



U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

Management Information Report

Management and Performance Challenges Facing the Railroad Retirement Board for Fiscal Year 2023

Report No. 24-02

February 5, 2024



What We Found

The Reports Consolidation Act of 2000 and Office of Management and Budget Circular A-136 require the Inspector General to make a statement on what they consider to be the most serious management and performance challenges facing the agency and assess the agency's progress in addressing those challenges. As required, the Inspector General's statement was included in the Railroad Retirement Board's (RRB) fiscal year 2023 Performance and Accountability Report (PAR).

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 Transparency and Management of Railroad Medicare
4. Improve Payment Accuracy and Transparency
5. Achieving a Clean Opinion on Agency Financial Statements and Internal Controls over Financial Reporting
6. Compliance Concerns Identified

Management's Comments and Our Response

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

What We Did

Our identification of management and performance challenges facing the RRB was based on recent audits, reviews, investigations, follow-up activities, and issues of concern to the Office of Inspector General.

We previously provided these management challenges to the RRB for inclusion in its fiscal year 2023 PAR.

Our objective was to identify and assess the most serious challenges facing RRB management during fiscal year 2023.

Contents

INTRODUCTION	1
OBJECTIVE, SCOPE, AND METHODOLOGY	2
MANAGEMENT’S COMMENTS AND OUR RESPONSE	2
RESULTS OF REVIEW	3
CHALLENGE 1 – IMPROVE AGENCY DISABILITY PROGRAM INTEGRITY	3
CHALLENGE 2 – IMPROVE INFORMATION TECHNOLOGY SECURITY AND COMPLETE SYSTEM MODERNIZATION	5
CHALLENGE 3 – IMPROVE TRANSPARENCY AND MANAGEMENT OF RAILROAD MEDICARE	8
CHALLENGE 4 – IMPROVE PAYMENT ACCURACY AND TRANSPARENCY	11
CHALLENGE 5 – ACHIEVING A CLEAN OPINION ON AGENCY FINANCIAL STATEMENTS AND INTERNAL CONTROLS OVER FINANCIAL REPORTING	14
CHALLENGE 6 – COMPLIANCE CONCERNS IDENTIFIED	20
APPENDIX I: MANAGEMENT COMMENTS	25
APPENDIX II: REPORTS	41
ABBREVIATIONS	45
LIST OF FIGURES	
FIGURE 1. FISCAL YEAR 2023 YEAR-END CLOSING BULLETIN	17

INTRODUCTION

The Reports Consolidation Act of 2000 and the 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.¹ As required, the Inspector General's (IG) statement was included in the Railroad Retirement Board's (RRB) fiscal year 2023 Performance and Accountability Report (PAR).²

The 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 Act (RRA) and Railroad Unemployment Insurance Act (RUIA). 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.³

In fiscal year 2022, the RRB paid retirement-survivor benefits of nearly \$13.5 billion to about 506,000 beneficiaries and paid unemployment-sickness insurance benefits of approximately \$90.4 million 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 Transparency and Management of Railroad Medicare
- Improve Payment Accuracy and Transparency
- Achieving a Clean Opinion on Agency Financial Statements and Internal Controls over Financial Reporting
- Compliance Concerns Identified

The challenges this year include items relating to prior Office of Inspector General (OIG) concerns or those identified in prior audits, OIG investigations, the President's Management Agenda, and areas related to the RRB's core mission.⁴ Many of this year's challenges have been repeatedly included in prior statements. Some have been included in one form or another for at

¹ Office of Management and Budget (OMB), *Financial Reporting Requirements*, Circular No. A-136 Revised (Washington, D.C.: May 19, 2023).

² Railroad Retirement Board (RRB) Office of Inspector General (OIG), *The Office of Inspector General's Report on the Railroad Retirement Board's Financial Statements in the Fiscal Year 2023 Performance and Accountability Report*, Report No. 24-01 (Chicago, IL: November 15, 2023).

³ Social Security Act (42 U.S.C. § 1842(g)).

⁴ The President's Management Agenda, *The Biden-Harris Management Agenda Vision*, <https://www.performance.gov/pma/>.

least nine years. Because the RRB has either dismissed our concerns or has not taken sufficient actions to address them, we continue to highlight these repeated critical challenges.

Objective, Scope, and Methodology

Our objective was to identify and assess the most serious challenges facing RRB management during fiscal year 2023. Our identification of management and performance challenges facing the RRB was based on recent audits, reviews, investigations, follow-up activities, and issues of concern to the OIG.

Management's Comments and Our Response

As required, these management and performance challenges were provided to RRB for inclusion in its fiscal year 2023 PAR.⁵ Subsequently, RRB management provided written comments in its PAR, and we provided the full text of these comments in Appendix I.

In its comments, RRB management acknowledged some of the challenges identified by OIG and disagreed with the majority 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 by the IG. Some of the actions described by the RRB did not always meet the intent of OIG recommendations nor do they always address the weaknesses that remain. Lastly, RRB management recommended that the OIG close the non-concurred improper payments and Railroad Medicare OIG recommendations without implementation. RRB management stated that their decision not to implement a recommendation is after a detailed analysis of the recommendation. RRB management also stated that their decision does not reflect a resistance to implement change, but represents a fulfillment of their responsibility to implement those changes that are cost effective and will result in improvements.

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

⁵ RRB OIG Report No. 24-01.

RESULTS OF REVIEW

This management information report presents the following six major management and performance challenges facing the RRB for fiscal year 2023.

Challenge 1 – Improve Agency Disability Program Integrity

Why is this a serious management challenge? The potential for fraud, abuse, and mismanagement in the RRB’s disability program remains high. Over the years, we have issued numerous audit recommendations directed towards increasing program integrity within the RRB’s disability program. Investigative work in this area continues as well. However, RRB has failed to enact substantial change to a program valued at approximately \$710 million in fiscal year 2022 (\$475 million for occupational disability and \$235 million for total disability).⁶ Disability program integrity remains one of my top concerns.

The potential for the RRB’s exposure to fraud and abuse is compounded by the lack of timely corrective actions and the RRB’s rejection of issues identified not only in the past ten years but in more recent audits completed in 2019 and 2021.⁷ In six prior audits, we made 34 recommendations to address disability findings, of which 20 remain open at the time of this statement. All of these recommendations should still be implemented as reported. Of the 20 open recommendations, RRB management concurred with 6 of them. For these six recommendations, two have been open for more than a decade, one has been open for over seven years, and three for over four years. In response to our previous management challenges, the RRB acknowledged that some recommendations are still open because management’s intentions are to complete a detailed analysis of the recommendations and establish a commitment to implement those program integrity improvement changes that are considered cost effective. However, fraud risk increases as time passes without the RRB taking timely corrective actions. This area also remains a challenge because the RRB previously reported that additional staff are needed to meet its timeliness goals and to ensure payment accuracy. This is discussed in further detail later in this challenge.

Adding support to our concerns, a prior audit report, issued by the Government Accountability Office (GAO), conducted of the RRB’s occupational disability program 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, weaknesses in program design, or both.”⁸ The RRB’s approval rate for occupational disabilities was 97.62 percent during fiscal year 2022. The GAO report also stated that they identified these and other areas in the occupational disability program that require further evaluation. Because we continue to identify weaknesses

⁶ A railroad employee is considered occupationally disabled if the physical or mental condition is such that the employee is permanently disabled for work in his or her regular railroad occupation, even though the employee may be able to perform other kinds of work.

⁷ Details regarding these reports can be found in our previously reported challenges.

⁸ Government Accountability Office (GAO), *Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities*, GAO-09-821R, (Washington, D.C.: September 9, 2009). This review of occupational disability claims was limited to the Long Island Rail Road and seven other commuter railroads covered by the Railroad Retirement Act (RRA).

in RRB's occupational disability program, the statement in GAO's report remains valid and reflects that improvements are still needed in the program.

Total and occupational disability awards are high value and can be abused by railroad employees. For fiscal year 2022, 7,500 total disabled annuitants received an average monthly total disability annuity of \$2,425 and 9,700 occupationally disabled annuitants received an average monthly occupational disability annuity of \$3,612. The RRB is statutorily required to periodically review disability annuitant's impairment(s) and work activity to determine if the annuitant continues to be entitled to disability benefits.⁹ The RRB calls this evaluation a continuing disability review (CDR). In general, the CDR process includes the RRB obtaining recent medical evidence and other documents from awardees and determining if recovery from a disability has occurred. If the RRB confirms recovery, the disability is terminated. The breadth and effectiveness of the RRB's CDR program is an area of concern. At the start of fiscal year 2022, there were 923 pending CDR actions, and the Disability Benefits Division (DBD) completed 490 CDRs in fiscal year 2022. In comparison, the RRB paid 17,200 disability annuities during fiscal year 2022. Improvements in the RRB's oversight of CDRs will help minimize disability overpayments and support the RRB's mission. According to the RRB, "[i]n carrying out our mission, the RRB will pay benefits to the right people, in the right amounts, in a timely manner, and will take appropriate action to safeguard our customers' trust funds."

A prior audit report, issued by GAO in 2018, reported that the RRB needed to take actions to improve the effectiveness and oversight of CDRs.¹⁰ GAO found that most beneficiaries were not subject to medical CDRs, and the RRB's data used to identify unreported earnings and potential overpayments was outdated. In addition, GAO determined RRB's oversight of its CDR program has focused on high-risk reviews rather than overall program data. GAO made three recommendations, the RRB concurred with the three recommendations and implemented corrective action, and GAO closed these recommendations. GAO also recommended that Congress consider giving RRB access to the National Directory of New Hires, a national database of wage and employment information that would enable it to identify potential overpayments sooner. As of May 2023, no legislation had been enacted related to this matter of Congress.

In the RRB's fiscal year 2022 PAR, RRB management explained that the near 100 percent occupational disability approval rate reflects the statutory requirements for approval more than a measure of program integrity. They stated because of these statutory requirements, many recommendations made by the OIG will not address the disability approval rate. In addition, RRB management explained that the 2009 GAO report cited by the OIG was over a decade old and asserts that the report did not actually make the conclusion that the approval rate was indicative of lax internal controls in RRB's decision-making process, weaknesses in program design, or both. In the RRB's fiscal year 2020 PAR, RRB management also mentioned they have been addressing the concerns in the 2009 GAO report and subsequent OIG reports by developing the Disability Tracking of Physicians and Patterns system to identify the issue that

⁹ RRB regulations in 20 Code of Federal Regulations § 220.185 through 187 and 220.15 through 20 describe the broad categories of circumstances when the RRB will conduct a continuing disability review and the frequency of review of disability determinations under the RRA.

¹⁰ GAO, *Railroad Retirement Board: Actions Needed to Improve the Effectiveness and Oversight of Continuing Disability Reviews*, GAO-18-287, (Washington, D.C.: February 21, 2018).

occurred in the Long Island Rail Road cases where three physicians provided a majority of the medical evidence, and that they are tracking patterns of disability or sickness claims reported out of a single railroad.¹¹

Staffing has been an issue according the RRB. In the fiscal year 2022 PAR, RRB management explained that DBD experienced a 28 percent staffing loss, and in the fiscal year 2021 PAR and fiscal year 2022 PAR stated that to reduce the number of pending cases and to improve timeliness DBD planned to hire additional initial claims examiners. In the fiscal year 2024 Justification of Budget Estimates, RRB management indicated that the Office of Programs (Programs), of which DBD is a part, has been operating at reduced capacity for six years. As of February 14, 2023, 26 percent of staff within Programs can retire within the next year and 33 percent can retire within the next three years. The sustained low staffing levels have led to backlogs in cases that require post award adjustments. Lastly, as of March 13, 2023, the DBD had backlogs of approximately 2,314 initial disability decisions and 2,738 early Medicare cases were pending decisions.

Although RRB management has taken some actions to address the disability program and its performance, many more improvements are needed as recommended by GAO, RRB OIG, and independent public accounting (IPA) firms engaged to conduct RRB OIG audits. The RRB must also not ignore Congressional concerns from the past. RRB should advocate for legislative changes on behalf of the railroad community to overcome perceived statutory constraints, work expeditiously on closing recommendations, and ensure millions of dollars in unwarranted expenses are not paid to ineligible beneficiaries. If nothing changes, the RRB's disability program continues to be at high risk for fraud and abuse, unnecessarily draining the railroad community's social insurance funds. Additionally, the culture and stress of paying benefits at such a high approval rate could potentially impact the RRB's disability division and its employees. A federal disability program that, according to the administering agency, is established to achieve a near 100 percent approval rate is very troubling and needs to be reassessed by Congress.¹²

Refer to Appendix II 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 an ongoing challenge for the agency. Secure and modern information technology (IT) systems are vital in supporting the ability to meet the RRB's core mission and to transform its core business processes and services while safeguarding information. Managing cybersecurity risks is critical to the security posture of federal networks and infrastructure. The President's Management Agenda requires a priority of delivering excellent, equitable, and secure federal services and customer experience.

¹¹ GAO-09-821R.

¹² The approval rate for occupational disability claims in fiscal year 2022 was 97.62 percent.

In the RRB's fiscal year 2024 Justification of Budget Estimates, the RRB acknowledged that they continued to have \$65 million available for IT projects. Approximately \$39 million of the \$65 million, was marked for IT modernization. The remaining \$26 million was additional funding related to the 2019 coronavirus pandemic. Using this additional funding, RRB will focus on its fully funded IT initiatives and planned projects.

In the annual Federal Information Security Modernization Act of 2014 (FISMA) audits for fiscal years 2018, 2019, 2020, 2021, and 2022, the RRB did not comply with FISMA legislation or OMB guidance. As reported in the fiscal year 2022 FISMA, the sampled security controls selected from National Institute of Science and Technology Special Publication 800-53, Rev 5 demonstrated ineffectiveness, and thus, the RRB's information security program (ISP) did not provide reasonable assurance of adequate security. Auditors observed various improvements across the agency that demonstrated RRB's commitment towards progress and noted that RRB has ongoing initiatives that, if fully implemented, will further mature RRB's ISP and practices. However, based on the fiscal year 2022 Core IG FISMA Reporting Metrics, RRB's ISP was not operating effectively. RRB's ISP did not meet the fiscal year 2022 Core IG FISMA Reporting Metrics' definition of effective because the program's overall maturity did not reach Level 4: Managed and Measurable. A total of 11 detailed audit recommendations were made to address these fiscal year 2022 identified weaknesses. RRB management concurred with all of the recommendations. RRB's response noted the recognition of necessary improvements to mature RRB's ISP and defined the Chief Information Officer and Chief Information Security Officer's planned actions to address the findings and recommendations presented in the audit report.¹³ In total, for all prior FISMA reports, the RRB has implemented 35 recommendations and 37 remain open.

On August 31, 2023, auditors reported the maturity of RRB's ISP to be not effective.¹⁴ The IPA firm reviewed the RRB's Agency Enterprise General Information System General Support System and determined that despite an overall not effective system, the RRB has sustained some of the prior year ratings, continued to improve on other ratings, and continued to make steady progress in improving their ISP.

The RRB continues to emphasize the need for improving cybersecurity and modernizing the RRB's systems through key reporting. In its fiscal year 2024 Justification of Budget Estimates, the RRB established Strategic Goal I, Modernize Information Technology Operations to Sustain Mission Essential Services with the Strategic Objective, RRB's Transformation. In support of Strategic Goal I, the RRB developed its Information Resources Management (IRM) Strategic Plan for Modernization and identified four goals which are: 1) Improve the User Experience, 2) Secure the Enterprise, 3) Upskill the IT Team, and 4) Optimize the Infrastructure. In efforts to achieve its goals and planning, the RRB identified four IT priorities, which are:

¹³ RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2022*, Report No. 23-02 (Chicago, IL: January 18, 2023).

¹⁴ An independent public accounting (IPA) firm made this determination using the required fiscal year 2023 Core and Supplemental Inspector General (IG) Federal Information System Modernization Act Reporting Metrics. The IPA firm provided the RRB OIG with what is commonly known as the CyberScope report. This report was uploaded in the Department of Homeland Security's CyberScope Portal.

- Priority 1 - Mainframe and Legacy Application Optimization in Cloud Environments/Platforms
- Priority 2 - Data Model Design/Implementation
- Priority 3 - Application/Customer Views
- Priority 4 - Optimize Infrastructure

In addition, the RRB addressed its ISP as a component of its Strategic Goal III, serve as responsible stewards for our customers' trust funds and agency resources, through its strategic objective, ensure effectiveness, efficiency, and security of operations.

Within its Justification of Budget Estimates Performance Plan, the RRB consolidated its performance indicators to assess its progress toward its strategic objective with reference to its IRM Strategic Plan for Modernization. The five performance indicators are:

- Indicator 1 - Complete the development of business rules strategy and data layer components of the modernization
- Indicator 2 - Deliver citizen-centric services and applications to railroad employees through mobile and web-ready interfaces
- Indicator 3 - Complete the streamlining of core business processes and modernize key applications, which support these processes
- Indicator 4 - Refine critical management processes in the following areas within the IT organization: change, project, program, and configuration
- Indicator 5 - Evaluate the re-engineering assessment deliverables to determine a cost-effective path forward to application rationalization and streamline business processes

RRB management stated that it continues to make progress towards a compliant ISP and make efforts towards improving its security posture to ensure compliance with emerging executive orders and emergency operational directives. RRB has partnered with the Department of Homeland Security (DHS) and participates in the Continuous Diagnostic and Mitigation (CDM) program and the CDM Dynamic and Evolving Federal Enterprise Network Defense program. This partnership with DHS is expected to strengthen its Information Security continuous monitoring compliance, vulnerability assessment, hardware and software management, configuration management, and privileged account management.

In response to our narrative for this challenge, RRB management stated that it has consistently recognized its regulatory responsibilities and acknowledges the OIG's concern with the RRB's ability to establish and maintain a secure and reliable IT environment for its data, applications, and systems. RRB also stated that it understands and takes very seriously the mandate of the Federal Information Security Management Act of 2002, as amended by FISMA. RRB management also explained that its leadership has been proactive in implementing the guidelines set forth in the NIST Cybersecurity Framework, managing supply chain threats as required by the Presidential Executive Order for Cybersecurity, developing a Zero Trust strategy, and implementing an Identity, Credential, and Access Management strategy that will

support both RRB and the Railroad community. According to the RRB, these actions improved its overall risk management for the agency.

RRB's progress has steadily been improving because they closed 21 Plan of Action and Milestones and 23 OIG findings during fiscal year 2022. RRB also plans to proactively address the remaining findings and recommendations in order to improve the agency's security posture. RRB's multi-year effort to stabilize its infrastructure and modernize its operations was expected to close by the end of fiscal year 2023.

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

Challenge 3 – Improve Transparency and Management of Railroad Medicare

Why is this a serious management challenge? Transparency and the management of Railroad Medicare continues to be a challenge for the RRB. The Railroad Medicare topic fits the President's Management Agenda priority of delivering excellent and equitable federal services. Additionally, Congress and the American public have required access to what the federal government spends every year and how it spends the money, including appropriations to federal agencies and down to local communities and businesses. Prior RRB OIG audit findings with 84 open recommendations over the years regarding Railroad Medicare have continued to raise issues of concern. RRB management concurred with 2 of these open recommendations and did not concur with 82 recommendations. For the reasons explained later in this challenge, we continue to see the need for action on all open recommendations.

According to the Social Security Act (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 disenrollment, premium collection, processing state buy-ins, and selection of a contractor to process Medicare Part B claims. The RRB administers the Railroad Medicare program for railroad workers and, since 2000, has contracted with Palmetto GBA, LLC (Palmetto), to process Medicare Part B claims on behalf of railroad beneficiaries.¹⁵

As of June 7, 2023, we were informed that the RRB established a Railroad Medicare bridge contract with Palmetto as a result of an earlier bid protest.¹⁶ GAO dismissed this protest on September 27, 2022 as described in last year's challenge. Since September 2022, RRB management has been extending the previous Palmetto contract until they could complete the process for a new long-term contract. RRB management explained they will try to obtain a new 10-year Specialty Medicare Administrative Contractor (SMAC) contract sometime during the

¹⁵ Palmetto GBA, LLC (Palmetto) has been the Specialty Medicare Administrative Contractor (SMAC) that processes Medicare Part B claims for Railroad Retirement beneficiaries nationwide. As the SMAC, Palmetto had administrative responsibility for processing Railroad Retirement beneficiary claims only.

¹⁶ According to USAspending.gov and the Federal Procurement Data System, the RRB initially awarded Palmetto contract number 60RRBH22C0080 on August 13, 2022 in response to solicitation number 60RRBH21R0011. According to GAO's bid protest website, a protest was filed under number B-421010.1. The prior contract awarded in 2012 was number RRB12C011. The bridge contract number is 60RRBH23C0003.

first quarter of fiscal year 2024, with the period of performance beginning on or around April 1, 2024. However, RRB management is anticipating another bid protest. We are also concerned that if RRB's Acquisition Management pursues this new acquisition in the same manner previously, they indeed will face another bid protest and more delays in awarding a new contract.

It is anticipated that a new 10-year contract with a total cost of approximately \$183 million will be awarded by the RRB this fall with a performance period beginning on April 1, 2024. In contrast, if the contract were to be transferred to the Centers for Medicare and Medicaid Services (CMS), federal taxpayers could potentially save a significant amount of funds due to the gained economy of scales.

Within the RRB, Programs is responsible for the day-to-day Railroad Medicare contract oversight, while RRB's Acquisition Management Division is responsible for successfully awarding the contract. The RRB is fully responsible for the Railroad Medicare contract.

At the end of fiscal year 2022, approximately 459,773 qualified railroad retirement beneficiaries were enrolled in Medicare Part A, and 442,615 were also enrolled in Medicare Part B. During fiscal year 2022 and on behalf of the RRB, Palmetto processed more than 7.9 million Railroad Medicare claims and paid approximately \$923 million in benefit payments to providers for Part B services. CMS transferred/reimbursed RRB for total expenses of \$38.3 million in Railroad Medicare program costs during fiscal year 2022, a total increase of 15 percent from the prior fiscal year. Of that amount, approximately \$23.3 million, a 27 percent increase from the prior fiscal year, was transferred to fund the RRB's Palmetto contract, and \$15.0 million, a 1 percent increase, was sent to the RRB for reimbursable expenses incurred for administering the program. At the time of this report, no information was available to explain the extraordinary contract funding increase. CMS paid the RRB for these administrative services through an existing and ongoing cost reimbursement agreement, interagency agreement, and memorandums of understanding. This total expense covered both direct and indirect costs for the RRB, the RRB OIG, and the cost of its Palmetto contract.

During the course of fiscal year 2022 audit fieldwork, we obtained cost per claim information directly from CMS and Palmetto and determined that the RRB pays a far greater claims processing fee than the fee paid by CMS. As it stands, the RRB is approving that Palmetto be paid approximately three times the amount, to process one Railroad Medicare Part B claim, as compared to the average processing fee that CMS pays its contractors. This is a significant difference considering the almost eight million claims processed by Palmetto. We provided this information to RRB management on June 16, 2022.

On August 31, 2022, a new Memorandum of Understanding (MOU) was signed by CMS and the RRB outlining each agency's responsibilities for Railroad Medicare. According to the new MOU, CMS is responsible for calculating and reporting the improper payment rate and improper payment reporting for the RRB's SMAC, Palmetto. Therefore, RRB is no longer responsible for reporting Railroad Medicare improper payment information.

As outlined in our last payment integrity report, and previous payment integrity reports, there has been no public transparency regarding the improper payment rate of the Railroad Medicare program. This report includes five recommendations addressing Medicare payment integrity transparency.¹⁷ The public and Congress have not been allowed access to Palmetto's performance over the years, including Palmetto's fiscal year 2022 performance in processing over 7.9 million claims to pay various providers over \$923 million. Five years of improper payment information is unknown to the public and Congress. Additionally, the MOU dated August 31, 2022 does not outline who is responsible for taking corrective action on past recommendations made by my office and does not mitigate prior issues identified by OIG auditors and investigators.

In the fiscal year 2022 PAR, RRB management provided actions taken to address the management of Railroad Medicare, such as 1) continue to prepare an annual risk assessment to determine SMAC vulnerabilities, 2) continue to use the Comprehensive Error Rate Testing (CERT) improper payment information to prepare annual medical review strategies, 3) continue to require the SMAC to submit a CERT Improper Payment Activities Report after the final improper payment data is received from CMS, 4) continue to ensure that the SMAC submits regular updates to the RRB if the improper payment rate is above the accepted tolerance levels, and 5) continue providing performance data and other data to CMS, when requested, in order to assist CMS with reporting requirements.¹⁸ RRB's actions are noted, however, we are emphasizing that past payment integrity reporting recommendations should be implemented as required by laws and regulations. For example, in one of our past payment integrity reports, we had a finding regarding the inadequacy of the CERT's sampling approach for Railroad Medicare.¹⁹ Auditors determined the sample size used to calculate the improper payment rate was too small to provide an accurate rate that the RRB could rely on to determine SMAC vulnerabilities, prepare medical review strategies, and use as a driver to reduce improper payments. Our review of nonpublic internal reports substantiated this determination by revealing an unreliable and ever fluctuating Railroad Medicare improper payment rate (i.e., rates from 2 percent up to 13.7 percent).²⁰ Further analysis of the Railroad Medicare's initial CERT sample size projected the margin of error at +/- 8.2 percent whereas a proper statistical sample would have a margin of error between +/- 3.00 percent and +/- 4.99 percent.

We continue to disagree with RRB management that the RRB is not responsible for the oversight of the now more than \$38 million per year 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 complete administration of the Railroad Medicare

¹⁷ RRB OIG, *The Railroad Retirement Board was Not Compliant with the Payment Integrity Information Act for Fiscal Year 2022*, Report No. 23-04 (Chicago, IL: May 19, 2023).

¹⁸ RRB OIG, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2022*, Report No. 23-01 (Chicago, IL: November 15, 2022).

¹⁹ 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).

²⁰ The Comprehensive Error Rate Testing (CERT) report, dated November 2017, contained a Railroad Medicare improper payment rate of 10.5 percent, while the subsequent annual November reports contained a rate of 12.5 percent, 9.3 percent, 13.7 percent, 2.0 percent, and 5.2 percent. Each CERT report warned readers to proceed with caution when interpreting data because of small sample sizes.

program, including contract oversight of Palmetto, the RRB should implement Railroad Medicare related audit recommendations. If not, the Railroad Medicare program will continue to lack transparency and in this weakened state of control, payment integrity will remain vulnerable, as no one would be held accountable for maintaining effective oversight of the SMAC Palmetto contract.

Due to the RRB's indifference to oversight of the Railroad Medicare program and the waste of maintaining it as a separate program, there is no practical reason for its existence, thus total Railroad Medicare program elimination should be strongly considered as a necessary means for strengthening federal financial integrity and curbing wasteful government spending. During a ten-year period of fiscal years 2013 through 2022, CMS paid the RRB approximately \$141 million in Railroad Medicare administrative costs plus funded an additional \$183 million for the Palmetto contract. To eliminate excessive federal program waste, the more than \$38 million in Railroad Medicare administrative and contract costs expended each year could be put to much better use through consolidation with the Medicare program and remedial budgetary oversight action.

See Appendix II for a list of relevant reports for this challenge.

Challenge 4 – Improve Payment Accuracy and Transparency

Why is this a serious management challenge? Recent audits and reviews have identified many instances where there is a need to improve payment accuracy and transparency at the RRB. In addition, delivering excellent, equitable, and secure federal services and customer experience is a priority in the President's Management Agenda. Data, accountability, and transparency are important factors in delivering an excellent and equitable federal service to the public. This includes providing high quality and timely information for decision-making, determining effectiveness of government programs, and providing accurate and timely spending information.

Payment Accuracy

A series of laws in 2020 and 2021 provided economic relief to the rail community and the RRB during the pandemic. These laws were the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Continued Assistance to Rail Workers Act, and the American Rescue Plan Act (ARPA). Each Act provided for the payment of enhanced and extended benefits under RUIA to railroad beneficiaries.

Through the CARES Act, Congress provided \$425 million in funding to the RRB. The funding was intended to pay for an 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 coronavirus. ARPA provided the latest pandemic funding and extended those benefit provisions allowed under the CARES Act. Through ARPA, Congress appropriated an additional \$2 million to fund additional extended unemployment insurance benefits and approximately \$28 million to remain available until expended, to prevent, prepare for, and respond to the pandemic. From

fiscal year 2020 through fiscal year 2022, the RRB made pandemic relief benefit payments of more than \$264.4 million.

Our oversight of CARES Act funding is ongoing. In three prior reports, we made eight recommendations to address CARES Act findings, six of which remain open.²¹ Even though the RRB did not concur with five of the six recommendations, we believe that all of these recommendations should still be implemented as reported. Details regarding these prior reports can be found in our previously reported challenges.

A recent OIG audit determined that the RRB lacked comprehensive controls for the 12(o) lien process.²² According to federal law, a railroad employee must reimburse the RRB for certain sickness benefits. The RRB refers to its right to reimbursement as a 12(o) lien. Specifically, Programs could not adequately determine the dollar value of sickness benefits that could potentially be recovered from 12(o) liens. In addition, the auditors determined that Programs did not ensure that 12(o) lien receivables information was entered into the RRB's financial management system timely. The auditors also determined that Programs' actions were not sufficient to ensure that all 12(o) liens were collected, since the auditors could not verify that all settled cases were transferred from the Railroad Unemployment Claims System, the system used to monitor ongoing cases, to the agency's financial management system, Financial Management Integrated System. The auditors made 21 recommendations and 5 of these recommendations were to address the payment accuracy weaknesses discussed in this section. The RRB did not concur with two recommendations, which included a recommendation discussed in payment transparency section in this challenge and a recommendation discussed in Challenge 6.

Transparency

The transparency issues discussed below represent our most recent concerns for this area. We have previously reported challenges for these same audit topics over the years. Our previously reported concerns continue to exist and are compounded by 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. During our mandated payment integrity audit, we determined that the Railroad Medicare improper payment information was not transparent in HHS' Agency Financial Report (AFR) or the RRB's PAR.²³ As of August 31, 2022, the RRB is no longer responsible for reporting payment integrity information for Railroad Medicare because of a written agreement between HHS, CMS, and the RRB, which clarified that CMS will calculate and report Railroad Medicare program payment integrity data. However, Railroad Medicare

²¹ RRB OIG, *Management Information Report: Interim Report Regarding CARES Act Expenditures and Controls*, Report No. 20-08 (Chicago, IL: September 28, 2020); RRB OIG, *Management Information Report: Interim Review of Railroad Retirement Board CARES Act Benefit Payments During the Pandemic*, Report No. 21-04 (Chicago, IL: March 26, 2021); and RRB OIG, *Management Information Report: Railroad Retirement Board's Actions in Response to Pandemic Funding*, Report No. 22-06 (Chicago, IL: March 16, 2022).

²² RRB OIG, *The Railroad Retirement Board's 12(o) Lien Process Does Not Have Sufficient Controls to Identify, Monitor, and Collect Liens*, Report No. 23-05 (Chicago, IL: August 9, 2023).

²³ RRB OIG, *The Railroad Retirement Board Complied with the Payment Integrity Information Act for Fiscal Year 2022*, Report No. 23-04 (Chicago, IL: May 19, 2023).

improper payment information was not separately published in HHS' or CMS' AFR or on PaymentAccuracy.gov. In addition, Railroad Medicare improper payment information was not reported in HHS' 2022 Medicare Fee-for-Service Supplemental Improper Payment Data supplement to HHS' AFR. This was in direct opposition to OMB's intent for transparency and illustrated the failings and risk inherent with the extended enterprise (i.e., a smaller program being overshadowed by a larger program).

My office is deeply concerned with the lack of transparency of a program that is reaching \$1 billion in payments per year. Railroad Medicare should be considered as one program for improper payment reporting as its annual outlays are greater than \$10 million and its improper payments have historically exceeded the statutory threshold deeming it susceptible to significant improper payments. We made five recommendations for this audit, and two of these recommendations were to address the weaknesses related to Railroad Medicare transparency of reporting.²⁴ RRB did not concur with the five recommendations. We continue to disagree with the RRB's position and maintain that RRB should include the improper payment rates and amounts in the payment integrity section of the PAR to inform their stakeholders of how the RRB's SMAC is performing in making payments. The five recommendations remain open.

As previously discussed, a recent OIG audit also determined that the information regarding the RRB's 12(o) lien program was not transparent.²⁵ Specifically, auditors determined that Programs did not know the financial magnitude of the 12(o) liens. As a result, the auditors determined that the entire total of all net sickness benefits paid during the scope of the audit, \$358.8 million, could possibly have been eligible to be recovered as a 12(o) lien. In accordance with the IG Act, the \$358.8 million is considered unsupported questioned costs.²⁶ The auditors made 21 recommendations and 3 of these recommendations were to address the payment transparency weakness discussed in this challenge. The RRB did not concur with two recommendations, which included a recommendation concerning the RRB's inability to determine the financial magnitude of the 12(o) liens. We continue to disagree with RRB's position and maintain that the RRB needs to track payments subject to recovery, to provide a better understanding of the financial magnitude of the 12(o) liens process. The 21 recommendations remain open.

See Appendix II for a list of relevant reports for this challenge.

²⁴ RRB OIG, Report No. 23-04.

²⁵ RRB OIG, Report No. 23-05.

²⁶ The IG Act of 1978, revised December 27, 2022, Section 405(a)(4)(b) defines questioned cost. According to the Act, "[t]he term 'questioned cost' means a cost that is questioned by the Office because of...(B) a finding that, at the time of the audit, the cost is not supported by adequate documentation...."

Challenge 5 – Achieving a Clean Opinion on Agency Financial Statements and Internal Controls over Financial Reporting

Why is this a serious management challenge? RRB has not received an unmodified (clean) opinion on its annual agency wide financial statements since 2012.²⁷ For its fiscal year 2022 financial statements, the RRB received a disclaimer of opinion and separately received an additional disclaimer of opinion on its internal controls over financial reporting for the first time.²⁸ Disclaimers are issued when the independent financial statement auditor cannot express an opinion. The primary reasons for the fiscal year 2022 disclaimers were due to the RRB’s inability to provide sufficient appropriate evidential matter to the auditors. Overall, the RRB’s fiscal year 2022 financial statement audit included nine material weaknesses and one instance of noncompliance that are discussed in this challenge.

RRB’s financial management issues are prominent and may adversely affect the economy, efficiency, and effectiveness of its operations. Sound financial management practices and reliable, useful, timely financial and performance information would help improve RRB’s accountability over its extensive resources, would support more efficient management of these resources, and ensure the railroad community continues to have access to its earned benefits.²⁹ As of September 30, 2022, the RRB’s assets were approximately \$31 billion. As of the same day, the RRB’s obligations were reported at almost \$17 billion according to USAspending.gov, ranking it 26th highest out of 112 listed agencies.³⁰

At the time this statement was prepared, the RRB’s fiscal year 2023 financial statements audit was in progress. Therefore, our discussion in the following sections does not include any recent developments that might be discussed in the Independent Auditor’s Report that will be rendered in November 2023.

Nine Material Weaknesses

On November 15, 2022, a total of 15 new recommendations were made to address nine material weaknesses regarding scope limitations, IT environment, and financial reporting. RRB management did not concur with any of the new recommendations and all remained open at the time of this statement.

²⁷ In an unmodified opinion on the financial statements, the auditor concludes that the financial statements are presented fairly, in all material respects, as of the specified date in accordance with U.S. Generally Accepted Accounting Principles.

²⁸ The independent financial statement auditor issued its report on November 15, 2022.

²⁹ According to the RRB’s 2023 Annual Report, the RRB paid benefits to about 528,000 beneficiaries and supported 477,000 active railroad community employees.

³⁰ USAspending.gov is the official source for spending data for the U.S. Government. Its mission is to show the American public what the federal government spends every year and how it spends the money. You can follow the money from the Congressional appropriations to the federal agencies and down to local communities and businesses.

Scope Limitations

The financial statement auditor faced scope limitations due to lack of access to National Railroad Retirement Investment Trust (NRRIT) audit results, timeliness of evidential matter, and inadequate statement of assurance reporting. These three material weaknesses are described in the following paragraphs.

Lack of Access to NRRIT Audit Results

As in the previous ten audits, the RRB financial statement auditors could not perform required American Institute of Certified Public Accountants (AICPA) audit procedures.³¹ As a result, the audit scope over the fiscal year 2022 RRB's financial statements was materially limited by the RRB and the NRRIT. Even though RRB management continued to not concur with this finding, they agreed that, “[u]ntil additional guidance is issued this reported material weakness will exist due to an inability for the [RRB financial statement] auditors to perform the audit procedures required by AICPA AU-C Section 600B....” Further, the RRB explained that it has no authority to compel the NRRIT auditors to provide their work to RRB financial statement auditors. Even though RRB management continued to be vocal to auditor findings, they continued to remain inactive in regards to pursuing legislative change that would ensure compliance with AICPA requirements and provide transparency for approximately 74 percent of the assets reported on the RRB’s Balance Sheet.³²

Because the RRB has not taken corrective action for a 2015 recommendation and the same recommendation is applicable to this finding, no new recommendation was made.³³

Timeliness of Evidential Matter

RRB was not able to provide the required and necessary evidential matter in a timely manner during the fiscal year 2022 audit engagement due to documentation delays regarding key drafts and reports, including but not limited to the trial balance and the financial statements. Initially, RRB did not have a process or mechanism in place to properly communicate with the appropriate person or group of persons that could respond timely to financial statement auditor requests. In numerous instances, RRB requested due dates to be extended or did not provide the requested evidential matter timely, causing further delays. There were a significant number of overdue deliverables during the audit. A total of 62 requested documents were

³¹ American Institute of Certified Public Accountants AU-C Section 600, Part B *Special Considerations - Audits of Group Financial Statements (Including the Work of Component Auditors)* requires the establishment of ongoing communication between group management responsible for conducting the audit and other auditors (component auditors) who perform work on the financial information that will be used as audit evidence for the group audit.

³² Since fiscal year 2013, RRB OIG auditors and now an IPA firm have rendered a disclaimer audit opinion on the RRB’s financial statements because auditors have not been permitted to communicate with the RRB’s component auditor (National Railroad Retirement Investment Trust’s auditor), as required by financial statement audit guidance. As reported in the RRB’s fiscal year 2022 financial statements, the National Railroad Retirement Investment Trust held approximately \$23 billion of the RRB’s \$31 billion (74 percent) in assets.

³³ Recommendation 8, RRB OIG, *Report on the Railroad Retirement Board's Fiscal Year 2014 Financial Statements*, Report No. 15-01 (Chicago, IL, November 17, 2014).

marked as overdue over the course of the audit. RRB management did not concur with this finding, stating that they substantially met all due dates.

The financial statement auditor made four recommendations regarding this material weakness, they remain open.

Inadequate Statement of Assurance Reporting

Based on the financial statement auditor's procedures and observations, RRB management should have reported no assurance to the overall adequacy and effectiveness of internal control within the agency related to operations, reporting, and compliance.³⁴ In contrast, the RRB reported a modified statement of assurance due to one material weakness related to the net asset value of the NRRIT.³⁵ As noted in the remaining material weaknesses, there are additional control deficiencies outside of the NRRIT that are significant enough for management to provide no assurance in its required reporting.

According to the MOU between RRB, NRRIT, the Department of the Treasury, and OMB entered into in 2002, the NRRIT's internal control environment is beyond RRB's authority. Thus, RRB is not able to assess that the internal control environment was designed, implemented, and operating effectively, for 74 percent of the railroad community's assets reported on the RRB's Balance Sheet.

RRB management did not concur with the finding, stating its inability to obtain NRRIT's evidential matter to support NRRIT financial information that is reported within RRB's financial statements as their reasoning. Auditors agree with management that the inability to provide support for NRRIT is a material weakness as previously mentioned. However, this material weakness is related to the inappropriate reporting of modified assurance based solely on the NRRIT issue.

The financial statement auditor made one recommendation regarding this material weakness, which remains open.

Information Technology Environment

The financial statement auditor included the RRB's ineffective IT internal controls over financial reporting as one material weakness in its independent auditor's report. RRB's IT policies and documentation were formalized but not consistently implemented in the areas of Security Management, Access Controls, Configuration Management, Segregation of Duties, and Contingency Planning. As a result, it was determined that RRB has not implemented the necessary IT internal controls over its financial reporting systems to mitigate the risk of material misstatement. Without effective IT controls over financial reporting, financial systems cannot be relied on, and RRB's financial statements may be materially misstated. RRB management did not concur with our finding, stating the auditors relied on the FISMA work as support for this

³⁴ Statement of no assurance means there are no processes in place or pervasive material weaknesses exist.

³⁵ Modified statement of assurance means one or more material weaknesses exist or lack of compliance has been reported.

finding. FISMA is another required annual audit as described in Challenge 2. In Challenge 2, we explain that the RRB did not comply with FISMA legislation or OMB guidance for the last five years.

The financial statement auditor made one recommendation regarding this material weakness, which remains open.

Financial Reporting

The financial statement auditor determined that five material weaknesses exist regarding the RRB’s financial reporting, including issues with preparing and reviewing financial reports, the lack of corrective action plans, untimely reviews of open obligations, unsupported journal entries, lack of detailed financial statement analysis. These five material weaknesses are described in the following paragraphs.

Preparing and Reviewing Financial Reports

RRB management did not establish or maintain internal controls to achieve reliable financial reporting. RRB's process for compiling its annual PAR, as well as preparing and reviewing its financial statements needs improvement. Financial statement auditors observed that the RRB's financial data, financial statements, and accompanying notes had:

- prior year balances that did not agree with the reported prior year financial statements,
- balances that did not agree with provided evidential matter,
- note disclosures that were missing, incomplete, inaccurate, and/or misleading,
- mathematical errors, and
- formatting consistencies and/or errors.

RRB management did not concur with our finding, explaining that the financial statements were still subject to review and revision up through November 15th. This statement is very misleading and concerning. RRB is required to submit its **audited** financial statements on November 15th. For example, the RRB is required to submit its upcoming fiscal year 2023 **audited** financial statements before 6pm on November 15th as shown in Figure 1.

Figure 1. Fiscal Year 2023 Year-end Closing Bulletin

<p>Final audited financial statements are due to MAX.gov and by email to GAO. Please contact Fiscal Service if there are any adjustments after November 15, 2023.</p>	<p>Email to USCFS@gao.gov and upload to MAX.gov</p>	<p>November 15, 2023, by 6 p.m. ET</p>
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Source: Department of Treasury’s website for official publication of policies, procedures, and instructions concerning financial management in the federal government (accessed <https://tfm.fiscal.treasury.gov/v1/bull/23-09> on October 4, 2023).

For fiscal year 2022 reporting, the RRB was also required to submit a complete draft of the PAR to OMB no later than 10 business days before November 15, 2022. This draft PAR would have included its unaudited financial statements. For fiscal year 2023, RRB must submit a complete draft PAR, including its unaudited financial statements, to OMB by October 31, 2023.

The financial statement auditor made three recommendations regarding this material weakness, they remain open.

Lack of Corrective Action Plans

RRB does not have a process in place to maintain detailed corrective action plans related to its previous financial statement audit material weaknesses and noncompliance findings. RRB management did not concur with our finding, stating that they have a process for preparing corrective action plans related to the internal control program. However, when asked in meetings, RRB management had stated on several occasions that they did not maintain corrective action plans for any findings related to the financial statement audit.

The financial statement auditor made one recommendation regarding this material weakness, it remains open.

Untimely Reviews of Open Obligations

The RRB does not have the ability to review its open obligation balances in a timely manner.³⁶ This may result in material transactions being recorded after financial reporting deadlines have passed for the corresponding fiscal year. Financial statement auditors determined that the required due date for the review does not allow sufficient time for RRB management to review, approve, and process any potential adjustments to its obligations. RRB management did not concur with our finding, stating that the third quarter review of open obligations is sufficient for adjusting the year-end balances. As reported above, the due dates do not allow sufficient time for analysis of fourth quarter obligations.

The financial statement auditor made one recommendation regarding this material weakness, it remains open.

Unsupported Journal Entries

RRB does not have adequate processes in place to ensure its journal entries are properly supported with sufficient and appropriate documentation. For example, RRB did not provide documentation to support:

- eliminating entries posted in the third quarter of fiscal year 2022. There were approximately 60 eliminating entries totaling approximately \$2 billion, and
- a total of \$654 million in journal vouchers relating to disbursements and budget authority.

³⁶ Open obligations support the accounting accuracy of the budgetary process, as such their timely review is critical.

RRB management did not concur with the finding, stating that the information requested was not clear and that no additional information or discussion on the topic of eliminating entries was requested. A meeting with RRB management was held on October 7, 2022, to try to gain a better understanding of what supporting documentation might be available. In that meeting, RRB management directed the financial statement auditors to the agency's standard operating procedures in lieu of supporting documentation for the individual transactions. For the \$654 million in journal vouchers, the only support provided or contained was a system edit check showing that the trial balance had a fatal flaw prior to adjustment. There was no analysis documented to identify the root cause of why such entries were required.

The financial statement auditor made two recommendations regarding this material weakness, they remain open.

Financial Statement Analysis

During the financial statement audit, the RRB's process related to its financial statement fluctuation analysis did not provide detailed level information to adequately explain why or how the differences occurred. RRB's inability to appropriately explain the cause of a fluctuation in its financial statements may lead to unreasonable balances and may indicate the existence of a risk of material misstatement due to control, fraud, or inherent risk.

RRB management did not concur with our finding, stating that responses were provided to both auditors and OMB. The explanations provided to the auditors and OMB did not always address the underlying event that caused the fluctuations but summarized the activity by Treasury Fund Symbol or in broad statements.

The financial statement auditor made two recommendations regarding this material weakness, they remain open.

Compliance with Laws and Regulations

In connection with the audit of the financial statements, tests were performed of RRB's compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. The results of the financial statement auditor's tests disclosed one instance of noncompliance with the RRA/RUIA.

Controls Over Railroad Service and Compensation

The RRB's Audit and Compliance Section (ACS) did not complete any Class 1 railroad audits during fiscal year 2022. ACS audits should determine whether the railroad community's employers have accurately reported credible service and compensation to the RRB in a timely

manner.³⁷ Failure to monitor railroad employers effectively through ACS conducted railroad audits may lead to the inaccurate reporting of creditable service and taxable compensation, which directly impacts the value of the railroad community's retirement funds and sustainability of the railroad retirement system. RRB management did not concur with the finding, explaining they have mitigating controls in place to identify potential discrepancies and were also required to shift resources to federally mandated work.

RRB's mitigating controls were explained as reconciliation of unaudited and employer self-reported information. Using unaudited credible service and compensation numbers and reconciling them against employer self-reported data or other unaudited information is risky and concerning. The RRB cannot be sure that information manipulation did not occur or attest to the reliability or accuracy of the information obtained from the employers. This puts the railroad community's retirement system at risk to be underfunded or overfunded. Underfunding could potentially cause the railroad's retirement system to fail prematurely, while overfunding could potentially reduce railroad employers' available capital and reduce railroad employees' net pay due to increased railroad employer and employee payroll taxes. Ultimately, such overfunding could foster a decline in railroad employment and potentially weaken the nation's economy.

The financial statement auditors did not make a recommendation regarding this finding because recommendation 4 in OIG Report No. 20-02 was written with the intent that the RRB ensure that a sufficient quantity of railroad audits, including Class 1 railroads, are conducted to establish and maintain an appropriate level of oversight. At the time of this statement, the RRB's Bureau of Fiscal Operations has not taken corrective action for that recommendation. In addition and since 1993, the RRB's OIG is not allowed to conduct audits of the railroads.³⁸

Due to these audit concerns, the lack of corrective actions for these recommendations, and unimplemented corrective actions for prior reports regarding this subject, agency action is needed to address this challenge.³⁹

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

Challenge 6 – Compliance Concerns Identified

Why is this a serious management challenge? Recent OIG audits and semiannual reporting have determined that the RRB was noncompliant with various guidance. Noncompliance can

³⁷ Section 7 of the RRA and Section 12 of the Railroad Unemployment Insurance Act (RUIA) provide authority for the RRB to conduct audits of the railroad community's employers. According to the April 30, 1993 Board Approval Memo, Functional Statement, RRB's Audit and Compliance Section is responsible for conducting external audits of railroad employers to determine and ensure compliance with the financial reporting requirements of the RRA and RUIA; determining whether employers are properly reporting creditable compensation and whether all reports are filed in an accurate and timely manner; and reviewing the activities of employers/employees to gather, verify, and analyze relevant information to enable the Board to make coverage determinations under the RRA and RUIA.

³⁸ Burlington Northern Railroad Company v. OIG, RRB, 983 F.2d 631, 642 (5th Cir. 1993).

³⁹ The financial statement auditor made 15 new recommendations, 32 prior year recommendations remained open of which RRB management concurred with 26 recommendations, partially concurred with 2 recommendations, and did not concur with 4 recommendations, for a total of 47 open recommendations.

have a far-reaching impact on the protection of federal trust funds, assets, information security, governmentwide improper payments, transparency, and the effectiveness of agency operations.

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

Sickness Benefits

According to federal law, a railroad employee must reimburse the RRB for certain sickness benefits obtained. RRB refers to its right to reimbursement as a 12(o) lien. In addition, RRB must implement, establish, and maintain an effective internal control system over its programs and processes. As discussed in Challenge 4, a recent RRB OIG audit determined that the 12(o) lien process needed improvement as applicable to payment and transparency concerns.⁴⁰ In this challenge, noncompliance with federal regulations and internal controls as covered by GAO's *Standards for Internal Control in the Federal Government* is discussed.⁴¹

During the audit of the RRB's 12(o) lien process, auditors determined that: 1) RRB's process to identify, monitor, and collect all 12(o) liens did not comply with federal regulations, 2) RRB did not have sufficient policies or procedures over its liens, 3) RRB did not ensure all 12(o) lien information was entered into its financial management system in a timely manner, and 4) RRB did not ensure all liens were collected. These issues occurred because RRB lacked comprehensive controls to identify, monitor, and collect all 12(o) liens. The findings detailed in the audit report are similar to a prior audit conducted in 2012. In particular, we recommended that RRB implement a comprehensive tracking system for 12(o) liens. Though this recommendation was closed in 2013, the condition returned during the 2023 audit.

Auditors made 21 recommendations, 13 were to address the noncompliance issues discussed in this challenge and 8 were to address the payment transparency issues discussed in Challenge 4. In August 2023, the RRB concurred with 19 recommendations and did not concur with 2 recommendations, which included 1 of the noncompliance recommendations. We continue to disagree with RRB's position for this recommendation, and the RRB should implement this recommendation to ensure compliance with federal standards for internal control. The 21 recommendations remain open.

Records and Information Management Program

Another recent RRB OIG audit determined that the RRB was not fully compliant with OMB and National Archives and Records Administration (NARA) requirements concerning records and information management.⁴² Even though the RRB was taking steps to ensure compliance with meeting the June 30, 2024 deadline of transitioning to electronic records. RRB: 1) did not fully

⁴⁰ RRB OIG, Report No. 23-05.

⁴¹ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington D.C.: September 2014).

⁴² RRB OIG, *Audit of the Railroad Retirement Board's Records and Information Management Program*, Report No. 23-06 (Chicago, IL: September 27, 2023).

ensure that agency records were maintained and preserved per federal statutes and regulations, 2) had not fully implemented its records and information management program process improvements as identified in its fiscal year 2021 Federal Manager's Financial Integrity Act report, and 3) had not fully implemented audit recommendations from 2017. Additionally, auditors determined that some of the internal controls were not implemented or operating effectively as required by RRB's policies and procedures. RRB OIG Report No.17-08 first identified some of these issues, which continued to exist during fiscal years 2018 through 2022.⁴³

Noncompliance with OMB and NARA guidance led to delays in implementing comprehensive policies and procedures, prevented full compliance with federal records management requirements, and increased the risk of RRB records being unlawfully or accidentally removed, defaced, altered, or destroyed. Additionally, noncompliance with OMB and NARA guidance may contribute to an inefficient and untimely reduction in the number of records, increasing data storage costs.

The auditors made seven recommendations to address weaknesses identified during the audit. RRB management concurred with all seven recommendations that were issued in September 2023.

Timely Implementation of Audit Recommendations

RRB's efforts to implement audit recommendations in a timely manner is discussed in this challenge. In conjunction with GAO and OMB requirements, OMB reminded managers that agency management has the responsibility to complete corrective action, in a timely manner, on audit recommendations on which agreement with the OIG has been reached. Management must make a resolution regarding OIG audit recommendations within a maximum of six-month period after issuance of the audit report and implement management's decision within one year to the extent practicable.⁴⁴

As of October 2, 2023, the number of recommendations that remained open for which agreement with the OIG was reached was 264. At the time this statement was prepared, there were 62 recommendations out of the 264 that corresponded to 1 or more of the 6 management challenges facing the agency. The primary areas where the recommendations remain a challenge for the RRB to close cover Pandemic Relief Acts, Payment Integrity, Information Technology Security, Disability Program Integrity, and Railroad Medicare. For each of these areas, we continue to see the need for these recommendations to be implemented and recognize that timely implementation of OIG recommendations was a compliance challenge for fiscal year 2023.

⁴³ RRB OIG, *Railroad Retirement Board Must Take Further Action to be Compliant with Federal Records Management Directives*, Report No. 17-08 (Chicago, IL: September 28, 2017).

⁴⁴ GAO, Principle 17.06, GAO-14-704G; OMB, *Audit Followup*, Circular No. A-50 Revised (Washington, D.C.: September 1982); and OMB, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Circular A-123, M-16-17 (Washington D.C.: July 15, 2016).

Pandemic Relief Acts

As discussed in Challenge 4, we issued multiple reports regarding the Pandemic Relief Acts. These reports were issued in 2020 through 2022 and presented recommendations on issues raised during our oversight of RRB's actions while implementing the CARES Act and the subsequent related laws.⁴⁵ As of October 2, 2023, six recommendations have not been implemented or closed. The RRB concurred with one of the six.

Previous Improper Payment and Payment Integrity Reporting Recommendations

We determined the RRB was compliant with the last payment integrity audit.⁴⁶ However, during our previous mandated payment integrity audits, we determined the RRB was noncompliant with the Payment Integrity Information Act of 2019 because the RRB did not disclose Railroad Medicare payment integrity information or the performance of the RRB's SMAC to the public, the President, and Congress. In response to the prior audits and as discussed in Challenge 3, the RRB obtained a new MOU with CMS regarding Railroad Medicare responsibilities. This MOU was signed on August 31, 2022 and indicated that CMS is now responsible for calculating and reporting improper payment information for the performance of RRB's SMAC. Conversely, the MOU did not identify who was responsible for addressing recommendations prior to August 31, 2022.

At the time of this challenge, RRB management had not taken the corrective actions required by legislation on any of the recommendations previous to the August 31, 2022 MOU. The OIG's outstanding recommendations related to Railroad Medicare improper payment reporting may be slightly impacted by the MOU. RRB management has the responsibility to request closure of these impacted recommendations. As of October 2, 2023, 53 recommendations have not been implemented or closed. The RRB concurred with 7 of the 53.

Information Technology Security

As discussed in Challenge 2, the RRB has been noncompliant with FISMA legislation and OMB guidance for five consecutive years.⁴⁷ Although agency management acknowledged the need for improvement, corrective actions have only been made for 36 of the 83 recommendations issued in the FISMA reports for fiscal years 2018 through 2022. 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 through our contracted audits. Many compliance related recommendations from our prior reports remain open. As of October 2, 2023, 47 recommendations have not been implemented or closed. The RRB concurred with 46 of the 47.

⁴⁵ RRB OIG, Report No. 20-08; RRB OIG, Report No. 21-04; and RRB OIG, Report No. 22-06.

⁴⁶ RRB OIG, Report No. 23-04.

⁴⁷ RRB OIG, Report No. 23-02; RRB OIG, Report No. 22-04; RRB OIG, Report No. 21-03; RRB OIG, Report No. 20-04; and RRB OIG, Report No. 19-03.

Disability Program Integrity

As discussed in Challenge 1, the RRB has not taken timely corrective actions for six prior RRB OIG disability audits.⁴⁸ The six RRB OIG reports presented valuable recommendations on disability program integrity issues. As of October 2, 2023, 20 recommendations have not been implemented or closed. The RRB concurred with 6 of the 20.

Railroad Medicare

As discussed in Challenge 3, prior RRB OIG audit recommendations regarding Railroad Medicare have continued to raise issues of concern. Two RRB OIG Railroad Medicare reports have 50 open recommendations that should be addressed to strengthen the integrity of the Medicare program, as a whole. As of October 2, 2023, these 50 recommendations have not been implemented or closed.⁴⁹ The RRB concurred with 2 of the 50.

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

Through audits, investigations, and other follow-up activities, we will continue our oversight of the challenges discussed in this letter. We encourage RRB to take meaningful action to address these challenges to prevent fraud, waste, and abuse in RRB programs and operations, and to adhere to applicable authoritative guidance.

Original Signed By:

Martin J. Dickman
Inspector General

⁴⁸ RRB OIG, Report No. 13-02; RRB OIG, Report No. 16-05; RRB OIG, Report No. 19-15; RRB OIG, Report No. 19-16; RRB OIG, Report No. 19-17; and RRB OIG, Report No. 21-07.

⁴⁹ 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); and RRB OIG, *Railroad Medicare Controls Over Evaluation and Management Services Were Not Fully Adequate*, Report No. 19-10 (Chicago, IL: August 5, 2019).
Management and Performance Challenges Facing the RRB for Fiscal Year 2023 - Report No. 24-02

APPENDIX I: 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 enacted substantial change to address its recommendation to improve program integrity. RRB disagrees with this assessment and cites changes that have been made such as including a second review of all initial decisions and requiring additional forms and documentation for disability decisions. These forms include employer medical and revised vocational forms. RRB performs investigative work post entitlement and notes it is often based on earnings. To be proactive, the agency obtains earnings queries in all cases prior to adjudication. Queries include information from both Social Security Administration records and a third-party vendor, The Work Number.

RRB has been receptive and responsive to recommendations made by the OIG and its contractors and has worked diligently to implement several 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 change. Rather, such action represents a fulfillment of RRB management's responsibility to implement those changes that are cost effective and will, if adopted, improve program integrity. The integrity of the programs administered by the RRB are of the utmost concern to RRB management and the Board.

The open recommendations referenced were partially concurred with and there are no open recommendations impacting the adjudication of the disability program under its current regulations and statutes. Any recommendations not concurred with were rejected only after extensive analysis of regulations and statutes.

The Long Island Rail Road (LIRR) investigation is not reflective of the entire Disability program, nor has a similar fraud scheme been uncovered. Contrary to the OIG's opinion, RRB's culture is not focused on approving benefits but rather on fulfilling its mission to administer retirement/survivor and unemployment/sickness insurance benefit programs for railroad workers and their families under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In carrying out this mission, the RRB does its absolute best to pay benefits to the right people, in the right amounts, in a timely manner, and to take appropriate action to safeguard our customers' trust funds.

OIG's summation of benefits presumably draws attention to the amounts paid for occupational annuities. However, it does not account for the significant percentage of individuals also entitled to a disability benefit and early Medicare under the Social Security Act. As stated to the OIG numerous times, it is not the role of RRB management, nor the OIG, to make judgments as to the benefit program amounts established by Congress.

The role of the OIG is not only to search for fraud, waste and abuse in our agency, it is also "to promote economy, efficiency, and effectiveness in the administration of Railroad Retirement Board programs."¹ Such responsibility requires a focus on the RRB's programs as they exist

¹ <https://www.rrb.gov/OurAgency/InspectorGeneral>

today. Yet the OIG again references a 2009 audit performed by the Government Accountability Office (GAO).² That report, now almost 15 years old, noted the high approval rate of disability applications and the *possibility* the rate could be indicative of “lax internal controls in RRB’s decision-making process, weakness in program design, or both.” Notably, the GAO did not conclude that the approval rate did, indeed, reflect a weakness in the program or in the RRB’s internal processes or its decision making, and subsequent reports have not cited a lack of program integrity. Furthermore, most annuities are awarded under the occupational program, and the approval rate, which has remained steady since the inception of the program in the 1940s, is more a reflection of those statutory requirements for approval than a measure of program integrity. Program design, the statutory criteria for eligibility, is a legislative issue and not part of the mission of the RRB. The RRB administers a disability program for railroad employees who are either totally or occupationally disabled and those who are occupationally disabled are awarded disability annuities if they cannot perform their regular railroad occupation.

The absence of specific findings or recommendations by the OIG directed to the administration of the disability program suggests that the approval rate is a function of the statutory criteria and not RRB administration. Because of the statutory provisions defining RRB’s disability program, the many recommendations made by the OIG as to record keeping, documentation, and other procedural steps will not impact the disability approval rate.

RRB works expeditiously to close recommendations with which the agency has concurred and works to ensure decisions are made for the right people, in the right amounts, in a timely manner. The timeliness concerns raised by OIG reflect the average adjudication time. However, more than 60% of the cases adjudicated were adjudicated in less time than the average adjudication, and the minority of delayed cases exponentially impact the average overall. The OIG asserts that the potential for fraud, abuse, and mismanagement in the RRB’s disability program remains high. RRB disagrees with OIG’s proposition and notes no systemic fraud, nor abuse, has been found in recent years.

OIG’s outline of the continuing disability review (CDR) generalizes the process to simply include assessing medical improvement to determine recovery leading to cessation of a disability annuity. However, conducting a CDR includes assessing medical improvement as well as vocational factors, which may or may not result in cessation of disability benefits. Furthermore, GAO’s cited CDR study recommended the cessation of the high-risk reviews and instead a focus on earnings reviews.³ RRB implemented GAO’s recommendations and as a result nearly 90% of the CDR reviews that resulted in changes in entitlement were earnings related. In addition, OIG’s cited CDR data does not account for monitoring earnings that may result in payment changes before termination. We routinely review earnings and develop all work through adjudication to minimize future overpayments. GAO’s recommendation for RRB to have access to the National Directory of New Hires continues to require congressional action.

OIG’s discussion of the challenges facing the RRB recognizes the agency’s response, hiring plan, and reduced staffing. RRB increased staffing in FY23 to address the pending cases cited as backlogs by OIG. After the post examiners team was reduced due to promotions and

² 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).

³ GAO, *Railroad Retirement Board: Actions Needed to Improve the Effectiveness and Oversight of Continuing Disability Reviews*, GAO-18-287, (Washington, D.C.: February 21, 2018).

attrition, RRB tripled the post examining staff responsible for CDRs. The additional examiners will complete training and assist in the quality review of continued eligibility by third quarter of FY24. In addition, RRB increased the number of initial examiners who make initial annuity and early Medicare decisions. By increasing the number of examiners to complete early Medicare decisions, RRB increases time available for post examiners to focus on earning CDRs as recommended by GAO.

Finally, OIG states that "RRB must not ignore Congressional concerns from the past. RRB should advocate for legislative changes on behalf of the railroad community to overcome perceived statutory constraints, work expeditiously on closing recommendations and ensure millions of dollars in unwarranted expenses are not paid to ineligible beneficiaries." RRB not only advocates for the railroad community as suggested but adheres to the regulations and statutes that apply to both the Railroad Retirement Act and Social Security Act. The railroad community is crucial to the fulfillment of the mission.

Contrary to the OIG's statement, RRB's culture is not focused on paying benefits at a high approval rate. Rather, it is determined to fulfill its mission to accurately and timely administer retirement/survivor and unemployment/sickness insurance benefit programs for railroad workers and their families under the RRA and the RUIA. RRB's Disability Benefit Division (DBD) is not the only component responsible for finalizing disability determinations. It is imperative to note that DBD's denial determinations are reviewed and, at times, upheld through higher levels of appeal. All RRB employees are dedicated to carrying out our mission to pay benefits to the right people, in the right amounts, in a timely manner, and will take appropriate action to safeguard our customers' trust funds.

CHALLENGE 2 – IMPROVE INFORMATION TECHNOLOGY SECURITY AND COMPLETE SYSTEM MODERNIZATION

The RRB has consistently recognized its responsibilities under the statutes and regulations and acknowledges the OIG's concern with the RRB's 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.

During FY 2023, the RRB continued to build upon its successes in improving the security posture of the agency. In a condensed FY 2023 FISMA Audit, the RRB improved its scores across eight areas to Level 3 – Consistently Implemented, demonstrating notable continued progress from previous years' FISMA audits. The RRB continues to make significant progress in accordance with cybersecurity standards and guidelines, partnering with Department of Homeland Security and Department of Justice to ensure compliance and depth of security across the RRB enterprise. In FY 2023, the RRB completed and is executing according to its Zero Trust Journey Map to illustrate its plans to comply with federal zero trust standards and guidelines. The RRB continues to improve its overall security posture as it modernizes its enterprise to ensure current security guidelines are architected into its solutions and applications. To that end, the RRB hired application security expertise to ensure its modernization of legacy applications is secure and reliable. The RRB continues to consume

federal cybersecurity shared services to not only secure its enterprise but to also manage its Risk Management Framework.

Through these efforts, we addressed and closed 27 OIG findings during FY 2023. As the RRB continues to develop and implement its IT modernization initiatives, we will proactively address the remaining findings and recommendations to improve the agency's security posture and to sustain at acceptable levels. The RRB will continue to work to maximize its performance against the measured controls as it continues to modernize its enterprise and continue to make incremental steps to reach the overall maturity goal of Level 4 – Managed and Measurable.

CHALLENGE 3 – IMPROVE TRANSPARENCY AND MANAGEMENT OF RAILROAD MEDICARE

The RRB has consistently acknowledged 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. The RRB does not directly issue Medicare payments to beneficiaries or providers. 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), oversees the Medicare program.

The OIG states that, over the years, RRB management and the OIG disagree on which Medicare responsibilities belonged to the RRB, Palmetto, and/or CMS. The RRB agrees with this assessment. To continue to clearly define the roles of both the RRB and the CMS, both agencies worked together to update the Memorandum of Understanding (MOU). On August 31, 2022, a finalized MOU (MOU-22-191) was executed and signed by both agencies.⁴ This updated MOU addresses the changes that have occurred and the roles and responsibilities of each agency. It also defines which agency has responsibilities under the SMAC contract to provide specified health insurance benefit administration. MOU 22-191 addresses the responsibilities of CMS and the 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. MOU 22-191 dictates that while the RRB will assess the SMAC performance, CMS will provide overall program guidance.

The RRB is responsible for making benefit payments to eligible beneficiaries under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, as well as extended, enhanced, or other unemployment benefits payments authorized under supplemental appropriations. Therefore, its financial statements reflect the financial results for accounts financing these benefit payments and related operations. To ensure proper preparation of the government-wide consolidated financial statements, RRB and CMS record intra-governmental transactions to reflect business activities conducted between agencies including reimbursement to the RRB for its specified Medicare administrative responsibilities and funding transferred for obligation on the contract with Palmetto GBA, LLC, as well as results of the annual financial interchange.

While the RRB has certain financial transactions with CMS and specified Medicare administrative responsibilities for railroad annuitants, said transactions and responsibilities do not include financing the Medicare Part B medical services benefit payments issued by Palmetto

⁴ *Memorandum of Understanding, MOU22-191*, entered into by the Department of Health and Human Services, Centers for Medicare & Medicaid Services and the Railroad Retirement Board, August 31, 2022 (on file at RRB).

GBA, LLC. Instead, Palmetto GBA, LLC in accordance with CMS policy has an established tripartite agreement with CMS and a CMS appointed bank, whereby funding is provided from the Medicare trust funds for Part B medical services benefit payments. The RRB is not a party to the financial transactions to pay the Medicare Part B medical services benefits financed by CMS and issued by Palmetto, GBA LLC. Accordingly, the RRB does not and should not report and/or disclose these financial transactions in its financial statements, contrary to the OIG's assertion. In prior audits related to improper payments, CMS confirmed that Palmetto GBA, LLC had claims sampled and reviewed in the calculation of the Medicare FFS improper payment rate, where said improper payment rate was reported in CMS' financial report. Note that CMS categorizes Palmetto GBA, LLC as a Medicare Administrative Contractor (MAC) rather than a SMAC.⁵ Since CMS is responsible for reporting the Medicare FFS program improper payment rate and is a component of HHS, HHS consolidates CMS' financial results and related Medicare improper payment information into its annual Agency Financial Report (AFR). The HHS AFR reports the estimated proper and improper payments and related information for the Medicare FFS program, to include the results of all MACs including the SMAC. The Medicare FFS improper payment rate is discussed within CMS' financial report as well as in the Payment Integrity Report that HHS publishes in its AFR to accompany its consolidated Principal Financial Statements.

Despite this information, the OIG continues to assert that the RRB is responsible for reporting improper payments related to the Railroad Medicare program and that HHS reporting does not identify improper payments for the Railroad Medicare program. The Payment Integrity Information Act of 2019 states, "An executive agency shall publish improper payments information with the annual financial statements of the executive agency for the most recent fiscal year and post on the website of the agency that statement, and any accompanying materials required under the guidance of the Office of Management and Budget [31 USC 3351(2)(A)]." As such, RRB's maintains that improper payments information related to the Medicare Part B medical services benefits payments issued by Palmetto GBA, LLC should not accompany RRB's financial statements in its annual Performance and Accountability Report. Also maintaining this posture, RRB and CMS continue to provide interested parties with the programmatic cost of the Medicare program in its entirety. This data is then utilized for comparison to the improper payment information covering the Medicare program.

As mentioned by the OIG, the RRB is currently in the process of recompeting the SMAC. The process began in calendar year 2022 and because of a protest, the process of evaluating and awarding a new SMAC had to be restarted. As a result of the protest, the RRB established a Medicare bridge contract with Palmetto GBA, LLC. The RRB anticipates that the evaluation and award process for a new SMAC will be completed by the end of FY 2024.

The RRB remains committed to working with CMS to manage the Railroad Medicare program and take any necessary action in accordance with the updated MOU to protect and properly administer any funding associated with Railroad Medicare.

The actions taken by the RRB to accomplish this include but are not limited to:

- Continue working with CMS to ensure that the MOU is current and accurately reflects each agency's responsibilities,

⁵ Centers for Medicare and Medicaid Services web page, entitled "Who are the MACs"
<https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/Who-are-the-MACs#MapsandLists>

- Continue performing annual risk assessments utilizing the risk factors prescribed in Appendix C of Office of Management and Budget (OMB) Circular A-123, to determine susceptibility to potential payment risks,
- Continue using Comprehensive Error Rate Testing (CERT) improper payment information to prepare annual medical review strategies,
- Continue working with the SMAC to submit an Improper Payment Activities Report (IPAR) after the CERT improper payment data information is received from CMS,
- Continue ensuring that the SMAC submits regular updates to the RRB if improper payment rate is below the accepted tolerance levels, and
- Continue providing performance data and other data to CMS, when requested, to assist CMS with reporting requirements.

The RRB is aware and understands its responsibilities with respect to managing the Railroad Medicare program and is committed to working with CMS to ensure that the obligations and responsibilities associated with this responsibility are met.

CHALLENGE 4 – IMPROVE PAYMENT ACCURACY AND TRANSPARENCY

The RRB fully supports delivering excellent, equitable, and secure federal services and customer experience priority 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.

1. Payment Accuracy:

- a. **CARES Act:** Regarding the OIG’s most recent pandemic funding review, Audit Report No. 22-06, RRB non-concurred with each of the three recommendations as briefly discussed below:
 - i. **Recommendation No. 1:** Based upon discussion with OMB as to their continued COVID reporting needs for FY 2022, RRB generated and provided the OMB with information concerning the \$5 million CARES Act funds on a monthly basis via the OMB Outlay Report. Given the OMB’s shift from weekly to monthly CARES Act reporting, the Bureau of Fiscal Operations (BFO) reconciled the monthly OMB Outlay Report to the DATA Act and Governmentwide Treasury Account Symbol Adjusted Trial-Balance System (GTAS) submissions for the period ending December 2021. We provided the December 2021 information to the OIG, which demonstrated that the \$5 million CARES Act obligations and outlays reconcile, as appropriate, to the monthly OMB Outlay report, the DATA Act information via USAspending.gov, and the monthly GTAS reporting. However, the OIG stated via email that “[s]ince the information indicates changes made subsequent to the reporting period, we will not be making a change to the report.” Given OMB’s transition to monthly reporting and the reconciliation provided to the OIG during the audit, we respectfully non-concurred and considered this matter closed.
 - ii. **Recommendation No. 2:** As previously communicated to the OIG, the Executive Committee (EC) is the group, at the RRB, tasked with

determining hiring priorities and the appropriate use of funds, whether from RRB's annual appropriation, the American Rescue Plan Act (ARPA), or any other source of annual or emergency funding. The EC is comprised of the top management officials from each of the RRB's seven major operational divisions. Any other cross-divisional committee, with the insight, authority, and data access to make the hiring decisions contemplated in this finding would be an inefficient redundancy to the EC. Currently, the EC makes hiring decisions and staffing plans based upon Basic Board Order 2, Section 2, entitled "Human Capital Management and Approvals." Pursuant to that section, the RRB has developed a comprehensive Human Capital Plan (HCP) that is based upon an in-depth workforce analysis, conducted by the RRB annually and culminating in the release of an updated HCP each May. The HCP describes the documentation and planning that the EC utilized to determine the staffing and hiring decisions that are the subject of this audit recommendation. Finally, the EC points out that ARPA funding did not create additional hiring but allowed the RRB the flexibility to accelerate hiring already in the multi-year plan to support the increased workloads realized pursuant to the COVID-19 pandemic.

- iii. **Recommendation No. 3:** RRB management pointed out that in the details of this recommendation, the OIG questioned the reasoning and support behind the hiring of claims examiners in the Office of Programs and claims representatives in the Bureau of Field Service. Regarding the claims examiners hired by the RRB into the Office of Programs, the RRB previously provided the briefing document used to support RRB's request for funding to the Committee on Oversight and Reform staff on March 8, 2021, and an additional table which demonstrated that six months after the presentation, Sickness and Unemployment workloads remain extraordinarily high. The 39 staff members reported in the Sickness and Unemployment Benefits Division (SUBS) in the second chart reflected the 15 claims examiners hired under ARPA. RRB management pointed to additional justification for these hires in RRB's HCP. Through supporting documentation provided to the OIG, the RRB reiterated that the ARPA funding simply allowed the RRB to accelerate the hiring of these 10 examiners, with 5 additional hires to immediately begin training and working on the increased SUBS workload due to COVID-19 pandemic claims.

- b. **12(o) Lien Process:** The OIG asserts that the RRB lacked comprehensive controls for the 12(o) lien process. The RRB has consistently recognized its responsibilities under the statutes and regulations. The 12(o) lien process is a highly technical workload with manual controls, as well as an "experience rating system" that naturally incentivizes railroad employer participation in controlling the recovery of liens.

The RUIA provides sickness benefits to qualified railroad employees who are unable to work due to any physical or mental illness or injury including pregnancy, miscarriage, or the birth of a child, where working would be injurious to the employee's health. In most sickness benefit cases, rail employees claim sickness benefits for ordinary injuries or illnesses that will not result in litigation.

For instance, a worker who contracts the flu is unlikely to sue the railroad for personal injury damages. The OIG's analysis does not recognize this important factor in the 12(o) lien process.

Section 12(o) of the RUIA requires that a railroad reimburse the RRB for any sickness benefits that the RRB paid to an employee from any personal injury settlement or damages paid due to liability for the injury or infirmities claimed. Because the RRB cannot monitor every personal injury lawsuit in the United States (under the Federal Employers' Liability Act), it has developed a lien request practice to assist the RRB in recovering outstanding 12(o) liens from railroad settlements and court awards. In the small number of cases where damages are paid by a non-railroad third party, the RRB uses a manual monitoring system to detect the liability payment and recover the 12(o) lien.

The 12(o) lien process works like this: the RRB initially flags all claims where the employee indicates they were injured on duty or asserts liability for their injury or illness. Accordingly, while it is true any sickness benefit could *theoretically* be subject to 12(o) recovery, in reality most sickness benefits will never be subject to 12(o) liability-related recovery. Consequently, the agency has focused its limited resources on these flagged claims and relies on employer reporting as a check on the system. By regulation, employers are required to report any injury/sickness liability-related settlements or damages to the RRB, and then when they are preparing to satisfy a judgment or finalize a settlement, the railroad employer contacts the RRB to obtain the final amount of the 12(o) lien, which is the total amount of sickness benefits paid to the rail employee as a result of the same injury or illness for which damages are paid.

The OIG has not given much consideration to the railroad compliance incentives that "experience rating" provides to the 12(o) lien process. Section 8(a) of the Railroad Unemployment Insurance Act (RUIA) provides that every employer pay contributions based on their experience to, or "usage of" the RUI Account to support the payment of unemployment and sickness benefits to their employees. Under an experience rating system such as the RRB's, employers pay tax rates that range from 0.65 to 12.50 percent to fund the unemployment and sickness benefit program. To determine an employer's tax rate, the RRB charges an employer for each claim paid to one of their employees during the benefit charge year. Likewise, the RRB credits the employer in the quarter when it recovers the benefits for any reason, including satisfaction of a 12(o) lien.

In this way, experience rating contributions provided by the rail industry are sufficient to finance all RUIA benefits. No general funds are utilized to fund sickness nor unemployment benefits and it is a closed system funded solely by the railroads. Repayment of a 12(o) lien reduces a railroad's experience rating taxes. Further, the only way a railroad can accurately calculate a personal injury settlement and minimize expenses is by contacting RRB first to assess benefits paid.

2. Transparency:

- a. **Medicare:** The OIG determined the RRB was noncompliant with the Payment Integrity Information Act of 2019 because the RRB did not disclose Railroad

Medicare payment integrity information or the performance of the RRB's SMAC. The RRB disagrees because it did not identify any separately reported SMAC/MACs upon review of HHS' 2022 Improper Payment Dataset via PaymentAccuracy.gov, which supports RRB's position that all SMAC/MAC improper payments were compiled and reported by HHS. Further, the OIG acknowledges that the RRB obtained a new MOU with CMS regarding Railroad Medicare responsibilities, signed on August 31, 2022, which indicated that CMS is responsible for calculating and reporting improper payment, via HHS, as discussed in Challenge 3.

- a. **12(o) Liens:** The auditors, RMA associates, erroneously concluded that \$358.8 million in net sickness benefits paid between FY 2016 and FY 2021 were questioned costs because RRB could not calculate the portion of sickness benefits paid that were eligible for recovery thru 12(o) liens. The \$358.8 million referenced in the OIG Audit report, however, represents the net amount of sickness benefits paid for FY 2016 through 2021, to injured and sick railroad workers, not the portion of sickness benefits eligible for 12(o) lien recovery. Rather, the total amount of sickness benefits paid for the same period was \$477.2 million, but the RRB recovered \$58.4 million of sickness benefits paid in accordance with Section 12(o). During FY 2016 through 2021, approximately 80% of all sickness benefit applicants were not injured on the job and did not hold anyone liable for their infirmity. Accordingly, it was erroneous to conclude that \$358.8 million were questioned costs.

CHALLENGE 5 – ACHIEVING A CLEAN OPINION ON AGENCY FINANCIAL STATEMENTS AND INTERNAL CONTROLS OVER FINANCIAL REPORTING

The agency will never achieve a clean opinion on the agency's financial statements and internal controls over its financial reporting if the OIG continues to site disclaimers, in part, because they want access to financial information outside of what the Railroad Retirement and Survivors' Improvement Act of 2001 (the Act) allows. For its FY 2022 financial statements, the RRB received a disclaimer of opinion and separately received an additional Disclaimer of Opinion on Internal Control over Financial Reporting (ICOFR) for the first time. The contract auditor's basis for Disclaimer of Opinion on RRB's FY 2022 financial statements as of and for the year ended September 30, 2022, was due to lack of access to NRRIT or NRRIT's auditors pursuant to American Institute of Certified Public Accountants (AICPA) AU-C Section 600, Part B Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors). Additionally, the contract auditor's basis for the ICOFR is due, in part to, the same matter and other materials weaknesses that the contract auditor states reportedly exist.

The Act states that NRRIT is not a department, agency, or instrumentality of the Federal Government and is not subject to Title 31 of the U.S. Code. The Act further states that the NRRIT shall annually engage an independent qualified public accountant to audit the financial statements of the NRRIT and shall transmit the audited financial statements, together with an Annual Management Report, to Congress and the Executive branch. There is no other legal basis or requirement for NRRIT to provide financial information to another party outside of that which is specified in the Act.

The agency will continue to cooperate with the OIG and its contract auditors and provide all requested NRRIT-related information within its possession. The RRB does not have the authority to compel the NRRIT auditors to provide their work papers to RMA. We have provided

RMA access to NRRIT-related information in accordance with the 2002 Memorandum of Understanding between the RRB, NRRIT, Department of the Treasury, and the OMB.

We strongly disagree with the reported material weakness, and the response below reiterates the key points provided in response to the OIG and its contract auditors and published within RRB's FY 2022 Performance and Accountability Report. Specific comments are included below:

1. Material Weaknesses:

- a. **Lack of Access to NRRIT Audit Results:** With respect to the inability of the OIG to audit NRRIT, the OIG states that "even though RRB management continued to be vocal to auditor findings, they continued to remain inactive in regard to pursuing legislative change that would ensure compliance with AICPA requirements and provide transparency for approximately 74 percent of the assets reported on the RRB's Balance Sheet."

NRRIT was created more than 21 years ago with the cooperation of rail labor and rail management and audit provisions were built into the statute. The statutory design created by Congress did not include a provision for an inspector general, and none of the enabling legislation covering the OIG changes that. As we have explained to the OIG multiple times, there is no legal basis or requirements for the NRRIT to provide financial information to another party outside of that which is specified in the Act. The Act requires NRRIT management to annually engage an independent public accountant to audit its financial statement and submit an annual management report to the Congress that contains findings and results from that audit. NRRIT's management has engaged KPMG, LLP, an independent public accounting firm, for the purposes of conducting the annual financial statement audit. Further, in October 2018, the GAO, serving as the Federal Government's auditor, entered into a Memorandum of Understanding (MOU) with the NRRIT that provided the GAO access to information necessary to support inclusion of the NRRIT's financial information in the governmentwide financial statements starting in fiscal year 2018.⁶ To pursue legislative change to allow the OIG's auditors access to the same information currently accessed by the GAO would be duplicative and a waste of government resources.

- b. **Timeliness of Evidential Matter:** RRB management disagreed with the contract auditor's assertion that RRB was not able to provide the required and necessary evidential matter in a timely manner during the audit engagement. The contract auditor mischaracterized the underlying cause related to the issue of timeliness, which may be potentially deceiving to the reader as to the true nature of the problem. It is important to note that since 1993, the RRB's OIG performed the audit of RRB's consolidated financial statements. For fiscal year 2022, the OIG contracted out its financial statement audit services, where the base period for the OIG's contract with the contractor began on May 23, 2022, and the RRB received notice of this contracted audit on May 24, 2022. Further, the contract auditor held the entrance conference on May 26, 2022, but was unable to issue the Prepared by Client (PBC) (later changed to Prepared by Auditee (PBA)) listing until July 15, 2022. For comparison, in fiscal year 2021, the OIG conducted the entrance conference on May

⁶ 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).

5, 2021, subsequently met with RRB to discuss audit deliverables and then provided RRB the initial fiscal year 2021 audit deliverables list on May 20, 2021.

The timeline of events highlights the compressed nature of this audit, where the RRB staff balanced monthly, quarterly, and year-end financial reporting requirements with satisfying audit deliverables and requests. Even so, the RRB provided substantially all requested PBC/PBA deliverables by the contract auditor's due dates. The established due dates may not have provided the auditors with enough time to adequately perform their audit procedures prior to submitting their draft audit report to OIG for approval on October 27, 2022; however, that matter was between the contract auditor and the OIG. RRB management has no control over the terms of OIG's contract with the contract auditor but did provide substantially all PBC/PBA deliverables per RMA's requested due dates.

- c. **Inadequate Statement of Assurance Reporting:** As communicated to the OIG in response to the FY 2022 financial statement audit report, we believe that the OIG's contract auditors' recommendation to provide a "statement of no assurance" was based primarily upon the lack of access to NRRIT's auditors as addressed in paragraph 1a. above. We also reiterate that the RRB disagreed and non-concurred with the material weaknesses that the OIG's contract auditor reportedly state existed as of September 30, 2022, for numerous reasons as documented in RRB's formal response as published in the RRB's FY 2022 Performance and Accountability Report. Accordingly, RRB stands firm and will continue to provide a modified statement or reasonable assurance that the internal controls within our authority were operating effectively over operations, reporting, external reporting, and compliance as of the specific reporting period.
- d. **Information Technology Environment:** The RRB continues 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) and is separate and distinct from the agency's internally managed Agency Enterprise General Information Systems, Benefit Payment Operations and Financial Interchange system. CGI Federal offers its FedRAMP Authorized financial management system as a shared service to the federal government and is currently servicing nine other federal agencies.

Additionally, after review of the open recommendations associated with the FY 2018, FY 2019, FY 2020, FY2021, FY 2022 FISMA audits as well as consideration of the preliminary FY 2023 FISMA audit results, we could not find any impactful risk to the FMIS. Finally, and as discussed in our response to Challenge 2, the significant improvements to the security posture of the agency's systems and applications, while not readily reflected in preliminary FY 2023 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.

- e. **Financial Reporting:** The RRB categorically disagrees that five findings and related recommendations pertaining to preparing and reviewing financial reports, the lack of

corrective action plans, untimely reviews of open obligations, unsupported journal entries, and lack of detailed financial statement analysis rise to the level of five separate and distinct material weaknesses.

- i. *Preparing and Reviewing Financial Reports:* RRB disagrees with the contract auditor's assertion that RRB management did not establish and maintain internal controls to achieve, among other objectives, reliable financial reporting. Furthermore, it is RRB's management opinion that RMA failed to substantiate their claim that RRB financial statements were not prepared in accordance with U.S. GAAP and with the OMB Circular A-136, Financial Reporting Requirements. To date the RRB has not received any feedback from OMB or Treasury on its draft PAR submissions to indicate that RRB was non-compliant with federal requirements.
- ii. *Lack of Corrective Action Plans:* RRB disagrees the contract auditor's assertion that RRB does not have a process to maintain corrective action plans. The RRB's corrective action plan (CAP) process is detailed in RRB's Management Control Review (MCR) guide, Part 5: Material Weakness and Corrective Action. If a material weakness was identified internally through RRB's MCR/Enterprise Risk Management reporting process, the appropriate responsible official would develop a CAP in accordance with the MCR guide. The same process would apply if a material weakness was identified through an external audit, where management concurs with the reported material weakness. RRB management continues to disagree and non-concur with the material weaknesses that the OIG and its contractor auditors state reportedly exist.
- iii. *Untimely Reviews of Open Obligations:* As communicated to the auditors in response to the FY 2022 audit report, RRB management non-concurred with the RMA's assertion that open obligations were not timely reviewed. In the audit report, RMA failed to acknowledge that RRB performs open obligations reviews on a quarterly basis. The third quarter review provides opportunity for BFO to identify and pursue resolution of material open obligations in sufficient time to record upward or downward adjustments to the obligations prior to year-end close.
- iv. *Unsupported Journal Entries:* As communicated to the auditors in response to the FY 2022 audit report, RRB management non-concurred with the RMA's assertion that the RRB did not have adequate processes in place to ensure its journal entries are properly supported. Furthermore, RRB management refuted the auditors claim that RRB did not provide sufficient documentation for eliminating entries posted for the third quarter of fiscal year 2022. Finally, RRB management also non-concurred with the RMA's assertion that the RRB did not maintain the budget fiscal year identity of its disbursements and budget authority, was not able to support a total of \$654 million in journal vouchers relating to disbursements and budget authority and may not be able to adequately support an additional \$30 million, and did not perform adequate analysis of transactions that are reclassified due to GTAS edit checks.

The auditor requested on October 4, 2022, by email, unspecified supporting documentation for eliminating entries in the financial statements. This was RMA's first and only request for information on eliminating entries throughout the

course of the fiscal year 2022 audit. RRB provided RMA supporting documentation on October 5, 2022, consisting of instructions and criteria used for identifying transactions subject to elimination within the Trial Balance and Detail USSGL Transaction file, both of which were provided to RMA on August 15, 2022. RRB also provided the RMA auditors with RRB laptops and direct access to the FMIS for the purpose of obtaining and reviewing transactional information and documentation. RMA requested no additional information or discussion on the topic of eliminating entries following the RRB's response on October 5, 2022. Furthermore, as a routine procedure, RRB BFO accountants analyze the SF 133, Report on Budget Execution and Budgetary Resources, in sufficient detail to clear GTAS validation and edit codes.

It is RRB management's position that RMA was not able to adequately obtain an understanding of RRB eliminating entries and of RRB's 51 Treasury Account Fund Symbols in use at the end of fiscal year 2022 due to the compressed audit schedule.

- v. *Financial Statement Analysis:* RRB management non-concurs with the RMA's assertion that the RRB's current process related to its financial statement fluctuation analysis does not provide detailed level information to adequately explain why or how the differences occurred.

RRB performs 3rd and 4th quarter financial statement (Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position and Statement of Budgetary Resources) analysis for fluctuations between current year and prior year balances, investigates the reasons for those variances, and discusses at all levels within the RRB BFO. RMA requested, and was provided, a summary of variances greater than \$1 billion for the 3rd quarter interim financial statements; the same variance analysis reported to OMB in the OMB MAX system as required by OMB Circular A-136. A similar analysis was provided to RMA for the 4th quarter year-end financial statements. Both the interim and year-end variance analysis files were marked by RMA in their Client Portal as "Received", and at no point during the audit did RMA request additional discussion or information regarding financial statement variance analysis.

It is RRB management's position that RMA was not able to adequately obtain an understanding of RRB's financial analysis processes and procedures due to the compressed fiscal year 2022 audit schedule.

- f. **Compliance with Laws and Regulations:** In regard to *Controls Over Railroad Service and Compensation*, RRB initiated a Class 1 employer compliance audit toward the end of FY 2022, however, persistent staffing issues hindered significant progress. In past reports, the OIG has acknowledged that the lack of completed audits by ACS was due to insufficient staffing and funding. As a result of external hires onboarded during FY 2023, RRB is better positioned to finalize and release a Class 1 audit report in FY 2024.

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 disagree with the OIG's characterization and consolidation of the following topics into a serious management challenge.

1. **Sickness Benefits:** In this challenge, auditors determined that: 1) RRB's process to identify, monitor, and collect all 12(o) liens did not comply with federal regulations, 2) RRB did not have sufficient policies or procedures over its liens, 3) RRB did not ensure all 12(o) lien information was entered into its financial management system in a timely manner, and 4) RRB did not ensure all liens were collected.

The RRB acknowledges its responsibilities under the 12(o) lien process. We are preparing to initiate a total system modernization to our old legacy computer systems. Modernization is not re-engineering a particular application or system, but rather a holistic approach to building an information infrastructure to support the RRB's mission critical business processes.

Over the last few years, the agency has taken significant strategic steps to improve computer processes. The RRB's current IT system allows us to earmark cases in which we receive information from the claimant and/or railroad employer indicating that an employee was either injured on-duty or is holding the railroad or a 3rd party liable. On those earmarked cases, we ensure that a notification ("Notice of Lien") is sent to the alleged liable party. This notification protects the RRB's right to reimbursement and in most cases does not require human intervention. The "Notice of Lien" is one of the first notifications that a potential liable party receives. We agreed to work with the data that we are currently collecting in our existing environment and make the necessary modifications to store and retrieve this data on a regular basis to take additional follow-up actions to validate the continued existence of a potential recoverable.

The RRB did not concur with OIG's Audit Recommendation #3 (Develop a system that calculates and tracks the portion of sickness payments subject to be recovered from potential 12(o) liens). Audit Recommendation #3 would require us to develop a new application and significantly change data collection and storage mechanisms. We will soon be initiating our IT modernization process and are attempting to maximize our RRB staff and IT funding to make significant changes to the entire RRB process. It would not be prudent to create a new standalone application when we are about to begin work on basic integrated applications that will be our future state.

The RRB agreed with Audit Recommendation 4, which requires the RRB to update policies and procedures for determining the correct lien for cases with multiple and/or concurrent medical conditions. Because the RRB does not have clear procedure for handling these types of lien calculations, the RMA auditors were unable to determine if the RRB's lien calculation is accurate. Although this scenario affects a relatively small number of 12(o) lien cases, the RRB agreed that it would be beneficial to have clear procedure for adjudicating and documenting the lien calculation in such cases.

Calculating a lien amount often requires human intervention. Many times, the information provided by the claimant does not exactly match the information that the potential liable party has, and these discrepancies need to be resolved. The 12(o) lien process is a very complicated business process and requires staff to make determinations on lien amounts. The RRB believes that we can better utilize the data that we have collected and as we move forward in our IT modernization, make additional improvements to

minimize reliance on manual staff intervention and streamline processes for making status determinations.

Our efforts will reduce unnecessary or redundant activities, improve accuracy and security of our systems and their transactions, make the systems more user-friendly for agency employees and our customers, improve interoperability and flexibility of systems, and improve ability to collaborate with agency partners.

2. Records and Information Management Program

The RRB has taken significant steps to address OIG recommendations for an additional audit performed in FY 2023, Records Management. A lingering setback to address older recommendations was a staffing challenge, but in FY 2023, the RRB filled critical vacancies with appropriate skills sets for electronic records management and continued its use of new cloud technologies to meet records management requirements highlighted in audit reports. The RRB is already working to close one finding by January 2024. The RRB concurred with three of five of the findings from the Records Management audit and expects to address remaining open recommendations from this audit in FY 2024.

3. Timely Implementation of Audit Recommendations

- a. **Pandemic Relief Acts:** This response reiterates the RRB's response to the FY 2022 OIG challenge on this topic. The RRB continues to disagree with the assertion that the RRB's ability to recover fraudulent benefit payment is diminished because of the timing of the State Wage Match program. The RRB is able to determine eligibility for benefits based on our own internal records, whereby the RRB is able to identify railroad employees who attempt to claim benefits while still working at a railroad and potentially expose instances of identity theft. Further, the RRB disagrees with the OIG's assertion that the RRB needs to allocate additional resources to implement an automated debt recovery process for CARES Act benefit payments. To reiterate, the RRB communicated to the OIG prior to issuance of Report No. 21-04 that the RRB had already implemented the programming changes within its *existing* automated debt recovery system necessary to establish and recover overpayments of CARES Act benefits.
- b. **Previous Improper Payment and Payment Integrity Reporting Recommendations:** The OIG determined the RRB was noncompliant with the Payment Integrity Information Act of 2019 because the RRB did not disclose Railroad Medicare payment integrity information or the performance of the RRB's SMAC. The OIG also acknowledges that the RRB obtained a new MOU with CMS regarding Railroad Medicare responsibilities, signed on August 31, 2022, which indicated that CMS is responsible for calculating and reporting improper payment. Years prior to signing the MOU, we were informed by CMS that all Medicare FFS program improper payment rates would be reported via HHS' AFR. The 2022 MOU was a codification of our established business process with CMS, delineating roles and responsibilities prospectively, not retroactively. As noted, the related 53 recommendations noted by OIG were non-concurred by the RRB. We recommend that OIG close the non-concurred recommendations without implementation.

- c. **Information Technology Security:** As discussed above in response to Challenge 2, preliminary audit results for the FY 2023 FISMA audit indicate that the RRB continued to build upon its successes in improving the security posture of the agency. In a condensed FY 2023 FISMA Audit, the RRB improved its scores across eight areas to Level 3 – Consistently Implemented, demonstrating notable continued progress from previous years' FISMA audits.
- d. **Disability Program Integrity:** As mentioned in Challenge 1, RRB has been responsive to numerous concurred disability-related recommendations made by the OIG and its contractors to include second review of all initial decisions, additional forms to document decisions including employer medical, revised vocational forms, and earnings queries in all cases prior to adjudication including both Social Security Administration records and a third-party, The Work Number. The fact that only some of the recommendations remain open is evidence that the RRB has been receptive and responsive to OIG recommendations to improve program integrity. A decision not to implement a recommendation as suggested, after a detailed evaluation which includes an analysis of laws and regulations relevant to the recommendation, does not reflect a reticence to implement changes. Rather, such action represents a fulfillment of RRB management's responsibility to implement those changes that are cost effective and will, if adopted, improve program integrity. The integrity of the programs administered by the RRB are of the utmost concern to RRB management.
- e. **Railroad Medicare:** The OIG continues to refer to prior OIG "Railroad Medicare" reports and 50 "open recommendations" related to them. We established years ago with Centers for Medicare & Medicaid Services (CMS) that CMS is responsible for reporting the Medicare FFS program improper payment rate and as a component of HHS, that HHS consolidates CMS' financial results and related Medicare improper payment information into its annual Agency Financial Report (AFR). The HHS AFR reports the estimated improper payments and related information for the Medicare FFS program, to include the results of all MACs including the SMAC. The Medicare FFS improper payment rate is reported within CMS' financial report as well as in the Payment Integrity Report that HHS publishes in its AFR to accompany its consolidated Principal Financial Statements. The RRB did not and does not concur with the 50 recommendations. Concurrence would lead to inaccurate Medicare improper payment reporting government wide. We suggest the OIG close all 50 recommendations without implementation, as we non-concurred to all of them.

APPENDIX II: REPORTS

Please visit <https://www.rrb.gov/OurAgency/InspectorGeneral/Library> for our 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 Decision 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).

RRB OIG, *The Railroad Retirement Board's Disability Briefing Document Process Was Not Fully Effective*, Report No. 21-07 (Chicago, IL: August 16, 2021).

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, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2019*, Report No. 20-04 (Chicago, IL: December 18, 2019).

RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2020*, Report No. 21-03 (Chicago, IL: January 14, 2021).

RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2021*, Report No. 22-04 (Chicago, IL: January 4, 2022).

RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2022*, Report No. 23-02 (Chicago, IL: January 18, 2023).

Improve Transparency and Management of Railroad Medicare

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, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2022*, Report No. 23-01 (Chicago, IL: November 15, 2022).

RRB OIG, *The Railroad Retirement Board Complied with the Payment Integrity Information Act for Fiscal Year 2022*, Report No. 23-04 (Chicago, IL: May 19, 2023).

Improve Payment Accuracy and Transparency

RRB OIG, *Management Information Report: Interim Report Regarding CARES Act Expenditures and Controls*, Report No. 20-08 (Chicago, IL: September 28, 2020).

RRB OIG, *Management Information Report: Interim Review of Railroad Retirement Board CARES Act Benefit Payments During the Pandemic*, Report No. 21-04 (Chicago, IL: March 26, 2021).

RRB OIG, *Management Information Report: Railroad Retirement Board's Actions in Response to Pandemic Funding*, Report No. 22-06 (Chicago, IL: March 16, 2022).

RRB OIG, *The Railroad Retirement Board Complied with the Payment Integrity Information Act for Fiscal Year 2022*, Report No. 23-04 (Chicago, IL: May 19, 2023).

RRB OIG, *The Railroad Retirement Board's 12(o) Lien Process Does Not Have Sufficient Controls to Identify, Monitor, and Collect Liens*, Report No. 23-05 (Chicago, IL: August 9, 2023).

Achieving a Clean Opinion on Agency Financial Statements and Internal Controls over Financial Reporting

RRB OIG, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2022*, Report No. 23-01 (Chicago, IL: November 15, 2022).

Compliance Concerns Identified

RRB 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, *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, *Railroad Retirement Board Must Take Further Action to be Compliant with Federal Records Management Directives*, Report No. 17-08 (Chicago, IL: September 28, 2017).

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, *Railroad Medicare Controls Over Evaluation and Management Services Were Not Fully Adequate*, Report No. 19-10 (Chicago, IL: August 5, 2019).

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 Decision 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).

RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2019*, Report No. 20-04 (Chicago, IL: December 18, 2019).

RRB OIG, *Management Information Report: Interim Report Regarding CARES Act Expenditures and Controls*, Report No. 20-08 (Chicago, IL: September 28, 2020).

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RRB OIG, *Management Information Report: Interim Review of Railroad Retirement Board CARES Act Benefit Payments During the Pandemic*, Report No. 21-04 (Chicago, IL: March 26, 2021).

RRB OIG, *The Railroad Retirement Board's Disability Briefing Document Process Was Not Fully Effective*, Report No. 21-07 (Chicago, IL: August 16, 2021).

RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2021*, Report No. 22-04 (Chicago, IL: January 4, 2022).

RRB OIG, *Management Information Report: Railroad Retirement Board's Actions in Response to Pandemic Funding*, Report No. 22-06 (Chicago, IL: March 16, 2022).

RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2022*, Report No. 23-02 (Chicago, IL: January 18, 2023).

RRB OIG, *The Railroad Retirement Board Complied with the Payment Integrity Information Act for Fiscal Year 2022*, Report No. 23-04 (Chicago, IL: May 19, 2023).

RRB OIG, *The Railroad Retirement Board's 12(o) Lien Process Does Not Have Sufficient Controls to Identify, Monitor, and Collect Liens*, Report No. 23-05 (Chicago, IL: August 9, 2023).

RRB OIG, *Audit of the Railroad Retirement Board's Records and Information Management Program*, Report No. 23-06 (Chicago, IL: September 27, 2023).

ABBREVIATIONS

ACS	Audit and Compliance Section
AFR	Agency Financial Report
AICPA	American Institute of Certified Public Accountants
ARPA	American Rescue Plan Act
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CDM	Continuous Diagnostic and Mitigation
CDR	Continuing Disability Review
CERT	Comprehensive Error Rate Testing
CMS	Centers for Medicare and Medicaid Services
DBD	Disability Benefits Division
DHS	Department of Homeland Security
FISMA	Federal Information Security Modernization Act of 2014
GAO	Government Accountability Office
IG	Inspector General
IPA	Independent Public Accounting
IRM	Information Resources Management
ISP	Information Security Program
IT	Information Technology
MOU	Memorandum of Understanding
NARA	National Archives and Records Administration
NRRIT	National Railroad Retirement Investment Trust
OIG	Office of Inspector General
OMB	Office of Management and Budget
Palmetto	Palmetto GBA, LLC
PAR	Performance and Accountability Report
Programs	Office of Programs
RRA	Railroad Retirement Act
RRB	Railroad Retirement Board
RUIA	Railroad Unemployment Insurance Act
SMAC	Specialty Medicare Administrative Contractor