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RAIL TRANSIT

Observations on FTA's State Safety Oversight Program and Potential Change in Its Oversight Role

Statement of David J. Wise, Director
Physical Infrastructure Issues



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Highlights of [GAO-10-314T](#), a testimony before the Subcommittee on Housing, Transportation, and Community Development, Committee on Banking, Housing, and Urban Affairs, U.S. Senate

Why GAO Did This Study

Rail transit generally has been one of the safest forms of public transportation. However, several recent notable accidents are cause for concern. For example, a July 2009 crash on the Washington Metro Red Line resulted in nine deaths. The federal government does not directly regulate the safety of rail transit. Through its State Safety Oversight program, the Federal Transit Administration (FTA) requires states to designate an oversight agency to directly oversee the safety of rail transit systems. In 2006, GAO issued a report that made recommendations to improve the program. The Department of Transportation (DOT) is planning to propose legislation that, if passed, would result in a greater role for FTA in regulating and overseeing the safety of these systems.

This statement (1) summarizes the findings of GAO's 2006 report and (2) provides GAO's preliminary observations on key elements DOT has told us it will include in its legislative proposal for revamping rail transit safety oversight. It is based primarily on GAO's 2006 report, an analysis of key elements of DOT's planned proposal through review of documents and interviews with DOT officials, and GAO's previous work on regulatory programs that oversee safety within other modes of transportation. GAO's 2006 report was based on a survey of the 27 state oversight agencies and transit agencies covered by FTA's program. GAO provided a draft of this testimony to DOT officials and incorporated their comments as appropriate.

[View GAO-10-314T or key components.](#) For more information, contact David J. Wise at (202) 512-2834 or wised@gao.gov.

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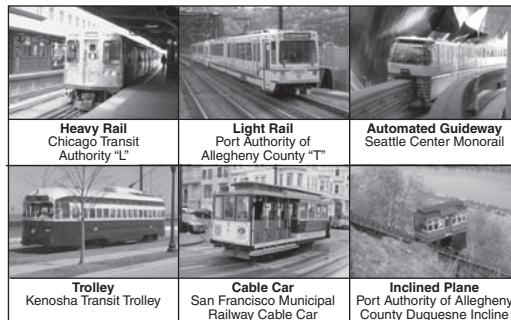
Observations on FTA's State Safety Oversight Program and Potential Change in Its Oversight Role

What GAO Found

GAO's 2006 report found that officials from the majority of the state oversight and transit agencies stated that the State Safety Oversight program enhances rail transit safety but that FTA faced several challenges in administering the program. For example, state oversight agencies received little or no funding from FTA and had limited funding for staff. In fact, some required that the transit agencies they oversaw reimburse them for services. Also, expertise, staffing levels, and enforcement powers varied widely from agency to agency. This resulted in a lack of uniformity in how oversight agencies carried out their duties. As of 2006, 13 oversight agencies were devoting the equivalent of less than one full-time employee to oversight functions. Also, 19 oversight agencies GAO contacted lacked certain enforcement authority, such as authority to issue fines, and those that did have such authority stated that they rarely, if ever, used it.

DOT is planning to propose major changes in FTA's role that would shift the balance of federal and state responsibilities for oversight of rail transit safety. According to DOT officials, under this proposal, the agency would receive authority to establish and enforce minimum standards although states still could maintain an oversight program. States could become authorized to enforce these standards if FTA determines their program capable and financially independent of the transit system they oversee. FTA would provide financial assistance to approved programs. Such changes would have the potential to address challenges GAO cited in its 2006 report. For example, providing funding to participating state agencies could help them maintain an adequate number of trained staff, and providing FTA and participating states with enforcement authority could help better ensure that transit systems take corrective actions when problems are found. Congress may need to consider several issues in deciding whether or how to act on DOT's proposal. These include determining what level of government has the best capacity to oversee transit safety, ensuring that FTA and state oversight agencies would have adequate and qualified staff to carry out the envisioned program, and understanding the potential budgetary implications of the program.

Examples of Rail Transit Systems Subject to FTA State Safety Oversight Program



Sources: PennDOT; Seattle Center Monorail; San Francisco Municipal Railway; GAO.

December 10, 2009

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to provide testimony on the mechanisms in place to oversee the safety of the nation's rail transit systems. Rail transit moves more than 7 million people in the United States daily and generally has been one of the safest forms of public transportation. However, several recent notable accidents and other troubling safety events are cause for concern. For example, a June 2009 crash on the Washington Metro Red Line resulted in nine deaths. Metro also has suffered from several incidents involving fatalities to track workers and other employees. In addition, in May 2009, two trolleys in Boston collided, injuring 49 people, and in July 2009 two rail cars collided in San Francisco, injuring 48 people.

The federal government does not directly regulate the safety of rail transit in the United States. However, in 1991, Congress required the Federal Transit Administration (FTA) within the U.S. Department of Transportation (DOT) to issue regulations requiring states to designate an oversight agency to oversee the safety and security of rail transit agencies and withhold federal funds if a state did not comply. Through the resulting State Safety Oversight (SSO) program, FTA requires states to designate an oversight agency to implement FTA safety and security oversight over rail transit agencies. In 2006, we testified on the SSO program and issued a report that made recommendations to improve the program.¹ DOT plans to submit a proposal for legislation that, if passed, would result in a greater role for the department in regulating and overseeing safety of rail transit systems.

My testimony today (1) summarizes the findings of our 2006 report and (2) provides our preliminary observations on key elements DOT has told us it will include in its legislative proposal for revamping rail transit safety oversight. In our observations, we cite key issues Congress may need to consider in determining whether or how to act on DOT's proposal. My comments are primarily based on our 2006 report; interviews with DOT officials about the department's plans for proposing a greater federal role

¹GAO, *Rail Transit: Observations on FTA's State Safety Oversight Program*, [GAO-06-997T](#) (Washington, D.C.: July 19, 2006) and *Rail Transit: Additional Federal Leadership Would Enhance FTA's State Safety Oversight Program*, [GAO-06-821](#) (Washington, D.C.: July 26, 2006).

in rail transit safety oversight; a review of related documents that we obtained; a comparison of key elements of the planned proposal with issues raised in our 2006 report; and our previous work on regulatory programs, DOT's transit programs, and efforts to oversee safety within the various modes of transportation. Our 2006 report was based on a survey of 27 state safety oversight agencies and transit agencies covered by FTA's program as well as reviews of program documentation and guidance and interviews with FTA, the National Transportation Safety Board, the American Public Transportation Association, the Transportation Security Administration (TSA), state safety oversight agencies, and transit agencies. We plan to issue a report on challenges in improving rail transit safety in fall 2010 for the Senate Committee on Banking, Housing, and Urban Affairs. We conducted our prior and current work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We provided a draft of our statement to the Department of Transportation and incorporated its comments as appropriate.

In summary:

- Our 2006 report found that officials from the majority of oversight and transit agencies stated that the SSO program enhances rail transit safety but that FTA faced several challenges in administering the program. FTA had not definitively shown that the program had enhanced safety, however, because it did not have performance goals and did not measure performance. Therefore, FTA had little information with which to track oversight agencies' performance over time. It has since taken steps to begin developing performance goals and metrics. Other challenges facing FTA in terms of assuring that the SSO program adequately oversees transit safety included that state oversight agencies received little or no funding from FTA and that some of them had limited funding for staff—in fact some required the transit agencies they oversaw to reimburse them for services. Also, expertise, staffing levels, and states' enforcement authority, e.g. fines, varied widely from agency to agency. As of 2006, 13 state oversight agencies were devoting the equivalent of less than one full-time employee to oversight functions. Finally, we found that transit and oversight agencies were confused about the role of FTA and TSA in overseeing security functions.

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- DOT plans to propose major changes in FTA's role that would shift the balance of federal and state responsibilities for oversight of rail transit safety. According to DOT officials, under this proposal, FTA would receive statutory authority to establish and enforce minimum standards. Still, FTA might not have to take on the enforcement role in all circumstances; states could become authorized to enforce these standards if FTA determines their programs are capable and financially independent of the transit system they oversee. FTA would provide financial assistance to approved programs. These changes would have the potential to address some challenges and issues we cited in our 2006 report. For example, providing funding to participating state agencies could help them maintain an adequate number of trained staff. Also, providing FTA and participating states with enforcement authority could help ensure that transit systems take corrective actions when problems are found. Congress may need to consider several issues in deciding whether or how to act on DOT's proposal. These include
 - determining what level of government, state or federal, is most capable of overseeing transit safety,
 - ensuring that FTA and state oversight agencies would have adequate and qualified staff to carry out the envisioned program,
 - determining which enforcement mechanisms are best for rail transit so that FTA or the state oversight agencies can ensure that identified safety problems are corrected before they lead to accidents, and
 - understanding the budgetary implications of the program.

Background

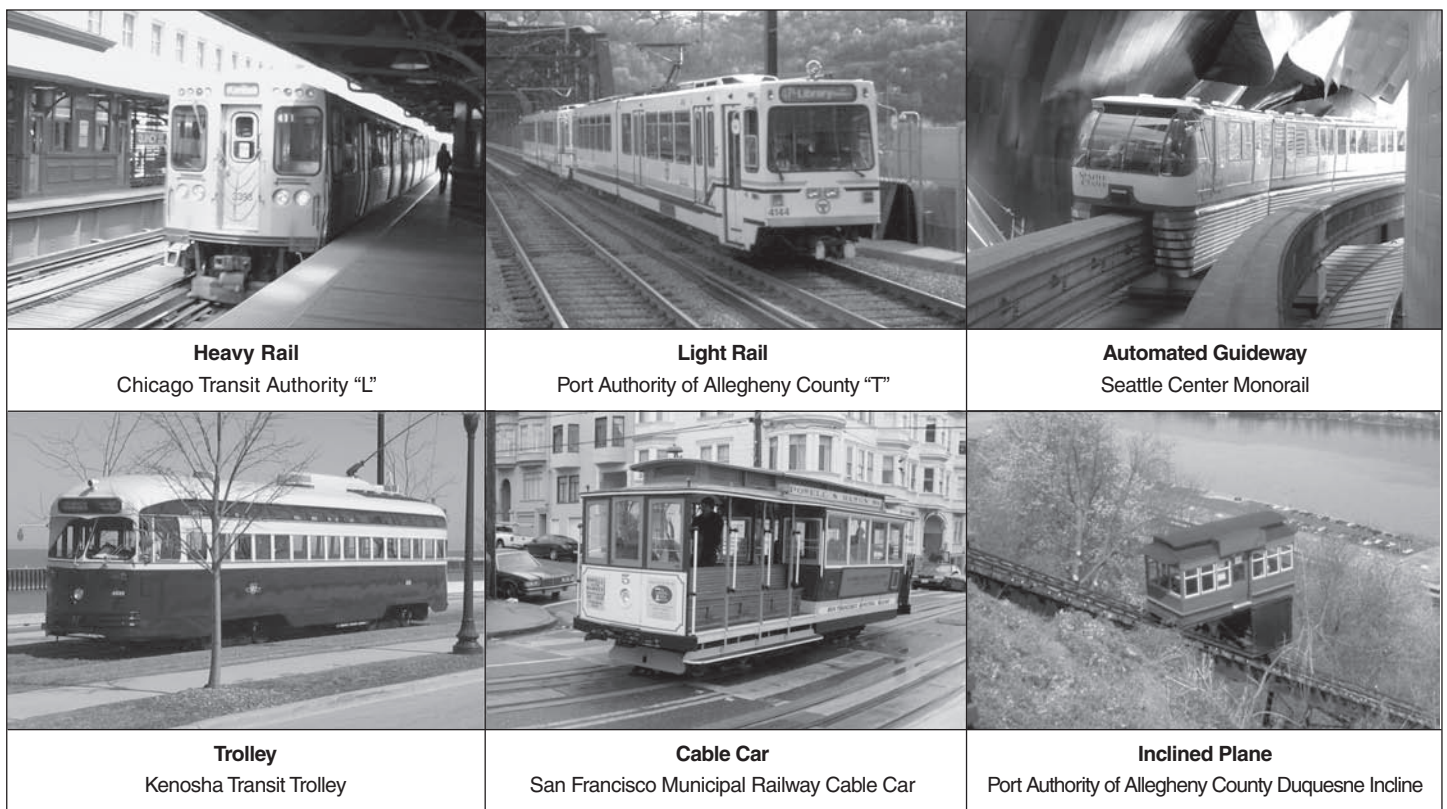
The SSO program covers all states with fixed guideway systems operating in their jurisdictions. FTA defines a rail fixed guideway system as any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that is not regulated by the Federal Railroad Administration (FRA) and is

- included in FTA's calculation of fixed guideway route miles, or
- receives funding under FTA's formula program for urbanized areas, or

- has submitted documentation to FTA indicating its intent to be included in FTA’s calculation of fixed guideway route miles to receive funding under FTA’s formula program for urbanized areas.²

Figure 1 shows the types of systems that are included in the SSO program.

Figure 1: Examples of the Types of Rail Systems Included in the State Safety Oversight Program



Sources: PennDOT; Seattle Center Monorail; San Francisco Municipal Railway; GAO.

In the SSO program, state oversight agencies are responsible for directly overseeing rail transit agencies. As of December 2009, 27 state oversight agencies exist to oversee rail transit in 26 states.³ According to FTA, states must designate an agency to perform this oversight function at the time

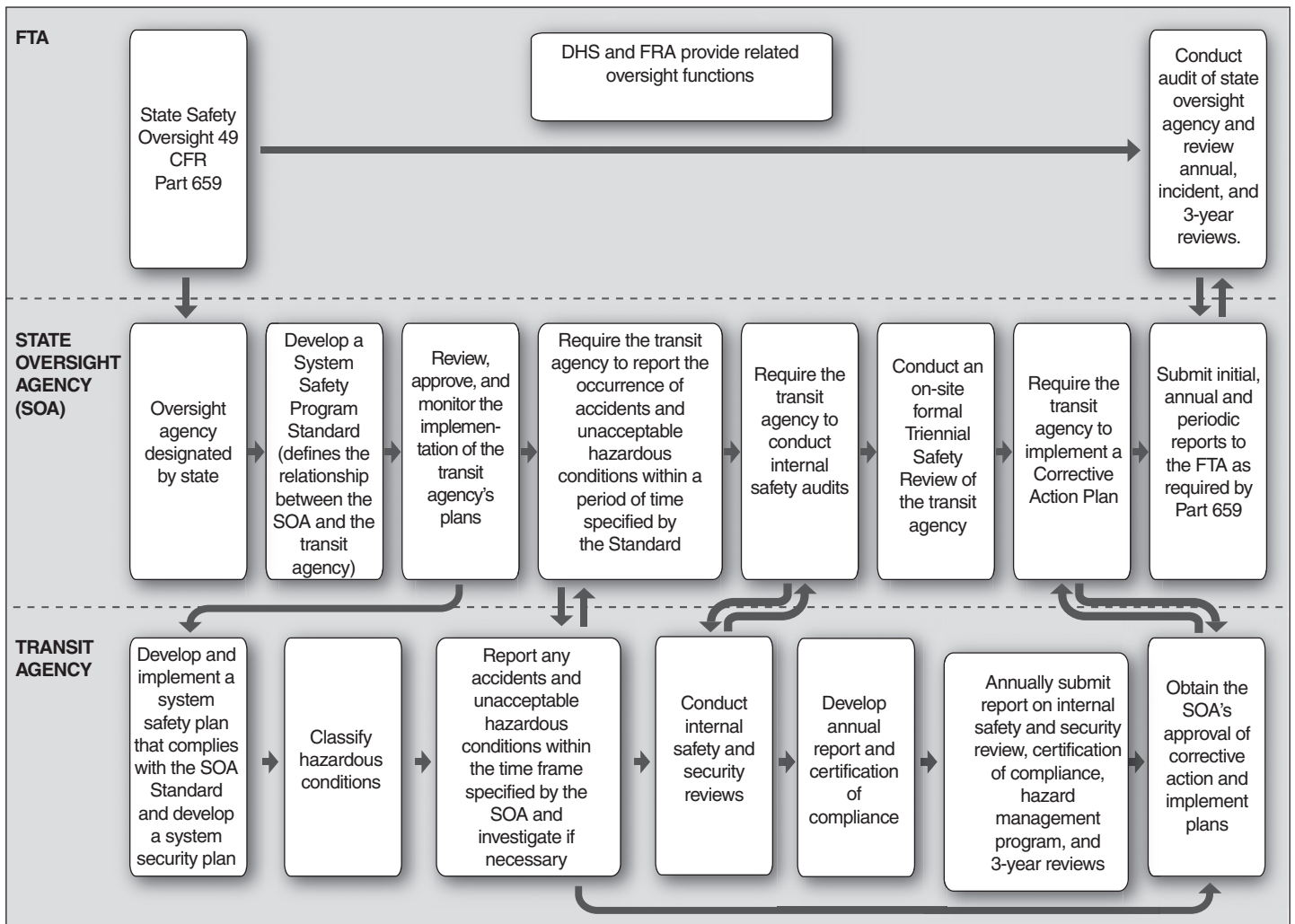
²49 C.F.R. § 659.5.

³One state, Illinois, has two oversight agencies, each overseeing a different rail transit agency.

FTA enters into a grant agreement for any “New Starts” project involving a new rail transit system, or before a transit agency applies for FTA formula funding.⁴ States have designated several different types of agencies to serve as oversight agencies, including state departments of transportation, public utilities commissions, or regional transportation funding authorities. FTA has a set of rules that an oversight agency must follow, such as developing a program standard that transit agencies must meet, reviewing transit agencies’ safety and security plans, conducting safety audits, and investigating accidents. In the program, rail transit agencies are mainly responsible for meeting the program standards that oversight agencies set out for them, which generally include developing a separate safety and security plan, developing a hazard management process, reporting accidents to oversight agencies within 2 hours, and other similar tasks. Under the program, FTA provides limited funding to oversight agencies in only limited instances, generally for travel or training. While oversight agencies are to include security reviews as part of their responsibilities, TSA also has security oversight authority over transit agencies. (See fig. 2 showing roles and responsibilities of participants in the program.)

⁴New Starts refers to capital investment grants that fund new fixed guideway capital projects (49 U.S.C. § 5309).

Figure 2: Roles and Responsibilities of Participants in the SSO Program



Source: GAO adaptation of State Safety Oversight Program Annual Report 2003, FTA Office of Safety and Security.

FTA's role in overseeing safety and security of rail transit is relatively limited. FTA relies on a staff member in its Office of Safety and Security to lead the SSO program. A program manager is responsible for the SSO program along with other duties. Additional FTA staff within the Office of Safety and Security assist with outreach to transit and oversight agencies and additional tasks. FTA regional personnel are not formally involved with the program's day-to-day activities, but officials from FTA regional offices help address specific compliance issues that occasionally arise and help states with new transit agencies establish new oversight agencies.

FTA also relies on contractors to do many of the day-to-day activities, ranging from developing and implementing FTA's audit program of state oversight agencies to developing and providing training classes on system safety.

Rail transit has been one of the safest modes of transportation in the United States. For example, according to DOT, in 2008, 57.7 people were injured traveling in motor vehicle accidents per 100 million miles traveled and 5.5 people were injured in commuter rail accidents per 100 million miles traveled.⁵ For rail transit, the rate was 0.5 people injured per 100 million miles traveled. The injury rate on rail transit has varied from 0.2 to 0.9 injuries per 100 million miles traveled since 2002. Also, the Washington Metro Red Line accident this summer marked the first fatalities involving a collision between two rail cars on a U.S. rail transit system in 8 years. However, according to FTA officials, the recent major incidents in Boston, San Francisco, and Washington have increased their concern about rail transit safety. In addition, FTA states that the number of derailments, worker injuries, and collisions has increased on rail transit systems as a whole in the last several years.

Our 2006 Report Found Most Participants Stated That the State Safety Oversight Program Was Worthwhile but FTA Faced Several Challenges in Administering the Program Effectively

Our 2006 report found that officials from the majority of oversight and transit agencies with whom we spoke stated that the SSO program enhances rail transit safety. Officials at several transit agencies cited improvements in reducing the number of derailments, fires, and collisions through actions undertaken as a result of their work with state oversight agencies. However, despite this anecdotal evidence, FTA had not definitively shown that the program had enhanced safety because it had neither established performance goals nor tracked performance. Also, FTA had not audited each state oversight agency in the previous 3 years, as the agency had stated it would. Therefore, FTA had little information with which to track oversight agencies' performance over time. We recommended that FTA set and monitor performance goals for the SSO program and keep to its stated schedule of auditing state oversight agencies at least once every 3 years. Although FTA officials pointed out that tracking safety performance would be challenging in an environment where fatalities and incidents were low, they agreed to implement our

⁵Commuter rail is a type of public transit that is characterized by passenger trains operating on railroad tracks and providing regional service (e.g., between a central city and adjacent suburbs).

recommendation. FTA assigned the task to a contractor and said that it would make auditing oversight agencies a priority in the future.

We also found that FTA faced several challenges in assuring the effectiveness of the program and recommending improvements to transit agency safety practices.

Funding challenges limited staffing levels and effectiveness.

Officials at several state oversight agencies we spoke with stated that since FTA provided little to no funding for rail transit safety oversight functions, and because of competing priorities for limited state funds, they were limited in the number of staff they could hire and the amount of training they could provide. While FTA requires that states operate safety oversight programs, capital and operating grants are not available to support existing state oversight agencies once passenger service commences. FTA, however, has begun to provide training for state oversight agency staff.⁶ With the current financial crises most states are experiencing, states face increasing challenges in providing adequate funding for state oversight agencies. Also, in our 2006 report, we found that 10 state oversight agencies relied on the transit agencies they oversaw for a portion of their budgets. In those cases, the oversight agencies required that the transit agency reimburse the oversight agency for its oversight expenses.

Expertise varied across oversight agencies. The level of expertise amongst oversight staff varied widely. For example, we found that 11 oversight agencies had staff with no previous career or educational background in transit safety or security. Conversely, another 11 oversight agencies required their staff to have certain minimum levels of transportation education or experience, such as having 5 years of experience in the safety field or an engineering degree. In the agencies in which oversight officials had little or no experience in the field, officials reported that it took several years before they became confident that they knew enough about rail transit operations to provide effective oversight—a process that new staff would likely have to repeat when the current staff leave their positions. Officials from 18 of the 24 oversight agencies with whom we spoke stated that additional training could be useful in providing more effective safety oversight. FTA, under the current system, does not have the authority to mandate a certain level of training for oversight

⁶FTA also provides some funding for new oversight agencies during their start-up process and before passenger service commences on the transit agencies they oversee.

agency staff. In response to our prior recommendation, FTA has created a recommended training curriculum and is encouraging oversight agency staff to successfully complete the curriculum and receive certification for having done so.

Staffing levels varied across oversight agencies. The number of staff that oversight agencies devoted to safety oversight also varied. For example, we found that 13 oversight agencies dedicated less than one full-time equivalent (FTE) staff member to oversight. While in some cases the transit agencies overseen were small, such as a single streetcar line, we found one state that estimated it devoted 0.1 FTE to oversight of a transit agency that averaged 200,000 daily trips. Another state devoted 0.5 FTE to overseeing five different transit systems in two different cities.

To help ensure that oversight agency staff were adequately trained for their duties, we recommended that FTA develop a suggested training curriculum for oversight agency staff and encourage those staff to complete it. FTA implemented our recommendation and over 50 percent of state oversight agencies have staff who have completed at least the first tier of this training. Still, the number of staff devoted to safety oversight remains potentially problematic. FTA currently does not require that states devote a certain level of staffing or financial resources to oversight; without additional funding from the federal government or another source, and due to the fiscal difficulties most states are now experiencing, it is unlikely states will independently increase staffing for safety oversight. FTA, however, has asked many SSO agencies to perform formal manpower assessments to ensure they have adequate resources devoted to oversight functions.

Enforcement powers of oversight agencies varied. The individual authority each state oversight agency has over transit agencies varies widely. While the SSO program gives state oversight agencies authority to mandate certain rail safety practices, it does not give them authority to take enforcement actions, such as fining an agency or shutting down operations. Some states have given their oversight agencies such authority, however. In our 2006 report, we stated that 19 of 27 oversight agencies had no punitive authority, such as authority to issue fines, and those that did have such authority stated that they rarely, if ever, used it. While taking punitive action against a rail transit agency could be counterproductive (by, for instance, withholding already limited funding), several oversight agency officials told us the threat of such action could potentially make their agencies more effective and other DOT modal administrations with safety oversight authority can level fines or take other punitive action against the entities they oversee.

Confusion existed about agency responsibilities for security oversight. Our 2006 report also found that the transit and oversight agencies were confused about the role TSA would take in overseeing security and what role would be left to the state oversight agencies, if any. We made recommendations to TSA and FTA to coordinate their security oversight activities. The agencies agreed and FTA officials reported they are now coordinating their audits with TSA.

Preliminary Observations on DOT's Plans For Revamping Rail Transit Safety Oversight and Key Issues Congress May Need to Consider

DOT is planning to propose major changes in FTA's role that would shift the balance of federal and state responsibilities for setting safety standards for rail transit agencies and overseeing their compliance with those standards. Based on information provided to us by DOT, the department plans to propose a new federal safety program for rail transit, at an unspecified future date, with the following key elements:

- FTA, through legislation, would receive authority to establish and enforce minimum safety standards for rail transit systems not already regulated by FRA.
- States could become authorized to enforce the federal minimum safety standards by submitting a program proposal to FTA and receiving approval of their program. In determining whether to approve state safety programs, FTA would consider a state's capability to undertake rail transit oversight, including staff capacity, and its financial independence from the transit systems it oversees. DOT would provide federal assistance to approved state safety programs. Participating states could set more stringent safety standards if they choose to do so.
- In states that decide to "opt out" of participation or where DOT has found the program proposals inadequate, FTA would oversee compliance with and enforce federal safety regulations.

These changes would give FTA the authority to directly regulate rail transit safety and, in cooperation with the states, to oversee and enforce compliance by rail transit systems with these regulations. These changes would bring its authority more in line with that of other modal administrations within DOT. For example, FRA, Federal Motor Carrier Safety Administration, Federal Aviation Administration, and Pipeline and Hazardous Materials Safety Administration promulgate regulations and technical standards that govern how vehicles or facilities in their respective modes must be operated or constructed. In addition, each of these agencies use federal or state inspectors, or a combination of both, to

determine compliance with the safety regulations and guidance they issue. Finally, these agencies can mandate corrective actions and levy fines to transportation operators, among other actions, for noncompliance with regulations.

The new program DOT is planning to propose has the potential to address some challenges and issues we cited in our 2006 report. The consideration of staffing levels in deciding whether to approve states' proposed programs and the provision of funds to approved programs could increase levels of staffing. Requiring that participating states not receive funds from transit agencies would make the state agencies more independent of the transit agencies they oversee. Providing FTA and participating states with the authority to enforce minimum federal safety standards across the nation's transit systems could help ensure compliance with the standards and improved safety practices, and might prevent some accidents as a result.

While the new program, as envisioned by DOT, may have some potential benefits, our work on the SSO program, other transit programs, and regulatory programs suggests there are a number of issues Congress may need to consider in deciding whether or how to act on DOT's proposal.

- ***Roles of the states versus FTA.*** The following questions would need to be considered when determining whether changes are needed in the balance of federal versus state responsibility for establishing rail transit safety:
 - Are uniform federal standards and nationwide coverage essential to achieving rail transit safety?
 - Which level of government, state or federal, has the capacity to do the job at hand, taking into account such factors as resources and enforcement powers?

In addition, shifting federal-state responsibilities for oversight of rail transit safety would bring a number of operational challenges. These include finding the appropriate level of FTA oversight of state programs and allocating costs between the federal government and the states. The new oversight system to be proposed would potentially involve major changes in the way states interact with FTA in overseeing transit safety. The new balance of state and federal responsibilities could take some time for transit agencies to adjust to, especially those that would now be reporting directly to federal officials.

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- ***Adequate staff with needed skills.*** FTA would need to ensure it has adequate qualified staff to oversee safety under the new program, especially in states that opt out of participating in the new program. FTA's current safety staff is very small as is the staff devoted to rail transit safety oversight in most state agencies. Building the capability within FTA, its contractors, and these state agencies to develop and carry out the envisioned program would pose a number of challenges. However, the actions FTA has taken in response to our 2006 recommendation to institute a training curriculum for oversight agency staff, would give it a head start on this process.
 - ***Enforcement.*** Congress would need to determine which enforcement mechanisms to authorize FTA to use and FTA would need to develop an enforcement approach that makes the best use of these enforcement mechanisms. Other DOT modal administrations with safety oversight responsibilities, such as the Federal Aviation Administration and FRA, are authorized to issue fines or civil penalties to operators that violate regulations. However, transit agencies are usually publicly owned and face many financial challenges. As a result, fines and penalties could be counterproductive to enhancing safety when funding is at a premium and local riders or taxpayers ultimately could bear the cost of fines. Other enforcement tools are options. For example, FRA may order a locomotive, freight car, or passenger car out of service or may send warning letters to individuals if a safety violation is found, among other enforcement actions.
 - ***Cost.*** According to FTA officials, their estimates of the total cost of the new program the department plans to propose are very preliminary. Better estimates of what, if any, costs that states would bear under the new system will also be important before moving forward with this proposal. This could include considering any estimated costs the federal government would incur under various scenarios based on how many states opt out and how many new federal employees or contractors would be required under each scenario to act as trainers, inspectors, and administrative staff. Currently, states bear most of the costs for transit safety oversight. Determining these additional costs would be added as the federal and state governments face significant increasing fiscal pressures. Further, it is uncertain how the program will be paid for. Congress will need to determine if riders, states, those who pay taxes to the Highway Trust Fund, or the Department of the Treasury, or a combination of sources, would bear the cost of this program.

In addition to the issues that Congress may need to address, FTA would face some challenges in implementing a new system of transit safety oversight. These include:

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- ***Variations in the different types of transit.*** The U.S. rail transit system consists of several different types of vehicles, from heavy and light rail to monorails and funiculars or inclined planes. These vehicles operate on different kinds of track with different power sources and can vary from new modern vehicles to vehicles that are 30 or more years old. Setting federal safety regulations for these varying systems could be a lengthy process and could require multiple parallel rulemakings.
 - ***Transition to the new system.*** If the new safety oversight system is approved, it will take some time to transition to the new system. States currently performing safety oversight that opt out in favor of federal oversight will likely need to continue to perform their oversight functions until FTA has additional staff and an enforcement mechanism in place. However, a state may be less likely to replace staff who leave or ensure staff in place stay adequately trained if the state is in the process of giving over its oversight responsibilities to FTA. While the likely effect of this may be minimal, this situation could create the possibility of relaxed oversight during the transition period.

As part of our ongoing review of challenges to improving rail transit safety, we will review states' and FTA's current efforts to oversee and enhance rail transit safety as well as DOT's efforts to strengthen the federal role in overseeing rail transit safety.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee might have.

For further information on this statement, please contact David J. Wise at (202) 512-2834 or wised@gao.gov. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement. Individuals making key contributions to this testimony were Catherine Colwell, Judy Guilliams-Tapia, and Raymond Sendejas, Assistant Directors; Timothy Bober; Martha Chow; Antoine Clark; Colin Fallon; Kathleen Gilhooly; David Goldstein; Joah Iannotta; Hannah Laufe; Sara Ann Moessbauer; and Stephanie Purcell.

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