act funds were spent properly, (2) implementing the new accountability requirements and programs, and (3) combating fraud, waste, and abuse. Our Recovery Act risk assessment considered this draft report with the other vulnerabilities that have been identified through the FHWA national review program or OIG reports. The actions to address these issues are ongoing and at various stages of implementation.

3. Office of Management and Budget Accountability Risks. On February 19th, the Office of Management and Budget issued initial implementing guidance for the Recovery Act. That guidance established requirements for various aspects of planning and implementation and identified the crucial accountability objectives to meet those requirements. We considered how the accountability objectives related to each of the FHWA identified risks and our draft strategies. These areas address both the crucial accountability objectives and the minimum risks (in parentheses) identified by OMB for Recovery Act implementation.

- a. **Award of Funds** – funds are awarded and distributed in a prompt, fair, and reasonable manner (Competitive Award Opportunities Maximized);
- b. **Transparency** – recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner (Timely Obligation of Funds and Timely Expenditure of Funds);
- c. **Use of Funds** – funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated (Improper Payments Minimized);
- d. **Delays and Overruns** – avoid unnecessary delays and cost overruns (Timely Completion of Work and Cost Overruns Minimized);
- e. **Program Goals** – program goals are achieved, including specific program outcomes and improved results on broader economic indicators (Program and Economic Outcomes Achieved);
- f. **Personnel** – (Qualified personnel overseeing Recovery Act funds);
- g. **Oversight** – audits and investigation of Recovery Act funds are occurring to identify wasteful spending and minimize waste, fraud, and abuse (Audits and Investigation).

4. Survey of Federal-Aid Divisions for Recovery Act Risk. By mid-February 2009, as the outlines of the Recovery Act had become sufficiently clear across the organization, FHWA decided that one of the best sources for identifying potential vulnerabilities in delivering the program was the front line leadership of the organization. Consequently, on February 17th, the Directors of Field Services asked division and program offices to identify the top risks to implementing the Recovery Act and their initial response strategies. They were asked to consider the 2008 FHWA agency-wide combined risk analysis, lessons learned from the emergency relief program (because of the similarities with the Recovery Act in how those funds are administered), and the results of recent national reviews and OIG reports.

The offices identified a range of risks particular to their States and programs as well as a host of potential response strategies. The risks ranged from the increased safety risk associated with a doubling of the number of work zones, concern about states ability to meet reporting requirements, risks of not meeting NEPA and other permitting requirements to concern over inadequate staffing for proper construction inspection, procurement & bidding, local public agency (LPA) oversight, eligibility and improper payments, the Disadvantaged Business Enterprise Program, management of contract changes, industry and state capacity (other projects may be delayed), urgency (project

delays could mean lost funds), rushed NEPA documents, State failure to sub allocate to locals, violations of the Uniform Act, and cutting corners in the PS&E package. Figure 2 shows a Pareto chart of the 133 risk statements submitted by the Division Offices.

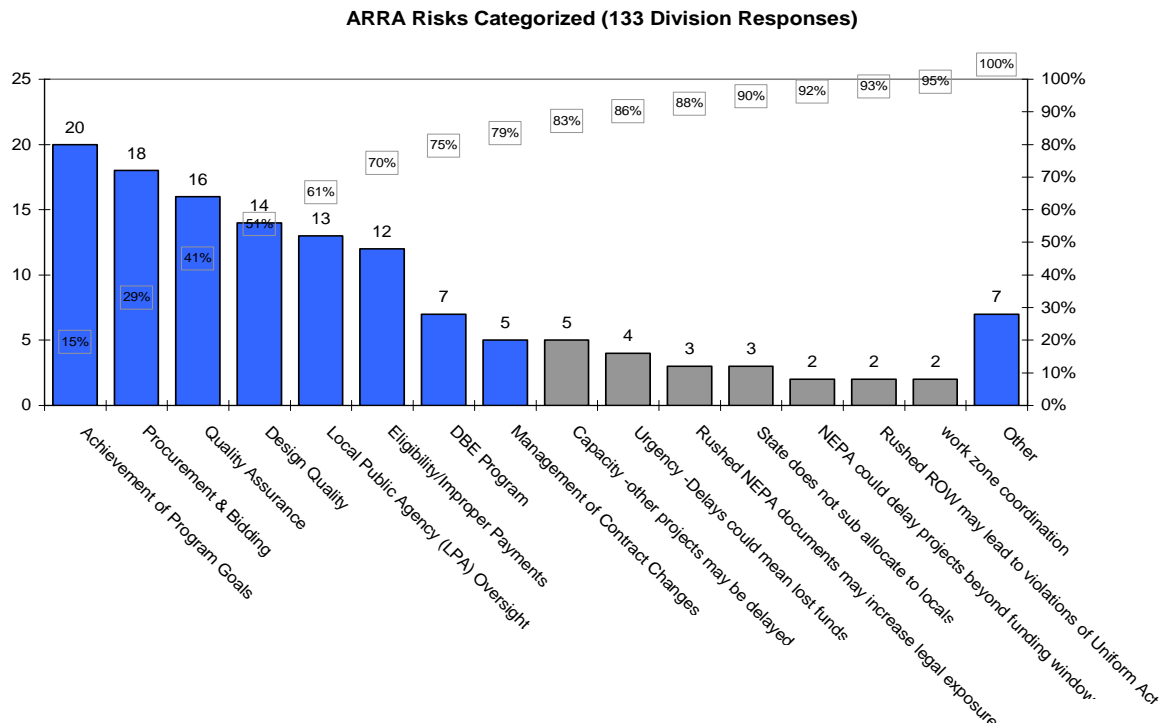


Figure 2 Recovery Act Risks Categorized (Division Responses)

5. Federal Lands Highway Program Risk Assessment. Concurrent with the survey of Federal-aid Divisions and program offices, the Office of Federal Lands Highway performed risk assessments at each Division Office and initiated discussions with its partners in consideration of the program’s major areas of risk. The Federal Highway Administration’s Federal Lands Highway (FLH) Program received \$550 million in Recovery Act funding above and beyond its core funding level of approximately \$1 billion in FY2009. These program areas provided the context for identification of FLH risks.

FLH Program	Recovery Act Funding Level
Indian Reservation Roads Program	\$310M
Park Roads and Parkways Program	\$170M
Forest Highways Program	\$60M
Refuge Roads Program	\$10M

Table 1 Federal Lands Highway Recovery Act Funding

III. RISK ANALYSIS

Federal-aid Risk Analysis. FHWA used four major sources of information to identify Recovery Act implementation risks: the 2008 risk assessment, known vulnerabilities, accountability risks identified by OMB in the initial implementing guidance and agency-specific identified in the February 2009 field survey. Beginning in February 2009, FHWA undertook an analysis of risk specifically associated with delivering the Recovery Act program. While the 2008 FHWA risk assessment did not foresee the possibility of a sudden doubling of the Federal-aid highway program with substantially shortened delivery times, we used the results of the 2008 risk analysis cycle as a foundation, and particularly focused on the risks associated with Design, Construction, Contract Administration and Finance. We narrowed our focus to these areas because most of the Federal highway dollar is spent when the project is in the construction phase. The amount of money and product exchanged at this stage of project delivery heightens the potential and impact of waste and fraud. We assessed environmental risks to be lower because of the tight delivery timetable associated with Recovery Act; we expect many of the projects to be preservation and reconstruction with little required environmental analysis prior to design and construction. More complex projects using Recovery Act funds are likely to have cleared all or most of the planning and environmental requirements and acquired most of the necessary right of way, reducing both the likelihood and impact of risk in these areas. Contract administration is the gateway to the very high dollar volume transactions of construction and therefore has the potential of controlling or enabling the waste, and schedule overruns, and fraud. In addition to our 2008 risk assessment and known vulnerabilities, FHWA considered the Recovery act accountability risks identified by OMB in the initial implementing guidance and agency-specific Recovery Act implementation risks identified in the February 2009 field survey. In analyzing the risk from these four sources, we recognized several points of convergence.

- a. The field survey validated the initial focus on the design and construction areas as having both high potential and high impact. (See Figure 2)
- b. A focus on construction and materials quality will address the greatest dollar volume impact of the “Use of Funds” and “Oversight” accountability issues identified by OMB. Quality Assurance in materials construction is also a known vulnerability, identified in a national review.
- c. The “Delay and Overruns” accountability issue is partially coincident with several field responses dealing with design as well as the design risks identified in the 2008 assessment cycle. If corners are cut in the design or estimating process, bids are inaccurate. The result is numerous change orders that lead to delays and unplanned cost overruns that lose the public trust. The control point where these issues can be checked is the PS&E package.
- d. The field identification of vulnerabilities in procurement and bidding is consistent with the vulnerabilities in contract administration identified from audits and national reviews. These vulnerabilities are coincident with the OMB accountability issue of “Award of Funds.”

- e. Finally the OMB accountability issue of proper “use of funds” was raised frequently in the field survey as “eligibility and improper payments”. This will be of particular concern with recipients unused to managing Federal aid highway funds, such as county and local governments.

The Agency identified three other areas of vulnerability in delivering the Recovery Act. First, we noted that many of the responses to in the field survey identified the subject matter such as “quality construction” and then added the addendum “especially for projects managed by local agencies”. Since oversight of local agencies managing federal aid highway projects was identified as an internal control material weakness as a result of an FHWA national review, we have been engaged in a substantial corrective action program. Nevertheless it remains a key cross cutting agency risk from our analysis in the 2008 risk cycle. The new (and unfamiliar) sub-recipients of Federal funding through the Recovery Act and the legislated schedule pressures will further exacerbate this existing risk.

Second, we believe the sudden expansion of work will put particular pressure on the Disadvantaged Business Enterprise (DBE) program. These businesses are some of the very entities that are targets of the Recovery program. In the rush to get projects out the door there may be a temptation by agencies and contractors alike to put forward less than a good faith effort to incorporate them in their work. Worse, there may be a temptation to use sham DBEs. While the financial impact of such fraud is not as high as overall construction and contract administration issues, the potential for public embarrassment due to such fraud or missing the stated intention of the Recovery Act, we believe, is high.

Finally, the entire purpose of the Recovery Act package is economic stimulus as well as long term transportation infrastructure investment. If the public perceives that either of these goals has not been met, our trust with the public may be severely damaged.

Some of the risks or vulnerabilities identified in the four categories of input would not be included in the list of FHWA-specific Recovery Act risks. They were considered and assessed as described below:

- a. State Transportation Improvement Plan (STIP) and other Planning Requirements. The project authorization process that exists in most Divisions is highly controlled with one element being a “STIP check” on each project. The legislated requirements surrounding the STIP, the Certifications, and the public visibility render this risk lower in probability and certainly lower in financial impact.
- b. Environmental issues. The nature of the vast majority of the Recovery Act projects is likely to preclude an attempt to rush thru the NEPA or environmental permitting process. To meet the obligation timetables much of this work will have had to have been done, if it was required at all. Considering the low to medium likelihood and impact, environmental permits and compliance risks were included as component of the in the PS&E and Quality Assurance Risks.
- c. Right of Way transactions. Some of the same arguments can be made about ROW transactions as are made above for environmental issues, though there will be some projects on which there will likely be a rush through remaining ROW

acquisition. Where the financial impact is higher, we believe those projects will be better known and monitored as appropriate at the Division Office level.

- d. The OMB Accountability Risk of “Transparency” The reporting required by Recovery Act fund recipients is unprecedented. There will likely be mistakes, late reporting and some inaccuracies. However the impact of these events pale in comparison to the wealth of relatively accurate information that will be made available by state and local agencies and their contractors. This data made available via internet to the public will provide an unprecedented level of transparency as well as a a powerful risk mitigation tool.
- e. The OMB Accountability Risk of “Qualified Personnel. This risk is partially captured in our identification of Local Public Agency Oversight. It is the lack of staff trained in managing federal aid projects that is the concern; one that we will need to manage carefully. It is also captured in our Quality Assurance risk. Lessening the impact of this risk is the well-established FHWA partnership with State DOTs who have been staffed and trained to handle Federal Highway funds and the associated regulations. Recovery Act funds will be handled by these staff using long established and well understood processes.

Figure 3 Shows an assessment of the likelihood and impact of these risks.

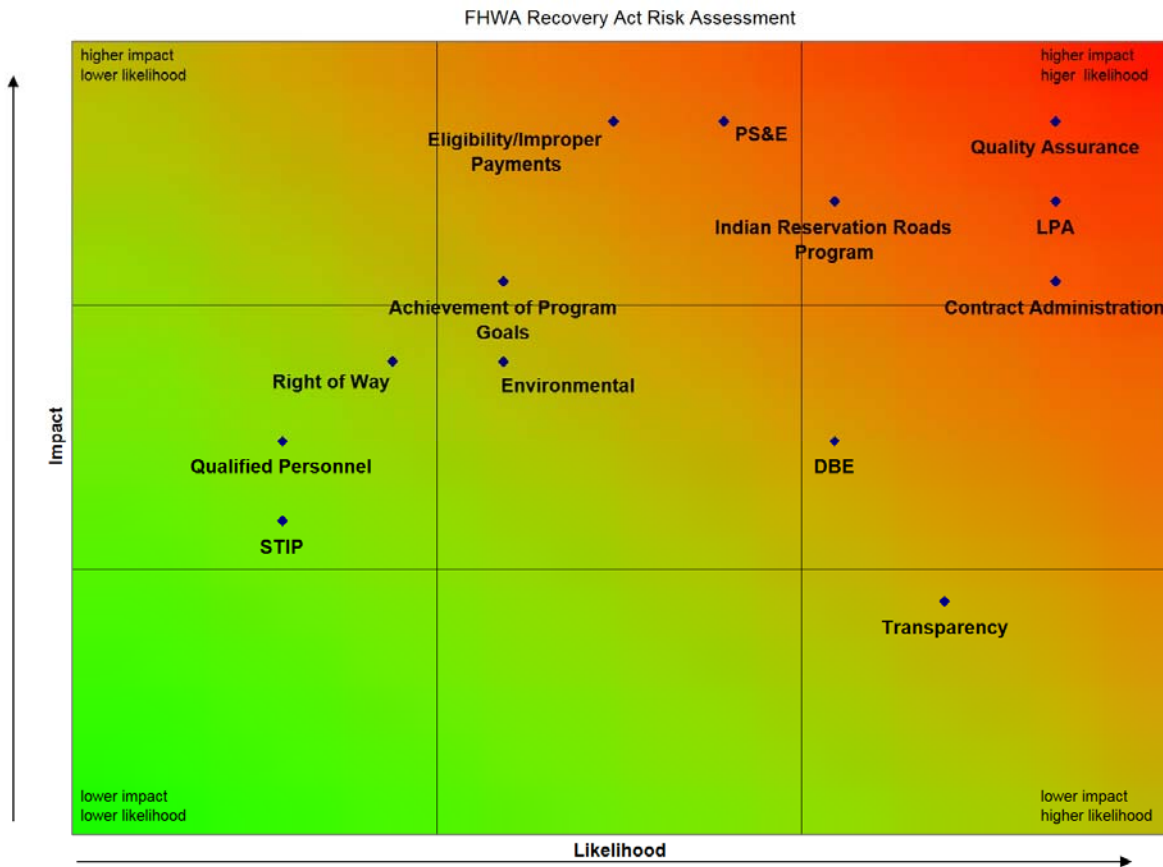


Figure 3 FHWA Recovery Risk Plot

Table 2 shows how the FHWA Recovery Act risks correlate to the OMB accountability risks.

		OMB Accountability Risks						
		Award of Funds	Use of Funds	Delays and Overruns	Program Goals	Qualified Personnel	Fraud, Waste & Abuse	Transparent Reporting
FHWA Risk Areas	Local Public Agency (LPA) Oversight	●	●	●		●	●	
	PS&E Quality			●		●	●	
	Contract Administration	●		●		●	●	
	Quality Assurance					●	●	
	DBE Program	●	●		●	●	●	
	Eligibility & Improper Payments		●				●	
	Achieving Program Goals		●		●			●

Table 2 Comparison of OMB Recovery Act Accountability Risks to FHWA Risk Areas

IV. FHWA-SPECIFIC RECOVERY ACT RISKS

FHWA-Specific Recovery Act Risks. After analyzing the potential Recovery Act risks from four major sources (1) the 2008 FHWA risk assessment cycle, (2) known vulnerabilities or weaknesses, (3) OMB accountability objectives, and (4), the survey of Federal-aid Divisions, we identified the major risks particular to the States. We also identified a major risk to the Federal Lands Highway Program. The FHWA specific Recovery Act risks are:

1. **Local Public Agency (LPA) Oversight** – This risk includes lack of oversight by the State DOTs and the lack of experience of some LPAs in handling Federal aid projects. There will be time pressure on local projects that may be less ready-to-go than State DOT projects. The temptation will be to circumvent procurement and bidding procedures, and/or to use other non-compliant procedures that are more familiar. Other concerns are that LPAs may have inadequate quality assurance and inspection procedures and may violate other requirements such as Davis Bacon and Buy America, and may use funds for ineligible purposes.
2. **Plans, Specifications, and Estimates (PS&E) Quality** – With aggressive project obligation schedules there is the potential for increased errors and omissions leading to change orders, cost overruns, delays, permit violations, and substandard products.
3. **Contract Administration** – This risk area includes the areas of procurement, bidding, and the management of contract terms and changes. In the rush to get projects out the door appropriate procurement processes may be circumvented. The large influx of dollars may limit competition and industry may have inadequate capacity to handle the work leading to price escalation and delays. There may be an increased potential for price fixing and bid rigging. This risk area also includes managing the risks of inadequate local and State oversight and management of contract changes that could lead to cost increases and time delays. This area is of particular concern because of the high dollar values involved.
4. **Quality Assurance** – The quality of construction and materials continues to be a high-risk area. Where there are weak procedures in place, potentially untrained or inadequate inspection personnel, and a time and material squeeze on contractors, there may be substandard material acceptance and construction. Increased funding levels may stress the quality assurance programs of States who generally handle this well. In addition to waste, fraud, or abuse impacts, this area threatens the service life of facilities, environmental compliance, and the safety of the travelling public.
5. **Disadvantaged Business Enterprise (DBE) Program** – With a substantially increased program, there could be difficulties in meeting DBE goals. Where there is inadequate industry capacity, there may be attempts by contractors to avoid or the States to relax scrutiny of good faith efforts, and temptation to use front companies. The Commercially Useful Function requirement is an area of known risk for fraud and abuse by prime contractors who perform work on behalf of the DBE.

6. **Eligibility/Improper Payments** – Where there are weak internal controls for the segregation, expenditure, and billing of Federal funds, ineligible costs may be billed and paid, resulting in non-compliance with requirements of the legislation.

7. **Achievement of Program Goals** – Public expectations are high regarding the Recovery Act. FHWA has an opportunity to either build or lose credibility depending on how well the Recovery Act projects are managed.

8. **Indian Reservation Roads Program (IRR)** (Federal Lands Highway) - The IRR Program has previously been identified as high risk by FLH, and is high risk for Recovery Act. Reasons driving the high risk include: the program uses a tribal share approach, and therefore Recovery Act funds are available proportionally to all 562 federally recognized tribes; political and sovereignty issues increase complexity; tribal expertise varies greatly; and recent IRR Program Review findings have found significant stewardship issues with the Bureau of Indian Affairs' (BIA) administration of the program in certain regions. In response, FHWA has developed an IRR Risk Mitigation Plan in coordination with the Bureau of Indian Affairs.

V. RISK ASSESSMENT SUMMARY

FHWA took a comprehensive approach to identifying the risks associated with implementing the Recovery Act. Risk identification came from four major sources (1) FHWA specific risks, (2) OMB accountability objectives, and (3) known vulnerabilities or weaknesses, and (4) the 2008 FHWA risk assessment cycle. We identified a range of risks particular to the States and programs. The risks associated with contract administration and quality assurance are areas of particular concern because of the dollar value and threat to safety or service life. The inputs from individual offices, OMB guidance, the results of recent national program reviews, and Office of the Inspector General and Government Accountability Office reports guided our response strategies. We considered the strength of our systems of internal control. These controls are adequate for administering the Recovery act. The FHWA management commitment in maintaining effective systems of internal control will aid in implementing the Recovery Act activities and support the risk management and mitigation strategies in the following sections.

VI. FHWA RISK MANAGEMENT AND MITIGATION STRATEGIES

FHWA has identified eight strategies to respond to its Recovery Act risk. These strategies consider the recipients of Recovery Act funding and their potential performance issues; the level of funding provided by Recovery Act; desired program outputs and outcomes and the need for tools to measure them; and existing resources and control systems. The strategies were identified through outreach to program and field offices, consideration of recent national review and audits, and leadership discussions.

The strategies are cross-cutting. They respond to the identified risk areas by building capacity, providing guidance and information, and ensuring oversight. FHWA will build its organizational capacity to report and analyze information. The volume and type of reporting that will occur on Recovery Act projects will allow us to monitor the program in ways that had not been possible before. We will provide guidance to the States and our other partners to ensure they know the Title 23 and Recovery Act requirements for using Federal funds and have the tools and guides needed to successfully deliver the program. For oversight, our strategies reflect a tiered approach: reinforcing State oversight at the local level; FHWA Division Offices conducting project level reviews and spot checks; and directing national reviews, guided by known risks, to provide on-site expertise to resolve complex or significant issues. Our intent is to revalidate both the risk assessment and the response strategies as we implement the Recovery Act and further integrate risk management with strategic and performance planning. The eight strategies are:

1. **Resource Enhancement.** FHWA will add and redirect resources to address the Recovery Act risks and vulnerabilities by expanding reporting and analysis capacity, conducting national reviews, and increasing Division Office oversight. The agency received additional resources to manage the Recovery Act and has conducted analysis and developed staffing and resource plans at both the national and Division level. Our analysis found a need for a mix of specialists, both full-time and part-time, with heavy demand for transportation engineers and financial specialists to support Division-level oversight; information technology and database management specialists to address the reporting requirements; and experienced reviewers to support the national oversight. Some Division Offices will require only limited technical assistance. To address these needs, we will provide full-time and part-time positions to some Divisions and address the technical assistance needs of the other offices through assistance from the Resource Center and Headquarters offices. The bulk of the need occurs during the first two years of the four-year program, so many positions will sunset or shift from full time to part-time by year three. These additional resources will improve our ability to manage the Recovery Act risks. Initiatives include:
 - a. Enhance the Division Office oversight capacity by providing additional staff and travel funds to support Recovery Act delivery. Provide 37 full-time and 17 part time (rehired annuitants) in year one. Transition to 23 full-time and 29 part-time by year four.

- b. Provide resource commitments to create national review teams to carry out monitoring and oversight reviews across the country. These teams will receive additional staff and budgetary resources in addition to technical and program support from Headquarters and the Resource Center. Provide eight full-time positions through the life of the program and consider using contractor and consultant support where it may be beneficial.
 - c. Expand reporting and data analysis capacity in response to the significant reporting requirements of the Recovery Act. Support with four full-time Headquarters positions through the life of the program and 3.2 contractor work years in year one, transitioning to 1.2 contractor work years in years two through four.
 - d. Establish contracting mechanisms using competitive procedures to provide any necessary environmental and engineering consultant services required for oversight in the Divisions or HQ.
2. **Communication and Education.** FHWA will provide outreach, seminars, and lessons learned at the National and Division level to respond to risks associated with the Recovery Act program, audits, and known vulnerabilities, especially LPA oversight, fraud prevention, and the DBE program. Since much of the work to improve performance in these areas started before the Recovery Act, FHWA is in a good position to address these known vulnerabilities. Recovery Act implementation can provide both the focus and sense of urgency to implement planned improvements and provide needed training. This communication and education strategy will prepare our partners and stakeholders to implement the Recovery Act expeditiously, while minimizing the identified risks. An agency communication plan has been developed that includes the following key initiatives:
- a. **National Level Communication and Education.**
 - (1) Provide all-hands training to FHWA to communicate the strategies and activities to implement the Recovery Act. Include tools for checking and monitoring, fraud awareness, and national accountability objectives.
 - (2) Coordinate with the Office of the Inspector General to provide fraud awareness training and emphasize increased vigilance to:
 - a. FHWA senior leaders, including office Directors and Division Administrators, at the annual Spring Business Meeting.
 - b. All FHWA field and key headquarters personnel via national webcasts.
 - c. State DOT, Local Public Agency (LPA), and industry representatives in each State via face to face meetings, national webcasts in collaboration with FHWA Division Offices, and at national conferences, such as the AASHTO Administrative Subcommittee on Internal/External Audit
 - (3) Coordinate a kick-off meeting between the FHWA Executive Director, and State CEOs to communicate the need to carry out the Recovery Act “by the book”. The purpose of this meeting will be to outline where we think our

vulnerabilities are, remind the audiences of bright lines of regulatory requirements, and reinforce the States' responsibilities for oversight of locally administered Recovery Act Projects. In addition, FHWA will communicate our own risk management plan.

- (4) Advertise and deliver National web-seminars for LPAs regarding Federal-Aid requirements. FHWA will ensure that they are broadly advertised and repeated multiple times to reach a wide audience.
- (5) Develop and distribute materials focused on LPAs to communicate key Federal requirements in the development and execution of a Recovery Act funded project. Use an easy to follow format and deliver via the web, by making pertinent information available on a new public LPA website and in print.
- (6) Provide outreach to all Division Offices regarding lessons learned from national emergency and disaster relief efforts. These lessons will be correlated to the impact of the Recovery Act.
- (7) Provide education for FHWA acquisition, Federal aid, and Federal lands staff on Recovery Act transparency and reporting requirements through meetings and dissemination of guidance.
- (8) Advertise and deliver National web-seminars and other events for FHWA, State DOTs, and LPA regarding DBE requirements, specifically focused on awarding contracts based on Good Faith Efforts, identifying and addressing fraud in the Commercially Useful Functions requirement, and other ongoing Civil Rights areas whose risk may be increased by the Recovery Act.
- (9) Coordinate with the Audit Subcommittee of the American Association of State Highway and Transportation Officials (AASHTO) Standing Committee on Finance and Administration to conduct national outreach to firms and organizations doing single audits of governments using Recovery Act Funds.
- (10) Provide effective outreach on the soon-to-be revised AASHTO Audit Guide for overhead costs of design & engineering firms to State DOTs, Local Public Agencies, consulting firms, CPAs, and FHWA Division Offices, to ensure increased understanding of and compliance with Federal requirements, and audit guidance.
- (11) Provide general outreach to transportation related associations/organizations such as NACE, APWA, ATRBA, etc.
- (12) Establish a Recovery Act web page to assist all FHWA partners and stakeholders in implementing the Act as expeditiously as possible. Include and update key questions and answers to provide the latest information. Develop and post a list of actions that can be taken to expedite delivery of the Recovery Act program.

b. Division Office Communication and Education.

- (1) Regular and ongoing meetings between FHWA and key State and local partners to discuss the progress of Recovery Act activities and projects, potential barriers, and plans to address them. The meetings between FHWA Division Administrators and the senior leadership of the State DOTs are some of the most effective venues to address Recovery Act risks within each State. We will use these venues.
- (2) Ensure widespread distribution of the Local Public Agency reference materials by Division Offices in each State to key local agencies, decision makers, and the Local Technical Assistance Programs.
- (3) Enhancement and increased delivery of training to LPAs.
- (4) Communication and education by Division Offices regarding the risk monitoring efforts that FHWA will undertake during the lifetime of the Recovery Act. A clear message will be delivered to State and local agencies regarding the importance of this effort and the responsibilities that are borne by governmental agencies at all levels.
- (5) Formal review of the Recovery Act implementing guidance with State DOT staff in known areas of national and local vulnerability.
- (6) Coordination and information sharing with entities responsible for conducting single audits in accordance with OMB Circular A-133. FHWA will share information related to agency-identified high risks for consideration during the planning and conduct of these annual audits.

3. Sharing Risk with Partners. The known risks associated with contract administration and quality assurance are areas of particular concern because of the dollar value involved and threat to safety or service life. FHWA will share certain Recovery Act risk with State and local agencies and the contracting and supplier communities through the execution and emphasis of existing Stewardship Agreements, the development of new standard language for Federal-aid project and cooperative agreements, and new construction contract provisions to ensure oversight responsibilities and reporting requirements are met.

a. FHWA will issue a formal letter to each State DOT CEO to:

- (1) Outline State oversight responsibilities associated with receipt of funds for sub- recipients.
- (2) Emphasize the specific oversight responsibilities for Recovery Act projects.
- (3) Identify special stewardship issues associated with local high risks.
- (4) Emphasize that as the recipients or grantees for the majority of the Recovery Act funds, States are by statute responsible for the reporting to FHWA on the projects, use of Recovery Act funds, and jobs supported.

- b. Provide implementing guidance that clearly links the receipt of Recovery Act funds with the obligation to report specific items in an accurate and timely manner.
 - c. FHWA will develop new boilerplate language for Recovery Act Federal-aid project and cooperative agreements that links the acceptance of Recovery Act funds with the obligation to meet reporting requirements.
4. **Division Office Oversight.** Division Offices will assess Recovery Act risks and vulnerabilities specific to their State and local programs and implement a risk management plan to mitigate these risks. The Federal-aid highway program is a federally assisted State-administered partnership between FHWA and the States. Section 106 of Title 23, United States Code, requires FHWA and each State enter into an agreement documenting the extent to which the State assumes the responsibilities under Title 23, and that FHWA establishes an oversight program to monitor the effectiveness and efficient use of funds authorized under Title 23. These stewardship agreements document the various approaches for handling project delegation and oversight, including program reviews, performance measures, risk assessments, and financial review. The stewardship agreements provide the framework critical to effectively managing Recovery Act risks in each State. Figure 4 in the next section depicts how this framework relates to increased Division and National oversight. The key elements of the Division Office Recovery Act oversight will include:
- a. Identification of risks related to the Recovery Act in each State using the standard Federal-aid Highway Program risk assessment framework.
 - b. Consideration of known national, State, and local risks, existing Division Financial Integrity Review and Evaluation (FIRE) plans; results of recent national and Division reviews; State staffing and other resources available; maturity of programs and experience levels of the various partners; and dollar, schedule, public trust and safety impact.
 - c. Coordination with entities responsible for conducting single audits in accordance with OMB Circular A-133, to share information on agency-identified high risks.
 - d. Development and implementation of a local the Recovery Act Risk Mitigation Plan that must include three key elements:
 - e. An approach to conduct “visible monitoring” which includes scheduled and unscheduled sampling and checking of processes and documentation associated with identified national and State risks such as financial transactions, consultant procurement and administration, construction bid processes, change order approvals, and quality assurance monitoring. This “checking” is a new approach intended to detect problems and discourage fraud by increasing both the actual and perceived federal attention to the Recovery Act activities.
 - (1) Enhanced financial oversight by conducting Federal-aid billing reviews during fiscal year 2009 to ensure that States are compliant with Federal-aid billing

- documentation and Cash Management Improvement Act (CMIA) requirements.
- (2) Communication and outreach which includes (as appropriate) outreach strategies listed above, as well as other efforts designed to heighten awareness of risk issues in each State and through education, help avoid them.
- f. Consideration of other strategies in the local the Recovery Act Risk Mitigation Plan including.
 - (1) Identification of individual(s) to serve as the Recovery Act point of contact in the Division Office responsible for active monitoring and management of the Recovery Act risk plan.
 - (2) Monitoring Recovery Act project information to include cost, schedule, and progress.
 - (3) Regular meetings with partners to discuss progress and barriers for Recovery Act projects.
 - (4) Continuation of current LPA oversight enhancements and periodic reporting.
 - g. Reevaluation of the 2009 unit performance plan and adjustment of priorities and related activities, in the context of the overall Federal-aid highway program. The Division should determine which, if any, currently planned program reviews should be retained and which should be replaced with the “visible monitoring and checking” effort.
 - h. Reevaluation of the 2009 FIRE Plan to determine what currently planned reviews can be deferred or refocused to address recovery program risks and revised Division risk statements.
5. **National Oversight.** FHWA will use site visits and analysis to increase monitoring and review of Recovery Act projects at the national level to ensure compliance with Federal requirements and minimize the potential for fraud, waste, and abuse. This level of national oversight is a new strategy for FHWA and has been developed explicitly to address the increased risks associated with implementing the Recovery Act. Based on risks or issues identified through the Division Offices or through analysis of national data, the review teams will conduct document and site reviews of Recovery Act projects across the country in key risk areas. These teams will include staff with expertise in Federal-aid, project development, contract administration and construction management, the DBE program, and highway financing. Specialists will perform data and information analysis both on-site and using the national data and reporting systems. The purpose of these reviews is to provide an independent evaluation of State processes and procedures along with project-level verification to ensure compliance with Federal requirements. These reviews will augment the agency’s oversight role in relation to the increased risks posed by the large amount of funding and expedited timeframes. Any process or project-level concerns will be referred to the Division Office for resolution as appropriate unless national trends warrant further attention. The effort will include:

- a. Establishment of 3-4 national teams staffed with individuals with key knowledge and experience in the areas of Federal-aid, contract administration, construction management, DBE program management, financial management, and the completeness and adequacy of cost estimates and schedules. FHWA will seek out highly qualified current employees or retirees for this effort including support from the existing Program Management Improvement (PMI) Team, Resource Center (RC-FST), and Headquarters office
- b. Development of standardized review guides and checklists for use by the national teams to carry out periodic reviews of key control points.
- c. Analyze Recovery Act reporting and financial systems data to identify project level issues and national trends. Consider how the results of Single Audits could provide additional data or areas for analysis. Results of the analysis will be used to identify responses to recurring concerns and to provide feedback to enhance ongoing communication and education strategies.
- d. Establishment of a risk-based national review plan to focus review efforts considering Division Office risk management plans, program size and known risk factors, and the need to respond to emergent issues or high priority risks that were not identified as agency-wide risk areas.
- e. Development of a risk-based approach to identifying cognizant agency audits of architectural & engineering (A&E) consulting firms to establish overhead rates. Through coordination with the AASHTO Administrative Subcommittee on Internal/External Audit, FHWA will request and provide assistance in conducting multi-State, cognizant audits of firms identified as high national risks, using an AASHTO data call to States to determine national risk.

Figure 4 depicts the framework for increased Division and National oversight.

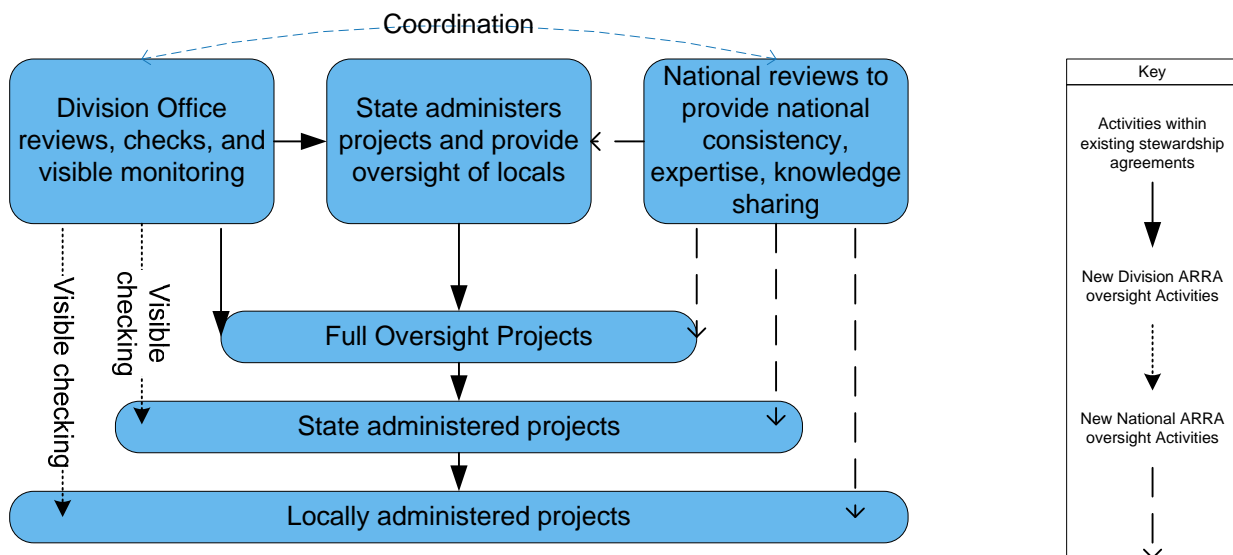


Figure 4 Increased Division and National Oversight Activities

6. **Measure, Monitor, and Periodically Review.** FHWA will collect information and data as required by the Recovery Act and will define and monitor metrics associated with the OMB accountability risks and FHWA risk areas to ensure the project and program goals are being achieved. While some existing measures will allow the public to see the marginal performance impact of Recovery Act investments, the scope of the new data collection effort is unprecedented. New systems will have to be developed quickly and deployed nationwide to provide heightened levels of transparency and accountability. We will work with the States to develop procedures, processes, and systems to collect and validate data from all contractors, and then turn that data into useful information for reporting to the public and monitoring the program through Division and National level oversight. We will continue to use existing systems to help monitor and manage high-risk areas at Division level for delegated and full-oversight projects. We expect that the newly reported data and information, when correlated to financial data from existing systems at the national level will allow us to conduct analysis in high-risk areas that had previously been impossible. This analysis may provide insights to further strengthen our oversight efforts and allow us to identify and address emerging vulnerabilities. Specific activities include:
- a. FHWA will define metrics to monitor key OMB and FHWA risk areas:
 - (1) Competitive awards (bid tab analysis);
 - (2) Timely award of funds;
 - (3) Timely expenditure of funds (inactive obligations);
 - (4) Use of funds (improper payments);
 - (5) Timely completion of work;
 - (6) Cost escalation;
 - (7) Cost overruns; and
 - (8) Fraud indicators.
 - b. FHWA will define and monitor key outcome metrics where needed to show Recovery Act progress and will retain the measures currently used to report programs' performance in relationship to these goals (consistent with Administration policy). Use of existing measures will allow the public to see the marginal performance impact of Recovery Act investments. Areas for outcomes metrics include job creation and infrastructure improvements.
7. **Information and Tool Development.** FHWA will develop guidance, evaluation tools, and regulatory reference material to support Recovery Act implementation. This is an enabling strategy; the activities listed below support the other six risk management strategies. While the leadership activity is new and tied directly to the Recovery Act, others reflect ongoing activities to address recognized needs and previously identified vulnerabilities whose risk has been heightened by the Recovery Act. The national guides, checklists, and manuals will provide new tools and readily

accessible information to bring consistency to the Federal-aid oversight and review activities across the nation. These new tools will improve our ability to manage the Recovery Act risk and implement our national strategies. Some of the key activities include:

- a. Establish among leadership a common understanding of a graduated set of consequences for Recovery Act non-compliance. The principal philosophy of this effort is to “help the State manage its risks” however clear non-compliance will be addressed.
 - b. Develop and implement new national guidance in key areas based on findings from recent national reviews and audits.
 - c. In partnership with AASHTO, ACEC, and others, develop a comprehensive revised Audit Guide for coverage of overhead costs related to design & engineering firms.
 - d. Issue Recovery Act Implementation Guidance and detailed questions and answers.
 - e. Risk management guide to outline the requirements for Division Offices to reassess risk and develop a local risk management plan.
 - f. National review “guides” for use by national review teams.
 - g. Division Office monitoring “checklists” for use in “visible monitoring” efforts.
 - h. Sub-recipient evaluation guidance for State DOTs to assist them in carrying out their required monitoring responsibilities in accordance with 49 CFR 18.40.
 - i. Implementation of an FHWA Program Policy & Guidance Center (PGC) to improve consistency of program delivery by providing a single repository of current FHWA policy and guidance.
 - j. Development and dissemination of an Area Engineer Manual.
8. **Reassessment and Feedback.** We will revalidate both the risk assessment and the response strategies as we implement the Recovery Act and further integrate risk management with strategic and performance planning. The communications, outreach, education components of the plan provide a strong mechanism for feedback from our partners and stakeholders. The national and Division Office oversight and the measurement and reporting strategies will provide internal feedback on how well we are managing the risks. This feedback will be incorporated into our administration of the program at the Division Office level and nationally through dissemination of the national review team reports. In the next year, FHWA will identify the steps needed to further integrate our existing risk management framework into our strategic implementation planning cycle. This combination of near term feedback and long term strategic integration will give us the ability to address emergent or changing risks associated with implementation of the Recovery Act and administration of the Federal Highway program.

9. **Federal Lands Highway Risk Management Strategies.** Federal Lands Highways will use the eight FWHA strategies identified above to manage its Recovery Act risks. Activities in each strategy area include:
- a. **Resource Enhancement.** FLH has secured three additional full time employees, with Recovery Act administrative funding, to assist in the delivery of the Recovery Act Program: two in the IRR program, and one to support reporting requirements. In addition, our field offices have the ability to add resources as necessary through program funds in the delivery of Recovery Act projects.
 - b. **Communication and Education.** FLH has initiated regular dialog with our partners on Recovery Act requirements and risks, particularly the Bureau of Indian Affairs, as we jointly administer IRR funds. We are also participating in tribal Recovery Act implementation with other Federal agencies through the White House Office of Intergovernmental Affairs.
 - c. **Sharing Risk.** FLH and the BIA developed an IRR Program Risk Assessment Plan where we jointly identified areas of concern and strategies for addressing them. In addition, each FLH Division Office conducted a local risk assessment with staff and regional partners and developed similar strategies for managing risk pertinent to their regions.
 - d. **Division Office Oversight.** Unit level risk assessments will assure any delivery challenges are addressed. The FLH Headquarters office will provide technical assistance as needed and overall program guidance.
 - e. **National Oversight.** FLH will focus its national Recovery Act oversight to the IRR program, as this program is administered principally from the Headquarters office and is considered the highest risk area. For tribes that contract directly with FHWA, FLH will provide technical assistance to tribes, and will conduct and coordinate tribal site visits during construction in order to review project documentation and assure proper compliance. For the BIA-administered program elements, FLH will work with BIA Headquarters to assure consistent program direction, and will focus our oversight on BIA regional offices. Last year a joint FHWA/BIA review identified significant issues with BIA's administration of the IRR program in Alaska. FLH will work with BIA-DOT to carry out monthly monitoring of the funding and project oversight work being initiated by all twelve BIA Regional Offices. BIA may receive up to 4 percent of Recovery Act funds for administration of the Recovery Act IRR program.
 - f. **Measure, Monitor, and Review.** As part of our reviews and oversight of Recovery Act reporting requirements, FLH will monitor the eight metric areas as alluded to in the Federal-aid Risk Plan, namely competitive awards (bid tab analysis), timely award and expenditure of funds, use of funds, timely completion of work, cost overruns, and fraud indicators.
 - g. **Information and Tool Development.** FLH has issued Q&As specific to FLH programs as further guidance to Divisions and other partners. FLH will be conducting webinars, attending regionally significant conferences, and utilizing the Tribal Technical Assistance Program (TTAP) centers in order to provide

education to both the BIA field personnel and the Tribes on the availability, reporting, and other statutory requirements of the Recovery Act–IRR funds. For tribal projects, FLH has developed a program guide to assist as well.

- h. Reassessment and Feedback. FLH will revalidate both the risk assessment and the response strategies as we implement the Recovery Act and continue to integrate risk management with strategic and performance planning. Some of our partners have asked FLH if we can deliver projects using Recovery Act funds that were appropriated directly to their Departments, FHWA has agreed to assess the risk of any additional projects on a case-by-case basis .

The Office of Federal Lands Highway is confident that the identified strategies above will mitigate the risk associated with the delivery of Recovery Act funds and will strengthen our ability to stimulate job growth while improving access to our nation's parks, forests, and refuges and within our tribal communities.

VII. SUMMARY

FHWA took a comprehensive approach to identifying the risks associated with implementing the Recovery Act then identified eight strategies to respond to its Recovery Act risk. The strategies are cross-cutting to address all risk areas. They include (1) resource enhancement, adding and redirecting staff at the national and local level; (2) communication and education to provide outreach, guidance, and lessons learned; (3) sharing the risk through agreement and contract modifications; (4) national oversight, using national review teams in areas of identified risk; (5) Division Office oversight, implementing local risk mitigation plans, increasing monitoring, and emphasizing financial controls; (6) measuring and monitoring key OMB and FHWA risk and program goal areas; (7) developing information and tools to support these strategies; (8) reassessment and feedback. Many activities supporting these strategies are well underway. For example, we are holding a series of Recovery Act webcasts and implementing guidance has already been published and updated on the FHWA recovery website. Our intent is to revalidate both the risk assessment and the response strategies as we implement the Recovery Act and further integrate risk management with strategic and performance planning. We are confident that the eight response strategies contained in this plan will help us to effectively and efficiently administer the highway component of the Recovery Act of 2009 with unprecedented levels of transparency and accountability.