

# **OFFICE OF INSPECTOR GENERAL**

## **Statement of Concern**

**National Railroad Retirement Investment Trust  
Lack of Provision for Performance Audits**

**March 31, 2008**



**RAILROAD RETIREMENT BOARD**

**National Railroad Retirement Investment Trust  
Lack of Provision for Performance Audits**

**EXECUTIVE SUMMARY**

The Office of Inspector General (OIG) at the Railroad Retirement Board (RRB) has concerns about the effectiveness of oversight for the National Railroad Retirement Investment Trust (the "Trust"). Excessive reliance on the annual audit of the Trust's financial statements to provide information about Trust performance has left the Railroad Retirement program with fewer safeguards than those established to protect the retirement investments of Federal and private sector workers.

The RRB is an independent agency in the executive branch of the Federal government that administers comprehensive retirement-survivor and unemployment-sickness benefit programs for the nation's railroad workers and their families. For fiscal year (FY) 2007, the RRB reported benefit payments for its retirement-survivor program in excess of \$9.8 billion.

The Railroad Retirement Survivor's Improvement Act of 2001 (RRSIA) amended the Railroad Retirement Act (RRA) creating the Trust, independent of the RRB, to manage and invest railroad retirement assets in a diversified investment portfolio in the same manner as those of private sector retirement plans.<sup>1</sup> At the end of FY 2007, the Trust reported net assets of \$32.6 billion representing approximately 97% of the RRB's \$33.5 billion net position and was ranked 45<sup>th</sup> in total assets among U.S. pension funds.

The Trust is not a Federal agency and the members of the Board of Trustees are not officers or employees of the government. Section 105(a) of RRSIA provides that "the Trust is not a department, agency, or instrumentality of the Government of the United States and shall not be subject to title 31, United States Code." Although the Trust is independent of the RRB, the RRB has enforcement authority with respect to compliance with RRSIA. That is, the RRB has legal standing to bring the Trust, its Board of Trustees, its employees, or agents to court if the agency believes that the Trust is not in compliance with the requirements of RRSIA. However, that authority is not supported by an adequate oversight program.

RRSIA included specific language concerning independent oversight of the Trust which requires only an annual audit of the Trust's financial statements. RRSIA did not require, or otherwise provide for, audits of compliance with laws and regulation or evaluations of management performance. As a result, although the RRB has enforcement authority, no provision has been made to provide RRB management with the information it needs to determine whether any enforcement action may be necessary. An annual financial statement audit is not adequate to support the RRB's enforcement responsibility because such audits are not intended to provide information about all areas of risk that could indicate the need for enforcement action.

The specific requirement for an annual financial audit and lack of provision for any other type of audit or oversight activity has been understood by the RRB's OIG to exclude the Trust from the OIG's audit and investigative responsibilities. No other organization, public or private, has assumed what would otherwise be the OIG's oversight role.

The OIG is concerned that RRSIA does not specify or define any requirement for oversight by the RRB that would identify circumstances requiring enforcement action by RRB management, other than an annual audit of the Trust's financial statements. The program of Trust oversight is incomplete because RRSIA did not require any oversight activity that directly supports the RRB's enforcement authority creating a passive relationship between the Trust and the RRB while at the same time precluding the OIG from its traditional role of program watchdog.

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<sup>1</sup> Public Law 107-90, December 21, 2001, codified in 45 U.S.C. § 231n(j)

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By comparison, we have observed that the retirement savings program for Federal employees under the Federal Employees' Retirement System Act of 1986 (FERSA) and private pension plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) are protected by oversight programs that include more than an annual financial statement audit.

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# National Railroad Retirement Investment Trust Lack of Provision for Performance Audits

## INTRODUCTION

This document expresses the Office of Inspector General's (OIG) concerns about the absence of performance audits from the program of oversight for the National Railroad Retirement Investment Trust (the "Trust").<sup>2</sup>

### Background

The Railroad Retirement Board (RRB) is an independent agency in the executive branch of the Federal government. The RRB's primary function is to administer comprehensive retirement-survivor and unemployment-sickness benefit programs for the nation's railroad workers and their families, under the Railroad Retirement and Railroad Unemployment Insurance Acts. For fiscal year (FY) 2007, the RRB reported benefit payments for its retirement-survivor program in excess of \$9.8 billion.

The Trust was established pursuant to Section 105 of the Railroad Retirement Survivor's Improvement Act of 2001 (RRSIA).<sup>3</sup> This law amended the Railroad Retirement Act (RRA) by creating the Trust to hold and invest surplus program assets. Prior to RRSIA, agency managers could only invest surplus program assets in certain U.S. government securities. The Trust is not a Federal agency and the members of the Board of Trustees are not officers or employees of the government. Section 105(a) of RRSIA provides as follows:

NOT A FEDERAL AGENCY OR INSTRUMENTALITY.—The Trust is not a department, agency, or instrumentality of the Government of the United States and shall not be subject to title 31, United States Code.

At the end of FY 2007, the Trust reported net assets of \$32.6 billion representing approximately 97% of the RRB's \$33.5 billion net position and was ranked 45<sup>th</sup> in total assets among U.S. pension funds.<sup>4</sup> At the end of calendar year 2006, the trust was ranked 88<sup>th</sup> largest pension fund in the world.<sup>5</sup>

### Role of the Railroad Retirement Board

The Trust is independent of the RRB; however, RRSIA gives the RRB legal standing to bring the Trust, its Board of Trustees, its employees, or agents to court if the agency believes that the Trust is not in compliance with the requirements of RRSIA. However, RRSIA includes no oversight provisions that require the RRB to assess Trust performance and no independent assessments other than an annual audit of the Trust's financial statements. Financial statement audits are not designed to address all areas

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<sup>2</sup> A "program of oversight" includes the various activities that review, monitor, and supervise Federal agencies, programs, and policy implementation.

<sup>3</sup> Public Law 107-90, December 21, 2001, codified in 45 U.S.C. § 231n(j).

<sup>4</sup> The Top 200 Pension Funds/Sponsors, Pension & Investments Online, Crain Communications Inc.

<sup>5</sup> The Worlds 300 Largest Pension Funds Year End 2006, Watson Wyatt Worldwide.

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of potential risk that should be included in a comprehensive oversight program. Later in this presentation, we will discuss audits that are designed to address risks not covered by a financial audit.

Section 105(a) of RRSIA provides as follows:

ENFORCEMENT.—The Railroad Retirement Board may bring a civil action—

- (i) to enjoin any act or practice by the Trust, its Board of Trustees, or its employees or agents that violates any provision of this Act; or
- (ii) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this Act.

Although RRSIA gives the RRB enforcement authority, the law does not provide for performance audits to support the agency in the discharge of this responsibility. That is, although the RRB is charged with enforcing the provisions of the Act, no provision has been made to assess compliance with the Act as a basis for informed decisions.

For example, RRSIA imposes certain duties and responsibilities on the Trust but does not mandate any testing to determine how well the Trust is fulfilling its responsibilities. Section 105(a) of RRSIA requires that the Trust and each member of the Board of Trustees shall discharge their duties solely in the RRB's interest and the participants and beneficiaries of the Railroad Retirement programs.

DUTIES OF THE BOARD OF TRUSTEES — The Trust and each member of the Board of Trustees shall discharge their duties (including the voting of proxies) with respect to the assets of the Trust solely in the interest of the Railroad Retirement Board and through it, the participants and beneficiaries of the programs funded under this Act—

- (i) for the exclusive purpose of—
  - (I) providing benefits to participants and their beneficiaries; and
  - (II) defraying reasonable expenses of administering the functions of the Trust;
- (ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
- (iii) by diversifying investments so as to minimize the risk of large losses and to avoid disproportionate influence over a particular industry or firm, unless under the circumstances it is clearly prudent not to do so; and
- (iv) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this Act.

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During a performance audit, independent audit organizations inquire, gather evidence, make determinations and offer recommendations to inform Congress, agency managers and the public about program performance compared with applicable criteria such as laws, regulations, internal control and security standards, as well as recognized good business practices.

Although explicitly placing responsibility for enforcement with the RRB, the law does not explicitly direct any organization to perform, or contract for, audits to support that responsibility with evaluations of the Trust's performance. Without an independent source of information, the RRB has taken a largely passive role with respect to Trust oversight.

### Role of the Trust

The sole purpose of the Trust is to manage and invest railroad retirement assets in a diversified investment portfolio in the same manner as those of private sector retirement plans. The Trust is administered by seven trustees: three representing rail labor, three representing rail management, and one independent trustee selected by the other six. RRSIA requires the Board of Trustees to retain independent advisers to assist them in the formulation and adoption of investment guidelines and independent investment managers to invest the assets of the Trust in a manner consistent with those guidelines.

Under RRSIA, the Trust is not a department, agency, or instrumentality of the Government of the United States. In addition, the law specifically exempts the Trust from compliance with Title 31, United States Code which governs the monetary and financial operations of the Federal government.<sup>6</sup> The Trust is exempt from federal, state and local taxes.

The law also provides for an annual audit of the Trust's financial statements to be performed by an independent certified public accountant selected by the Trustees. The Trust is required to submit an annual management report to Congress, the President, the Office of Management and Budget, and the RRB transmitting the report of the independent auditors and any other comments and information necessary to inform the Congress about the operations and financial condition of the Trust.

### Role of the Office of Inspector General

The RRB's Office of Inspector General (OIG) has not taken a role in oversight of the Trust. RRSIA's specific provision for audit coverage of the Trust has been understood to exclude other coverage not specifically provided for in the law. In addition, the OIG's FY 2006 appropriation process resulted in publication of the following language stating

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<sup>6</sup> Title 31 establishes the Government Accountability Office (GAO) and includes the Chief Financial Officers Act, the Federal Managers' Financial Integrity Act, Federal Financial Management Improvement Act, and the Accountability of Tax Dollars Act.

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that “[t]he conferees expect that the Trust be administered and audited solely in conformance with the Act of 2001.”<sup>7,8</sup>

Mindful of the provisions of the law, the OIG has not included the Trust in the scope of its responsibilities as set forth in the Inspector General Act of 1978 which would otherwise extend to non-governmental entities that have a relationship with the agency. The Inspector General Act provides that the OIG’s duties and responsibilities include:

- ◆ to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of their agencies;
- ◆ to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- ◆ to recommend policies for, and to conduct, supervise, or coordinate relationships between their agencies and other Federal agencies, State and local governmental agencies, and **nongovernmental entities** with respect to all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or the identification and prosecution of participants in such fraud or abuse[Emphasis added]; and
- ◆ to keep the head of such establishment and the Congress fully and currently informed, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered **or financed by such establishment**, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action [Emphasis added].

### **Why the OIG Prepared This Document**

The OIG’s purpose in preparing this document is to describe its concerns about the absence of performance audits from the program of oversight established for the Trust under RRSIA.

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<sup>7</sup>The expectation of the conferees was offered in context of a discussion concerning reporting and auditing of the Trust in relation to the accounting and auditing of the RRB. House Report 109-337, page 116.

<sup>8</sup>The Congressional Research Service report, Conference Reports and Joint Explanatory Statements, updated February 28, 2003, indicated that, “The House and Senate create a conference committee to resolve the disagreements that result when one house passes a bill and the other house then passes the same bill with one or more amendments. It is those amendments that are in disagreement between the houses and that are the subjects of conference negotiations. In their conference report, the conferees propose a way to resolve the disagreement created by each of the amendments.”

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**What the OIG Did to Develop This Presentation**

In order to develop this presentation, we:

- ◆ identified the duties and responsibilities of the Inspectors General as set forth in the Inspector General Act of 1978, as amended;
- ◆ identified the management and oversight responsibilities with respect to the Trust as set forth in Railroad Retirement Survivor's Improvement Act of 2001 (RRSIA);
- ◆ considered the meaning of program oversight in both the public and private sector; and
- ◆ reviewed selected audit and evaluation reports concerning oversight of Federal programs involving trust fund administration.

**WHAT CONCERNS THE OIG**

The legislation that created the Trust includes specific language concerning audit and oversight responsibility for the Trust. This language, because of its specific provisions for audit and reporting, has been understood by the RRB's OIG to exclude the Trust from the OIG's audit and investigative responsibilities. As a result, although the Trust is subject to an annual audit of historical financial information, no provision has been made for the type of performance audits which would otherwise be a routine part of the OIG's responsibility. In addition, we note that the Trust is not subject to the somewhat higher financial audit requirements imposed on publicly held companies, or the level of oversight given to the investment savings of many workers.

Earlier in this document we discuss the role of the RRB (see page 1) and discussed the agency's enforcement authority. Although the Trust is independent of the RRB, RRSIA gives the RRB standing to bring the Trust, its Board of Trustees, its employees, or agents to court if the agency believes that the Trust is not in compliance with the requirements of RRSIA. However, the agency's enforcement authority is not supported by any specific requirement for audits to assess the Trust's compliance with the law.

Without the information provided by performance audits, RRB management does not have adequate resources to determine whether enforcement action may be necessary. By comparison, we have observed that the U.S. Department of Labor is mandated to obtain performance audits of the Thrift Savings Plan which invests retirement savings on behalf of Federal employees and has oversight responsibilities for private pension plans as well.

The Trust plays a critical role in the financing and future solvency of the Railroad Retirement program. The program and its public constituency would benefit from an OIG that is permitted to fulfill its statutory role by extending its oversight responsibilities to the Trust whose holdings of \$32.6 billion represented 97% of net program assets at the end of FY 2007.

## **National Railroad Retirement Investment Trust Lack of Provision for Performance Audits**

In the following sections of this document we discuss the difference between financial and performance audits (below), we take a look at the higher audit requirements imposed on publicly held companies (page 8), the higher oversight requirements established for Thrift Savings Plan (page 9) and the related issue of Federal oversight of private pension plans (page 10).

### **Financial Audits: An Historical Snapshot**

Financial statements provide an historical snapshot of an organization's financial position at a point in time as well as the results of its operations. For example, financial statements will tell a reader how much cash an organization held, how much its investments were worth, and how much money it owed at some point in the past. Financial statements will also tell a reader how much money the organization earned or how much its investments earned or lost during a prior period.

A financial audit is intended primarily to determine whether the financial statements are fairly presented and will not mislead a reader about the organization's assets, liabilities or income. Such audits examine a snapshot of financial operations that is not intended to cover the full panorama of public interest. For example, the Trust's financial auditors offer assurance about the reliability of the Trust's report of assets and liabilities but does not speak about compliance with the law or the effectiveness of internal control. We have noted that the Trust is not subject to Sarbanes-Oxley requirements for an opinion on the effectiveness of internal control over financial reporting (discussed further on page 8).

RRSIA requires that the Trust annually engage an independent qualified public accountant to audit its financial statements and that the Trust submit an annual management report to Congress not later than 180 days (6 months) after the end of the Trust's fiscal year with copies to the President, the RRB, and the Director of the Office of Management and Budget.

Audited financial reports play a key role in protecting the public interest; however, a financial audit is very specific in scope. A financial audit covers only historical financial information which may become outdated depending on the timeliness of its public release. A financial audit does not typically include the detailed assessments of legal compliance or program effectiveness that performance audits are designed to provide.

Because the scope of a financial audit is limited to historical financial information, it excludes, by definition, compliance with any laws and regulations that do not have a direct and material impact on the financial statements. In addition, a financial audit may limit the responsibility that auditors take with respect to information accompanying the financial statements. For example, the auditor's opinion on the Trust's FY 2007 financial statements is limited to the:

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...accompanying statement of assets and liabilities of the National Railroad Retirement Investment Trust (the "Trust"), including the condensed schedule of investments, as of September 30, 2007 and the related statements of operations, changes in net assets, and the financial highlights, for the year then ended.

We note that the Trust's auditors report publicly only on the financial information in the statements (which includes the notes to the financial statements); they do not report publicly on the effectiveness of internal control or compliance with laws and regulations.

A financial audit plays an important part in ensuring financial accountability. We make no criticism of the Trust's annual audit process. Our concern is that the financial audit process is often mistakenly believed to be more comprehensive and to provide more assurance than intended.

### **Performance Audits Complete the Picture**

Federal oversight of the Trust does not include performance audits by an independent auditor such as the RRB's OIG, the Government Accountability Office (GAO) or public accountants. Performance audits have an important role in a comprehensive oversight program. Although RRSIA gives the RRB enforcement authority with respect to the Trust, the lack of program audit coverage leaves the agency without an independent assessment of compliance.

GAO defines performance audits as "engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices."<sup>9</sup> For example, performance audits include assessments of program effectiveness; economy and efficiency; internal control; as well as compliance. Performance audits can offer information about:

- ◆ the effectiveness of internal control over financial reporting, computer processed data, or asset management;
- ◆ an organization's compliance with legal requirements applicable to its operations;
- ◆ the efficiency of personnel recruitment and retention strategies;
- ◆ management's contracting practices as compared with those in the same or related industries;
- ◆ the adequacy of efforts to safeguard sensitive information.<sup>10</sup>

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<sup>9</sup> GAO, Government Auditing Standards, July, 2007. GAO-07-731G, page 17.

<sup>10</sup> GAO-07-731G, pages 17-22. This section of Government Auditing Standards describes the spectrum of performance auditing in detail.

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Performance audits can provide objective analysis to assist management and those charged with governance such as the Trust's Board of Trustees and their managers. Managers can use the information gathered during such an audit to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.<sup>11</sup> Those charged with oversight and enforcement, such as Congress and the RRB, can use the information gathered by performance audits to identify areas that require attention.

The legislation that created the Thrift Savings Plan to invest the retirement savings of Federal workers requires performance audits. This requirement is discussed further beginning on page 9 followed by a discussion of Federal oversight of private pension plans.

### **Trust's Financial Audit Not Subject to PCAOB Standards**

While the Trust's financial statements are audited in accordance with auditing standards generally accepted in the United States of America, the Trust is not held to the additional standards promulgated by the Public Company Accounting Oversight Board (PCAOB) for publicly-held companies.<sup>12,13</sup> Most notably, the Trust is exempt from the PCAOB requirement that financial audits include an opinion regarding the effectiveness of internal control over financial reporting.

In an April 2006, report on implementation of the Sarbanes-Oxley Act, GAO offered the following summary of the Act's origins, objectives and applicability.

In response to numerous corporate failures arising from corporate mismanagement and fraud, Congress passed the Sarbanes-Oxley Act of 2002. Generally recognized as one of the most significant market reforms since the passage of the securities legislation of the 1930s, the act is intended to help protect investors and restore investor confidence by improving the accuracy, reliability, and transparency of corporate financial reporting and disclosures, and reinforce the importance of corporate ethical standards. Public and investor confidence in the fairness of financial reporting and corporate ethics is critical to the effective functioning of our capital markets. The act's requirements apply to all public companies regardless of size and the public accounting firms that audit them.<sup>14</sup>

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<sup>11</sup> GAO-07-731G, page 17.

<sup>12</sup> Auditing standards generally accepted in the U.S. are promulgated by the American Institute of Certified Public Accountants (AICPA).

<sup>13</sup> The Sarbanes-Oxley Act of 2002, created by Public Law 107-204, Section 103, directs the PCAOB to establish auditing and related attestation, quality control, ethics, and independence standards and rules to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Securities and Exchange Commission. The starting point for PCAOB standards is the existing standards of the AICPA; however, the PCAOB has added certain requirements, most notably in the area of internal control.

<sup>14</sup> GAO, Sarbanes-Oxley Act Challenges for Small Companies, April 2006, GAO-06-361, page 1.

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The Sarbanes-Oxley Act of 2002 created the PCAOB to oversee the auditors of public companies in order to protect the interest of investors and further the public interest in the preparation of informative, fair, and independent audit reports. Section 404 of the Act requires company management to assess and report on the effectiveness of the company's internal control. It also requires a company's independent auditor to attest to management's disclosures regarding the effectiveness of its internal control.

Because the Trust is not a publicly held company it is not subject to the requirements of the Sarbanes-Oxley Act or standards promulgated by the PCAOB. The Trust's annual financial statement audit does not include an auditor's attestation concerning the effectiveness of internal control which is required for publicly traded companies under PCAOB standards.

Internal control requirements are a key difference between generally accepted auditing standards for private entities, which apply to the Trust, and the PCAOB standards that apply to publicly held companies subject to the Sarbanes-Oxley Act. Mark Olson, PCAOB Chairman stated that "[t]he internal control reporting requirements of the Sarbanes Oxley Act are a key reason why the reliability and accuracy of financial reporting has improved over the past few years [.] The renewed confidence in financial reporting is critical for the health of our markets."<sup>15</sup>

### **A Look at Federal Oversight of the Thrift Savings Plan**

In contrast with the limited audit requirements imposed on the Trust, the retirement investments of Federal employees and members of the military are subject to an ongoing program of performance audits mandated by law.

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for Federal employees and members of the uniformed services. The TSP was authorized by the United States Congress in the Federal Employees' Retirement System Act of 1986 (FERSA).<sup>16</sup> The TSP provides Federal employees and members of the uniformed services with savings and tax benefits similar to what many private sector employers offer their employees. The TSP is administered by an independent Federal agency, the Federal Retirement Thrift Investment Board (FRTIB), which is charged with operating the Plan solely in the interest of the participants and their beneficiaries. As of February 2007, the TSP had the most assets of any similar plan with approximately \$210 billion in retirement assets and 3.7 million participants.<sup>17</sup>

In addition to an annual audit of its financial statements by an independent public accountant, the Department of Labor (DOL) provides oversight to the TSP and FRTIB through performance audits. DOL's performance oversight of FRTIB is based on the

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<sup>15</sup> PCAOB News and Events, May 24, 2007, as reported on the PCAOB internet website [www.pcaobus.org](http://www.pcaobus.org)

<sup>16</sup> 5 U.S.C. §§ 8401-8479.

<sup>17</sup> GAO, Federal Retirement Thrift Investment Board, Many Responsibilities and Investment Policies Set by Congress, GAO-07-611, June 21, 2007, page 6.

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FERSA requirement that the Secretary of Labor establish a program to carry out audits to determine the level of compliance with the requirements of the law relating to fiduciary responsibilities and prohibited activities of fiduciaries.<sup>18</sup> FERSA provides for the mandated audits to be conducted by DOL, by qualified organizations under contract to DOL, or in cooperation with GAO.<sup>19</sup>

The audit requirements established under RRSIA do not ensure the same level of oversight activity for the assets of the Railroad Retirement program as are mandated for the assets of Federal workers and the military under FERSA. In addition, we have noted that provision has been made for Federal oversight of private pension plans which also exceed the requirements established for the Trust under RRSIA. A discussion of Federal oversight of private pension plans follows.

### **Federal Oversight of Private Pension Plans**

In 1974, Congress passed the Employee Retirement Income Security Act of 1974 (ERISA) to protect the rights and interests of participants and beneficiaries of private sector employee benefit plans. ERISA sets forth the responsibilities of employers and administrators who sponsor and manage these plans. Similar to RRSIA, ERISA, requires fiduciaries to act prudently and exclusively in the interest of plan participants and beneficiaries.<sup>20</sup>

The Employee Benefits Security Administration (EBSA) within DOL, the Internal Revenue Service (IRS) and the Public Benefit Guarantee Corporation (PBGC) share responsibility for enforcing ERISA.<sup>21</sup> In addition, The Securities and Exchange Commission (SEC) has a related responsibility for regulating and examining investment advisors, managers, and investment companies that often provide services to retirement plans.<sup>22</sup> Following, adapted from a GAO report on EBSA pension oversight, is a brief description of oversight roles for private sector pension plans.<sup>23</sup>

- ◆ EBSA enforces Title I of ERISA conducting investigations of plan fiduciaries and service providers, seeking appropriate remedies to correct violations of the law, and pursuing litigation when they determine necessary.
- ◆ IRS enforces Title II of ERISA which provides, among other standards, tax benefits for plan sponsors and participants, including participant eligibility, vesting, and funding requirements. IRS audits plans to ensure compliance and can levy tax penalties or revoke tax benefits, as appropriate.

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<sup>18</sup> 5 U.S.C. § 8477(g)(1).

<sup>19</sup> 5 U.S.C. § 8477(g)(2).

<sup>20</sup> GAO, Employee Benefits Security Administration, Enforcement Improvements Made but Additional Actions Could Further Enhance Pension Plan Oversight, GAO-07-22, January 18, 2007, page 5. This GAO report was the primary source for the descriptions of the division of responsibility for pension oversight that follow.

<sup>21</sup> GAO-07-22, page 7.

<sup>22</sup> GAO-07-22, page 9.

<sup>23</sup> GAO-07-22, page 9.

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- ◆ PBGC, under Title IV of ERISA, insures benefits when companies default on certain promised pension benefits.
- ◆ Although the SEC does not draw its authority from ERISA, it is responsible under securities laws for regulating and examining entities registered with the SEC, such as investment advisers, managers, and investment companies.

EBSA enforces violations of ERISA which can result in civil or criminal actions. EBSA conducted approximately 200 criminal investigations during FY 2005 and more than 100 plan officials, corporate officers, and pension plan service providers were indicted as a result of these investigations.<sup>24</sup> DOL has increased its oversight of private pension plans by implementing a quality assurance program to ensure the reliability of financial statement opinions. ERISA requires plans with more than 100 participants which hold assets in trust to obtain an annual financial statement audit by an independent qualified public accountant. DOL established a quality review program to ensure that the level and quality of work by public accountants meets applicable standards.

Nevertheless, GAO recently reported that EBSA does not conduct routine compliance evaluations of a company's books, records, and internal controls, which limits its ability to detect and deter violations. Instead, EBSA relies on leads, i.e. complaints.<sup>25</sup> This is the same weakness that we see in the present oversight structure for the Trust which holds and invests the assets of the Railroad Retirement program.

We also note that the Trust, exempt from federal, state and local taxes, cannot be expected to receive oversight from the IRS or state/local taxing authorities. In addition, although the Trust is non-governmental, it is not a public company subject to SEC oversight. The Railroad Retirement program is a Federal social insurance program that pays benefits from Federal trust funds and is not a private pension plan within the responsibility of the PBGC.

## **CONCLUSION**

The lack of performance audits of Trust activities and operations leaves the Railroad Retirement program with fewer safeguards than those established to protect the retirement investments of Federal and private sector workers. The RRB has enforcement authority with respect to the Trust, but is not authorized to obtain the kind of information that would identify situations requiring agency action.

An annual audit of the Trust's financial statements is not adequate to protect the Railroad Retirement program from the risks that performance audits are meant to identify.

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<sup>24</sup> GAO-07-22, page 12.

<sup>25</sup> GAO-07-22, page 22.