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U.S. HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

HEARING ON

***AMERICA BUILDS: IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF
FEDERAL RAIL ASSISTANCE***

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SUBMITTED BY



NATIONAL RAILROAD CONSTRUCTION AND MAINTENANCE ASSOCIATION

80 M STREET SE, WASHINGTON, DC 20003

The NRC is a trade association representing businesses from across the nation in the rail construction and maintenance field. Founded in 1978, the NRC's member companies range in size from small family businesses to the largest companies in the industry. NRC members perform work for transit, commuter, intercity passenger, industrial, and freight rail customers, with services including track construction and maintenance, grade crossings, signal and communications installation, bridge construction and repair, rail yard work, and many more. The NRC strives to put an emphasis on rail safety and quality while proudly serving the rail industry.

www.nrcma.org

Introduction

Good morning, Chairman Webster, Ranking Member Titus, and Members of this esteemed subcommittee. My name is Kevin Hicks and I am a Senior Vice President and Rail & Freight Market Sector Leader at Gannett Fleming TranSystems (GFT). I currently serve on the Board of Directors of the National Railroad Construction and Maintenance Association (the “NRC”). I also serve as the Chairman of the NRC Policy & Legislative Committee.

As you may know, the NRC is an association that advances the mutual interests of railway contractors and suppliers who construct, maintain, and supply both freight and passenger railroads. Founded in 1978, the NRC connects members with other railway industry professionals and government legislators and policymakers. Together we work to create a positive business climate and to make railway construction and maintenance safer and more efficient.

Although NRC members often compete against each other, our collaboration furthers the railway construction industry and benefits American freight, transit and commuter rail lines, our member contractors and suppliers, the general public, and our own professional growth.

In my role at GFT I work on business development and project delivery nationally for clients in the railroad, ports and maritime, energy, and warehousing businesses.

Prior to joining GFT, I spent the first 25 years of my career with the Union Pacific Railroad, serving in many positions, and ultimately working my way up to AVP and chief engineer of design.

In addition to my role with the NRC, I am an active member of several industry and professional organizations, including the American Railway Engineering and Maintenance Association, the Railway Tie Association, the Missouri S&T Corporate Development Council, and the Inspire University Transportation Center at Missouri S&T.

Though I now currently reside in Omaha, Nebraska, I grew up in Congressman Burlison’s district in the town of Ash Grove, Missouri.

I am honored to join this distinguished panel today and to provide our perspective on this important topic.

Gannett Fleming TranSystems

GFT is an Architecture, Engineering, and Construction (AEC) firm shaping the Infrastructure of Life: water, power, transportation, and buildings. Our team of 5000+ experts design, construct,

and engineer resilient, creative solutions that uplift communities across North America and beyond.

GFT has been engrained in the US freight rail industry for over forty years. Our experts are engaged in the planning, permitting, design, and construction management of a broad spectrum of railroad infrastructure, including bridges, at-grade crossings and grade separations, line and yard capacity expansions, and intermodal facility construction and expansions.

Since 2010, GFT has been helping the federal government to deliver railroad infrastructure projects, both through our design services for railroad owners, through public agency projects building railroad infrastructure that expands freight and passenger rail capacity, and also by assisting the Federal Railroad Administration (FRA) in oversight of the successful delivery of projects that have some portion of federal investment through an FRA grant. In the FRA grant oversight work, the firm's professional engineering, transportation planning, and environmental practitioners work with the grant recipients to comply with federal requirements and assure that each project's scope is delivered without any extra cost to the federal government and that the promised public benefits are successfully delivered per the intent of the public expenditure. The firm has provided oversight for over 500 grants across the eastern and western U.S.

NRC and the Rail Contracting Industry

While GFT is just one member company within the NRC, our member companies generate more than 100,000 jobs nationwide supplying, building and maintaining freight, public transit and industrial rail networks.

As I mentioned in my opening, I serve on the Board of Directors of the NRC. The NRC is a U.S. trade association that represents nearly 400 companies in the rail contracting and rail supply industry, with employees in all 50 states. Most NRC member companies are small family owned, multi-generational businesses with operations, manufacturing facilities, and offices located all across the United States.

NRC members perform every type of rail infrastructure work – from design and engineering to basic construction and maintenance to highly specialized and custom design-build jobs. This work includes building new tracks, repairing and maintaining existing track, laying and replacing rail, welding and grinding, surfacing, ballast distribution, tie insertion and removal, grade crossings, signal systems, switches and turnouts, bridge deck replacement and maintenance, track design, crane rail, inspection services, emergency maintenance, and more.

The freight railroad industry has grown dramatically since the partial de-regulation of the industry by the Staggers Act in 1980. The prevalence of rail transit systems throughout the country has also increased dramatically over the last generation resulting in increased

urbanization and density. The size of the rail construction and maintenance contractor and supplier community has grown in proportion. More than 500 independent rail contracting companies in the United States perform more than \$10 billion worth of rail infrastructure construction and maintenance work every year.

In addition to the contracting community, in 2020, the rail supply industry directly employed almost 240,000 workers, who directly contributed \$27.7 billion of value-added economic activity across the United States.¹ Rail suppliers also deliver secondary benefits that other modes of transportation cannot, such as reductions in road congestion, highway fatalities, fuel consumption, greenhouse gases, cost of logistics, and public infrastructure maintenance costs.

NRC members serve every type of railway owner, including Class 1, short line and regional railroads, industrial track owners, the U.S. military, port facilities and terminals, and rail transit agencies operating light rail, streetcars, subways, metro, commuter rail operations, and intercity passenger rail systems.

Issues with the Federal Discretionary Grants Process and Potential Solutions

Again, we appreciate the committee focusing its attention on the issue of improving the efficiency and effectiveness of federal rail assistance.

Let me preface my comments by saying that I think the staff of the FRA is full of hardworking and talented individuals and my comments are not an indictment on them. Rather, the grant process that has been established at the FRA has put burdens on the staff often times putting them in positions that do not make the grants process efficient or effective.

Also, the NRC supports the continued funding of the FRA grant programs at existing or increased funding levels. Spending on infrastructure, especially rail infrastructure, is truly a sound investment that pays dividends to our economy, supply chain, and our transportation network. These funds will also help stimulate additional infrastructure investment by states, localities, and private sector partners, and will help to onshore additional manufacturing jobs here in the U.S.

I will focus my comments first on describing some of the current issues from our perspective, identifying the responsible parties, and finally, offering some recommendations for reforms in the next surface transportation reauthorization bill that the committee will soon be drafting.

My comments focus around three key themes: 1) creating project pipelines, 2) sufficient and consistent staffing; and 3) stakeholder agreements.

¹ *Rail Supply Industry: Manufacturing and Services Keeping the American Economy on Track*. January 2023. www.remsa.org/files/RailSupplyIndustry_EconomicImpactStudy.pdf

1. Selection Process is Slow

Issue: Grant award selection takes about 6 months after the application is submitted. It takes FRA a long time to evaluate the large number of applications received as all the federal rail grant programs are vastly oversubscribed. This is a vicious spiral that forces FRA staff to be in a constant cycle of publishing a Notice of Funding Opportunity (NOFO), awarding grants, and then immediately drafting the next NOFO.

With the influx of funding from the IIJA, the size and complexity of the NOFOs has increased which has also impacted the speed of selecting projects. These delays are especially felt by our NRC member contractors who are usually engaged at the end of this process. These delays result in changing budgets that jeopardize the projects and places additional risks onto contractors.

Recommendations: Congress should consider directing FRA to identify a “pre-approved” or at least a prior vetted pipeline of projects. FRA NOFOs should have more stringent requirements (e.g. require projects to have more burden of proof of readiness) and/or eligibility to shrink the applicant pool. FRA should consider further standardization of the grant applications, e.g., a more defined template, thereby reducing the effort required both in preparation and in review. FRA could also consider consolidating existing grant programs and having separate programs for preliminary engineering (PE) and NEPA versus final design and construction grants. For final design and construction grants, FRA should require PE/NEPA to be completed in order to be eligible for funding.

2. Grants Take Too Long to Obligate

It takes 6-18 months on average to obligate a grant after selection. It takes too long to deliver projects, and the waste due to delays in the form of administrative and planning costs, inflation, and lost opportunities for alternative use of the capital, hinder us from achieving our capacity expansion goals. The expediting of transportation projects can be accomplished while retaining all current environmental safeguards.

Next, I will detail several obligation-related issues in more detail:

Obligation prerequisite – NEPA

Issue: It continues to take a very long time to obtain environmental clearances. The project sponsor is not able to engage with FRA or USDOT on the NEPA process until the grant application is selected. Many times, the project sponsor does not have the capacity to complete NEPA themselves, and it takes a few months to hire an environmental consultant.

Recommendations: FRA should establish a process to evaluate projects and allow them to proceed with NEPA before applying for a grant (e.g. establish a pipeline). FRA should also commit to an expedited NEPA process and eliminate NEPA requirements where states have existing or duplicative requirements, like in California or Washington. Sufficient and consistent

FRA staffing would also help minimize the NEPA process timeframe. FRA should also require that project sponsors be ready to submit documentation within a certain timeframe (e.g. must submit environmental assessment within 1 month of selection) or consider having a separate grant or step in the grant program only for completing NEPA. This is similar to what the FRA Corridor ID program is attempting to establish, although that program has also moved in too slow of a manner. This would give the resulting project priority for funding, similar to the NEC inventory established in the FRA Federal-State Partnership program. Congress should also consider directing the FRA to establish a separate grant program, or step within existing programs, for projects to complete the NEPA process, and then require a completed NEPA document as proof of eligibility for funding for a final design/construction project. Finally, the FRA should allocate a larger percentage of its funding to agency staffing focused on expediting project delivery.

Obligation prerequisite – NEPA Categorical Exclusions (CEs)

Issue: Many rail projects, particularly those on short line or regional railroads, consist of ordinary ties, rail, ballast, and surfacing type work that falls under a NEPA Categorical Exclusion (CE). The FRA requires a CE worksheet to prove, with a “legally defensible evidentiary record,” that the project qualifies for a CE. This requires significant work, including resource mapping and appendices, to prove eligibility for a CE.

In addition, Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve throughout the country. If a federal or federally-assisted project has the potential to affect historic properties, a Section 106 review will take place. This requires a Secretary of the Interior (SOI) qualified archeologist and State Historic Preservation Office consultation to be completed before the FRA can approve the CE worksheet. This process causes many delays to rail projects attempting to receive a CE.

Recommendation: The CE process should be streamlined to a simple grantee self-certification for an ordinary track rehabilitation project.

Regarding Section 106, Congress should consider the creation of a national rail network that can be recognized for its historical importance, but only certain elements require compliance with Section 106, exempting the national rail network from Section 106 the same way the Interstate Highway System is exempt. At a minimum, Congress should expand the Advisory Council on Historic Preservation (ACHP) issued *Section 106 Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way* to cover a broader list of activities, such as construction of additional yard or industrial tracks within the footprint of an existing yard or industrial facility.

Obligation prerequisite – Preliminary Engineering (PE)

Issue: It takes a while for project sponsors to have PE, cost estimates, and stakeholder concurrence ready for FRA review. Many times project sponsors do not even hire a consultant to complete PE until the grant is awarded and sometimes sponsors struggle with getting stakeholder concurrence, which can add to project delays.

Recommendations: The FRA should require PE, cost estimates, and stakeholder concurrence with grant applications. Again, project sponsors should complete PE/NEPA before being awarded a final design or construction grant. For stakeholder concurrence, a sign-off form or letter template would make it easier for the FRA to collect and verify stakeholder concurrence. Short of that, the FRA should at a minimum define the stakeholder concurrence requirements and define the format required.

Obligation prerequisite – 49 U.S.C. § 22905

Issue: Project sponsors often struggle with obtaining the 22905 railroad agreement with the host railroad. It often gets caught up as a provision within a larger design, construction or maintenance agreement.

Recommendation: The FRA already provides simple template language which could be extracted as a separate 1-page agreement. If the host railroads would be willing to sign a 22905-only agreement, separate from the larger overarching agreements and the FRA would require 22905 agreement with the grant application, this could potentially speed up the project timeline.

Grant Agreement Processing Time

Issue: The FRA is very flexible, customizing the grant agreement scope of work for each individual project. Multiple disciplines at the FRA (e.g. Project Managers, Grant Managers, Engineers, Planners, Environmental Specialists, Legal, etc.) must review the “Attachment 2” (SOW, schedule, budget, performance measures) for each individual grant and this takes a long time. In addition, larger multimodal USDOT grants like BUILD and Mega must also undergo additional USDOT OST Office of the Secretary review.

Recommendation: This process can be expedited by sufficient and consistent FRA/USDOT staffing with experience, capacity, and the ability to make decisions. Empowering FRA project managers to be decisionmakers would help address this problem. In addition, the agreements and scopes of work should be made more formulaic and template-based.

Currently, the FRA builds in flexibility so that sponsors are not trapped with a hyper-specific SOW. The project sponsors also need to understand that they are being asked to fill in a binding contract document, and that they should not just copy and paste from a SOW with their contractor. Better education could help, along with fewer choices and less flexibility. For example, if grant agreements included a standard SOW by project type (e.g. Task 1 is always the

project management plan, Task 2 is always final design, Task 3 is always construction) then that would minimize opportunities for customization.

Finally, FRA engineering reviews should be limited to ensuring the PE and final design are in alignment with the grant agreement and not in conflict with industry standards, especially with grantees that are familiar with these standards and grants. FRA engineering reviews should only occur on request to smaller or less experienced grantees.

3. Delays to Project Implementation

Issue: Numerous factors impact project readiness, including railroad coordination and approvals, utility coordination and relocations, right of way acquisition, permitting and additional funding.

Recommendation: Most if not all of these factors are outside of the FRA's control, but the FRA could do more to avoid future delays by having project sponsors better define the status of these factors in advance of obligation. The FRA could also conduct risk reviews later in the grant process based on project scope, readiness, and budget.

[Additional Recommendations for Reforming the Grants Process](#)

Finally, as this committee begins the process of reauthorizing surface transportation programs, Congress should direct the FRA to speed up and streamline the discretionary grant process to reduce waste, cost overruns, and unnecessary project delays. The NRC offers the following broad grants recommendations that we suggest will help America build and improve the federal rail discretionary grant process:

- Standardize environmental approval processes across USDOT modal agencies.
- Provide pre-award spending authority for advance construction and pre-construction activities across funding programs available to rail infrastructure projects. USDOT should provide clear and consistent guidance to grant recipients.
- Provide each successful grantee with a target date for a completed grant agreement. Responsibility for meeting a target date would be shared by USDOT and the grantee.
 - o FRA should model its grant management system after FTA's Transit Award Management System (TrAMS).
- Make the grant process easier for smaller entities by establishing a page limit for NOFOs and grant applications. The complexity of NOFOs has grown and has disproportionately impacted smaller entities with less resources and personnel.
- Codify authority for flexing and transferring funds between USDOT modal agencies when appropriate.

Closing

Thank you for the opportunity to share our perspective today on improving the efficiency and effectiveness of federal rail assistance and building America's rail network. I look forward to answering any questions you may have.