

RAIL

MOVING AMERICA FORWARD



From Selection to Award—The Post-Selection Process for FRA Grants

Presented by: Michael Longley, Karla Maffett, Laura Shick, Lynn Everett, John Johnson, Matthew Lorah



U.S. Department of Transportation
Federal Railroad Administration

November 2, 2021

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the Q&A portion of
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support that you need

Welcome:

Project Management and Oversight Division Chief

Michael Longley



Today's FRA Presenters



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Agenda

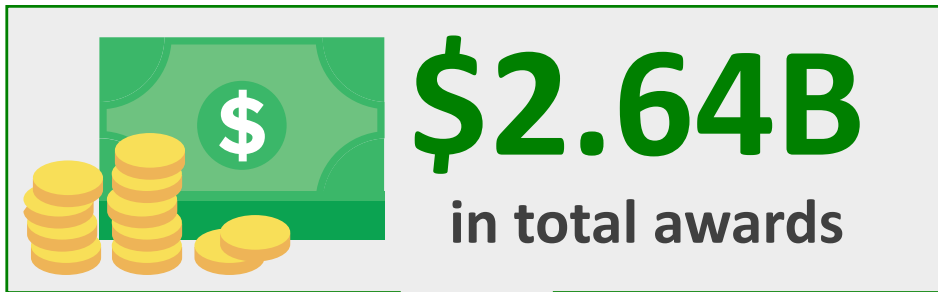
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Office of Infrastructure Investment

Infrastructure Investment



DOT and FRA Discretionary Rail Selected Grants 2017-2020



for
348
projects
selected



124
Freight
\$914.9M



151
Mixed Use
\$568.54M



62
Passenger
\$1.16B

Highlights



118
Rural
\$829.6M



1,000+
GX-related
projects

Project Tracks and Agreement Types

Project Tracks

- Pre-NEPA/planning
- Preliminary Engineering
- Environmental Compliance (NEPA)
- Final Design Engineering
- Construction
- Safety

Agreement Types

- Grant Agreement
- Cooperative Agreement

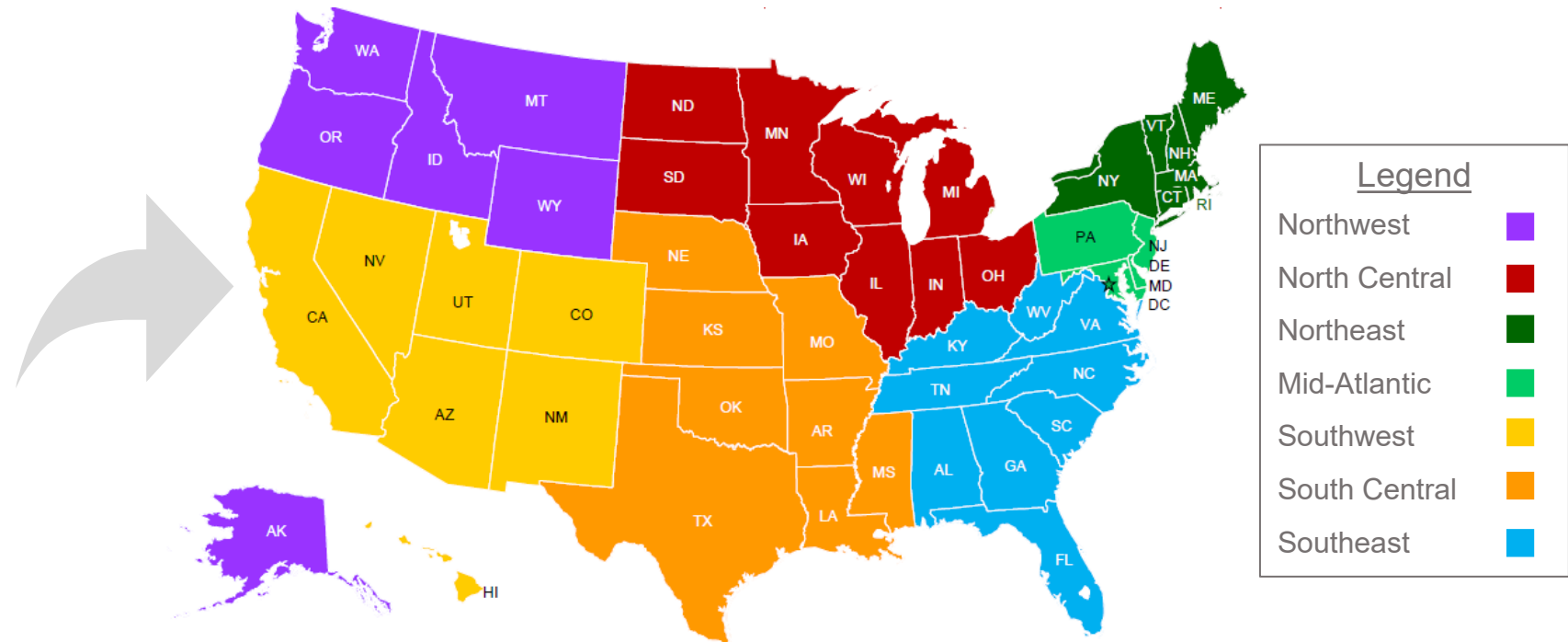
FRA's Project Oversight Team Organizational Structure

Integrated teams enable more effective customer service:

Teams that combine expertise and specialty can more effectively manage our grant program portfolios and establish enduring customer relationships.



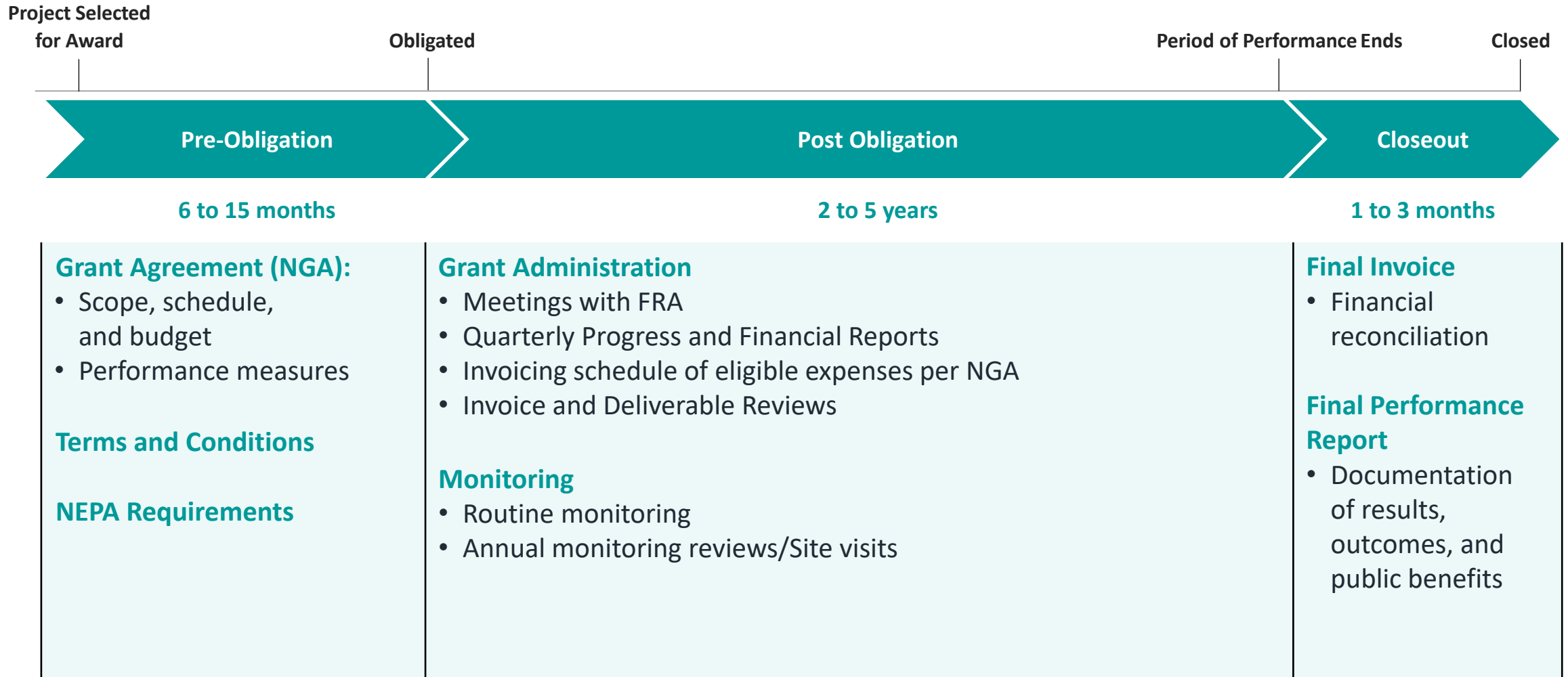
TEAM STRUCTURE



REGIONS

Grant Lifecycle and Approximate Timeframes

Grant Lifecycle and Approximate Time Frames



Pre-Obligation Activities and Prerequisites

Railroad Agreement

As a condition of making a grant, 49 U.S.C. § 22905(c)(1) requires an agreement between grantees (who are not the right-of-way owner) and the right-of way owner. The Agreement must include:

- Compensation for such use;
- Assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;
- An assurance by the owner that collective bargaining agreements with railroad employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by such employees on the railroad transportation corridor; and
- An assurance that an applicant complies with the liability requirements consistent with [49 U.S.C. § 28103](#).



Railroad Agreement (continued)

The requirements of 49 U.S.C. § 22905(c)(1) do not apply:

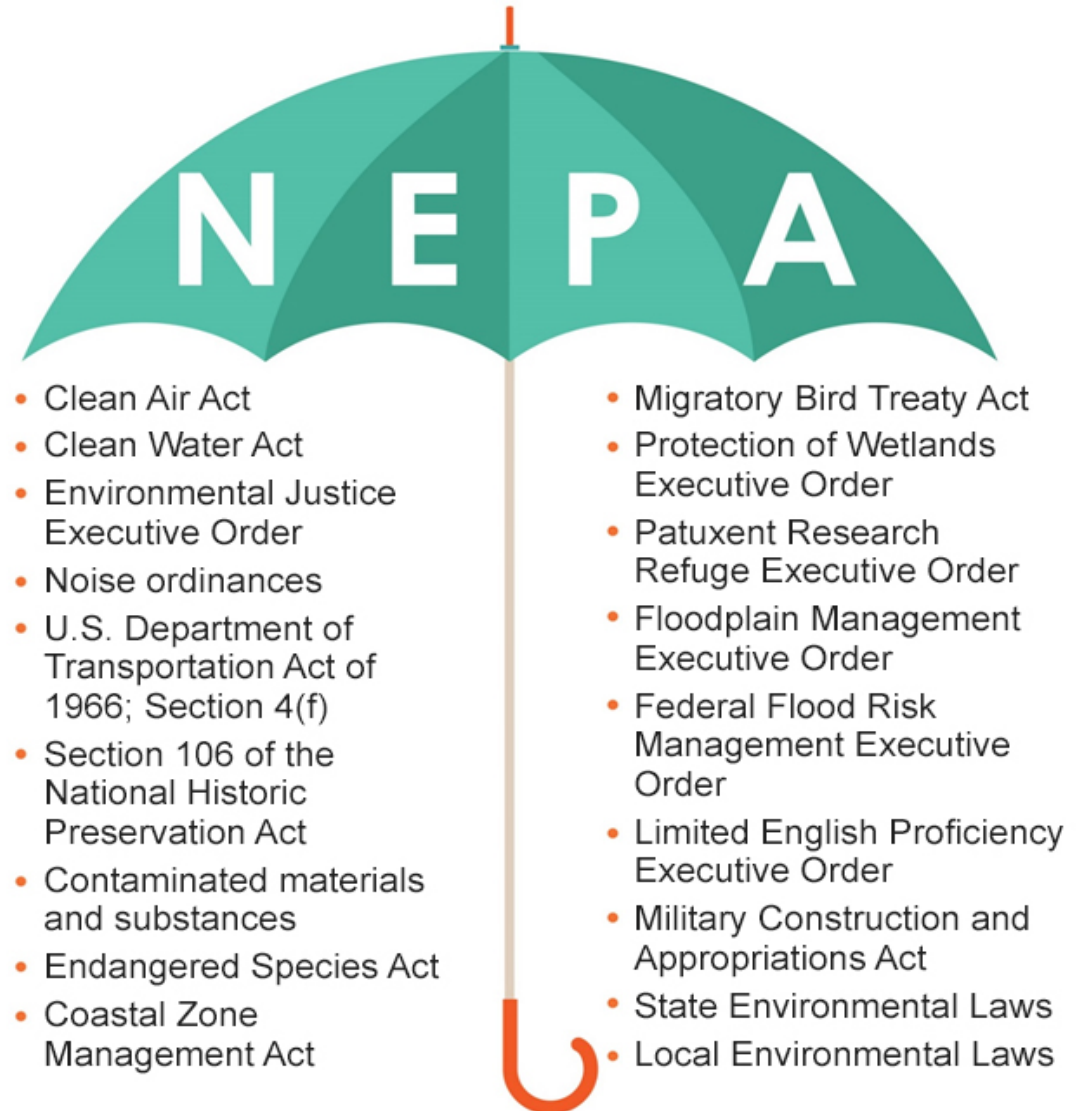
- If your project does not use rights-of-way owned by a railroad (e.g., Project is for planning, preliminary engineering and/or NEPA only or the Project is for on-board PTC installation only);
- Commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations;
- The Alaska Railroad or its contractors; or
- Amtrak's access rights to railroad right-of-way and facilities under current law.

FRA must provide acceptance of the Railroad Agreement prior to grant obligation.

What is NEPA, and why is it required?

- The National Environmental Policy Act (NEPA) is an “umbrella law” that brings together numerous laws, regulations, executive orders, and requirements regarding the quality of the human and natural environment (40 CFR 1500-1508).
- Federal agencies, including FRA, use the NEPA review process to help identify and evaluate project alternatives and to help identify and address project impacts on environmental resources.

NEPA review must be conducted for all FRA grant-funded rail projects.



Class of Action

A Class of Action indicates the anticipated level of environmental impacts and associated required documentation to comply with NEPA (23 CFR 771.115).

At FRA, there are 3 NEPA classes of actions:

- Categorical Exclusion (CE).
- Environmental Assessment & Finding of No Significant Impact (EA, FONSI).
- Environmental Impact Statement & Record of Decision (EIS, ROD).

Project-specific “red flags” may influence FRA’s Class of Action determination.



Class of Action

Categorical Exclusion (CE) Worksheets are the most commonly completed NEPA documents for FRA-funded rail projects:

Commonly used FRA CE categories (see all at 23 CFR 771.116):

- Planning and design activities.
- Positive Train Control, safety and security improvements.
- Track and track structure repair, maintenance, replacement.
- Minor rail line additions, new track within existing ROW.
- Property acquisition, including safety equipment and rolling stock.
- Bridge rehabilitation or replacement.
- Construction of small structures.
- Americans with Disabilities Act (ADA) improvements.



For a project to qualify as a CE, there must be minimal environmental issues and no extraordinary circumstances.

Environmental Review

Environmental Review generally refers to a process of review, documentation, consultation, and public outreach. FRA and grantees both have critical roles to ensure successful project delivery.

- Environmental review/documentation is prepared during the Award Phase or earlier in a grant's lifecycle. It must be approved **before** FRA can obligate a grant.
- Beginning the NEPA process early is critical, especially if there are statutory timeframes associated with your project or an applicable environmental review requirement (such as Section 106 of the National Historic Preservation Act [NHPA]), or substantive environmental impacts from your project that need to be mitigated.



The level of effort to document compliance with NEPA does not necessarily equate to the level of effort required to document compliance with the other laws under the NEPA umbrella.

Uses of Grant Funding

Depending on the program, grant funds may be used for:

- **Preliminary Engineering (PE)/NEPA:**

- FRA applies an administrative, minimally documented CE to obligate the grant. Grantee does not need to prepare anything for this step.
- Grantee uses grant funds to pay for preparation of NEPA document.

- **Final Design (FD)/Construction:**

- Before FRA can obligate the grant, NEPA must be complete.
- Grantee is responsible for preparing NEPA document, with or without use of grant funds, depending on scope of grant application. Or FRA may rely on or supplement an existing NEPA decision document, if available.

If a single grant is funding both PE/NEPA and FD/Construction, FRA may obligate a portion of the grant so funds are available to Grantee to prepare NEPA document. Grantee cannot proceed with construction phase of project until NEPA is complete.

Section 106 of the National Historic Preservation Act (NHPA)

Section 106 protects historic properties and cultural resources:

- Historic properties can include railroad infrastructure (e.g., bridges, tunnels, passenger stations, interlocking towers, power plants, segments of railroad line).
- Historic properties also include non-rail properties in the vicinity of railroad rights-of-way (ROW) or a proposed railroad alignment (e.g., commercial and residential districts, municipal buildings, archaeological sites).
- Potential historic properties within the vicinity of your project should be identified in your NEPA documentation (generally applies to properties 45 years old or older).

Even if your project qualifies for a CE under NEPA, it still may require extensive Section 106 review/consultation with a State Historic Preservation Officer under NHPA.

Section 106 and use of the Program Comment for Rail ROW

Your entire project or elements of your project may be exempt from Section 106 review under the Program Comment for Rail ROW:

The Program Comment was issued by the Advisory Council on Historic Preservation in 2018 and is comprised of two parts:

- 1) An **activities-based approach**, which is a comprehensive list of maintenance, repair, and upgrade activities that are likely to have effects to historic rail properties in existing ROW that are minimal or not adverse and are therefore exempt from Section 106 review ([exempted activities list](#)); and
- 2) An **optional Project Sponsor-led property-based approach** that ultimately may further streamline the Section 106 review process for transportation-related projects in railroad and rail transit ROW.



Many rail projects require permits, licenses, or approvals from other federal agencies.

Examples: US Army Corps of Engineers, US Coast Guard, Federal Communications Commission.

Each Federal agency has its own environmental review and documentation requirements.

When more than one federal agency has an action related to a rail project that triggers NEPA:

- Agencies may establish one lead or act as joint leads; or
- An agency may adopt another agency's NEPA analysis and issue its own decision;

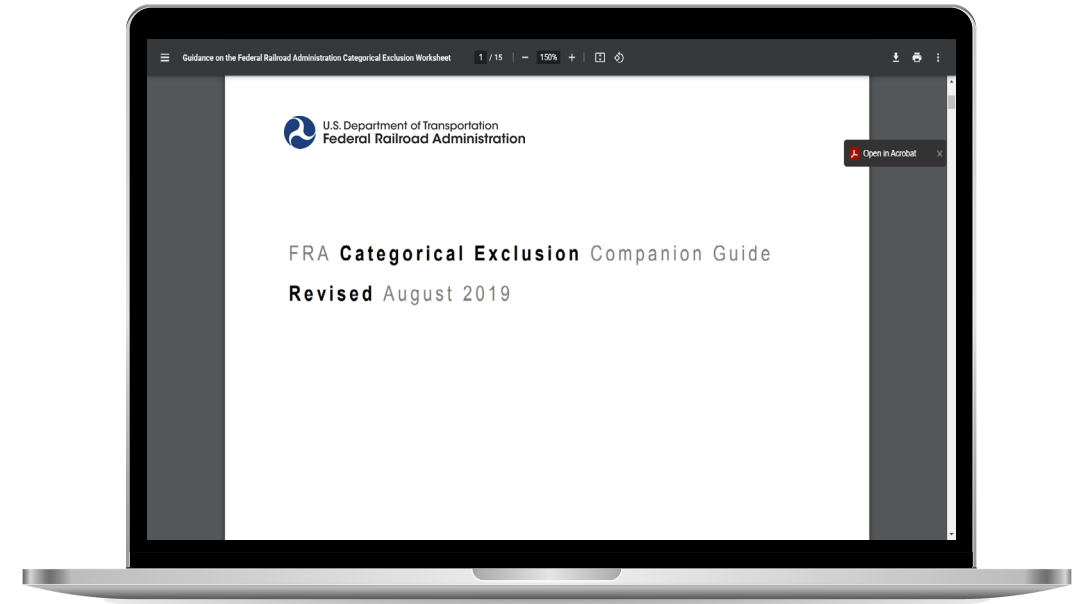
An agency that does not have an action may participate in a lead agency's NEPA process as Cooperating or Participating Agency to provide subject matter or jurisdictional expertise.

Things to think about

- Learn more about what is required for NEPA/Environmental Review in FRA's [CE Companion Guide](#) online.
- Expect to ask for help (e.g., private consultant, State DOT) for certain topics such as Section 106, Section 4(f), and Endangered Species Act (ESA) compliance.
- For more information, contact FRAenvironment@dot.gov.

Grantees are encouraged to:

- Review [FRA's environmental webpages](#).
- Participate in [environmental-focused webinars](#).



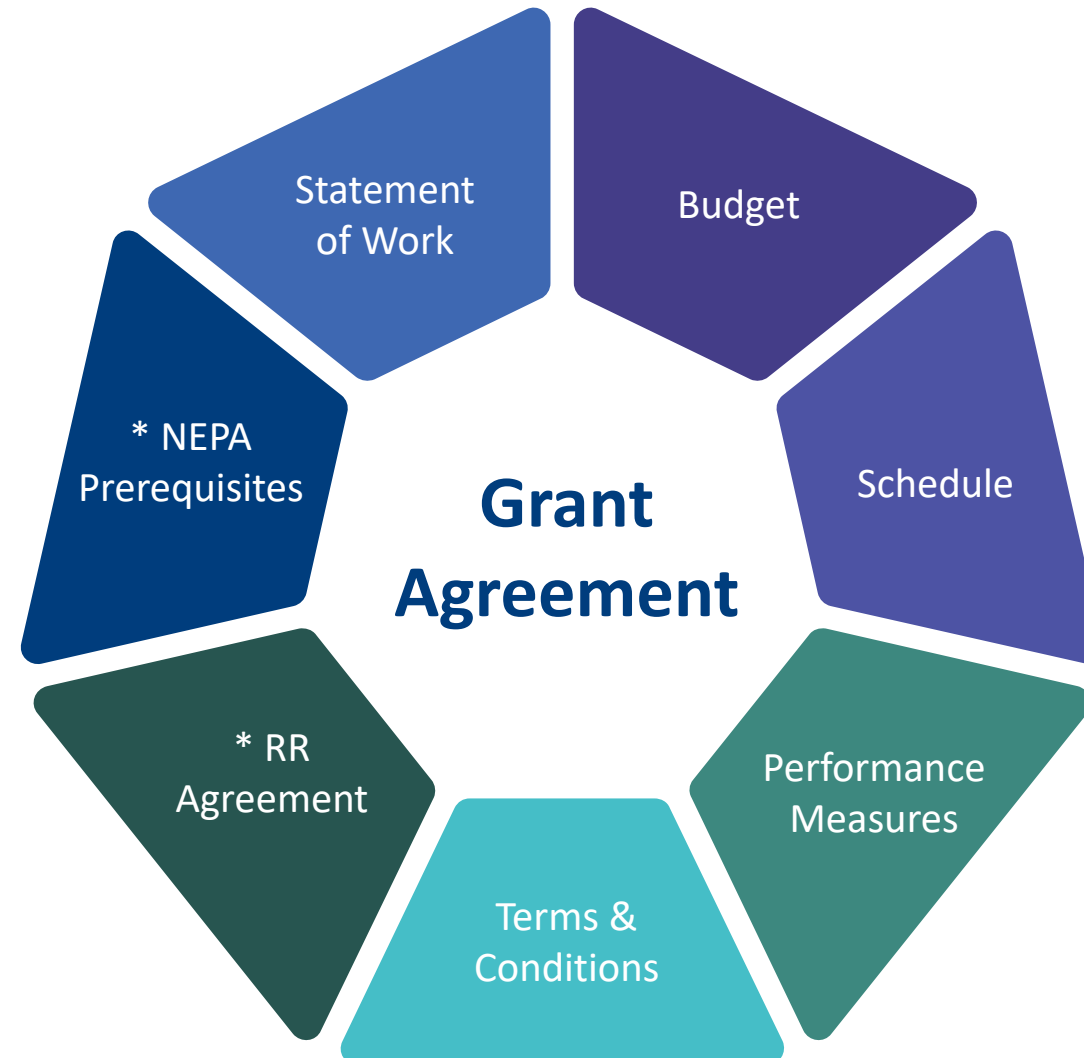
Trespassing-Related Capital Projects

Selected projects will require close coordination with the FRA Office of Railroad Safety Trespass Team in addition to FRA Office of Infrastructure Investment staff.

- For trespass related Final Design/Construction track Projects: the Trespassing needs assessment, preliminary engineering (PE), and environmental determination (NEPA) will be required **prior to grant obligation**. The needs assessment, PE, and NEPA will not be included in the scope of the grant.
- The FRA Office of Railroad Safety recommends trespass capital grants utilize the CARE Model: Community, Analysis, Response, and Evaluation.
- For more information, contact Michail.Grizkewitsch@dot.gov

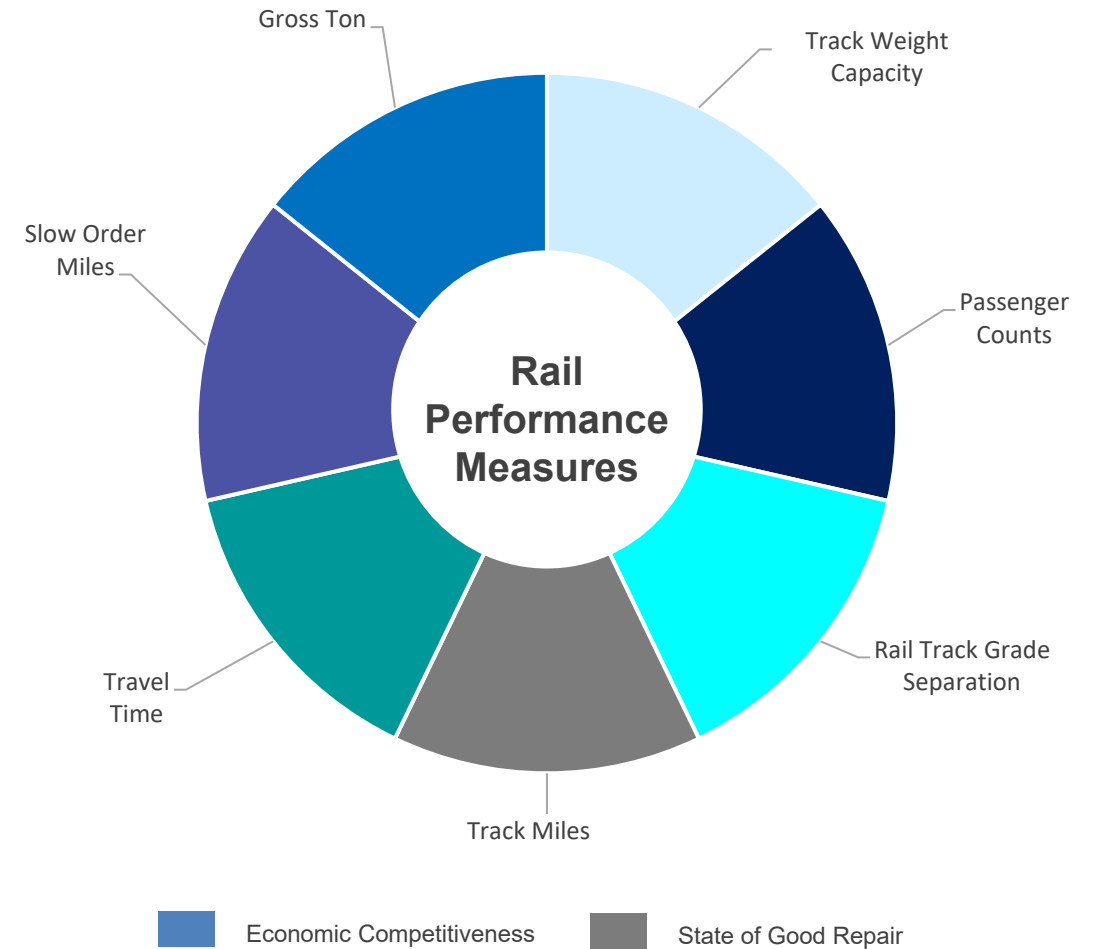


Creation of Grant Agreement



Performance Measures

- In accordance with **§200.301** and **Sec. 11301 of FAST Act**, each applicant selected for funding must collect information and report on the Project's performance using measures mutually agreed upon by FRA and the grantee to assess progress in achieving strategic goals and objectives.
- Performance Measures are typically captured pre-grant agreement execution (Baseline), at Project Completion, and may be captured for up to five years following Project Completion.



Post-Obligation Activities and FRA Oversight

Grantee Roles & Responsibilities

The Grantee who is the recipient of Federal Funds is responsible for:

- Grant Terms & Conditions
 - Contractor Flow Down Provisions
 - Buy America Compliance
- Grant Oversight & Monitoring Compliance
- Certifying Reimbursement Requests
- Reporting Requirements



Buy America Compliance (49 U.S.C. 22905(a))

Policy: Federal financial assistance awards should maximize the use of goods, products, and materials produced in the U.S.

Requirement: Steel and Iron (e.g. rail and structural steel), and manufactured goods (e.g. rolling stock and fire alarm) “end products” and “components” must be manufactured in the U.S.; requirement applies to the whole “Project,” including any non-Federal portion(s).

Waivers:

- Non-Availability: product is not available from domestic source.
- Project Specific: FRA has no standing waivers.
- Grantee must document effort to buy U.S.-made goods. Start addressing at design stage.
- Work with FRA Project Manager as soon as you are aware of non-availability (and before you sign contracts).
- Waiver process may take a long time and may not be successful, so be prepared.

Resources: <https://railroads.dot.gov/legislation-regulations/buy-america/buy-america>

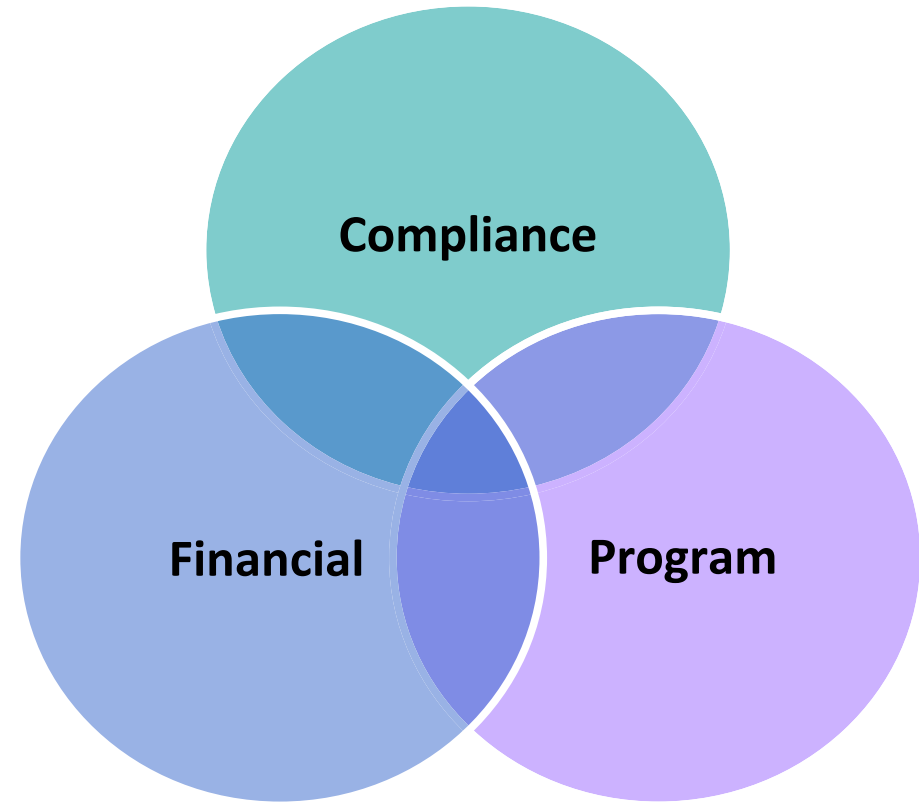
FRA Oversight and Monitoring

Compliance oversight/monitoring

measures how well recipients are following grant requirements, including terms and conditions.

Program oversight/monitoring assesses scope, timeframes, budget, and targeted technical matters, such as engineering, environmental, and financial analysis.

Financial oversight/monitoring assesses issues related to expenditures and the financial management capabilities of the recipient.



General Deliverables & Reporting Requirements

Deliverable: A document that is developed by the Grantee to carry out the purpose of the Project and serves as a key component of FRA's monitoring and oversight program.

- Deliverables provide FRA visibility on the Project progress and demonstrate a grantee's ability to deliver a Project within scope, schedule, and budget.

Report: A standardized document, usually collected on a recurring basis, that is completed by the Grantee to provide the Federal awarding agency financial and performance information.

Deliverables and Reports are part of FRA's Routine Oversight and Monitoring Activities.



Types of Deliverables & Reports

Example Deliverables

Project Management Plan (PMP)

Project Agreements

NEPA Documentation

Preliminary Engineering Plans

Final Design Plans

Final Performance Report

Example Reports

Quarterly Progress Report

Quarterly Federal Financial Report

Final Performance Report

Performance Measure Report

Annual Monitoring

Annual monitoring, a scheduled monitoring that requires an in-depth review, is more time and resource intensive and is based on risk.

- **Desk Review:** A comprehensive, periodic review of all current progress and financial reporting information. These are typically performed annually and primarily evaluate compliance and programmatic review elements.
- **Site Visit:** An in-person visit to assess project progress and performance and provide targeted training and technical assistance. Site visits primarily include reviewing programmatic aspects of performance but also cover aspects of grantee compliance.



FRA Grant Oversight – Benefits of Annual Monitoring

Monitoring enables FRA to identify project problems and support needs during program execution:

Monitoring activities often uncover problem areas in the form of:

- **Areas of Interest:** issues that could lead to significant findings.
- **Significant Finding:** issues noted through monitoring that jeopardize project completion.



FRA provides follow-up support to the grantees to address the identified problems through:

- **Corrective Action Plans:** addresses one or more significant findings FRA has identified during the monitoring review and details the grantee's plan for resolving the issues.
- **Training:** provide support and guidance on how to effectively and efficiently carry out their responsibilities.

As a result of the numerous monitoring efforts and follow-up activities, FRA has been able to increase compliance, apply course corrections to off-track projects, and maintain the financial integrity of grant funds.

Benefits of Monitoring Activities

Collection of Lessons Learned

Opportunity to Share Best Practices

Development of Guidance & Training

Invoicing

Invoicing requests are submitted on a reimbursement basis and are only eligible for allowable costs.

- Project work completed prior to the grant agreement execution is not eligible for reimbursement, unless approved in writing by FRA.
- Delinquent or non-compliant deliverables and/or reports may delay or cause denial of FRA approval of reimbursement requests.
- Ensure the Federal portion of the total project cost does not exceed the authorized amount.
 - Ensure any match requirements are met.



Contact Us

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Connect with us USDOTFRA



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