U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

Management Information Report

Management and Performance Challenges Facing the Railroad Retirement Board for Fiscal Year 2020

Report No. 21-02 December 3, 2020

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What We Found

The Reports Consolidation Act of 2000 and Office of Management and Budget (OMB) Circular A- 136 require the Inspectors General to identify what they consider the most serious management challenges facing its respective agency and briefly assess the agency's progress in addressing these challenges.

We present the following six major management and performance challenges facing the RRB:

1. Improve Agency Disability Program Integrity
2. Improve Information Technology Security and Complete System Modernization
3. Improve Management of Railroad Medicare
4. Improve Payment Accuracy and Transparency
5. Financial Management and Reporting Issues
6. Compliance Concerns Identified

Management's Comments and Our Response

RRB provided written comments, which are reprinted in Appendix B. While RRB management provided comments and disagreements with some of the challenges we identified, our assessment of the major challenges facing RRB remains unchanged.

What We Did

Our identification of management challenges facing the Railroad Retirement Board (RRB) is based on recent audits, evaluations, investigations, and current issues of concern to the Office of Inspector General (OIG). RRB OIG identified six major management challenges facing RRB during fiscal year 2020.

We previously provided these management challenges to the RRB for inclusion in its fiscal year 2020 Performance and Accountability Report.

Objective and Scope

Our objective was to identify and assess the most serious challenges facing RRB management during fiscal year 2020.

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INTRODUCTION

The Reports Consolidation Act of 2000 and Office of Management and Budget (OMB) Circular A-136 require the Inspectors General to identify what they consider the most serious management challenges facing their respective agency and briefly assess the agency's progress in addressing these challenges.

The Railroad Retirement Board (RRB) is an independent agency in the executive branch of the Federal Government. The RRB's primary function is to administer comprehensive retirement-survivor and unemployment-sickness benefit programs for the nation's railroad workers and their families, under the Railroad Retirement and Railroad Unemployment Insurance Acts. As part of the retirement program, the RRB also has administrative responsibilities under the Social Security Act for certain benefit payments and railroad workers' Medicare coverage.

In fiscal year 2019, the RRB paid retirement-survivor benefits of nearly $13 billion to about 535,000 beneficiaries. The RRB also paid net unemployment-sickness benefits of $88 million (including recoveries of about $100,000 in expired temporary extended unemployment benefits under the American Recovery and Reinvestment Act of 2009, the Worker, Homeownership, and Business Assistance Act of 2009, and subsequent reauthorizing legislation) to about 23,000 claimants.

This year's management challenges are:

- Improve Agency Disability Program Integrity
- Improve Information Technology Security and Complete System Modernization
- Improve Management of Railroad Medicare
- Improve Payment Accuracy and Transparency
- Financial Management and Reporting Issues
- Compliance Concerns Identified

The challenges this year include items relating to prior Office of Inspector General (OIG) concerns or those identified in prior audits, the President's Management Agenda, and areas related to the RRB's ability to meet its core mission.

Management's Comments and Our Response

These management challenges were provided to RRB for inclusion in its fiscal year 2020 Performance and Accountability Report. Subsequently, RRB management provided written comments, which are provided in Appendix B.

In its comments, RRB management acknowledged some of the challenges identified by OIG and disagreed with some of the concerns, indicating that they do not give rise to a serious management concern or challenge. RRB management described actions implemented, approaches taken, and improvements underway to improve the functions and operations of the agency to address the challenges identified. Some of the actions described by the RRB do not always meet the intent of OIG recommendations nor do they always address the weaknesses that remain.

While RRB management provided comments and rebuttals, our assessment of the major challenges facing RRB remains unchanged. As responsible public stewards, RRB management must implement an effective control system to ensure that all agency programs are managed efficiently.

Challenge 1 – Improve Agency Disability Program Integrity

Why is this a serious management challenge? The OIG has been concerned about fraud and abuse in the disability program for many years and RRB management has not been receptive of our recommendations for corrective action. The Government Accountability Office (GAO) has also audited the RRB's disability program and reported that "a nearly 100 percent approval rate in a federal disability program is troubling, and could indicate lax internal controls in RRB's decision-making process, weakness in program design, or both."[1] The RRB's approval rate for occupational disabilities was 97.54 percent during fiscal year 2019.

The RRB adjudicates and processes disability benefit payments to railroad employees in support of total and permanent and occupational disabilities. Occupational disabilities are awarded if a physical or mental impairment permanently disqualifies the railroad employee from performing his or her regular railroad occupation, even though the employee may be able to perform other types of work.

During fiscal year 2019, the RRB paid approximately $643 million to 13,900 occupationally disabled annuitants. The average monthly occupational disability annuity was $3,266.

Management has overall responsibility for establishing internal controls to manage the risk of fraud. Fraud can jeopardize an agency's mission by diverting resources from their intended purpose. While the RRB previously had a Fraud Risk Detection Task Force, it was not established as a permanent entity with responsibility for continuously assessing fraud risk, implementing corresponding corrective actions, and monitoring the effectiveness of those actions. As a result, in September 2019, our contracted auditor determined that the actions taken as a result of the RRB's Disability Program Improvement Plan (DPIP), were not fully effective in establishing a risk based approach to prevent future fraud and abuse in the RRB's disability programs. Our contracted auditor issued three recommendations to: establish a dedicated entity within RRB to lead the fraud risk management process, establish a fraud risk assessment process specifically for disability programs to routinely determine and update the RRB's fraud risk profile, and establish an ongoing fraud risk monitoring process to evaluate the effectiveness of corrective actions and identify new risks.

The Office of Programs concurred with the three recommendations to address these weaknesses, but indicated they did not have the authority to take the recommended actions and would forward them to the RRB Board. Although OIG has received correspondence indicating that the RRB established a Fraud Risk Assessment Committee (FRAC) in fiscal year 2020, the OIG has not received any requests to close these recommendations to date, and all three remain open.

In addition to the above contracted audit, OIG contracted two other disability program audits. For one of these audits, our contracted auditor determined that the RRB did not effectively consider fraud risk indicators in the disability decision process and provided three recommendations. For the other audit, our contracted auditor determined that RRB medical

[1] Government Accountability Office (GAO), *Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities*, GAO-09-821R (Washington, D.C.: Sept. 9, 2009).

experts did not always reach a consistent medical assessment based on the medical evidence, and provided two recommendations. RRB management did not concur with any of these recommendations. However, all five remain open because we continue to see the need for these improvements.

Because these five recommendations, and many others from other reports remain open, the RRB's disability program continues to be at risk of fraud and abuse.

This paragraph, and the other paragraphs that follow, summarize some of the actions RRB management has taken to address its disability program and related performance. In response to our performance and management challenge related to disability program integrity outlined in the Fiscal Year 2019 Performance and Accountability Report (PAR), RRB management's comments acknowledged the importance of identifying and mitigating fraud risk throughout the programs the agency administers. They discussed establishment of the FRAC whose purpose is to assess, and offer solutions to mitigate, fraud risk in the administration of all of the RRB's programs, including the disability program.

In August 2020, the RRB issued a press release announcing the appointment of a Chief Medical Officer (CMO) who is to provide expert medical guidance to the RRB's Office of Programs and train examiners on medical issues. During fiscal year 2020, the FRAC worked with the Board to initiate changes documented in Board Orders 20-23 and 20-37. The main change was to eliminate the mandatory use of specialist medical exams for some medical conditions, with additional specific requirements that included some reviews by RRB staff, contracted medical professionals, and the RRB's CMO. The RRB stated that the policy change to eliminate the mandatory use of specialist medical exams for some medical conditions in initial disability adjudication will save time and money. While we acknowledge that this policy change would save time and money, OIG still remains concerned that the policy change could increase the risk of fraud, if the proposed compensating controls are not fully implemented.

In the fiscal year 2019 PAR, RRB management stated that in 2018, the Disability Benefits Division (DBD) lost experienced disability staff due to promotions and reassignments to other types of work. They further stated that to assist in managing the increased workloads, DBD hired additional staff and a supervisor. However, RRB management also stated that it takes two to three years to acquire the knowledge and skills required for proficient adjudication, therefore, at the end of the fiscal year, more than half of the staff had less than one year of experience. In the Fiscal Year 2021 Budget Justification, RRB management acknowledged that currently only two initial survivor claims examiners have more than three years of experience and only two initial retirement claims examiners have more than five years of experience.

In addition, RRB Management stated that the performance plan for goal II-A-7 is to pay or deny a disability benefit within 100 days of the date the application is filed, but in fiscal year 2019, this goal was met only 12.5 percent of the time. RRB Management also noted that a study was conducted that showed it takes about 245 days to make a disability decision, therefore, RRB is re-baselining the performance goal for this measure.

Although RRB management has taken some actions to address disability program and performance, many more improvements are needed, and the RRB's disability program continues to be at risk for fraud and abuse.

Refer to Appendix A for a list of relevant reports for this challenge.

Challenge 2 – Improve Information Technology Security and Complete System Modernization

Why is this a serious management challenge? Improving cybersecurity and modernizing the RRB's systems is vital to support the ability to meet its core mission. Managing cybersecurity risks is critical to improvement of the security posture of the federal networks and critical infrastructure. Executive Order 13800 emphasizes the importance of strengthening the cybersecurity of federal networks. In the Fiscal Year 2021 RRB Budget Justification, RRB acknowledged that they had a total committed/obligated cost of $13,894,709 as of January 21, 2020, towards alignment of the information technology (IT) initiatives to the proposed Phased RRB Transformation. The RRB Transformation Roadmap consists of three phases – Stabilize (fiscal years 2020-2021), Modernize (fiscal years 2021-2023), and Perform (fiscal years 2023- 2024). In its effort to complete the Stabilize phase and begin work in the Modernize phase, the agency is requesting $13,850,000 for fiscal year 2021 and plans to request $21,325,000 for fiscal years 2022 and 2023 to complete the Transformation.

RRB is required by the Federal Information System Modernization Act (FISMA) to report the status of its information security program to OMB and FISMA metrics to the Department of Homeland Security. An annual independent assessment of the agency's IT program is performed for the cybersecurity of RRB networks and critical infrastructure.

In the annual FISMA audits for fiscal years 2019 and 2018, the OIG's contractor found that RRB did not comply with FISMA legislation and OMB guidance and that sampled security controls selected from National Institute of Science and Technology Special Publication 800-53, Rev.4 demonstrated ineffectiveness, and thus the RRB's Information Security Program (ISP) did not provide reasonable assurance of adequate security.

In fiscal year 2019, the OIG's contractor determined that policies and procedures were not regularly updated and had not been developed for the majority of systems and controls, system owners and IT management failed to communicate with each other resulting in missing security controls and processes, and resource constraints had not been properly addressed through changes in IT strategy. The contractor also reported that the RRB's ISP was not operating effectively, because the program's overall maturity did not reach Level 4: *Managed and Measurable.* A total of 19 detailed recommendations were made to address these identified weaknesses. RRB management concurred with all of the recommendations. RRB management comments stated that the Chief Information Officer and the Chief Information Security Officer recognized that improvement was required to have an effective ISP. OIG has not received any requests to close any of these recommendations, thus all 19 remain open. For the fiscal year 2018 FISMA audit, although findings were consistent with prior FISMA audit results, RRB management disagreed with the conclusion that the RRB's ISP was not providing adequate assurance of adequate security. The report included 31 recommendations for improvement. The RRB has implemented 8 of these recommendations and 23 remain open.

In the Fiscal Year 2019 PAR, RRB management stated that significant investment is essential to update the agency's outdated IT systems, reduce cybersecurity risk, and sustain mission operations. They also stated that RRB's Annual Performance Plan for fiscal year 2019 reflects one strategic objective that focuses on the specifics of achieving this goal of legacy systems modernization. Also in fiscal year 2019, the Chief Information Officer introduced an initiative called "On Track to Tomorrow." The initiative is composed of several IT projects that are designed to help RRB improve efficiency of operations, adhere to governance, and provide increased value to the railroad community. In the fiscal year 2019 PAR, RRB stated that in fiscal year 2020, they will complete the re-platform of legacy mainframe applications currently developed using COBOL/CICS/DB2. In addition, the contract, which was to assess RRB's core current businesses and develop a To-Be Blueprint for modernization, has been completed. However OIG auditors were informed that the contract to complete the re-platform of legacy mainframe applications was terminated in September 2020 and that a replacement contract is not in place.

In the Fiscal Year 2021 Budget Justification Performance Plan, the RRB identified five new performance goals for RRB's Transformation (formerly Legacy Systems Modernization), which are all related to the strategic goal to modernize IT operations that will sustain mission essential services.

In response to our concerns from the fiscal year 2019 PAR regarding improving the RRB's IT security and system modernization, RRB management's comments acknowledged the OIG's concern to establish and maintain a secure and reliable IT environment for its data, applications, and systems. They stated that they intend to comply with FISMA, to ensure adequate security protections for federal information systems and information. RRB management anticipates that the cybersecurity posture of the agency will improve and be sustained at an acceptable level, as they continue with the development and implementation of the IT modernization initiatives. They also stated that the RRB will continue to make incremental steps to reach the overall maturity goal of Level 4 – *Managed and Measurable*.

Refer to Appendix A for a list of relevant reports for this challenge.

Challenge 3 – Improve Management of Railroad Medicare

Why is this a serious management challenge? The Medicare topic is included on the President's Management Agenda.

Under the Social Security Act, (see 42 U.S.C § 1842(g)) the RRB has the authority to administer certain aspects of the Medicare program for qualified railroad beneficiaries.

Some of these provisions include eligibility determination, enrollment or removal from enrollment, premium collection, processing state buy-ins, and selection of a contractor to process Medicare Part B claims. The RRB administers the Railroad Medicare (RM) program for railroad workers and, since 2000, has contracted with Palmetto GBA, LLC (Palmetto), to process

Medicare Part B claims on behalf of RRB beneficiaries.[2] Within the RRB, the Office of Programs (Programs) is responsible for quality assurance and contract oversight of the RM contract with Palmetto.

At the end of fiscal year 2019, approximately 465,500 qualified railroad retirement beneficiaries were enrolled in RM Part A, and approximately 446,300 were also enrolled in Medicare Part B. During fiscal year 2019, Palmetto processed more than 8.5 million RM claims, and made approximately $832 million in benefit payments for Part B medical services. The Centers for Medicare and Medicaid Services (CMS) transferred/reimbursed RRB for $32 million in RM program costs during fiscal year 2019. Of that amount, approximately $18.3 million was transferred to fund the RRB's Specialty Medicare Administrative Contractor (SMAC), Palmetto, and $13.6 million was reimbursed for RRB expenses incurred for administering the program. In fiscal year 2018, the transfer was recorded as a reimbursement. Beginning fiscal year 2019, the amount transferred to fund the SMAC contract was recorded as a transfer rather than a reimbursement. This change was agreed to by CMS for intragovernmental reporting.

Over the years, the OIG has disagreed with RRB as to which RM related responsibilities belonged to the RRB, Palmetto, or CMS. In response to our recent audits, agency management continued to state that the Medicare program should be treated as one program and that CMS is responsible for the overall program, including RM.

In May 2020, an OIG audit found that the RRB did not publish payment integrity information or improper payment data for RM and determined that RRB's performance in reducing RM improper payments was inadequate. Three of the five recommendations that OIG made were directly related to RM. RRB disagreed with all three recommendations and stated that "…although Section 1842(g) of the Social Security Act provides the RRB with the authority to contract with and to oversee a contractor to perform Medicare Part B functions, including the functions of determining Medicare Part B payment amounts and of making these Medicare Part B payments, CMS and RRB agree that Medicare FFS (Fee-for-Service) is one program for improper payment reporting purposes." OIG disagreed and stated that they determined that the RRB should continue to separately report RM payment integrity information in its PAR due to the unique characteristics of the RRB's SMAC, its extended enterprise relationship with CMS, the lack of transparency for a separate RM program, and the less than optimal sampling of the RRB's SMAC, Palmetto.

Although RRB disagreed with our findings for this report for the reasons stated above, Programs stated that the RRB and CMS were working on an updated Memorandum of Understanding (MOU) between RRB and CMS, which would clarify each agency's responsibilities regarding RM reporting of improper payments. At the time of our report in May 2020, they stated that they expected the agreement (updated MOU) to be finalized by the end of 2020. Programs provided the OIG a recent update which stated that several meetings were held with RRB and CMS stakeholders to discuss updates to the MOU during the first half

[2] Palmetto GBA is the Railroad Specialty Medicare Administrative Contractor (RRB SMAC) that processes Part B claims for Railroad Retirement beneficiaries nationwide. As the SMAC, Palmetto has administrative responsibility for processing Railroad Retirement beneficiary claims only.

of fiscal year 2020 and significant progress was made; however, the meetings were postponed due to the shifting of resources to COVID-19 activities. Programs management indicated that the meetings with CMS will resume in the early part of fiscal year 2021 timeframe to finalize the changes.

Our previous audits identified improper payments that could have been prevented, improvements needed for improper payment reporting, and the need for improved controls and support to validate the accuracy of reimbursements the RRB receives to administer the RM program. In response, RRB management stated that it is not responsible for the RM program, they only review Palmetto's contract performance, and they believe that some improper payments related to RM can only be recovered under special limited circumstances. Due to RRB management's stance on this matter, they did not concur with many of our previous recommendations. We continue to disagree with RRB management that the RRB is not responsible for oversight and reporting responsibilities for this program. We stand by the recommendations made in our recent audit reports, many of which remain open. It is the RRB OIG's position that until CMS absorbs the administration of RM, including contract oversight of Palmetto, the RRB should continue to report RM payment integrity data and implement RM related audit recommendations. If not, there is a lack of transparency, as the RRB would not be held accountable for its role in maintaining effective oversight of Palmetto.

Due to the RRB's indifference to oversight of the RM program and the inefficiency of maintaining it as a separate program, there is no practical reason for its existence, thus elimination should be considered.

See Appendix A for a list of relevant reports.

Challenge 4 – Improve Payment Accuracy and Transparency

Why is this a serious management challenge? The topics of data, accountability and transparency are included on the President's Management Agenda.

One of the key drivers in the President's Management Agenda is an initiative to improve delivery of better results to the public and improving accountability to taxpayers. A specific strategy to accomplish this initiative is to improve the data available for decision-making and accountability. Fostering accountability and transparency is one way to improve data for both internal and external uses. Recent audits have identified instances where inaccurate reporting indicates the need to improve transparency at RRB.

- **Payment Accuracy**

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided funding for the RRB that consisted of an appropriation of $425 million to pay for the increase in unemployment benefits, with an additional $50 million provided to cover the cost of eliminating a waiting period for unemployment or sickness benefits. CARES Act funding also included $5 million to prevent, prepare for, and respond to the coronavirus. Issuance of these benefits required modifications to RRB systems, training for RRB staff, and revisions of RRB procedures.

Our oversight of CARES Act funds is ongoing, but we issued an interim report to discuss our current concerns. We determined that CARES Act benefits are being issued without any concurrent checks against state wages and unemployment benefits for the same periods. The RRB's current state wage match program will not begin to compare the RRB's CARES Act payments to state wage and benefit data for at least six months depending on the schedule with each particular state. RRB management indicated that the state wage match runs, that contain payments under the CARES Act, will begin in the spring of 2021 and will be completed by the end of calendar year 2021. The RRB's state wage match program is operating based on previously negotiated agreements that are not providing wage and unemployment data in a timely manner, and because of the timing, it decreases program integrity for CARES Act benefit payments. This extensive lag period severely impedes the timely identification of fraudulent situations under the CARES Act. To address these concerns, we recommended that the RRB obtain state wage match and unemployment data in a timelier manner. Agency management did not concur with this recommendation, stating that the RRB's ability to recover fraudulent benefit payments is not diminished because of the timing of the state wage match program. The OIG's finding remains unchanged and as such, we continue to see the need for our recommendation to be implemented.

- **Transparency**

The transparency issues discussed below represent our most recent concerns for these areas, and note that we previously reported challenges for these same audit topics. Our previously reported concerns continue to exist and are compounded by these newer audit findings.

Agencies are required to report improper payment data for the programs it administers in the payment integrity portion of the agency's PAR. As discussed in Challenge 3, our most recent improper payments report determined that the RRB did not publish payment integrity information or improper payment data for RM in its fiscal year 2019 PAR, as required. The RRB did not publish RM improper payment data, citing that CMS is responsible for the program as a whole, and is, therefore, responsible for improper payment reporting. We disagreed and determined that the RRB is responsible for RM reporting. RM improper payment data is not transparent within the overall Medicare data reported by CMS. By not reporting RM, the RRB was not transparent in publicly reporting several aspects related to RM, the most significant of which was that RM improper payments was approximately $107.1 million for fiscal year 2018, that the RM improper payment rate had increased considerably, and it exceeded the threshold allowable by improper payments legislation. Our audit made four recommendations related to action plans to reduce improper payments, reconciliation of data, and resuming RM reporting. RRB Management did not concur with three of the four recommendations. As stated previously, we disagree with the RRB's position and maintain that the RRB is responsible for RM reporting. We continue to see the need for our recommended corrective actions. These four recommendations and other prior recommendations remain open.

Federal agencies are required by the Digital Accountability and Transparency Act (DATA Act) to publish transparent financial data. Our recent audit determined that improvements are needed in RRB internal controls for the DATA Act. The RRB's Data Quality Plan did not exist when the DATA Act submission was made. As a result, associated risks to data quality in the RRB's spending data might not have been identified or managed. In addition, we found that RRB management's quarterly assurance statement did not contain the required statement of accountability to confirm the RRB's efforts to support data quality and assurance for connectivity/linkages across all data files. This occurred because agency management was unaware of the requirement for an accountability assurance statement. We identified deficiencies in RRB policies and procedures for the DATA Act that could impact the completeness, accuracy, timeliness, and quality of data submitted. For these specific DATA Act findings, we made four recommendations for improvement. RRB management concurred with all four recommendations. Three of these recommendations and prior DATA Act recommendations remain open. Previously, RRB management stated that they continue to make great strides in ensuring that the agency's DATA Act submissions are complete, accurate, and agree to applicable source systems. As such, they disagreed that this matter contributes to a serious management concern or challenge. In order for RRB to provide consistent, reliable, and searchable spending data that are displayed accurately for taxpayers and policymakers, we continue to see the need for our recommendations to be implemented in compliance with the DATA Act.

See Appendix A for a list of relevant reports.

Challenge 5 – Financial Management and Reporting Issues

Why is this a serious management challenge? Financial management and reporting issues continue to be a challenge for RRB management, as is outlined in many of our prior audit reports, as well as our audit concerns discussed in the following paragraphs.

OIG has continued to render a disclaimer audit opinion on the RRB's financial statements since fiscal year 2013, because OIG auditors have not been permitted to communicate with the RRB's component auditor as required by financial statement audit guidance. The audit firm employed by the National Railroad Retirement Investment Trust (NRRIT) is the RRB's component auditor. The NRRIT held approximately $25.4 billion of the RRB's $32.8 billion (77 percent) assets as reported in the RRB's fiscal year 2019 financial statements.

Our audit opinion on the RRB's fiscal year 2019 financial statements also included two material weaknesses that are discussed in this challenge.

<u>Financial Reporting</u>

This overall material weakness for financial reporting has been reported since fiscal year 2014. Within this overall material weakness, we discussed our fiscal year 2019 financial reporting concerns regarding ineffective controls, communication with the NRRIT's auditor, and social insurance valuation. We continued to find the need for internal control improvements for financial reporting.

Our concerns about our inability to communicate with the NRRIT's auditor continued. RRB management stated that they will continue to cooperate and respond to OIG requests by providing NRRIT related information within its possession. They also stated that it is not within their authority to compel NRRIT auditors to speak with OIG or provide them their workpapers.

RRB management did not concur with the recommendation we made during our fiscal year 2014 financial statement audit that called for establishment of an independent committee that would identify a functional solution that would enable communication between OIG and NRRIT's auditor.

Our actuarial contractor identified a material understatement of $2.3 billion for the open group surplus amount shown on the RRB's Statement of Social Insurance dated October 1, 2018. RRB management did not concur with our recommended corrective action.

While RRB management has taken some corrective action to address our financial reporting concerns regarding ineffective controls, no corrective actions have been taken to address our recommendations regarding communication with the NRRIT's auditor and social insurance valuation.

Deficient Internal Controls at the Agency-Wide Level

In this section, we discuss the second material weakness, deficient internal controls at the agency-wide level, which relates to our audit concerns in several areas, including compliance concerns, and concerns regarding railroad service and compensation.

- Ineffective Standards for Internal Control

OMB guidance states that an evaluation of internal controls must be performed for the agency as a whole. We determined that the five required components of internal control were not designed, implemented, and operating effectively. The five required components of internal control consist of: control environment, risk assessment, control activities, information and communication, and monitoring. If control principles or components have not been fully designed and implemented, they cannot be tested and must be considered ineffective. RRB management acknowledged OIG's concerns and stated that they are committed to strong internal control. In addition, they indicated that improvements were made and training was provided to responsible officials and agency leadership. Corrective actions related to this portion of the material weakness remain unimplemented.

- Information Technology Security and Financial Reporting Controls

Eight FISMA metric domains were assessed not effective by our FISMA contractor for the fiscal year 2018 FISMA audit. As a result, during our fiscal year 2019 financial statement audit, information system control risk was assessed as high in accordance with GAO's Financial Audit Manual guidance. RRB management disagreed with this audit finding. We did not make any recommendations for corrective action due to the 31 recommendations made by our contracted auditor.

- Compliance with Indirect Laws, Regulations, Contracts, Treaties, and International Agreements

We determine that the RRB had not established effective policies and procedures for 1) preventing agency noncompliance with indirect laws, regulations, and contracts; and 2) identifying treaties and international agreements impacting the RRB or the NRRIT. These policies and procedures are required by Financial Audit Manual guidance. RRB management did not concur with our recommendations for corrective action. Due to the significance of these audit concerns, these audit recommendations remain open.

- Compliance with RRA Benefit Payment Provisions

RRB management was not able to ensure compliance with RRA benefit payment provisions for fiscal year 2019 within allowable timeframes for our fiscal year 2019 financial statement audit. RRB management cited severe staffing shortages as the cause for delay. These quality assurance reviews that consisted of a sample of benefit payments totaling approximately $662.1 million were not completed until October 31, 2019, which was too late for us to complete our review.

- Controls Over Railroad Service and Compensation

We determined that RRB controls over creditable and taxable compensation were inadequate due to insufficient audit coverage. The RRB received approximately $4.6 billion in payroll taxes as of June 30, 2019. An insufficient number of railroad audits were being conducted and, therefore, railroad employer audits were not effective in ensuring the accuracy of payroll tax amounts. RRB management acknowledged the need for improvement and explained that the limited number of these audits was due to staffing and funding constraints. The audit recommendation remains open.

- RRB's DATA Act Policies and Procedures Need Improvement

OIG conducted an audit of RRB's DATA Act Submission for First Quarter of Fiscal Year 2019, and one of the objectives was to assess the RRB's implementation and use of the governmentwide financial data standards established by OMB and the Department of the Treasury. The audit concluded that the RRB's internal controls over DATA Act reporting were generally effective but need improvement. OIG's concerns are discussed below.

Our audit determined that the RRB's policies and procedures contained minimum standards and information for the RRB to manage and facilitate the reporting of financial and award data in accordance with the requirements of the DATA Act. Even though the procedures included various controls to ensure overall quality of the data, deficiencies were identified and improvements were needed. We also found that there were no procedures established to ensure File A and B totals matched. According to GAO, "[i]nternal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity." Therefore, management is responsible for designing policies and procedures to fit the agency's situation. We made one recommendation and management concurred with our recommendation. The recommendation remains open.

Due to these audit concerns, the lack of corrective actions for most of these recommendations, and unimplemented corrective actions for prior reports with financial management and reporting concerns, agency action is needed to address this challenge.

Refer to Appendix A for a list of relevant reports for this challenge.

Challenge 6 – Compliance Concerns Identified

Why is this a serious management challenge? Recent OIG audits have determined that the RRB has been noncompliant with various guidance. Noncompliance can have a far reaching impact on the protection of federal trust funds, assets, information security, governmentwide improper payments, and the effectiveness of agency operations.

Our recent audits found that the RRB was noncompliant in several areas, as discussed in this challenge.

- **Telework**

Our audit of the RRB's telework program determined that controls over the RRB's telework program were not effective to ensure compliance with applicable telework laws, regulations, and policy. Specifically, we identified that 1) RRB's policy did not contain appropriate telework managing officer information, 2) RRB's privacy administrative circulars that support the telework program were outdated, 3) RRB's controls were not fully effective for ensuring that telework training and written agreements were completed, and 4) RRB had not monitored or evaluated its telework program in accordance with applicable guidance. Further, we determined that the RRB submitted inaccurate and unsupported data to the Office of Personnel Management for fiscal years 2017 and 2018.

Adherence to applicable laws and guidance, in addition to a fully effective internal control system over the telework program, would help ensure the protection of privacy data and agency information used during teleworking. Our audit made five recommendations in these specific areas for improving internal controls and compliance with teleworking laws and regulations. RRB management concurred with two, and did not concur with three. Our recommendations remain as written. All five recommendations remain open.

- **Improper Payment Reporting**

Our mandated improper payments audit determined that the RRB was noncompliant with improper payment legislation for the second consecutive year for its RM program. We cited the RRB with noncompliance because 1) the RM program had an improper payment rate of 12.5 percent according to the improper payment reporting data provided by CMS in fiscal year 2019, which exceeded the 10 percent threshold, for improper payment reporting, 2) the RRB did not publish a corrective action plan for the prior year RM improper payment rate of

10.53 percent, and 3) the RRB did not publish an annual reduction target in its payment integrity report or meet the prior year's published rate of 9.93 percent.[3]

Although the RRB was required to report RM improper payment data in its payment integrity report, it did not report RM data because RRB management determined that CMS is responsible for reporting all Medicare data as a whole and, if RRB reported this data, it would duplicate the data reported by CMS. However we found that the RRB did not have appropriate documentation to support their claim that RM was included in CMS' overall Medicare improper payment reporting. We continue to disagree that CMS is responsible for the RM program as discussed in Challenge 3. Because RRB management does not agree that they are noncompliant, they did not concur with our recommended actions this year or last year. Our recommendations restated corrective actions required by improper payment legislation. However, RRB management has not taken the corrective actions required by legislation.

- **Information Technology Security**

As discussed in Challenge 2, the RRB has been noncompliant with FISMA legislation and OMB guidance for two consecutive years. Although agency management acknowledged the need for improvement, corrective actions have only been made for 8 of the 50 recommendations issued in the fiscal year 2019 and 2018 FISMA reports.

Compliance with applicable authoritative guidance continues to be a challenge for RRB management as discussed in the audit reports referenced for this challenge, as well as other prior compliance audits conducted by our office, or, for our office, through contracted audits. Many compliance related recommendations from our prior reports remain open, and thus we remain concerned about RRB's efforts to be compliant with authoritative guidance.

Refer to Appendix A for a list of relevant reports for this challenge.

We plan to continue our oversight in all areas emphasized in this letter through audits, investigations, and other follow-up activities. We encourage RRB to take meaningful action on these challenges in order to prevent fraud, waste, and abuse in the programs and operations of RRB, and to reduce improper payments in all of its programs.

Original Signed By:

Martin J. Dickman
Inspector General

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[3] The information provided is according to a CMS's Comprehensive Error Rate Testing (CERT) report titled *November 2018 Final Report For Contractor RRB*. The report included reviewed claims data from the sampling period July 2016 through June 2017.

APPENDIX A: AUDIT REPORTS

Please visit https://www.rrb.gov/OurAgency/InspectorGeneral/Library for our audit reports.

Improve Agency Disability Program Integrity

- Railroad Retirement Board (RRB) Office of Inspector General (OIG), *Audit of Job Duty Verification Procedures for Long Island Rail Road Occupational Disability Applicants*, Report No. 13-02 (Chicago, IL: January 15, 2013).
- RRB OIG, *Control Weaknesses Diminish the Value of Medical Opinions in the Railroad Retirement Board Disability Determination Process,* Report No. 16-05 (Chicago, IL: March 9, 2016).
- RRB OIG, *The Implementation of the Disability Program Improvement Plan at the Railroad Retirement Board Did Not Result in a Fully Established Fraud Risk Assessment Process,* Report No. 19-15 (Chicago, IL: September 27, 2019).
- RRB OIG, *The Railroad Retirement Board Disability Programs Do Not Effectively Consider Fraud Risk Indicators in the Disability Process,* Report No. 19-16 (Chicago, IL: September 27, 2019).
- RRB OIG, *The Use of Medical Experts During Disability Determinations at the Railroad Retirement Board Can Be Improved,* Report No. 19-17 (Chicago, IL: September 27, 2019).

Improve Information Technology Security and Complete System Modernization

- RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 Fiscal Year 2018,* Report No. 19-03 (Chicago, IL: December 19, 2018).
- RRB OIG, *Selected General Information System Controls at the Railroad Retirement Board Were Not Always Adequate,* Report No. 19-07 (Chicago, IL: May 14, 2019).
- RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 Fiscal Year 2019,* Report No. 20-04 (Chicago, IL: December 18, 2019).

Improve Management of Railroad Medicare

- RRB OIG, *Railroad Retirement Board Did Not Calculate Reimbursed Medicare Costs in Accordance with Federal Requirements,* Report No. 16-10 (Chicago, IL: August 22, 2016).
- RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Elimination and Recovery Act in Fiscal Year 2018 Performance and Accountability Report,* Report No. 19-09 (Chicago, IL: May 30, 2019).
- RRB OIG, *Railroad Medicare Controls Over Evaluation and Management Services Were Not Fully Adequate,* Report No. 19-10 (Chicago, IL: August 5, 2019).

- RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Reporting in the Fiscal Year 2019 Performance and Accountability Report,* Report No. 20-06 (Chicago, IL: May 12, 2020).
- RRB OIG, *Controls over Medicare Premium Penalties and Refunds Can Be Improved,* Report No. 20-07 (Chicago, IL: June 4, 2020).

Improve Payment Accuracy and Transparency

- RRB OIG, *Railroad Retirement Board's Initial DATA Act Submission, While Timely, Was Not Complete or Accurate,* Report No. 18-01 (Chicago, IL: November 8, 2017).
- RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Elimination and Recovery Act in Fiscal Year 2018 Performance and Accountability Report,* Report No. 19-09 (Chicago, IL: May 30, 2019).
- RRB OIG, *Audit of Railroad Retirement Board's Digital Accountability and Transparency Acts of 2014 Submission for First Quarter of FY 2019,* Report No. 20-01 (Chicago, IL: November 6, 2019).
- RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Reporting in the Fiscal Year 2019 Performance and Accountability Report,* Report No. 20-06 (Chicago, IL: May 12, 2020).
- RRB OIG, *Management Information Report: Interim Report Regarding CARES Act Expenditures and Controls,* Report No. 20-08 (Chicago, IL: September 28, 2020).

Financial Management and Reporting Issues

- RRB OIG, *Fiscal Year 2014 Financial Statement Audit Letter to Management,* Report No. 15-05 (Chicago, IL: March 31, 2015).
- RRB OIG, *Enterprise Risk Management Process At The Railroad Retirement Board Was Not Fully Effective,* Report No. 18-07 (Chicago, IL: July 9, 2018).
- RRB OIG, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2018,* Report No. 19-01 (Chicago, IL: November 15, 2018).
- RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 Fiscal Year 2018,* Report No. 19-03 (Chicago, IL: December 19, 2018).
- RRB OIG, *Audit of Railroad Retirement Board's Digital Accountability and Transparency Acts of 2014 Submission for First Quarter of FY 2019,* Report No. 20-01 (Chicago, IL: November 6, 2019).
- RRB OIG, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2019,* Report No. 20-02 (Chicago, IL: November 15, 2019).
- RRB OIG, *Management and Performance Challenges Facing the Railroad Retirement Board,* Report No. 20-03 (Chicago, IL: November 21, 2019).

Compliance Concerns Identified

- RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 Fiscal Year 2019,* Report No. 20-04 (Chicago, IL: December 18, 2019).
- RRB OIG, *Railroad Retirement Board’s Telework Program Needs Improvement* Report No. 20-05 (Chicago, IL: April 24, 2020).
- RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Reporting in the Fiscal Year 2019 Performance and Accountability Report,* Report No. 20-06 (Chicago, IL: May 12, 2020).

APPENDIX B: MANAGEMENT COMMENTS

Management's Comments

These are Management's Comments on the Management and Performance Challenges identified by the Railroad Retirement Board (RRB) Office of Inspector General (OIG).

CHALLENGE 1 – IMPROVE AGENCY DISABILITY PROGRAM INTEGRITY

The OIG asserts that RRB management has not been receptive to its recommendation to improve program integrity, and claims that because some recommendations made by the OIG or its contractors remain open, the RRB's disability program is at risk of fraud and abuse. The fact that only some of the recommendations remain open is evidence that the RRB has been receptive to recommendations to improve program integrity. A decision not to implement a recommendation as suggested, after a detailed analysis of that recommendation, does not reflect a reticence to implement changes. Rather, such action represents a fulfillment of management's responsibility to implement those changes that are cost effective and will, if adopted, actually improve program integrity. The integrity of all of the programs administered by the RRB are of the utmost concern to RRB management.

The OIG's discussion of the challenges facing the RRB in 2020 begins by again referencing a 2009 audit performed by the Government Accounting Office (GAO). In that report, now over a decade old, an observation was made regarding the approval rate and the possibility that such a rate *could be* indicative of a program problem. However, the OIG fails to note that the GAO did not conclude in that report that the rate did, indeed, reflect a program integrity problem, and subsequent reports have not raised the approval rate as an indicator of a lack of program integrity. As the OIG notes, the RRB administers a disability program for railroad employees who are either totally or occupationally disabled and those who are occupationally disabled are awarded annuities even though the employee may be able to perform other types of work. Most annuities are awarded under the occupational program and the approval rate, which has remained steady since the inception of the program in the 1940's, is more a reflection of the statutory requirements for approval than a measure of program integrity. In its 2009 report, the GAO provided the following example to highlight this fact:

> *"To be occupationally disabled, a worker must have a permanent physical or mental condition that prevents him or her from performing his or her railroad job. For example, a railroad engineer who cannot frequently climb, bend, and reach, as required by the job, may be found occupationally disabled."*[3]

The OIG notes the average occupational disability annuity rate, presumably to draw attention to the amount and the fact that the monthly annuity rate is not inconsequential. It is not the statutory role of Management to make judgments about how generous the benefit programs are, or to attempt to ascertain the motives of applicants, except to the limited extent it may affect the merits of their applications. However, management notes that for most, applying for a disability annuity results in a loss of income as a result of leaving railroad employment as well as a loss of income over time, particularly if the employee applies before acquiring 30 years of service. Little to no significance seems to be given to the fact that the occupational disability program is available only to career railroad workers, whose average age at application is over 55. In addition, railroad employees who retire on disability face a loss of healthcare coverage until they are eligible for Medicare. Finally, if the employee is capable of performing other work, the

[3] Government Accountability Office (GAO), *Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities*, GAO-09-821R, Page 7 (Washington, D.C.: Sept. 9, 2009).

earnings restrictions for disabled annuitants are considerably stricter than those who retire based on age.

The RRB addressed the concerns identified in the 2009 GAO report and subsequent OIG reports. The Disability Tracking of Physicians and Patterns "DTOPP" system was developed to identify the issue that occurred in the Long Island Railroad cases where three physicians were providing medical evidence in the majority of the cases. The agency is also tracking patterns of disability or sickness claims being reported out of a single railroad.

In addition, the RRB has implemented a number of program integrity changes based on our own analysis as well as recommendations made by the OIG. This includes making updates to the disability application form and the hiring of a Chief Medical Officer (CMO). The RRB has added a second level reviewer for all disability decisions and updated and improved fraud training for staff throughout the agency.

As discussed by the OIG, the RRB eliminated the mandatory use of specialist medical exams. This step was taken after Management carefully reviewed the cost and benefit of those exams. This review looked at whether the exams were helpful to the claims review process, whether they had impacted the approval rate, their cost, and whether they significantly impacted the time required for review of applications. Eliminating these exams will result in a significant saving of both time and money. Equally important, our review demonstrated this change will not adversely impact program integrity.

In an effort to monitor the impact of this change, Management has instructed the CMO to review a sampling of cases each month for which a) the primary impairment is orthopedic or psychological; b) no consultative examination was ordered; and c) the CMO did not review the medical information prior to adjudication. The CMO will prepare an annual report for the Board at the end of February, which will contain the CMO's findings and any corrective action she took related to her findings. Also, our Program Evaluation and Management Services (PEMS) division is working with the outside contracted medical professionals to conduct an annual review of a sample of orthopedic and psychological disability cases that are adjudicated without an Independent Medical Exam or a Specialist Consultative Exam to ensure that the appropriate medical evidence was in the file at the time of adjudication. This will help the Director of Programs and our CMO determine whether the policy changes require further revisions or further staff training.

The RRB addressed the issue raised by the OIG's outside contractor concerning the establishment of an entity that would assess fraud risk indicators within the Agency's benefit paying programs. To that effect, the RRB created the standing Fraud Risk Assessment Committee (FRAC). The purpose of the Committee is not only to assess fraud risk, but to also offer solutions to mitigate fraud risk in the administration of the Agency's programs. While the Committee has made some recommendations for improvements in processes, a recommendation for closing has not been made to the OIG to date. Experience has shown a reluctance on the part of the OIG to close out recommendations without extensive, detailed documentation, which some might view as beyond the norm. Nevertheless, given the difficulty in successfully closing out other OIG recommendations, before submitting a request for closing, the Committee is working to make sure that it compiles the level of detailed documentation desired so that the request will be approved.

In discussing the RRB performance plan, the OIG combines two customer service goals in their analysis of the disability program. Customer Service goal II-A-7 states that the RRB will make a decision to pay or deny a benefit or a disabled applicant or family member within 100 days of the date of application. Currently, the RRB is making a decision this decision within 100 days 12.5 percent of the time. This is different from goal II-A-8 which states that the RRB will make a payment to a disabled applicant within 25 days of the date of a decision or earliest payment date, whichever is first 94 percent of the time. Our actual performance was 84.1 percent, due to a loss of experienced staff in that unit.

Ultimately, the RRB remains steadfast in its commitment to administering the disability program in a manner that will maintain or improve program integrity and protect the National Railroad Retirement Investment Trust. Many of the recommendations and suggestions made by the OIG for program improvements have been incorporated into the way cases are processed and adjudicated. The RRB will continue to perform its due diligence in this area.

CHALLENGE 2 – IMPROVE INFORMATION TECHNOLOGY SECURITY AND SYSTEM MODERNIZATION

The RRB acknowledges the OIG's concern with its ability to establish and maintain a secure and reliable information technology environment for its data, applications, and systems. We understand and take very seriously the mandate of the *Federal Information Security Management Act of 2002* (FISMA), as amended by the *Federal Information Security Modernization Act of 2014,* to ensure adequate security protections for Federal information systems and information.

Additionally, during fiscal year (FY) 2020, leading up to the execution of the FY 2020 FISMA audit, the RRB focused its efforts primarily on addressing open findings and related recommendations identified in years prior to the FY 2019 FISMA audit. Through these efforts, we addressed and closed 63 POAMs and 22 OIG findings during FY 2020. As the RRB continues to develop and implement its IT modernization initiatives, we will proactively address the remaining findings and recommendations in order to improve the Agency's security posture and to sustain at acceptable levels.

Preliminary audit results for the FY 2020 FISMA audit indicate that Kearney & Company will assess our overall maturity at Level 2 – *Defined*, maintaining the rating from 2019. The RRB realized fifteen significant improvements across each of the eight domains, improving several lower level ratings to Level 3 – *Consistently Implemented*, which is one-step lower than Level 4 – *Managed and Measurable.* Additionally, for the Configuration Management domain, the Agency improved from Level 1 – *Ad-Hoc* to Level 2 – *Defined,* and for the Data Protection and Privacy domain, the Agency improved from Level 2 to Level 3. The preliminary FY 2020 audit results further demonstrate progress in improving our information security program and practices across the Agency as required by FISMA, OMB policy and guidelines, and National Institute of Science and Technology standards and guidelines. The RRB needs to make more progress in improving the overall security posture of the Agency and it is committed to continue to make incremental steps to reach the overall maturity goal of Level 4.

The RRB acknowledges that it was not able to relocate its mainframe to a cloud environment during FY 2020. During FY 2020, the Agency faced some challenges with the approach it took to re-platform its mainframe into a cloud environment. Numerous challenges with our approach caused the RRB to issue a stop work order and ultimately terminate its contract with its selected vendor. The RRB performed an alternatives analysis, based on industry standards and best practices, to identify a more cost-effective and executable plan to modernize its mainframe and ultimately its business applications that reside on its mainframe. At this writing, the RRB has identified an alternative and efforts are underway to acquire appropriate resources via contract to complete the modernization of the mainframe towards a cloud environment.

The RRB acknowledges that the initiative, “On Track to Tomorrow,” introduced by a previous CIO in 2019, has transitioned to a three-phased approach to IT modernization. The transition to a three-phased approach was necessary to account for the numerous activities and projects required to modernize nearly every component of the RRB enterprise. The three phases, ***Stabilize – Modernize – Perform***, represent the overall phases the RRB will traverse towards a comprehensive modernization of its enterprise architecture, infrastructure, legacy systems, legacy applications and security architecture. The approach identified by the previous CIO focused solely on seven distinct efforts and did not capture fully the extensive modernization required. FY 2020 proved a complex period of transition from that previous approach to our current comprehensive strategy. The transition through the phased approach continues into FY 2021 as the RRB seeks to emerge from the ***Stabilize*** phase and enter the ***Modernize*** phase.

CHALLENGE 3 – IMPROVE MANAGEMENT OF RAILROAD MEDICARE

The RRB acknowledges its responsibilities under the Social Security Act to administer certain provisions of the Medicare program for the railroad, including the administration of the Specialty Medicare Administrative Contractor (SMAC) contract with Palmetto GBA, LLC. beneficiaries or providers directly. Notwithstanding the Agency’s specified Medicare responsibilities for railroad annuitants, the Centers for Medicare & Medicaid Services (CMS), a component of the Department of Health and Human Services (HHS), administers the Medicare program as a whole.

The Memorandum of Understanding between the HHS, CMS, and the RRB (MOU13-61)[1] defines the scope of the relationship for both CMS and RRB regarding roles and responsibilities under the SMAC contract to provide specified health insurance benefit administration. MOU13-61 addresses the responsibilities of CMS and RRB relating to Medicare Part B claims processing and payment services, in support of the Medicare fee-for-service (FFS) program for a nationwide jurisdiction. MOU13-61 dictates that while the RRB will assess the SMAC performance, CMS provides overall program guidance. The RRB confirmed with CMS that CMS is responsible for the Medicare program as a whole, including CMS’ responsibility to report on Medicare improper payments in the HHS annual Agency Financial Report (AFR).

The OIG’s audit recommendations asserted that the RRB should report Medicare improper payment information associated with the SMAC’s results under CMS’ Comprehensive Error Rate Testing (CERT) program. CMS informed RRB that if the RRB reported the SMAC’s CERT results, that reporting would be duplicative of reporting already being done by CMS and would result in an overstatement of the Medicare improper payment reporting by the Federal Government as a whole. Specifically, CMS reports a combined overall error rate that includes all Medicare Administrative Contractors (MACs) and the RRB SMAC. As such, CMS and RRB agreed that RRB would no longer separately report CERT information. RRB shared this decision with OMB. This is not an attempt to mask any significant improper payment rates, but rather an effort to ensure correct improper payment reporting consistent with CMS’ administration of its Medicare program. Adopting the OIG’s suggestion would lead to incorrect and misleading government reporting.

[1] *Memorandum of Understanding, MOU13-61,* entered into by the Department of Health and Human Services, Centers for Medicare & Medicaid Services and the Railroad Retirement Board, April 12, 2013 (on file at RRB).

As part of our continuing contract administration, the RRB is responsible for utilizing improper payment information provided by CMS and following their procedures and regulations to help reduce FFS program payments. The actions taken by the RRB will continue to include but are not limited to:

- Work with CMS on a regular basis to ensure that the Memorandum of Understanding (MOU) is current and accurately reflects each agencies responsibilities,
- Preparing annual risk assessment to determine SMAC vulnerability,
- Utilizing the CERT improper payment rate information to prepare annual medical review strategies,
- Require the SMAC to submit an Improper Payment Activities Report (IPAR) after the final improper payment rate data is received, and
- Ensure that the SMAC submits regular updates to the RRB if the improper payment rate is not equal to accepted tolerance levels.

CMS and RRB continue their efforts to finalize an MOU by the end of fiscal year 2021.

CHALLENGE 4 – IMPROVE PAYMENT ACCURACY AND TRANSPARENCY

The RRB fully supports the Data, Accountability, and Transparency Cross-Agency Priority (CAP) goal as outlined in the President's Management Agenda. The RRB takes very seriously its responsibility for payment accuracy and transparency to ensure delivery of high quality data for internal and external customers. We disagree that the elements discussed, individually or collectively, rise to the level of a serious management concern or challenge.

1. **Payment Accuracy for CARES Act:** We disagree with the OIG statements and believe that RRB's established process for obtaining wage information from the States is the most effective and efficient manner currently available.

   In accordance with our established State Wage Match Program we perform State Wage matches two times per year with each State and the District of Columbia. We perform a wage match with New York four times per year. No State or the District of Columbia is under any obligation to renegotiate the existing contracts we have with them. Additionally, renegotiating any of these contracts to perform more frequent wage matches is unlikely to result in any additional protection against improper payments. Though States may receive wage information from employers on a quarterly basis, it takes time for States to then upload this information into their respective systems. Performing more frequent wage matches may result in the RRB wasting resources without any benefit, because the additional matches may be performed before a State has uploaded any additional data. Unemployment payments are issued daily by the RRB, based on the date of filing. Implementing the OIG's recommendation to conduct matches concurrently with payment would require daily matching with a State system, which is not currently possible and may yield no relevant data. Further, attempting to implement a daily matching protocol with each State specifically for CARES Act implementation would have deviated from our normal business process and delayed payment of CARES Act benefits in contrast to the purpose of the law.

2. **Transparency:** The OIG states that agencies are required to report improper payment data for the programs it administers in the payment integrity portion of the agency's PAR. As such, the RRB's payment integrity reporting includes information related to benefit programs provided under the Railroad Retirement and the Railroad

Unemployment Insurance Acts. OIG once again cites the RRB's decision not to publish improper payment data related to the Medicare program. To reiterate and as discussed in Challenge 3, the RRB confirmed with CMS that CMS is responsible for the Medicare program as a whole, including CMS' responsibility to report on Medicare improper payments in the HHS annual AFR.

3. **DATA Act**: We continue to make great strides in ensuring that the Agency's DATA Act submissions are complete, accurate and agree with applicable source systems. We will continue to work with the OIG to close open audit recommendations; however, it is worth noting that in OIG Audit Report No. 20-01, the IG's audit results demonstrated that the RRB achieved the "higher" data quality level validated by an extremely low error rate of 0.43%. Further, the GAO recognized RRB's DATA Act audit results in their report GAO-20-540, where they cited that RRB's data quality is at the highest level. As such, we disagree that this matter contributes to a serious management concern or challenge.

CHALLENGE 5 – FINANCIAL MANAGEMENT AND REPORTING ISSUES

Through this management challenge, the OIG discusses its continued issuance of a disclaimer of opinion on the RRB financial statements as well as asserts the need for improvements related to two material weaknesses identified in the financial statement audit particularly related to 1) financial reporting and 2) deficient internal controls at the agency-wide level. We continue to design and implement cost effective internal controls striving toward optimal operational efficiency. Though more improvements will come, we disagree with the OIG's characterization and consolidation of these matters into a serious management challenge. Specific comments are included below:

1. **Disclaimer Audit Opinion**: The Agency will continue to cooperate with the OIG and provide all NRRIT related information within its possession which the OIG requests. The Agency does not have the authority to compel the NRRIT auditors to provide their work papers to, or speak with the OIG. Additionally, the NRRIT and the United States Government Accountability Office (GAO) entered into an MOU that gives GAO access to information regarding NRRIT's annual financial statements and related financial statement audits in support of the U.S. Government's consolidated financial statements.[2] Therefore, the RRB disagrees with the OIG's inclusion of this matter as both a basis for a disclaimer of opinion and as a component of the financial reporting material weakness.

2. **Material weaknesses:**

   a. **Financial reporting**: The OIG bases this discussion upon fiscal year 2019 financial statement audit results and included three components: 1) ineffective internal controls, 2) communication with the NRRIT's auditor, and 3) social insurance valuation.

      i. *Ineffective Controls*: The RRB has taken significant corrective actions to strengthen our voucher processing internal controls, which the OIG recognized during the fiscal year 2020 financial statement audit, where the OIG closed this component of the financial reporting material weakness. Therefore, we disagree that this matter rises to the level of material weakness or serious management

[2] MOU for the *NRRIT Inclusion in Government-Wide financial Statements and GAO Access to Information,* entered into by the National Railroad Retirement Investment Trust (NRRIT) and the U.S. Government Accountability Office (GAO), dated October 31, 2018 (on file at RRB).

concern.

ii. *Communication with NRRIT*: As stated above, the RRB does not have the authority to compel the NRRIT auditors to provide their work papers to, or speak with the OIG. Further, the GAO, through an MOU with the NRRIT, has gained access to information regarding NRRIT's annual financial statements and related financial statement audit in support of the U.S. Government's consolidated financial statements.

iii. *Social Insurance Valuation:* The OIG has stated that their actuarial contractor identified a material understatement of $2.3 billion for the open group surplus amount shown on the RRB's Statement of Social Insurance dated October 1, 2018. RRB management did not concur with their recommended corrective action, which was to adopt the calculation method of the contractor, the reasons were detailed in RRB's response dated November 15, 2019 to the fiscal year 2019 financial statement audit report.[4]

The contractor's 2019 report itself stated that the RRB's "[a]ctuarial assumptions are within accepted actuarial practice and are consistent with the RRB's experience. The actuarial method is in accordance with Actuarial Standards of Practice for Social Insurance Systems."

The contractor's report further stated, "[t]o the extent that we have identified areas to be considered, these recommendations should be treated as professional opinions to be evaluated and considered by the Bureau of the Actuary and Research."

The RRB acknowledges that the OIG's contractor offered a professional opinion for the RRB to consider, but finds it inappropriate and unjustified for the OIG to use this as the basis for a material weakness in light of the fact that the contractor found that the RRB's methodology was still within accepted actuarial practice, and remained consistent with RRB's experience.

The RRB further rejects the finding of material weakness because the Bureau of Actuary and Research believes that the contractor's recommended method was flawed. In determining the surplus, the contractor based its calculation of the present value of future income on the tax rates projected in the 2019 Section 502 report. The Section 502 report reflected the known 7.1% loss for the period 10/1/2018-12/31/2018 and thus provided the best estimate of future tier II tax rates. By discounting the present value of future income using a 1.7% rate for the quarter (which equates to a 7% annual rate) but projecting future taxes using actual return, the contractor significantly overstated the surplus position (from $1.4 billion to $3.7 billion). The contractor's recommended method will overstate the surplus when actual return is less than their assumption and understate the surplus when actual return exceeds their assumption. The methodology chosen by the Bureau of Actuary and Research provides a more accurate position of a surplus than would result from adopting the OIG contractor's methodology.

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[4] Memorandum from Frank Buzzi, Chief Actuary, RRB, to Debra Stringfellow-Wheat, Deputy Assistant Inspector General for Audit, OIG, November 15, 2019 (published on page 124 of RRB's FY 2019 Performance and Accountability Report, available on RRB's website at: https://www.rrb.gov/sites/default/files/2019-11/par2019.pdf).

b. **Deficient internal controls at the agency-wide level:** Again, the OIG bases this discussion upon fiscal year 2019 financial statement audit results and included five components: 1) implementation of GAO and OMB standards for internal of control; 2) information technology security and financial reporting controls; 3) compliance with indirect laws, regulations, contracts, treaties, and international agreements; 4) compliance with Railroad Retirement Act benefit payments provisions; 5) controls over railroad service compensation; and 6) RRB's DATA Act Policies and Procedures Need Improvement.

i. *Ineffective Standards for Internal Control:* We acknowledge the OIG's concern and have continued making strides in implementing Enterprise Risk Management (ERM) at the RRB by leveraging the Management Control Review (MCR) infrastructure already in place. In fiscal year 2020, we incorporated an ERM based reporting structure into the MCR guide aimed at enhancing our ability to identify potential events that may affect the agency and manage the related risks within our risk appetite. In fiscal year 2021, we will fully implement the new ERM based MCR reporting along with training of responsible officials. We are committed to strong internal controls and will move forward with the next phase of ERM implementation.

ii. *Information Technology Security and Financial Reporting Controls*: We continue to disagree with the OIG's assertion that the RRB's FISMA maturity level directly impacts the financial reporting system. Specifically, the Agency accomplishes its major financial reporting objectives through its financial management system, which is a comprehensive proprietary software application from CGI Federal – Momentum Enterprise Solution – that resides on a cloud hosting service. The Agency's system is referred to as the Financial Management Integrated System (FMIS). CGI Federal has been FedRAMP authorized since January 2013. CGI Federal offers its FedRAMP Authorized financial management system as a shared service to the federal government and is currently servicing 11 other federal agencies. FMIS is separate and distinct from the Agency's internally managed Agency Enterprise General Information Systems (AEGIS), Benefit Payment Operations (BPO) and Financial Interchange (FI) system.

Additionally, after review of the 31 recommendations associated with the FY 2018 FISMA audit report, the results of the FY 2019 FISMA audit as well as consideration of the preliminary FY 2020 FISMA audit results, we could not find any impactful risk to the FMIS. Finally and as discussed in our response to Challenge 2, the preliminary FY 2020 audit results further demonstrate progress in improving our information security program and practices across the Agency as required by FISMA, OMB policy and guidelines, and National Institute of Science and Technology standards and guidelines.

iii. *Compliance with Indirect Laws, Regulations, Contracts, Treaties, and International Agreements:* In its findings issued during the fiscal year 2019 financial statement audit, the OIG states that "RRB management has not established effective policies and procedures for preventing agency noncompliance with indirect laws, regulations and contracts…" We continue to disagree with this statement and have previously communicated to the OIG that compliance with laws and regulations is intertwined throughout various agency policy and procedure documents, such as our administrative circulars and others, as well as throughout the extensive documentation compiled to comply with the Federal Manager's Financial Integrity Act of 1982 (FMFIA). The Agency's Management Control Review (MCR) program directly fulfills the requirements of FMFIA and is an example of a well-established policy and procedure to help ensure compliance with indirect laws, regulations, and contracts.

In this regard, the OIG specifically cited fiscal year 2018 FISMA audit results as an example of the RRB's noncompliance with an indirect law or regulation. The term "noncompliance" is vastly different from the improvement needed that the Agency has already completed and committed to continuing each year. The results from the fiscal year 2019 FISMA audit, as well as the preliminary fiscal year 2020 FISMA audit results, continue to demonstrate ongoing progress in improving our information security program and practices across the Agency as required by FISMA, OMB policy and guidelines, and National Institute of Science and Technology standards and guidelines.

Additionally, in its findings, the OIG states that "RRB management has not established effective policies and procedures … for identifying treaties and international agreements impacting the RRB or its component NRRIT." We again note the OIG has not cited any specific instance of our failure to identify a treaty or international agreement impacting the RRB or NRRIT. Both treaties and international agreements are either entered into with the advice and consent of the Senate or reported to Congress by the State Department. Accordingly, any policies and procedures that provide for regular monitoring and reporting of actions in Congress would necessarily result in the identification of either type of agreement. As noted in the FY 2019 and FY 2020 Financial Statement Audit, Laws and Regulations, Cycle Synopsis documents that were provided to the OIG, the RRB monitors for changes in laws through the Office of Legislative Affairs, which "monitors legislation and notifies RRB officials of new developments." Such monitoring specifically serves to notify the General Counsel of any treaties and/or international agreements involving and/or affecting the RRB or NRRIT. It is then within the General Counsel's regular duties to review, analyze, interpret, and provide relevant guidance relating to any law, regulation, or policy, to include treaties and international agreements, which impacts the RRB or NRRIT. We therefore find that our current policies and procedures are effective and further find it unnecessary to establish, as noted by the OIG, a "policy or procedure to obtain Department of State assurance" regarding the impact of any treaty or international agreement on the RRB or NRRIT as the OIG did not provide any explanation as to why such assurance would be necessary in light of the above.

iv. *Compliance with RRA Benefit Payment Provisions*: As cited by the OIG, the first half of the 2019 Quality Assurance report was not accomplished on time (9/30/19) due to significant staffing shortages in the unit. The report was completed and provided to the OIG on October 31, 2019. The RRB is working to address the staffing shortages that were caused by retirements and unexpected departures early in the year. We will continue to work with the OIG to provide accurate and complete information at the earliest possible date.

v. *Controls Over Railroad Service and Compensation:* We take our responsibility for ensuring that employers accurately report Tier I and Tier II creditable service and taxable compensation very seriously. As communicated to the OIG in response to fiscal year 2019 financial statement audit report, and in an effort to increase audit coverage, we retrained and transitioned an existing employee into an audit role as well as hired two seasoned auditors from outside of the Agency. Further, in fiscal 2020 we were able to hire two additional external auditors. These actions have increased the audit staff from one to six. Accordingly, the RRB has three audits in progress and anticipates finalizing these audits during fiscal year 2021.

vi. *RRB's Data Act Policies and Procedures Need Improvement*: As discussed in our response to Challenge 4, we continue to make great strides in ensuring that the Agency's DATA Act submissions are complete, accurate and agree to applicable source systems. We will continue to work with the OIG to close open audit recommendations; however, recent OIG and GAO audit results demonstrated that the RRB achieved the "higher" data quality level. We disagree that this matter contributes to a serious management concern or challenge.

CHALLENGE 6 – COMPLIANCE CONCERNS IDENTIFIED

The OIG has identified a management challenge that asserts that the RRB has been noncompliant with various guidance, which could influence the protection of federal trust funds, assets, government wide improper payments, and effectiveness of Agency operations. We are committed to serving as responsible stewards for our customer's trust funds and agency resources. We disagree with the OIG's characterization and consolidation of the following topics into a serious management challenge.

1. **Telework:** The RRB addressed the OIG's concern regarding compliance with telework laws, regulations, and policy through modified training for both employees and managers/supervisors as well as through revisions to its telework policy. The RRB released revised employee training in March 2020. Additionally, the RRB developed and published a managerial/supervisory telework training and required RRB managers and supervisors to complete the mandatory training by August 31, 2020. The employee and managerial/supervisory automated trainings comply with both the Telework Enhancement Act of 2010 and RRB Policy. An updated version of the RRB's telework policy that is consistent with the Telework Enhancement Act of 2010 and applicable portions of OPM guidance is currently in our internal review and approval process.

   The RRB disagrees with the OIG's statement that RRB submitted inaccurate and unsupported data to the Office of Personnel Management (OPM) because the RRB reports generalized/summarized information to the OPM. The RRB retains the supporting documentation for its records, but did not provide said data to OPM and was not required to do so. During FY 2018, the RRB changed automated personnel processing systems, which unfortunately, led to manual compilation of data from two HR time and attendance systems in order to complete OPM's telework report for FY 2018. The RRB acknowledges that a minor error occurred related to the summary data provided to OPM, where we inadvertently included some OIG employees in the consolidated numbers, due to the former time and attendance system's inability to distinguish between OIG and RRB employees. The error represented less than 10 employees in the OPM summary data for each fiscal year 2017 and 2018, which equated to a negligible error percentage (i.e. less than 5%) for each fiscal year. As communicated to the OIG, this error will not occur in future telework information reported to OPM for fiscal years 2019 or beyond, given that the new automated personnel system reports have the capability of excluding OIG employees and the RRB has streamlined its telework reporting methodology.

The RRB does not fully agree with three OIG recommendations because they were based on the evaluation of dated systems and practices in place in FY 2017 and FY 2018. Specifically, the OIG's observations related to their audit scope covering FY 2017 through FY 2018 had already been resolved through revised internal policy, updated automated training and implementation of a new personnel processing system in May 2018; affecting our telework program in FY 2019 and beyond. We reiterate that the revised automated trainings and draft RRB Telework policy comply with the Telework Enhancement Act of 2010 and OPM guidance (where applicable). RRB's updated telework policy, data collection tools present during and after FY 2019, and evaluation mechanisms are compliant with current telework statutes and applicable OPM guidance. Overall, the OIG found our Telework program reasonably implemented evidenced by lack of significant findings and recommendations.

2. **Improper Payment Reporting:** The OIG asserts that RRB was noncompliant with improper payment reporting due to exclusion of Medicare improper payment information associated with the SMAC's results under CMS' CERT program. As discussed in our response to Challenge 3 above CMS is responsible for the Medicare program as a whole and they have confirmed for us that the reporting responsibility thereunder is theirs alone. As stated in our response to Challenge 3, both the CMS and RRB have separate and distinct responsibilities for administering the Medicare FFS program. The RRB is responsible for utilizing improper payment information provided by the CMS and following their procedures and regulations to help reduce the FFS. CMS and RRB agree that Medicare FFS is one program for improper payment purposes.

3. **Information Technology Security:** As discussed above in our response to Challenges 2 and 5, preliminary audit results for the FY 2020 FISMA audit indicate that Kearney & Company will assess our overall maturity at Level 2 – *Defined*, maintaining the rating from 2019. The RRB realized fifteen significant improvements across each of the eight domains, improving several lower level ratings to Consistently Implemented, which is one-step lower than Level 4 – *Managed and Measurable.* Additionally, for the Configuration Management domain, the Agency improved from Level 1 – *Ad-Hoc* to Level 2 – *Defined,* and for the Data Protection and Privacy domain, the Agency improved from Level 2 – *Defined* to Level 3 – *Consistently Implemented*. The preliminary FY 2020 audit results further demonstrate progress in improving our information security program and practices across the Agency as required by FISMA, OMB policy and guidelines, and National Institute of Science and Technology standards and guidelines.