



U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

The Railroad Retirement Board
was Not Compliant with the
Payment Integrity Information
Act for Fiscal Year 2021

Report No. 22-08

June 16, 2022



What We Found

The Railroad Retirement Board (RRB) was not compliant with the Payment Integrity Information Act of 2019 (PIIA) because it did not satisfy eight of ten payment integrity reporting requirements. This occurred because the RRB did not publish complete payment integrity information for Railroad Medicare in its performance and accountability report or accompanying materials.

We further determined that Railroad Medicare improper payment data was not transparent in the Department of Health and Human Services' fiscal year 2021 Agency Financial Report.

What We Recommend

To address the exceptions outlined in this audit report, we made nine recommendations related to PIIA compliance and annual data call completeness.

RRB management did not concur with eight of our nine recommendations. RRB's position was that the Centers for Medicare and Medicaid Services was responsible for the Medicare program as a whole, the RRB's Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting. We disagreed with this position and continue to see the need for our recommendations, as explained throughout this report.

What We Did

Section 3353 (a)(1)(A) of PIIA requires each agency's Inspector General to assess annual compliance. Our audit procedures included identification of criteria; and assessment of the accuracy and completeness of agency reporting, accompanying material, and related postings.

The mandated objectives of this audit were to

- determine whether the RRB was in compliance with the law;
- evaluate the accuracy of RRB risk assessments and improper payment and unknown payment estimates;
- evaluate whether RRB had correctly identified the root causes of improper payments and unknown payments and whether the RRB's corrective action plans adequately and effectively addressed those causes; and
- evaluate RRB efforts to prevent, reduce, and recover improper payments and unknown payments.

The scope of the audit was improper payment data reported in the RRB's fiscal year 2021 Performance and Accountability Report.

Contents

INTRODUCTION	1
OBJECTIVES, SCOPE, AND METHODOLOGY	1
BACKGROUND	2
RAILROAD MEDICARE, PAYMENT INTEGRITY REPORTING, AND IMPROPER PAYMENT DATA	5
RESULTS OF AUDIT	7
PAYMENT INTEGRITY REPORTING REQUIRED IN STATUTE	8
REQUIREMENTS #1A THROUGH #1B – RRB DID NOT PUBLISH COMPLETE PAYMENT INTEGRITY INFORMATION IN ITS PERFORMANCE AND ACCOUNTABILITY REPORT OR ACCOMPANYING MATERIALS	8
RECOMMENDATION	9
MANAGEMENT’S COMMENTS AND OUR RESPONSE	9
REQUIREMENTS #2A THROUGH #2B – RRB CONDUCTED ITS REQUIRED RISK ASSESSMENT AND ADEQUATELY CONCLUDED WITH REGARD TO THE STATUTORY THRESHOLD	12
REQUIREMENTS #3 THROUGH #6 – RRB DID NOT PUBLISH IP AND UP ESTIMATES, DEVELOP CORRECTIVE ACTION PLANS, DEVELOP IP AND UP REDUCTION TARGETS, DEMONSTRATE IP AND UP IMPROVEMENT, DEVELOP PLANS TO MEET THE IP AND UP REDUCTION TARGETS, OR REPORT AN IP AND UP RATE OF LESS THAN 10 PERCENT FOR RAILROAD MEDICARE IPs AND UPS	13
RECOMMENDATIONS	15
MANAGEMENT’S COMMENTS AND OUR RESPONSE	15
AGENCY’S EFFORTS TO PREVENT AND REDUCE IPs AND UPS	15
RECOMMENDATION	17
MANAGEMENT’S COMMENTS AND OUR RESPONSE	17
OTHER ISSUES POTENTIALLY IMPACTING COMPLIANCE	17
BENEFIT PAYMENTS OMITTED FROM RISK ASSESSMENT METHODOLOGY	17
RECOMMENDATION	18
MANAGEMENT’S COMMENTS	18
RRB DID NOT UPDATE ITS PAYMENT INTEGRITY PROCEDURES TO ADDRESS REVISED OMB GUIDANCE	19
RECOMMENDATION	19
MANAGEMENT’S COMMENTS AND OUR RESPONSE	19

OFFICE OF INSPECTOR GENERAL – U.S. RAILROAD RETIREMENT BOARD

RAILROAD MEDICARE IMPROPER PAYMENT DATA IS NOT TRANSPARENT IN HHS' FISCAL YEAR 2021 AGENCY FINANCIAL REPORT	20
APPENDIX I: MANAGEMENT COMMENTS	22
APPENDIX II: PREVIOUS OFFICE OF INSPECTOR GENERAL OPEN AUDIT RECOMMENDATIONS FOR IMPROPER PAYMENT REPORTING	27
APPENDIX III: ABBREVIATIONS	33
LIST OF TABLES	
TABLE 1. ASSESSMENT OF RRB'S COMPLIANCE WITH PIIA	7

INTRODUCTION

This report presents the results of the Office of Inspector General's (OIG) audit of the Railroad Retirement Board's (RRB) fiscal year 2021 compliance with the Payment Integrity Information Act of 2019 (PIIA). PIIA incorporates select provisions from prior payment integrity legislation and establishes the payment integrity statutory framework, and reporting requirements, including an annual compliance report by Inspectors General.¹

Objectives, Scope, and Methodology

The mandated objectives of this audit were to

- determine whether the RRB was in compliance with the law;
- evaluate the accuracy of RRB risk assessments and improper payment and unknown payment estimates;
- evaluate whether RRB had correctly identified the root causes of improper payments and unknown payments and whether the RRB's corrective action plans adequately and effectively address those causes; and
- evaluate RRB efforts to prevent, reduce, and recover improper and unknown payments.

The scope of this audit was the information published in the RRB's Payment Integrity section of its fiscal year 2021 Performance and Accountability Report (PAR), and accompanying materials.

To accomplish the audit objectives, we

- assessed whether the RRB was in overall compliance with PIIA;
- assessed the accuracy and completeness of agency reporting;
- evaluated the accuracy of the agency's risk assessments and their improper payment estimates methodology;
- identified criteria from the law as well as Office of Management and Budget (OMB) government-wide guidance;
- identified and reviewed internal guidance, policies, and procedures for payment integrity reporting in RRB's PAR;
- reviewed RRB's payment integrity section as provided in the fiscal year 2021 PAR, accompanying materials, and the OMB annual data call;
- requested and reviewed applicable source data and documentation from the agency to verify the support for the information in the PAR and data call;

¹ Pub. L. No. 116-117, 134 Stat. 113 (2020), Pub. L. No. 114-186, 130 Stat. 547 (2016), Pub. L. No. 112-248, 126 Stat. 2390 (2013), Pub. L. No. 111-204, 124 Stat. 2224 (2010), Pub. L. No. 107-300, 116 Stat. 2350 (2002).

- evaluated whether RRB correctly identified the causes of improper payments and whether their actions addressed those causes adequately and effectively;
- evaluated the adequacy of RRB's action plans in addressing the causes of its improper payments;
- evaluated RRB's efforts in preventing, reducing, and recovering improper payments;
- interviewed appropriate RRB officials and agency staff;
- determined if Railroad Medicare's improper payment estimate had been reported in the appropriate Department of Health and Human Services (HHS) and/or Centers for Medicare and Medicaid Services (CMS) Agency Financial Report (AFR);
- reviewed appropriate CMS documentation; and
- reviewed agency documentation.

We assessed the data reliability of the RRB's risk assessment and payment recapture data, appropriate to the risk of using the data by (1) tracing payment integrity totals reported in the PAR to source documents; (2) reviewing the underlying spreadsheet formulas supporting the source data calculations; and (3) considering the overall risk of the RRB's systems that provided the source data. We determined that the data were sufficiently reliable for the purposes of responding to our objectives. In addition, we determined that reliability of data would not materially affect our findings, conclusions, or recommendations.

Our review of internal controls was limited to those necessary to address the objectives and scope of the audit. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our fieldwork at RRB headquarters in Chicago, Illinois from December 2021 through April 2022.

Background

The RRB, an independent agency in the executive branch of the Federal Government, administers retirement-survivor and unemployment-sickness insurance benefit programs for railroad workers and their families under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA). The RRB paid \$13.3 billion in retirement and survivor benefits and \$156.9 million in unemployment and sickness insurance benefits during fiscal year 2021. The RRB paid \$136.5 million for enhanced unemployment benefit payments during fiscal year 2020. The RRB also administers aspects of the Medicare program (Railroad Medicare) under the Social Security Act.² The RRB, through its contractor, paid \$920.1 million in

² 42 U.S.C. § 1842(g). The portion of Medicare the Railroad Retirement Board (RRB) is responsible for is commonly known as Railroad Medicare. The term can be found on Google and throughout Palmetto GBA, LLC's website.

Railroad Medicare Part B claims on behalf of its beneficiaries from October 1, 2020, through September 30, 2021.

Improper payment legislation enacted to reduce improper payments, directed OMB to issue government-wide guidance regarding reporting requirements. PIIA defines an improper payment as any payment that should not have been made or that was made in an incorrect amount (including an overpayment or underpayment) under a statutory, contractual, administrative, or other legally applicable requirement. An improper payment includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments authorized by law), and any payment that does not account for credit for applicable discounts.³

PIIA aims to improve efforts to identify and reduce government-wide improper payments. Agencies are required to identify and review all programs and activities they administer that may be susceptible to significant improper payments based on guidance provided by OMB. Payment integrity information is published with the agency's annual financial statement in accordance with payment integrity guidance in OMB Circular A-136.⁴ The agency must also publish any applicable payment integrity information required in the accompanying materials to the annual financial statement in accordance with applicable guidance. The most common accompanying materials to the annual financial statement are the payment integrity information published on PaymentAccuracy.gov. Agency's Inspectors General are to review payment integrity reporting for compliance and issue an annual report.

As directed by OMB and the Council of the Inspectors General on Integrity and Efficiency, we initiated our fiscal year 2021 annual compliance review using a combination of the requirements in OMB Circular A-123, Appendix C; OMB Circular A-136; OMB Annual Data Call Instructions; OMB Payment Integrity Question and Answer Platform; and the Council of the Inspectors General on Integrity and Efficiency guidance required under PIIA.⁵

OMB M-21-19 defined significant improper payments as “[a]nnual [improper payments] and [unknown payments] (i.e., the sum of monetary loss [improper payments], non-monetary loss [improper payments], and [unknown payments]) in the program exceeding (1) both 1.5 percent of program outlays and \$10,000,000 of all program or activity payments made during the [fiscal year] reported or (2) \$100,000,000 (regardless of the [improper payment] percentage of total program outlays).”⁶

³ Pub. L. No. 116-117 (2020), 134 Stat. 114, Pub. L. No. 111-204 (2010), 124 Stat. 2224, Pub. L. No. 112-248 (2013), 126 Stat. 2390, and Pub. L. No. 107-300 (2002), 116 Stat. 2350.

⁴ This information is provided by the agency to the Office of Management and Budget (OMB) through the Annual Data Call and is then subsequently published on PaymentAccuracy.gov; OMB Circular No. A-136, *Financial Reporting Requirements* (Washington, D.C.: August 10, 2021).

⁵ Council of the Inspectors General on Integrity and Efficiency, *Guidance for Payment Integrity Information Act Compliance Reviews* (Washington, D.C.: October 26, 2021); OMB Appendix C to Circular No. A-123, *Requirements for Payment Integrity Improvement*, M-21-19 (Washington, D.C.: March 5, 2021); and OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, M-16-17 (Washington, D.C.: July 15, 2016).

⁶ OMB M-21-19, pgs. 73-74; Pub. L. No. 116-117 (2020), 134 Stat. 115, 3(A)(i).

The guidance also required agencies to approach improper payments with an Enterprise Risk Management (ERM) framework in mind and link agency efforts in establishing internal controls and preventing improper payments. According to OMB M-21-19:

... The [ERM] framework, introduced in OMB Circular A-123, can be used to assist in the identification and management of payment integrity risks for the agency. Ensuring the integrity of Federal payments is fundamental to the core mission for agencies. A significant risk in managing IP risk is the potential that agencies may make investments in risk controls that negatively affect program mission, efficiency, customer experience or the overall operations of the agency. Agency senior management is required to manage the payment integrity risk to an agency achieving its strategic, operations, reporting, or compliance objectives.⁷

Part of an ERM model is the extended enterprise. According to OMB M-16-17, the extended enterprise consists of interdependent relationships, parent-child relationships, and relationships external to an agency. Thus, no agency is self-contained, and risk drivers can arise out of organizations that extend beyond the enterprise. These relationships give rise to a need for assurance that risk is being managed in that relationship both appropriately and as planned.⁸

The risk environment is beyond the boundary of the extended enterprise. The environment generates risks that cannot be controlled, or constrain the way the organization is permitted to take on or address risk.

Within RRB, the Office of Programs compiles and reports improper payment data for the annual PAR. OMB guidance requires each agency's Inspector General to assess PIIA compliance and submit its final report within 180 days after the publication date for the agency's PAR and the accompanying materials.⁹ Agencies that are noncompliant with PIIA are subject to additional reporting requirements. Noncompliance for one year requires that the agency submit a plan describing the actions to be taken to become compliant. Noncompliance for two consecutive fiscal years for the same program requires a review from OMB to determine if additional funding would help the agency become compliant.¹⁰

⁷ OMB M-21-19, pg. 30.

⁸ OMB M 16-17, pg. 14.

⁹ OMB M-21-19, pg. 51.

¹⁰ Pub. L. No. 116-117, 134 Stat. 125; Section 3353 (B)(2)(A).

Railroad Medicare, Payment Integrity Reporting, and Improper Payment Data

At the end of fiscal year 2021, approximately 447,000 qualified railroad beneficiaries were enrolled in RRB's administered portion of Medicare Part B. During fiscal year 2021, RRB contracted with a Specialty Medicare Administrative Contractor (SMAC), Palmetto GBA, LLC (Palmetto) and administered certain provisions of the Medicare program.¹¹ These provisions included eligibility determination, enrollment or removal from enrollment, premium collection, processing state buy-ins, processing arrearages and refunds, paying Canadian Part A claims, liaison work with Palmetto, quality assurance and oversight of Palmetto, records maintenance, and answering inquiries. According to RRB, these costs for fiscal year 2021 were offset by approximately \$15.2 million in Railroad Medicare administrative expense reimbursements and \$19.7 million in transfers from CMS to fund the SMAC.¹²

As such, CMS has paid RRB for these administrative services through an existing and ongoing cost reimbursement agreement. For fiscal year 2021, the total expense of \$34.9 million covered both direct and indirect costs for RRB and RRB OIG and the cost of its Palmetto contract to support the separate Railroad Medicare program.

With respect to the Railroad Medicare program, payment integrity reporting, and improper payment data, RRB maintained an extended enterprise relationship with CMS and the RRB's SMAC, Palmetto. At the time of this audit, the governing documents between RRB, CMS, and Palmetto were the

- Interagency Agreement between HHS (CMS) and RRB, dated April 19, 1991, signed by the Health Care Finance Administration's (now CMS) Director of Office of Budget and Administration on April 16, 1991, and by RRB's Chief Executive Officer on March 22, 1991;
- Addendum to the Interagency Agreement between HHS (CMS) and RRB, dated July 26, 2004, signed by CMS' Director of Office of Financial Management on July 23, 2004, and by RRB's Senior Executive Officer on July 30, 2004;
- Memorandum of Understanding (MOU) between CMS and RRB (MOU13-61), signed by CMS' Deputy Center Director of the Center for Medicare on April 11, 2013, and by RRB's Director of Administration and Senior Procurement Executive on April 12, 2013; and
- RRB's Palmetto contract – RRB12C011 and corresponding statement of work. The SMAC contract was signed by Palmetto's President on November 26, 2012, and by RRB's Chief of Acquisition Management and Contracting Officer on November 27, 2012.

¹¹ As part of its administrative responsibilities, Railroad Retirement Board (RRB) selected a Specialty Medicare Administrative Contractor to process Railroad Medicare claims nationwide and administered the contract with the carrier, Palmetto GBA, LLC. The contracting officer, contracting officer representative, and the contracting team are all RRB government employees.

¹² The Centers for Medicare & Medicaid Services, a branch of the U.S. Department of Health and Human Services, is the federal agency that administers the national Medicare program.

The governing documents have not changed since we published the results of our prior mandated improper payment audit.

As part of an extended enterprise, CMS provided RRB with Railroad Medicare payment integrity information and data for the fourth year in a row, in time for fiscal year 2021 PAR reporting. The Railroad Medicare improper payment rate and estimates were determined through CMS' Comprehensive Error Rate Testing (CERT) program. Therefore, RRB should have reported Railroad Medicare payment integrity information including its fiscal year 2020 13.7 percent improper payment rate that had exceeded the national Part B improper payment rate of 8.1 percent. However, RRB did not report this data, to the President and Congress in its PAR, as required.

We discuss the Railroad Medicare reporting issue in the section titled:

Requirements #3 through #6 – RRB did not Publish IP and UP Estimates, Develop Corrective Action Plans, Develop IP and UP Reduction Targets, Demonstrate IP and UP Improvement, Develop Plans to Meet the IP and UP Reduction Targets, or Report an IP and UP Rate of Less than 10 Percent for Railroad Medicare IPs and UPs.

RESULTS OF AUDIT

We have determined the RRB was not compliant with PIIA because it did not satisfy 8 of 10 payment integrity reporting requirements as shown in Table 1.¹³ If an agency does not meet one or more of the ten requirements, then it is not compliant under PIIA. The RRB’s position was that CMS is responsible for the Medicare program as a whole, the RRB’s Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information, it would have resulted in duplicative reporting.

Table 1. Assessment of RRB’s Compliance with PIIA

Program Name	#1a - Published payment integrity information with the annual financial statement	#1b - Posted the annual financial statement and accompanying materials on the agency website	#2a - Conducted IP risk assessments for each program with annual outlays greater than \$10,000,000 at least once in the last three years	#2b - Adequately concluded whether the program is likely to make IPs and UPs above or below the statutory threshold	#3 - Published IP and UP estimates for programs susceptible to significant IPs in the accompanying materials to the annual financial statement	#4 - Published corrective action plans for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement	#5a - Published IP and UP reduction target for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement	#5b - Has demonstrated improvements to payment integrity or reached a tolerable IP and UP rate	#5c - Has developed a plan to meet the IP and UP reduction target	#6 - Reported an IP and UP estimate of less than 10 percent for each program for which an estimate was published in the accompanying materials to the annual financial statement
RRA	Compliant	Compliant	NA	NA	NA	NA	NA	NA	NA	NA
RUIA	Compliant	Compliant	Compliant	Compliant	NA	NA	NA	NA	NA	NA
Railroad Medicare	Not Compliant	Not Compliant	NA	NA	Not Compliant	Not Compliant	Not Compliant	Not Compliant	Not Compliant	Not Compliant
Vendor Payments	Compliant	Compliant	NA	NA	NA	NA	NA	NA	NA	NA
Employee Payments	Compliant	Compliant	NA	NA	NA	NA	NA	NA	NA	NA

Source: RRB OIG analysis of fiscal year 2021 Performance and Accountability Report (PAR).

We determined the agency’s payment integrity reporting was incomplete and therefore inaccurate. The agency could correct these deficiencies by implementing recommendations made in our prior RRB OIG improper payment audit. At the time of this audit, the prior year audit recommendations remained open.¹⁴ The current status of our prior open audit recommendations is provided in Appendix II.

¹³ Pub. L. 116-117, 134 Stat. 113 (2020).

¹⁴ RRB Office of Inspector General (OIG), *Audit of Railroad Retirement Board’s Compliance with Improper Payments Elimination and Recovery Act in Fiscal Year 2020 Performance and Accountability Report*, Report No. 21-05 (Chicago, IL: May 17, 2021), Recommendations 1 through 8.

A risk assessment was required for the RUIA program due to legislative changes and was reviewed during this audit.

Beginning with fiscal year 2020, PIIA requires that we annually assess and report on six areas of compliance with criteria listed in the law. These six areas are comprised of ten compliance requirements. We considered OMB and Council of Inspectors General on Integrity and Efficiency guidance for our evaluations of the additional reporting required in statute. We have provided the details of these compliance assessments, audit findings, observations, and recommendations for corrective action in this report.

We made nine recommendations to address the exceptions identified during our audit. The full text of management's response to these recommendations is included in Appendix I.

Payment Integrity Reporting Required in Statute

The RRB was not compliant with PIIA because it did not satisfy eight of ten payment integrity reporting requirements as shown in Table 1.¹⁵ If an agency does not meet one or more of the ten requirements, then it is not compliant under PIIA. The RRB's position was that CMS is responsible for the Medicare program as a whole, the RRB's Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting. We discuss our findings in the following sections.

Requirements #1a through #1b – RRB Did Not Publish Complete Payment Integrity information in its Performance and Accountability Report or Accompanying Materials

Although the RRB published a PAR and accompanying materials with payment integrity information and posted this information on the agency website, it was not complete because it did not include improper payment information for the Railroad Medicare program, nor did it offer any explanation as to why the information was not included.

Under the PIIA, an executive agency shall publish improper payments information with the annual financial statement of the executive agency for the most recent fiscal year. The agency shall post this statement and any accompanying materials required under OMB's guidance on their website.¹⁶

The RRB did not include Railroad Medicare improper payment data in their PAR or data call. They believe that since CMS is already reporting Railroad Medicare improper payment information, the reporting by the RRB would be duplicate reporting.

¹⁵ OMB M-21-19, pg. 52; Pub. L. 116-117, 134 Stat. 113 (2020).

¹⁶ OMB M-21-19, pg. 43; Pub. L. 116-117, 134 Stat. 113 (2020); 31 U.S.C. § 3351(2)(A).

The RRB stated in its fiscal year 2019 PAR:¹⁷

*The CERT program is administered by CMS and includes testing for all Medicare Administrative Contractors, including the RRB SMAC. Fiscal year 2018 was the first year that the SMAC was included in the testing program. As a result, the RRB reported the findings in the 2018 PAR. It was subsequently learned that these same testing results were captured by the Department of Health and Human Services in their 2018 Agency Financial Report, resulting in duplicative reporting.*¹⁸

Although the RRB claims that HHS is reporting improper payments for the Railroad Medicare program, HHS reporting does not identify improper or unknown payments for the Railroad Medicare program. While RRB's administrative responsibilities for the Railroad Medicare program have not changed by way of a formal agreement with CMS, RRB no longer discloses the program's existence, or its current resolution status in the Payment Integrity section of the PAR.

Recommendation

One of our prior year audit recommendations addressed these weaknesses and it remains open.¹⁹ In addition, we recommend that the Office of Programs

1. post Railroad Medicare program payment integrity information in the annual financial statement and accompanying materials on the agency website, in accordance with the Payment Integrity Information Act of 2019 and the Office of Management and Budget's data call requirements, until RRB formalizes an agreement with the Centers for Medicare and Medicaid Services to take over reporting for Railroad Medicare.

Management's Comments and Our Response

For recommendation 1, the Office of Programs nonconcurred and stated:

The Railroad Retirement Board (RRB) has consistently acknowledged its responsibilities under the Social Security Act to administer certain provisions of the Medicare program for railroad annuitants, including the administration of the Specialty Medicare Administrative Contractor (SMAC) contract with Palmetto GBA, LLC. 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 as a whole.

In prior audits related to improper payments, CMS confirmed that Palmetto GBA, LLC had claims sampled and reviewed in the calculation of the Medicare Fee-for-Service (FFS) improper payment rate, where said improper payment rate was reported in CMS' financial report. Please note that CMS categorizes Palmetto GBA, LLC as a

¹⁷ RRB OIG, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2019*, Report No. 20-02 (Chicago, IL: November 15, 2019).

¹⁸ RRB OIG, Report No. 20-02, pg. 153.

¹⁹ RRB OIG, Report No. 21-05, Recommendation 1.

Medicare Administrative Contractor (MAC) rather than a SMAC²⁰. Since CMS is a component of HHS, HHS consolidates CMS' financial results and related Medicare improper payment information into its financial statements presented in its annual Agency Financial Report (AFR). In its AFR, HHS reports the estimated proper and improper payments and related information for the Medicare FFS program as a whole, to include the results of all MACs including the SMAC. The Medicare FFS is a component discussed within CMS' financial report, as well as presented in the Payment Integrity Report that HHS publishes in its AFR to accompany its consolidated Principal Financial Statements.

Despite this information, the Office of the Inspector General 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. However, under the Payment Integrity Information Act of 2019 (PIIA), 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, it continues to be RRB's position 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.

The RRB is responsible for making benefit payments to eligible Railroad beneficiaries under the Railroad Retirement Act, 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 our agencies to include reimbursement to the RRB for its specified Medicare administrative responsibilities, 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 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.

It is RRB's position that Medicare improper payment information should continue to accompany the financial statements of CMS, and the consolidated financial statements of HHS, rather than those of the RRB, since the CMS' financial statements

²⁰ Centers for Medicare and Medicaid Services web page, entitled "Who are the MACs" <https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/Who-a-re-the-MACs#MapsandLists>.

and HHS consolidated financial statements report the cost of the Medicare program in its entirety. By maintaining this posture, RRB and CMS continue to provide interested parties with the programmatic cost of the Medicare program in its entirety for comparison to the improper payment information covering the Medicare program in its entirety, as we interpret the PIIA to intend.

The comments provided by management did not warrant a modification to our report.

To clarify, CMS categorizes Palmetto GBA, LLC as both a MAC for its two non Railroad Medicare contracts and as a Specialty Medicare Administrative Contractor (SMAC) for its Railroad Medicare contract. RRB's Performance and Accountability Report also correctly refers to the Railroad Medicare contractor as a SMAC.²¹ The SMAC is a unique and distinct contracting entity that processes Railroad Medicare claims nationally rather than regionally for the entire universe of railroad retirement beneficiaries. While CMS acknowledges Railroad Medicare as a unique SMAC, the cited CMS hyperlink only referenced the two non Railroad MAC contracts. A more current CMS hyperlink to the Railroad Medicare SMAC is provided for reference in our footnote.²²

Respectfully, the Office of Programs provided several points supporting their belief that Railroad Medicare improper payments should not be distinctly reported. However, as discussed previously in our report, OMB had not formally granted the RRB approval to discontinue reporting Railroad Medicare and directed RRB and CMS to resolve this issue by way of formalized agreement and establishment of an updated MOU between the agencies. As of May 3, 2022, we had been informed by the RRB that CMS is reviewing a draft version of the updated MOU. The draft MOU had not been provided to the OIG for review and comment and we have not observed any indication of CMS' concurrence with RRB's delegation of their payment integrity reporting responsibilities to CMS. Until an MOU expressing mutual agreement and clearly delineating Railroad Medicare payment integrity reporting responsibility is finalized, the reporting responsibilities of the RRB's Railroad Medicare program by default continue to belong to RRB. Prompt resolution and issuance of this MOU, first reported by the OIG in May 2019, is imperative as Railroad Medicare's improper payment rate has frequently exceeded both the national Medicare Part B rate and PIIA's established 10 percent threshold, and thus warrants separate program reporting. For example, Railroad Medicare's fiscal year 2020 improper payment rate of 13.7 percent significantly exceeded the national Part B improper payment rate of 8.1 percent, but was not reported to Congress due to RRB management's contractually unsupported decision.

²¹ RRB OIG, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2021*, Report No. 22-02 (Chicago, IL: November 15, 2021).

²² <https://www.cms.gov/MAC-info>.

Requirements #2a through #2b – RRB Conducted its Required Risk Assessment and Adequately Concluded with Regard to the Statutory Threshold

During fiscal year 2021 PAR reporting, the RRB was required to conduct a risk assessment for one of RRB's five programs and conclude whether the program was likely to result in improper or unknown payments above or below OMB's statutory threshold. The RRB performed a risk assessment for its RUIA benefit payment program and adequately concluded with regard to the statutory threshold. Therefore, RRB was compliant with the two requirements. Risk assessments were applicable for the program in response to legislative changes. Risk assessments for four of five RRB programs had been previously completed during fiscal year 2020. During the interim period from fiscal year 2017 through fiscal year 2021:

- OMB granted the RRB relief from reporting improper payments for the RRA and RUIA programs on July 19, 2018. RRB's fiscal year 2020 RRA risk assessment determined that the program was under PIIA's threshold of significant improper payments. RRB's fiscal year 2020 RUIA risk assessment concluded that, through fiscal year 2019, there were no reported issues or problems regarding the RUIA program. In response to the enactment, in fiscal year 2020, of the Coronavirus Aid, Relief, and Economic Security Act, which directly affects the payment of unemployment and sickness benefits, the RRB conducted an RUIA risk assessment during fiscal year 2021 and concluded that the program continues to remain below the statutory thresholds. RRB plans to conduct another RUIA Risk Assessment during fiscal year 2022 due to the passages of the Continued Assistance to Railway Workers Act of 2020 and the American Rescue Plan Act of 2021.
- RRB reported an improper payment estimate for Railroad Medicare in the fiscal year 2018 PAR. Therefore, continued reporting of its annual improper payment estimates was required and a risk assessment was not required. However, RRB ceased reporting Railroad Medicare improper payment data and estimates beginning with the fiscal year 2019 PAR and continuing through fiscal year 2021.
- RRB's risk assessments deemed the non-benefit payment programs, vendor and employee payment programs, not susceptible to significant improper payments in its fiscal year 2017 and 2020 PAR reporting. These programs did not experience significant change in legislation and/or a significant increase in their funding levels during fiscal year 2021 and the RRB plans to conduct risk assessments in fiscal year 2023.

If required, federal agencies are to conduct a program specific risk assessment for each program or activity that conforms with section 2(B) of the PIIA.²³ The agency must also ensure that the improper payment risk assessment methodology used adequately concludes whether the program is likely to make improper payments plus unknown payments above or below the statutory threshold.²⁴ For programs that are deemed to be not susceptible to significant improper payments, agencies are required to perform risk assessments at least once every

²³ Pub. L. 116-117, 134 Stat. 113 (2020); 31 U.S.C. § 3351(2)(B).

²⁴ OMB M-21-19, pg. 44.

three years. Programs already reporting an improper payment estimate do not need to perform an additional improper payment risk assessment.

Requirements #3 through #6 – RRB did not Publish IP and UP Estimates, Develop Corrective Action Plans, Develop IP and UP Reduction Targets, Demonstrate IP and UP Improvement, Develop Plans to Meet the IP and UP Reduction Targets, or Report an IP and UP Rate of Less than 10 Percent for Railroad Medicare IPs and UPs

The RRB did not publish payment integrity information or improper payment data for Railroad Medicare in its PAR or as accompanying information in its data call submission. Therefore, the RRB was noncompliant with requirements three through six.

- Requirement #3 – Publish improper payment and unknown payment estimates for programs susceptible to significant improper payments and unknown payments in the accompanying materials to the annual financial statement.
- Requirement #4 – Publish corrective action plans for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement.
- Requirement #5a – Publish improper payment and unknown payment reduction target for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement.
- Requirement #5b – Demonstrate improvements to payment integrity or reach a tolerable improper payment and unknown payment rate.
- Requirement #5c – Develop a plan to meet the improper payment and unknown payment reduction target.
- Requirement #6 – Report an improper payment and unknown payment estimate of less than 10 percent for each program for which an estimate was published in the accompanying materials to the annual financial statement.²⁵

The current version of OMB Circular A-136 also states that “[i]nformation previously contained in this section that is not explicitly required below will be collected by OMB through the Annual Data Call and published on PaymentAccuracy.gov.”²⁶

PIIA noncompliance with requirements 3 through 6 is directly attributable to RRB’s decision to cease Railroad Medicare reporting as of fiscal year 2019. RRB ceased reporting Railroad Medicare improper payment data because CMS reports a combined overall error rate that includes all Medicare Administrative Contractors and the RRB SMAC. CMS and RRB agreed that RRB would no longer separately report this information in order to avoid reporting duplicative information. RRB management has stated that there was no change in their rationale for not reporting a Railroad Medicare improper payment rate for fiscal year 2021. While assessed as

²⁵ OMB M-21-19, pgs. 45-49; Pub. L. 116-117, 134 Stat. 113 (2020); 31 U.S.C. §3351(2).

²⁶ OMB Circular No. A 136, pg. 112.

duplicative, we observed that the Railroad Medicare improper payment rate was not transparently disclosed in the HHS' or CMS' AFRs.

RRB should be reporting Railroad Medicare improper payment data because OMB did not formally grant the RRB approval to discontinue reporting Railroad Medicare. OMB indicated that RRB and CMS should resolve this issue amongst themselves. RRB and CMS have not formalized an agreement for reporting Railroad Medicare as they continue to work on updating an MOU between the agencies. Although the MOU was expected to be finalized by the end of 2020, RRB management explained that the actions had been postponed due to CMS' administrative changes and its shifting of resources to address coronavirus activities. They also stated that RRB and CMS have been actively working on finalizing an updated MOU. The RRB and CMS have had numerous discussions and draft exchanges regarding updating the MOU in March 2022. RRB management stated that as of the release of this report, CMS is reviewing a draft version of the updated MOU. Until the MOU is finalized, RRB's position was that they have a tentative agreement with CMS that Railroad Medicare reporting responsibilities belonged to CMS.

While above PIIA's established 10 percent threshold, RRB's improper payment and unknown payment rate of 13.7 percent determined during its November 2020 CERT was not reported in its PAR or data call submission. Because the Railroad Medicare improper payment and unknown payment rates were not reported and published in its PAR or accompanying materials, we determined that they were noncompliant for requirements 3 and 6.

Railroad Medicare improper payment and unknown payment estimates, corrective action plans, annual reduction targets, and improper payment rates are not being reported to OMB as required by PIIA, and it is RRB's responsibility to continue publishing this required improper payment and unknown payment information until the RRB and HHS sign an MOU detailing who is responsible for Railroad Medicare reporting. As such, the RRB did not disclose to the public, the President, and Congress the following information about the Railroad Medicare program and the performance of the RRB's SMAC, Palmetto.

- The RRB had \$122.8 million in projected Railroad Medicare improper payments.
- The RRB did not have a Railroad Medicare corrective action plan to adequately address the root causes and reduce the unreported Railroad Medicare improper payments and unknown payments that had exceeded the statutory threshold.
- The RRB did not publish a Railroad Medicare improper payment and unknown payment annual reduction target, did not demonstrate improvement to payment integrity, and did not develop a plan to achieve the target for this year.
- The RRB had an unpublished and unreported gross improper payment rate of 13.7 percent, above the 10 percent threshold.²⁷

²⁷ The information provided is according to a CMS' Comprehensive Error Rate Testing report titled *November 2020 Final Report For Contractor RRB*. The report included reviewed claims data from the sampling period July 2018 through June 2019.

Because of these instances of noncompliance, the RRB has been noncompliant with payment integrity legislation for fiscal years 2018 through 2021, four consecutive fiscal years.

Recommendations

Two of our prior year audit recommendations partially addressed these weaknesses and remain open.²⁸ In addition, we recommend that the Office of Programs

2. publish unknown payment estimates for the Railroad Medicare Program in the Office of Management and Budget's data calls, until the Office of Management and Budget formally approves the Railroad Retirement Board's discontinuation of reporting or approves an agreement between the Centers for Medicare and Medicaid Services and the Railroad Retirement Board on how Railroad Medicare will be reported;
3. develop and publish a Railroad Medicare corrective action plan in accordance with Office of Management and Budget directives;
4. publish improper payment and unknown payment reduction targets for the Railroad Medicare Program in accordance with the annual Office of Management and Budget Data Call requirements;
5. demonstrate improvement and develop a plan to meet the published improper payment and unknown payment reduction targets for the Railroad Medicare Program in accordance with Office of Management and Budget directives; and
6. report an improper payment and unknown payment rate of less than 10 percent for the Railroad Medicare program.

Management's Comments and Our Response

The Office of Programs did not concur with recommendations 2 through 6. Their response was the same as their response to recommendation 1. Our evaluation of their comments is also the same. Please refer to our comments for that recommendation.

Agency's Efforts to Prevent and Reduce IPs and UPs

The RRB has made efforts to prevent, reduce, and recover improper payments for their most significant programs with improper payments. We could not evaluate the RRB's efforts to prevent, reduce, and recover improper payments for the vendor and employee benefit payment programs because this has not been a focus for the RRB as these programs are not susceptible to significant improper payments.

The Railroad Medicare improper payment rate increased from 12.5 percent to 13.7 percent since reported in the 2018 CERT program issued in November 2018 and the 2020 CERT program issued in November 2020, respectively. Therefore, Railroad Medicare improper payments

²⁸ RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Reporting in the Fiscal Year 2019 Performance and Accountability Report*, Report No. 20-06 (Chicago, IL: May 12, 2020), Recommendation 1; and RRB OIG, Report No. 21-05, Recommendation 2.

prevention and reduction became less effective in reducing improper payments, although not reported in the PAR.

Although the RRB has not reported an RRB improper payment amount and rate for the RRA program since fiscal year 2017, they did include these amounts in their fiscal year 2020 Risk Assessment for RRA. Based on a comparison of these amounts, the RRB has reduced improper payments and the rate of improper payments in the RRA program between fiscal year 2016 and fiscal year 2019.

The RRB has also not reported improper payment amounts and percentages for the RUIA benefit payment program since at least fiscal year 2018 when they received a waiver of reporting from OMB. Therefore, we are unable to evaluate their success at preventing and reducing improper payment amounts.

Additionally, the RRB has identified the major causes of overpayments for both the RRA and RUIA benefit payment programs and actions for improving the accuracy of the payments and reducing erroneous payments. The RRB has not identified the causes of overpayments or the needed actions for the Railroad Medicare program because they do not accept responsibility for this program. They have indicated that they do not make Railroad Medicare payments.

RRA program recoveries increased from \$45.9 million in fiscal year 2015 to \$82.7 million in fiscal year 2019. RUIA program recoveries increased from \$22 million to \$26.1 million during that same time period. However, RRA and RUIA program recoveries decreased in fiscal year 2020 to \$53.5 million and \$22.89 million respectively. The RRB does not report recapture of Railroad Medicare information; therefore, we could not evaluate their experience with that program.

The RRB has determined that it would not be cost effective to capture employee and vendor payment recoveries; therefore, we could not make a determination regarding the RRB's adequacy in this area.

OMB Circular A-123 Appendix C, section VI.C.3, requires the OIG to "...include an evaluation of agency efforts to prevent and reduce [improper payments] and [unknown payments].... In addition, for each agency program reporting an estimate above the statutory threshold, the OIG must include recommendation(s) for action(s) to further improve prevention and reduction of [improper payments] and [unknown payments] within the program."²⁹

²⁹ OMB M-21-19, pg. 51.

Recommendation

Recommendations 1 through 6 of this report address our concerns, in addition, we recommend that the Office of Programs

7. accept responsibility and accountability for the Railroad Medicare program to further improve prevention and ensure that improper payments and unknown payments are minimized.

Management's Comments and Our Response

The Office of Programs did not concur with recommendation 7. Their response was the same as their response to recommendation 1. Our evaluation of their comments is also the same. Please refer to our comments for that recommendation.

Other Issues Potentially Impacting Compliance

While conducting this audit, we identified other issues potentially impacting compliance. We describe the details of these issues in the next sections.

Benefit Payments Omitted from Risk Assessment Methodology

The RRB's RUIA program improper payment risk assessment failed to factor \$136,520,396.42 for fiscal year 2020 enhanced unemployment benefit payments in their RUIA program risk assessment methodology. The enhanced unemployment benefits consisted of \$1,200 Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Recovery Payments (CARP).³⁰ Summarized OMB guidance for this situation states that:

The OIG should evaluate and take into account the adequacy of the program IP risk assessment when determining program compliance. The OIG should review the IP risk assessment methodology of the agency, including whether the audits, examinations, and legal actions of the IG indicate a higher risk of [improper payments] or actual [improper payments] that were not included in the [improper payment] risk assessments. After evaluating the program's assessment of the level of [improper payment] risk the OIG should determine whether the [improper payment] risk assessment adequately concludes whether the program is likely to make [improper payments] and [unknown payments] above or below the statutory threshold...

If the OIG determines that the [improper payment] risk assessment incorrectly identified whether the program is likely to make [improper payments] and [unknown payments] above or below the statutory threshold the OIG should provide recommended changes the program should make to their [improper payment] risk assessment methodology to achieve the alternate conclusion.³¹

³⁰ Pub. L. No. 116-127, Stat. 192; Section 4101 (2020); H.R. 6201, Families First Coronavirus Response Act. The RRB issued the first \$1,200 enhanced unemployment benefit payments under Phase II of the CARES Act on May 28, 2020. The RRB received an appropriation of \$425 million to fund these payments.

³¹ OMB M-21-19, pg. 44.

RRB's Office of Programs omitted CARP enhanced unemployment benefit payments from its RUIA program risk assessment methodology because they were not included in the outlay amounts provided by the Bureau of Actuary and Research (BAR). The Office of Programs relies on the BAR for this information because BAR has always provided the amount of unemployment insurance and sickness insurance outlays for the corresponding fiscal year. The Office of Programs stated that BAR is the only source for this information. When BAR provided the unemployment insurance and sickness insurance outlays for fiscal year 2020 they noted the CARP \$1,200 payments were excluded from the total RUIA outlays. The Office of Programs concluded that this seemed reasonable since the CARP payments were funded from a separate \$425 million Treasury appropriation rather than RRB trust funds and all benefits payable under the CARES Act would be excluded from Experience Rating. However, in response to the RRB OIG's inquiry questioning why enhanced unemployment benefit payments were excluded from the RUIA improper payment rate calculations, the Office of Programs sought legal advice from the Office of General Counsel which advised that the \$1,200 CARP payments should be included in the fiscal year 2020 RUIA improper payment calculation, regardless of the experience rating system or where the funding comes from.

While compliance with PIIA Requirement 2(a) potentially could have been impacted, correction of the error did not result in significant improper payments as defined by the PIIA statutory threshold. However, the following errors resulted from the RRB's failure to include the enhanced unemployment benefit payments in the risk assessment calculation:

- Total outlays for unemployment insurance benefits were understated by \$136.5 million, representing the \$1,200 CARP enhanced unemployment benefit payments.
- The RUIA improper payment rate was calculated and reported as 2.98 percent; however, it should have been reported as 2.40 percent. Both the incorrect and correct improper payment rates exceeded the 1.5 percent PIIA statutory threshold.
- Total improper payments of \$8.7 million, originally reported as \$6.95 million, were understated by \$1.77 million. However, the corrected total improper payments were still below the \$10 million PIIA statutory threshold.

Recommendation

We recommend that the Office of Programs work with the Bureau of Actuary and Research

8. to ensure all railroad unemployment program outlays and improper payments are included in the supporting calculations that will be used in the next risk assessment cycle.

Management's Comments

The Office of Programs concurred with recommendation 8.

RRB did not Update its Payment Integrity Procedures to Address Revised OMB Guidance

RRB's Program Evaluation & Management Services did not update RRA's current payment integrity methodology and procedure to comply with OMB M-21-19. RRB's improper payment methodology and procedure had not been updated since March 2018.

Released on March 5, 2021, OMB M-21-19 transformed the payment integrity compliance framework and created a more comprehensive and meaningful set of requirements to allow agencies to spend less time complying with low-value activities and more time researching the underlying causes of improper payments, balancing payment integrity risks and controls, and building the capacity to help prevent future improper payments.³²

The outdated procedure was caused by insufficient review of current improper payment guidance issued by OMB in fiscal year 2021. If procedures do not reflect current OMB guidance and requirements, payment integrity and data call reporting may not address the current guidance.

Recommendation

We recommend that the Office of Programs

9. establish procedure to ensure timely revision of improper payment methodology and procedure to reflect the most recent OMB guidance and requirements.

Management's Comments and Our Response

For recommendation 9, the Office of Programs nonconcurred and stated:

The RRB conducted and published an RRA Risk Assessment in the FY 2020 Performance and Accountability Report (P&AR) based on the most recent A-123 Appendix C guidance (M-18-20) dated June 2018. The results of this Risk Assessment demonstrated the program falls below the thresholds for "significant improper payments," and as a result, the RRA program went into a three-year Risk Assessment cycle, with the next Risk Assessment scheduled for FY 2023. Therefore, any procedure updates based on A-123 Appendix C guidance (M-21-19) dated March 2021, were not needed at the time for the FY 2021 P&AR. In addition, the audit report did not demonstrate any impact to our narrative in the "Payment Integrity Information Act Reporting" section in the FY 2021 P&AR or in the OMB Data Call.

The comments provided by management did not warrant a modification to our report.

As a safeguard and to ensure proper compliance with PIIA, methodology and procedure should be updated timely to reflect current OMB guidance.

³² OMB M-21-19, pg. 1.

The Government Accountability Office's (GAO) Green Book, Section 10.03, Appropriate Documentation of Transactions and Internal Control states:

Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.

And GAO's Green Book, Section 12.05, Periodic Review of Control Activities, states:

Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks. If there is a significant change in an entity's process, management reviews this process in a timely manner after the change to determine that the control activities are designed and implemented appropriately. Changes may occur in personnel, operational processes, or information technology. Regulators; legislators; and in the federal environment, the Office of Management and Budget and the Department of the Treasury may also change either an entity's objectives or how an entity is to achieve an objective. Management considers these changes in its periodic review.³³

While our audit did not identify impact specific to the procedural deficiency, the failure to update its methodology and procedure in a timely manner placed the RRB at a greater risk of noncompliance.

Railroad Medicare Improper Payment Data is Not Transparent in HHS' Fiscal Year 2021 Agency Financial Report

Railroad Medicare improper payment information was not separately published in HHS' or CMS' AFR or on PaymentAccuracy.gov. Therefore, published Railroad Medicare information was not transparent. We reviewed HHS' fiscal year 2021 AFR and there was no mention of the RRB's Railroad Medicare program as a separate program when discussing improper payment information. In addition, CMS' fiscal year 2021 AFR made no mention of Railroad Medicare as a separate program in discussing Medicare improper payment information. Finally, there was no mention of Railroad Medicare for HHS or CMS on the fiscal year 2021 dataset on PaymentAccuracy.gov.

Railroad Medicare, should be considered as one program for improper payment reporting. OMB M-21-19 requires that, "[w]hen determining how agency activities should be grouped, agencies should not put activities into groupings that may mask significant IP estimates by the large size or scope of a grouping. In addition, agencies should not intentionally group activities in an effort to reduce the size and fall below the statutory thresholds."³⁴

³³ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

³⁴ OMB M-21-19, pg. 70.

The RRB does not report the improper payment rate or other required information for the Railroad Medicare program because it maintains that this would be duplicate reporting. They maintain that HHS includes this information in their AFR and it is CMS' responsibility to report Railroad Medicare improper payment information. However, HHS only includes Railroad Medicare program improper payment information as part of their national Part B improper payment rate and does not report it or identify it separately. If RRB does not accept responsibility for Railroad Medicare reporting as required by PIIA and it is not reported as a unique program of risk elsewhere, there is no reason for RRB to retain its administrative responsibilities for the Railroad Medicare program.

The intent of OMB's guidance in Appendix C is to provide complete transparency of improper payment rates for programs an agency is responsible for overseeing and administering. For example, a significant improper payment error rate of a small program should not be concealed within a larger program that has a rate below the statutory threshold to allow the otherwise noncompliant smaller program to become compliant.

One of our previous audit reports addressed these weaknesses and those recommendations remain open.³⁵

³⁵ RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Elimination and Recovery Act in Fiscal Year 2020 Performance and Accountability Report*, Report No. 19-09 (Chicago, IL: May 30, 2019), Recommendations 9, 18, and 19.

APPENDIX I: MANAGEMENT COMMENTS



UNITED STATES GOVERNMENT
MEMORANDUM

FORM G-115f (1-92)
RAILROAD RETIREMENT BOARD

June 9, 2022

TO: Debra Wheat
Assistant Inspector General for Audits

FROM: Arturo Cardenas
Director of Programs **ARTURO
CARDENAS** Digitally signed by
ARTURO CARDENAS
Date: 2022.06.09 10:58:58
-05'00'

SUBJECT: **Draft** – Audit of Railroad Retirement Board’s Compliance with Improper Payments Reporting in Fiscal Year 2021 Performance and Accountability Report

Recommendation 1

We recommend that the Office of Programs post Railroad Medicare program payment integrity information in the annual financial statement and accompanying materials on the agency website, in accordance with the Payment Integrity Information Act of 2019 and the Office of Management and Budget’s data call requirements, until RRB formalizes an agreement with the Centers for Medicare and Medicaid Services to take over reporting for Railroad Medicare.

Response

RRB non-concurs. The Railroad Retirement Board (RRB) has consistently acknowledged its responsibilities under the Social Security Act to administer certain provisions of the Medicare program for railroad annuitants, including the administration of the Specialty Medicare Administrative Contractor (SMAC) contract with Palmetto GBA, LLC. 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 as a whole.

In prior audits related to improper payments, CMS confirmed that Palmetto GBA, LLC had claims sampled and reviewed in the calculation of the Medicare Fee-for-Service (FFS) improper payment rate, where said improper payment rate was reported in CMS’ financial report. Please note that CMS categorizes Palmetto GBA, LLC as a Medicare Administrative Contractor (MAC) rather than a SMAC¹. Since CMS is a component of HHS, HHS consolidates CMS’ financial results and related Medicare improper payment information into its financial statements presented in its annual Agency Financial Report (AFR). In its AFR, HHS reports the estimated proper and improper payments and related information for the Medicare FFS program as a whole, to include the results of all MACs including the SMAC. The Medicare FFS is a component discussed within CMS’ financial report, as well as presented in the Payment Integrity Report that HHS publishes in its AFR to accompany its consolidated Principal Financial Statements.

Response

Despite this information, the Office of the Inspector General 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. However, under the Payment Integrity Information Act of 2019 (PIIA), 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, it continues to be RRB's position 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.

The RRB is responsible for making benefit payments to eligible Railroad beneficiaries under the Railroad Retirement Act, 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 our agencies to include reimbursement to the RRB for its specified Medicare administrative responsibilities, 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 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.

It is RRB's position that Medicare improper payment information should continue to accompany the financial statements of CMS, and the consolidated financial statements of HHS, rather than those of the RRB, since the CMS' financial statements and HHS consolidated financial statements report the cost of the Medicare program in its entirety. By maintaining this posture, RRB and CMS continue to provide interested parties with the programmatic cost of the Medicare program in its entirety for comparison to the improper payment information covering the Medicare program in its entirety, as we interpret the PIIA to intend.

³Centers 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#MacsandLists>

Recommendation 2

We recommend that the Office of Programs publish unknown payment estimates for the Railroad Medicare Program in the Office of Management and Budget's data calls, until the Office of Management and Budget formally approves the Railroad Retirement Board's discontinuation of reporting or approves an agreement between the Centers for Medicare and Medicaid Services and the Railroad Retirement Board on how Railroad Medicare will be reported.

Response

RRB non-concurs. See response to Recommendation #1 above.

Recommendation 3

We recommend that the Office of Programs develop and publish a Railroad Medicare corrective action plan in accordance with Office of Management and Budget directives.

Response

RRB non-concurs. See response to Recommendation #1 above.

Recommendation 4

We recommend that the Office of Programs publish improper payment and unknown payment reduction targets for the Railroad Medicare Program in accordance with the annual Office of Management and Budget Data Call requirements.

Response

RRB non-concurs. See response to Recommendation #1 above.

Recommendation 5

We recommend that the Office of Programs demonstrate improvement and develop a plan to meet the published improper payment and unknown payment reduction targets for the Railroad Medicare Program in accordance with Office of Management and Budget directives.

Response

RRB non-concurs. See response to Recommendation #1 above.

Recommendation 6

We recommend that the Office of Programs report an improper payment and unknown payment rate of less than 10 percent for the Railroad Medicare program.

Response

RRB non-concurs. See response to Recommendation #1 above.

Recommendation 7

We recommend that the Office of Programs accept responsibility and accountability for the Railroad Medicare program to further improve prevention and ensure that improper payments and unknown payments are minimized.

Response

RRB non-concurs. See response to Recommendation #1 above.

Recommendation 8

We recommend that the Office of Programs work with the Bureau of Actuary and Research to ensure all railroad unemployment program outlays and improper payments are included in the supporting calculations that will be used in the next risk assessment cycle.

Response

RRB concurs. The RRB will work with the Bureau of Actuary and Research to ensure all railroad unemployment program outlays and improper payments are included in the supporting calculations that will be used in the next risk assessment cycle.

Target implementation date: November 30, 2022.

Recommendation 9

We recommend that the Office of Programs establish procedure to ensure timely revision of improper payment methodology and procedure to reflect the most recent OMB guidance and requirements.

Response

RRB non-concurs. The RRB conducted and published an RRA Risk Assessment in the FY 2020 Performance and Accountability Report (P&AR) based on the most recent A-123 Appendix C guidance (M-18-20) dated June 2018. The results of this Risk Assessment demonstrated the program falls below the thresholds for "significant improper payments," and as a result, the RRA program went into a

three-year Risk Assessment cycle, with the next Risk Assessment scheduled for FY 2023. Therefore, any procedure updates based on A-123 Appendix C guidance (M-21-19) dated March 2021, were not needed at the time for the FY 2021 P&AR. In addition, the audit report did not demonstrate any impact to our narrative in the "Payment Integrity Information Act Reporting" section in the FY 2021 P&AR or in the OMB Data Call.

APPENDIX II: PREVIOUS OFFICE OF INSPECTOR GENERAL OPEN AUDIT RECOMMENDATIONS FOR IMPROPER PAYMENT REPORTING

Railroad Retirement Board Office of Inspector General Audit Reports		
Report	Recommendation	Status
15-06	Take all of the necessary steps to prepare and submit the required plans within the 90 day reporting requirement. (Recommendation 1)	Open
15-06	Ensure that the necessary policies and procedures are developed and documented for the agency's use for the preparation of a risk assessment process that meets Improper Payment Elimination and Recovery Act of 2010 requirements. (Recommendation 2)	Open
15-06	Revise and document their definitions of improper underpayments for the Railroad Retirement Act program in compliance with Improper Payment Elimination and Recovery Act of 2010 guidance, and if similar definitions are used for other programs, revise them accordingly. (Recommendation 6)	Open
15-06	Develop and document the necessary policies and procedures for the review and validation of the Railroad Unemployment Insurance Act improper payment data to be reported in the Performance and Accountability Report. (Recommendation 9)	Open No corrective action taken due to disagreement between agency and Office of Inspector General (OIG) auditors regarding which unit within the agency this recommendation should be directed.
15-06	Ensure that the proper controls are in place to make sure that the policies and procedures are followed to properly support the improper payment data reported for the Railroad Unemployment Insurance Act program. (Recommendation 10)	Open No corrective action taken due to disagreement between agency and OIG auditors regarding which unit within the agency this recommendation should be directed.
16-07	Revise its overall process for the Railroad Retirement Act program that supports improper payment reporting requirements to ensure the accuracy of the data. (Recommendation 1)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
16-07	Document policies and procedures to ensure that entire receivable balances are recorded in the agency's receivable system. (Recommendation 2)	Open

Railroad Retirement Board Office of Inspector General Audit Reports		
Report	Recommendation	Status
16-07	Revise its definitions of improper underpayments in the methodology used for the Railroad Unemployment Insurance Act program to ensure that it is in compliance with Improper Payment Elimination and Recovery Act of 2010 guidance. (Recommendation 3)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
17-05	Take the actions as required by Office of Management and Budget guidance in regard to noncompliance for third consecutive year for the same program to ensure that RRB programs for vendor payments and employee payments are brought into compliance. (Recommendation 1)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
17-05	Revise its computation for application of improper payment percentages for the Railroad Retirement Act program associated with initial and post underpayments to ensure that they are separately applied to the applicable components in Railroad Retirement Board calculations of the total improper payments. (Recommendation 2)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
18-05	Identify and post all existing unposted returned payments. (Recommendation 2)	Open
18-05	Identify the cause for unposted returned payments and take the necessary corrective actions to ensure the accuracy of future reported recaptured amounts. (Recommendation 3)	Open
19-09	Submit a plan, within 90 days, to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, and the Office of Management and Budget, describing the actions that the agency will take to become compliant. (Recommendation 1)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Achieve a gross improper payment rate of less than 10 percent for Railroad Medicare. The Office of Programs through the Railroad Retirement Board's Specialty Medicare Administrative Contractor should continue to work with Medicare providers to communicate the documentation requirements and monitor the adherence to such requirements throughout the year. (Recommendation 2)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Remove or update the navigation instructions to the Performance and Accountability Report. (Recommendation 3)	Open
19-09	Obtain and maintain the applicable Railroad Medicare sampling and estimation plan agency certification. It must be a Centers for Medicare and Medicaid Services' certification, Railroad Retirement Board Chief Financial Officer's certification, or other Railroad Retirement Board program official's certification. (Recommendation 4)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.

Railroad Retirement Board Office of Inspector General Audit Reports		
Report	Recommendation	Status
19-09	Obtain the Railroad Medicare sampling and estimation plan for the fiscal year 2019 payment integrity reporting cycle. (Recommendation 5)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Establish a written policy to ensure subsequent Railroad Medicare sampling and estimation plans are obtained and readily available for review so that a qualified statistician would be able to replicate what was done or so that Office of Management and Budget, agency Inspector General, or Government Accountability Office personnel can evaluate the design. (Recommendation 6)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Submit the Railroad Medicare sampling and estimation plan for fiscal year 2019 to the Office of Management and Budget by the June 30th deadline. (Recommendation 7)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Obtain the Office of Management and Budget approval for Railroad Medicare's overall reduction target rate. (Recommendation 8)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Update the Memorandum of Understanding (MOU13-61) to describe the applicable agency responsibilities as they pertain to Improper Payments Elimination and Recovery Act laws and Office of Management and Budget guidance for payment integrity reporting. (Recommendation 9)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Include a brief narrative of the reduction in improper payments that is attributable to the Do Not Pay Initiative for Railroad Medicare and associated systems. (Recommendation 10)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Identify, publish, and provide a justification for Railroad Medicare uncollectible amounts. (Recommendation 11)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Provide justification for Railroad Retirement Act and Railroad Unemployment Insurance Act uncollectible amounts. (Recommendation 12)	Open

Railroad Retirement Board		
Office of Inspector General Audit Reports		
Report	Recommendation	Status
19-09	Develop a payment recapture audit program for vendor and employee payments, or approved alternative method, if one is deemed cost effective. (Recommendation 13)	Open
19-09	If a payment recapture audit program is deemed not cost effective, provide a cost benefit analysis, in accordance with the Office of Management and Budget's best practices as outlined in OMB M-18-20, in writing to Office of Management and Budget and the Office of Inspector General, and include it in the fiscal year 2019 Performance and Accountability Report. (Recommendation 14)	Open
19-09	Adopt the Office of Management and Budget's recommended best practice and describe statutory or regulatory barriers in the fiscal year 2019 Performance and Accountability Report. (Recommendation 15)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Update applicable performance appraisals with specific criteria for meeting applicable improper payment reduction targets and establish and maintain sufficient internal controls to reduce improper payments in accordance with Office of Management and Budget Circular A-136. (Recommendation 16)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Develop and implement an internal control process (e.g. a checklist) to ensure all updates to OMB M-18-20 and Office of Management and Budget Circular A-136 relating to improper payments are sufficiently addressed for payment integrity reporting. (Recommendation 17)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Work with the Centers for Medicare and Medicaid Services to meet the needs of Railroad Retirement Board's payment integrity reporting. If the Railroad Retirement Board is not able to obtain claims data that coincides with the fiscal year being reported, obtain Office of Management and Budget's approval for the delayed reporting timeframe. (Recommendation 18)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
19-09	Update the Memorandum of Understanding (MOU13-61) dated April 12, 2013 to ensure it reflects the applicable agency responsibilities as they pertain to improper payment reporting sampling and estimation plans. (Recommendation 19)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.

Railroad Retirement Board Office of Inspector General Audit Reports		
Report	Recommendation	Status
20-06	Create and submit proposals to Office of Management and Budget during their next budget submission that will bring the agency into compliance. If the Director of Office of Management and Budget determines that additional funding would help the agency become compliant, the agency should obligate an amount of additional funding determined by the Director of Office of Management and Budget to intensify compliance efforts. (Recommendation 1)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
20-06	Update the corrective action plan that was published in the Railroad Retirement Board's fiscal year 2018 Performance and Accountability Report to reduce Railroad Medicare improper payments and publish it in the Railroad Retirement Board's fiscal year 2020 Performance and Accountability Report. (Recommendation 2)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
20-06	Publish Railroad Medicare overpayment recapture data in the Railroad Retirement Board's fiscal year 2020 Performance and Accountability Report. (Recommendation 3)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
20-06	Perform a reconciliation of Railroad Retirement Act overpayments recapture source data to the Financial Management Integrated System when preparing the payment recapture data worksheet to ensure accurate information is published in the Railroad Retirement Board's Performance and Accountability Report's payment integrity section. (Recommendation 4)	Open
20-06	Resume payment integrity reporting in the Railroad Retirement Board's Performance and Accountability Report, as required by applicable improper payment laws, until official approval from Office of Management and Budget is obtained and updated governing documents between the Railroad Retirement Board and the Department of Health and Human Services have been signed to reflect the extended enterprise relationship between the two agencies. (Recommendation 5)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
21-05	Publish Railroad Medicare program payment integrity information in accordance with the Payment Integrity Information Act of 2019 and the Office of Management and Budget's data call requirements until it formalizes an agreement with the Centers for Medicare and Medicaid Services to take over reporting for Railroad Medicare. (Recommendation 1)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.

Railroad Retirement Board		
Office of Inspector General Audit Reports		
Report	Recommendation	Status
21-05	Publish improper payment estimates for the Railroad Medicare program in the Office of Management and Budget's data calls, until the Office of Management and Budget formally approves the Railroad Retirement Board's discontinuation of reporting or approves an agreement between the Centers for Medicare and Medicaid Services and the Railroad Retirement Board on how Railroad Medicare will be reported. (Recommendation 2)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
21-05	Develop and publish corrective action plan information in accordance with OMB directives. (Recommendation 3)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
21-05	Publish reduction targets for the Railroad Medicare Program in accordance with the annual Office of Management and Budget Data Call requirements. (Recommendation 4)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
21-05	Meet the published reduction targets for the Railroad Medicare Program. (Recommendation 5)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
21-05	Report an improper payment rate of less than 10 percent for the Railroad Medicare program in accordance with applicable laws and regulations. (Recommendation 6)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
21-05	Fully complete and publish all required payment integrity information as requested by the Office of Management and Budget's annual and supplemental data calls, until it formalizes an agreement with the Centers for Medicare and Medicaid Services to take over reporting for Railroad Medicare. (Recommendation 7)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.
21-05	Describe in its Performance and Accountability Report or Office of Management and Budget supplemental data call submission, the internal controls, human capital, its information systems and infrastructure needs, as well as its other program needs for reducing Railroad Medicare improper payments to the targeted levels, in accordance with OMB's supplemental data call requirements. (Recommendation 8)	Open Agency did not concur. OIG auditors believe this recommendation should still be implemented.

Source: RRB OIG analysis of open recommendation related to payment integrity reporting.

APPENDIX III: ABBREVIATIONS

AFR	Agency Financial Report
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CARP	CARES Act Recovery Payments
CERT	Comprehensive Error Rate Testing
CMS	Centers for Medicare and Medicaid Services
ERM	Enterprise Risk Management
HHS	U.S. Department of Health and Human Services
IP	Improper Payment
MOU	Memorandum of Understanding
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAR	Performance and Accountability Report
PIIA	Payment Integrity Information Act of 2019
RRA	Railroad Retirement Act
RRB	Railroad Retirement Board
RUIA	Railroad Unemployment Insurance Act
SI	Sickness Insurance
SMAC	Specialty Medicare Administrative Contractor
UI	Unemployment Insurance
UP	Unknown Payment