



U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

Management Information Report

Management and Performance Challenges Facing the Railroad Retirement Board

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**OFFICE OF INSPECTOR GENERAL
U.S. RAILROAD RETIREMENT BOARD**
*Management Information Report –
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Facing the Railroad Retirement Board*



What We Found

This statement has been prepared pursuant to the Reports Consolidation Act of 2000 and the requirements of Office of Management and Budget (OMB) Circular A-136, which require that the Inspectors General identify what they consider the most serious management challenges facing its respective agency and briefly assess the agency's progress in addressing those challenges.

For the 2018 Performance and Accountability Report (PAR), we present the following seven major management and performance challenges facing the Railroad Retirement Board (RRB):

1. Program Integrity to Strengthen Disability Programs
2. Information Technology Security and System Modernization
3. Management of Railroad Medicare
4. Assessing Payment Accuracy and Transparency
5. Human Capital Management
6. Material Weaknesses Related to Financial Statement Reporting and the Control Environment
7. RRB Oversight of the National Railroad Retirement Investment Trust

What We Did

Our identification of challenges facing RRB management is based on recent audits, evaluations, investigations, and current issues of concern to the Office of Inspector General (OIG). RRB OIG identified seven major management challenges facing RRB during fiscal year 2018.

We provided RRB these seven management challenges for inclusion in its fiscal year 2018 Performance and Accountability Report. Subsequently, the RRB provided written comments, which are reprinted in Appendix I. In its written comments, RRB described actions implemented and approaches taken to improve the functions and operations of the agency to address the challenges identified.

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INTRODUCTION

This statement has been prepared pursuant to the Reports Consolidation Act of 2000 and the requirements of Office of Management and Budget (OMB) Circular A-136, which requires that the Inspectors General identify what they consider the most serious management challenges facing their respective agencies and briefly assess the agency's progress in addressing those challenges.

Congress created the railroad retirement system more than 80 years ago. The Railroad Retirement Act (RRA) created a nationwide retirement system for railroad workers to provide income security in their old age. Over the years, the program has been expanded to include disabled workers, spouses and divorced spouses of retired workers, widows, children, and parents of deceased railroad workers. In 1938, Congress enacted the Railroad Unemployment Insurance Act (RUIA) which added a nationwide system of unemployment insurance, and later a program of sickness insurance. During fiscal year 2017, the Railroad Retirement Board (RRB) paid about \$12.5 billion in retirement and survivor benefits to approximately 548,000 beneficiaries, and approximately \$106 million in unemployment and sickness benefits to approximately 28,000 claimants.¹

RRB also administers aspects of the Medicare program and has administrative responsibilities under the Social Security Act and the Internal Revenue Code.² In fiscal year 2017, RRB enrolled more than 26,400 beneficiaries for Medicare. At the end of 2017, approximately 465,900 persons were enrolled in the Part A plan, and 446,400 of those persons were also enrolled in Part B.³

¹ United States Railroad Retirement Board (RRB), *An Agency Overview* (Chicago, IL: January 2018).

² RRB, *2018 Annual Report* (Chicago, IL).

³ RRB, *An Agency Overview*.

Our identification of challenges facing RRB management is based on recent audits, evaluations, investigations, and current issues of concern to the Office of Inspector General (OIG). RRB OIG identified the following seven major management challenges facing RRB during fiscal year 2018.

Table 1. Most Serious Management and Performance Challenges Facing RRB as of October 1, 2018 (as identified by the Inspector General)	
Challenge 1	<i>Program Integrity to Strengthen Disability Programs</i>
Challenge 2	<i>Information Technology Security and System Modernization</i>
Challenge 3	<i>Management of Railroad Medicare</i>
Challenge 4	<i>Assessing Payment Accuracy and Transparency</i>
Challenge 5	<i>Human Capital Management</i>
Challenge 6	<i>Material Weaknesses Related to Financial Statement Reporting and the Control Environment</i>
Challenge 7	<i>RRB Oversight of the National Railroad Retirement Investment Trust</i>

Management’s Comments and Our Response

These management challenges were provided to RRB for inclusion in its fiscal year 2018 Performance and Accountability Report. Subsequently, RRB management provided written comments, which are provided in Appendix I. In the response, RRB management described actions implemented and approaches taken to improve the functions and operations of the agency to address the challenges identified.

Throughout the management and performance challenges, we included various actions the RRB has taken as they relate to these challenges. However, these actions do not always meet the intent of OIG recommendations nor do they always address the weaknesses that remain. As responsible public stewards, RRB management must implement an effective control system to ensure that all agency programs are managed efficiently.

While RRB management provided expansive comments and rebuttals, our assessment of the major challenges facing RRB remains unchanged. OIG stands by our audit and investigative work and external peer reviews have found our audits and investigations to be in compliance with all applicable professional audit and investigative standards.

Challenge 1 – Program Integrity to Strengthen Disability Programs

There are two types of disability awards administered by RRB, the occupational disability annuity and the total (and permanent) disability annuity. A railroad employee is considered to be occupationally disabled if a physical or mental impairment permanently disqualified them from performing his or her regular railroad occupation (even though the employee may be able to perform other kinds of work). Occupational disability annuities are payable to qualified applicants at or after the age of 60 with 10 years of service, or at any age if the employee has at least 20 years of service. According to RRB’s 2018 Annual Report, in fiscal year 2017, occupational disability annuities totaling approximately \$772 million were paid to approximately 18,300 annuitants. The approval rate for occupational disabilities was approximately 98 percent in fiscal year 2017 and has remained relatively consistent for the months in fiscal year 2018 for which rates have been reported. A total disability annuity is payable, regardless of age, to employees with at least 10 years of service but requires that the applicant not be able to perform any substantial gainful activity in the U.S. economy. In fiscal year 2017, total disability annuities worth over \$243 million were paid to approximately 9,600 railroad annuitants.⁴

The occupational disability program remains the subject of sustained scrutiny by the Congress, OIG, and the Government Accountability Office (GAO) as a result of continued program vulnerabilities and ineffective oversight from RRB. The inability of RRB to effectively manage the disability program leaves over \$1 billion in annuity payments at increased risk.

In 2007, OIG initiated a joint investigation with the Federal Bureau of Investigation that identified a far reaching occupational disability fraud scheme perpetrated by a number of Long Island Rail Road (LIRR) retirees, doctors, and disability facilitators. This case was prosecuted by the U.S. Attorney’s Office for the Southern District of New York. All 33 people charged in connection with the LIRR disability fraud scheme have either pled guilty (28 individuals) or been convicted at trial (5 individuals). OIG estimates that approximately 700 individuals may have been involved in this fraud scheme and investigations are ongoing.

Through the LIRR investigation and subsequent work, significant deficiencies were identified within the occupational disability program and OIG has made numerous recommendations for improvement through audits, OIG Alerts, and investigative activity. Further, according to a 2009 GAO audit of RRB’s occupational disability program, “a nearly-100 percent approval rate in a federal disability program is troubling, and could indicate lax internal controls in RRB’s decision-making process weaknesses in program design, or both.”⁵

⁴ RRB, *2018 Annual Report* (Chicago, IL).

⁵ United States Government Accountability Office (GAO), *Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities*, GAO-09-821R (Washington, D.C.: September 2009).

The OIG remained so concerned by RRB's failure to address deficiencies in its occupational disability program that in February 2014, the Inspector General (IG) issued a seven-day letter to Congress alerting RRB and Congress of its concerns and outlined particularly serious or flagrant problems, abuses, and deficiencies relating to the occupational disability program.⁶ The IG urged the agency to institute substantial and meaningful corrective actions.

In May 2015, the U.S. House of Representatives Committee on Oversight and Government Reform's Subcommittee on Government Operations convened a hearing to examine if RRB was doing enough to prevent fraud in its occupational disability program and to assess RRB's process for determining which workers are eligible for benefits.⁷ In testimony, the IG detailed the systemic deficiencies within RRB's occupational disability program, as well as several key OIG recommendations aimed at addressing these deficiencies.

Additionally, in August 2015, an RRB contractor issued a report titled, *Benefit Payment Program Fraud Prevention/Detection Assessment/Advisory Services*, which provided an overview of RRB's control procedures for its four major benefit paying programs, including disability. This report outlined vulnerabilities related to the disability program that could limit RRB's ability to identify and prevent fraud and payment errors in the program, such as lack of monitoring of providers who submit medical evidence; lack of analytic monitoring and screening of applicants; limited electronic data collection; limited use of continuing disability reviews; reviews for occupational disability only cases; gaps in employer provided vocational information; and inadequate accountability and information for medical providers. Although this report did not make recommendations, the vulnerabilities listed are similar to concerns outlined in OIG and GAO reports.

As a result of the IG's seven-day letter, congressional hearing, the contractor's report, oversight by the OMB, and recommendations by GAO and OIG, RRB established a Disability Program Improvement Plan (DPIP) to track improvements to its disability program. RRB's DPIP consists of 18 initiatives with related tasks assigned, aimed at improving program integrity within RRB's disability program.

As part of the DPIP, RRB hired a Chief Medical Officer, to assist in providing medical guidance to the disability program's adjudication staff. However, the position of Chief Medical Officer is currently vacant after being filled for only ten months.

These enhancements to the disability program, if thoroughly implemented, could have generated improvements in program integrity. However, foundational flaws and a culture seemingly entrenched in defending its disability program at the expense of strengthened program integrity have resulted in little significant improvement or change.

⁶ RRB Office of Inspector General (OIG), *Seven-Day Letter to Congress* (Chicago, IL: February 10, 2014).

⁷ U.S. House of Representatives Committee on Oversight and Government Reform's Subcommittee on Government Operations Hearing, *Is the Railroad Retirement Board Doing Enough to Protect Against Fraud?* (Washington D.C.: May 1, 2015).

While the current DPIP indicates progress being made in its implementation, further review of the plan indicates that due dates are being changed without the original due date being noted and, more concerning, tasks are being labeled as closed when no more action is anticipated on the task and not necessarily when the task has been implemented.

The current DPIP, dated August 31, 2018, indicates that many of the initiatives were closed and specifies they were closed timely. From an oversight and program improvement perspective, the DPIP does not accurately reflect definite implementation of program improvements, which present a challenge for the Congress, as well as other oversight entities that rely on the DPIP to reliably identify which tasks have been implemented.

The OIG also remains concerned that RRB has not taken adequate steps to assure the collection of information on disability applicants' job duties from their railroad employers. In May 2016, the IG issued an alert to the Board revisiting a critical program vulnerability previously identified by OIG. Specifically, the alert reiterated that RRB's continued failure to verify self-reported job information with a third party (i.e., railroad employers) during the occupational disability adjudication process jeopardizes program integrity and does not comply with RRB regulations.⁸ In 2016, RRB published their intent to replace the current job verification forms (G-251a and G-251b) with a singular version.⁹ While this form has undergone extensive revisions as part of the DPIP, language in the Federal Registrar stated twice that completion of this form is voluntary. This is incongruent with RRB regulations that state RRB "shall also consider the employer's description of the physical requirements and environmental factors relating to the employee's regular railroad occupation, as provided by the employer on the appropriate form." This, among other third party verifications, is an important program integrity step that RRB has not fully implemented. In 2017, about 35 percent of disability determinations included an employer provided form. From January through August 2018, employers provided job description information in approximately 54 percent of cases, with about 54 percent also doing so in August 2018 (the month with most recently reported data).¹⁰ An increase in submission of this information is promising but until RRB makes this information mandatory and based on the individual's specific job duties, it cannot fully assess an applicant's eligibility.

⁸ OIG Alert Number 16-03, *Systemic Vulnerability within the Railroad Retirement Board's Occupational Disability Program* (Chicago, IL: May 11, 2016).

⁹ Form G-251 is the "Vocational Report" where the disability applicant self reports all information related to their disability. Forms G-251a and G-251b are the "Job Information" forms that are sent to the employer to verify the job information submitted by the applicant on form G-251. In 2016, RRB proposed to combine the G-251a and G - 251b into one form, a revised G-251a, to be sent to the railroad employer to verify the job information reported by the applicant on Form G-251.

¹⁰ The 54 percent includes submission of the G-251a and "Other (Employer Job Description)", as reported by RRB.

In addition, in September 2017, the IG issued an alert to the Board regarding the Occupational Disability Certification Form RL-8A.¹¹ This alert restated the IG's concerns with the Board's inaction to enact an annual eligibility questionnaire that requires a certified response from all disability annuitants. In August 2017, RRB's Office of Programs issued Procedure Transmittal 17-65, New Disability Forms RL-8/RL-8A and Revised Form G-254, which detailed RRB's newly enacted annual occupational disability certification procedure. Subsequently, the Office of Programs issued Informational Bulletin 17-27, Form RL-8A – Occupational Disability Certification Annual Release Notification, stating that it has, based on very specific and limited RRB developed criteria, identified 229 occupational disability cases that will be subject to RRB's new procedure. Out of these 229 cases, 77 will receive Continuing Disability Reviews (CDR) and 152 will receive the new Occupational Disability Certification (Form RL-8A).

RRB indicated that they've completed 72 out of the 77 CDRs and all but one were continuances. The remaining five CDRs were not completed because the high-risk CDR program was terminated in August 2018 based upon a recommendation from GAO "to reallocate resources used for high-risk CDRs to other CDR efforts that produce more effective outcomes." The 152 RL-8As resulted in one termination.

OIG contends that RRB's high-risk CDR program was cursory at best and OIG is not surprised by its lackluster results. Prior to implementation, OIG recommended a more robust disability certification program including a more comprehensive Form RL-8A; however, RRB did not agree and implemented the high-risk program as designed. OIG believes that, if implemented effectively, this program would have provided much needed oversight and increased program integrity.

In February 2018, GAO issued a report in which it concluded that "RRB's continued reliance on outdated earnings information to identify beneficiaries who, at the time a CDR is conducted, may no longer be eligible for benefits, increases the likelihood of making improper benefit payments and having to try to recover the money in the future. In addition, even for those overpayments that RRB identifies, it lacks a standard for processing them in a timely manner, which increases the potential loss of federal dollars." It further stated that "RRB's lack of routine data collection and analysis hampers its ability to monitor program performance and determine what changes, if any should be made to improve the CDR program, including determining the number of beneficiaries in each medical improvement category and the costs and benefits of conducting the various types of reviews.

¹¹ In November 2016, OIG recommended that proposed Form RL-8A be amended to gather additional information regarding medical improvement including whether the annuitant requires continued treatment/medications. This recommendation was not implemented despite the fact that 20 CFR § 220.179, Exceptions to Medical Improvement, lists an annuitant's failure to follow, without good cause, prescribed treatment which would be expected to restore their ability to engage in substantial gainful employment as a potential reason to terminate an annuitant's disability.

While paper files and disparate data systems present challenges to collecting and analyzing program data and may hinder its oversight efforts, RRB could be doing more with the data it has to identify potential gaps in oversight.”¹²

Another program improvement that has not been fully implemented is action to prevent occupational disability adjudications based on the simple task standard or one job aspect for railroad employees. In May 2015, OIG issued an alert to RRB’s Office of the Chairman recommending improvements to the disability program. One of the recommended improvements was that RRB should formalize and implement procedures clarifying that an occupational disability application should be assessed against an applicant’s permanent inability to perform the essential functions of their regular railroad occupation and not just a single task or function.¹³ RRB implemented a portion of the recommendation by agreeing to provide refresher training to disability examiners to clarify that occupational disabilities should be awarded only to applicants whose conditions are such that they are unable to perform their regular railroad occupation. However, the portion of the recommendation pertaining to formalizing procedures so that an occupational disability application is not assessed based on inability to perform just a single task or function, was not fully implemented.

The action taken—to review the disability procedures and verify that they do not include allowing an individual to be found occupationally disabled for an inability to perform a nonessential job task or function—rather than formalizing and implementing procedures clearly stating this, did not effectively address the IG’s recommendations and does not leave claims examiners unequivocal guidance should they face such a situation.

OIG remains significantly concerned with RRB’s inaction regarding the recovery of potentially fraudulent payments made to LIRR annuitants. Specifically, OIG has recommended RRB use its fraud or similar fault authority to collect payments made to annuitants based on fraudulent or misleading information. After the LIRR fraud was uncovered and prosecutions were ongoing, RRB terminated benefits of annuitants who applied using medical documentation supplied by specific healthcare providers convicted of fraud. The annuitants were subsequently allowed to reapply with new medical information and more than 80 percent did. This resulted in an approval rate of over 90 percent for the terminated LIRR beneficiaries who refiled.

According to RRB, as of September 2018, \$1,593,668 of the approximately \$5.9 million in outstanding court ordered restitution related to the LIRR convictions had been returned to RRB. This amount (\$5.9 million), however, is not an accurate reflection of the LIRR related court ordered restitution. It appears that RRB still has not established account receivables on some of the criminally convicted LIRR defendants, which represents more than \$150 million in additional court ordered restitution. It remains imperative that RRB use every avenue to recover payments lost due to fraud or similar fault and to prevent the continued abuse of its occupational disability program.

¹² GAO, *Railroad Retirement Board, Actions Needed to Improve the Effectiveness and Oversight of Continuing Disability Reviews*, GAO-18-287 (Washington, D.C.: February 2018).

¹³ OIG Alert Number 15-05, *Recommended Improvements to the Disability Program* (Chicago, IL: May 8, 2015).
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Allowing individuals to commit fraud against the program, with no repercussions, only encourages future fraud and abuse of the program.

As responsible public stewards, RRB management must effectuate comprehensive and meaningful procedural and cultural change to ensure that disability benefits are adjudicated accurately; awarding benefits only to those who are eligible after an independent and thorough review of the application and all required supporting documentation. RRB should not simply take applications at face value, but assess the veracity of the information by validating with appropriate third parties. Further, RRB must work to ensure programmatic improvements, even those requiring legislative changes, are made expeditiously. If implemented properly, the OIG's prior recommendations provide valuable steps to improve program integrity. Without these changes, RRB's propensity to inaccurately adjudicate disability applications will continue to cost taxpayers millions in unwarranted expenses annually. RRB's culture has been to focus on paying benefits, which increases the likelihood of abuse in the disability program and creates an environment that leaves the program susceptible to fraud and abuse. This type of culture can result in weakened internal controls, which allows fraud and abuse to continue and fails to protect the program for those who may truly need it in the future.

To prioritize paying benefits quickly, rather than paying benefits accurately, does not support RRB's fiduciary responsibility to the railroad community, in ensuring the correct benefit amounts are being paid to the right people.

Challenge 2 – Information Technology Security and System Modernization

With information technology (IT) security risks developing constantly, federal agencies, including RRB, are challenged as to how to modernize and maintain their systems in a secure environment. RRB is incorporating new technologies and enhancing existing ones, as well as implementing new systems, to effectively strengthen and improve IT security projects and their overall modernization efforts.

While OIG acknowledges RRB's efforts, there are still concerns that these efforts are not robust enough to adequately address innate risks involving IT security and developments.

In the RRB's Fiscal Year 2019 Budget Justification, RRB states that the RRB is continuing the effort and the process of undertaking major IT initiatives. The initiatives that RRB considers most critical are the implementation of the Enterprise Infrastructure Solutions (EIS) contract and Legacy Systems Modernization Services (LSMS).

In the budget justification, RRB states that successful implementation of EIS will allow RRB to consolidate network services, as well as re-architect and modernize RRB's network infrastructure. RRB states that the agency considers the LSMS project critical because the cost and resources needed to maintain RRB systems in the legacy environment are unsustainable. The LSMS implementation will modernize RRB's systems in order to mitigate cybersecurity risks; improve fraud prevention and detection abilities; and support a more effective, efficient, and leaner workforce.

Because of the difficulty in managing IT projects, acquisitions, and modernization, GAO has continually included IT in its High Risk Series Report.¹⁴ GAO reports that federal IT investments too frequently fail or incur cost overruns and schedule slippages, while contributing little to mission related outcomes; often suffering from a lack of disciplined and effective management, such as project planning, requirements definition, and program oversight and governance. In addition, GAO testified that the federal government has spent billions of dollars on these failed IT investments. In GAO testimony, GAO reported that “IT projects have also failed due to a lack of oversight and governance. Executive-level governance and oversight across the government has often been ineffective, specifically from Chief Information Officers (CIOs).”¹⁵

Most recently, on May 15, 2018, the President signed Executive Order 13833, *Enhancing the Effectiveness of Agency Chief Information Officers*.¹⁶ Among other things, this executive order is intended to better position agencies to modernize their IT systems, execute IT programs more efficiently, and reduce cybersecurity risks.

RRB has embarked on a legacy systems modernization that is one of the largest IT projects ever undertaken by RRB and estimates the project to cost approximately \$15.7 million. This modernization is essential to sustaining agency operations. This project is expected to take several years during which approximately 12 million lines of code are to be translated to more modern computer language, followed by a systems reengineering project. However, based on a review of the Fiscal Year 2018 Capital Plan, the existing mainframe at RRB will reach the end of its useful life before the legacy systems modernization project is complete. The Capital Plan states that RRB is to utilize the National Information Technology Center for its mainframe operations, temporarily, until the legacy systems modernization project is completed.

RRB “Office in the Cloud Plan,” cloud technology for a mobile workforce, has long term considerations of cost and data access, as well as the risks involved in operating in a cloud environment. In fiscal year 2018, the RRB reported that the tax system was successfully moved from the mainframe environment to the new platform. These types of projects of such size, length, security, and costs can come at significant risks of cost overruns and can result in project failure, which are concerns to OIG.

In a June 2018 audit report, OIG reported on information security at RRB.¹⁷ The audit included testing the effectiveness of the information security policies, procedures, and practices of a representative subset of the agency’s information systems; assessing the effectiveness of RRB’s information security policies, procedures, and practices; and preparing a report on selected elements of the agency’s information security program in compliance with OMB’s fiscal year 2017 Federal Information Security Management Act (FISMA) reporting instructions.

¹⁴ Government Accountability Office (GAO), *High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, GAO-17-317 (Washington, D.C.: February 2017).

¹⁵ GAO, *INFORMATION TECHNOLOGY: Continued Implementation of High-Risk Recommendations Is Needed to Better Manage Acquisitions, Operations, and Cybersecurity*, GAO-18-566T (Washington, D.C.: May 2018).

¹⁶ Executive Order No. 13833, *Enhancing the Effectiveness of Agency Chief Information Officers* (May 15, 2018).

¹⁷ RRB OIG, *Fiscal Year 2017 Audit of Information Security at the Railroad Retirement Board*, Report No.18-06 (Chicago, IL: June 5, 2018).

The audit determined that although RRB implemented changes in the information security program, a security program that meets the requirements of FISMA has not been achieved. RRB has not produced a fully effective security program with related information security policies, procedures, and practices. OIG issued 21 detailed recommendations for improvement.

For fiscal year 2017, OIG completed an evaluation of RRB's Cybersecurity Framework and rated each of the framework functions as "Not Effective."

Our FISMA audits will continue to assess RRB's efforts, and this will remain a management challenge until our work corroborates that RRB's system of controls achieves expected outcomes. To that end, RRB needs to effectively address information technology security deficiencies, continue to provide mitigating controls for vulnerabilities, and implement planned actions to correct system weaknesses.

RRB reported significant progress towards addressing longstanding information technology security weaknesses. However, we continue to identify significant weaknesses in our annual FISMA audits—despite RRB's reported corrective actions to address our prior recommendations.

Challenge 3 – Management of Railroad Medicare

Social Security Administration legislation gave RRB direct legislative authority to administer certain provisions of the Medicare program for Qualified Railroad Retirement Beneficiaries and active Railroad employees.¹⁸ These provisions included enrollment, premium collection, and selection of a carrier to process Medicare Part B claims nationwide. RRB is responsible for administering its contract with Palmetto GBA, its Part B carrier. In fiscal year 2017, RRB withheld approximately \$671 million in premiums, and Palmetto processed about \$850 million in payments for services covered by Medicare Part B. Since 1983, the Centers for Medicare and Medicaid Services (CMS) has reimbursed RRB for Medicare program related work performed. This reimbursement was approximately \$27.2 million in fiscal year 2017.¹⁹

In 2016, OIG conducted an audit to determine if RRB's cost allocation plans and Medicare reimbursement calculations were accurate and supported in accordance with federal requirements. The audit determined that the controls to ensure the plans and reimbursement calculations were accurate and supported were not adequate and RRB's Medicare cost allocation policies and procedures were not effective in preventing errors. Labor costs were reimbursed based on RRB management's professional judgment and indirect costs had not been formally approved by CMS. These weaknesses resulted in unsupported Medicare direct costs totaling approximately \$30.4 million and unsupported indirect costs ranging from \$9.5 million to \$33.8 million for fiscal years 2010 through 2014.²⁰

¹⁸ The Centers for Medicare & Medicaid Services (CMS), a branch of the Department of Health and Human Services, is the federal agency that runs the Medicare Program.

¹⁹ RRB, *2018 Annual Report*.

²⁰ RRB OIG, *Railroad Retirement Board Did Not Calculate Reimbursed Medicare Costs In Accordance With Federal Requirements*, Report No. 16-10 (Chicago, IL: August 22, 2016).

The audit resulted in 26 recommendations to address the weaknesses identified. RRB's management concurred with 10 of the 26 recommendations. OIG was concerned by the significant nonconcurrence from RRB management and conducted subsequent discussions, but RRB management made no revisions in its official responses to the audit report.

Most of RRB's nonconcurrence was with recommendations that would require retroactive assessment of the accuracy of reimbursements received from CMS and one that called for an assessment to determine whether the Antideficiency Act had been violated.²¹ OIG and RRB also have a fundamental disagreement on the applicability of and RRB's compliance with OMB Circular A-87.²² This circular established principles and standards for allowable cost reimbursements between governmental units that RRB was required to follow, based on its agreement with CMS. OIG believes that RRB should take all necessary steps to implement these recommendations in order to assure the accuracy of prior and future reimbursements.

In 2018, RRB completed corrective actions resulting in the closure of four recommendations. RRB officials have since attended training on OMB Circular A-87 and in February 2018, submitted a revised draft cost allocation plan for fiscal years 2015 and 2016. However, CMS has not approved the use of RRB's cost allocation plan for future reimbursements.

In May 2018, OIG informed CMS that RRB had received \$7.9 million in Medicare contract overpayments during the period of fiscal year 2013 through fiscal year 2017. OIG estimated that an additional \$20 million, for a total of \$27.9 million, in overpayments may be owed to CMS since the contract's inception.

In addition, OIG is concerned that Railroad Medicare is not using the CMS Fraud Prevent System (FPS). Implemented in July 2011 by CMS, FPS is utilized by CMS to assist in reducing improper Medicare payments.²³ While FPS has been integrated with CMS contractor systems that process claims, it has not been integrated with the payment processing system used for Railroad Medicare claims. In 2016, Railroad Medicare was approved for onboarding to FPS, with implementation planned for December 2016 or January 2017. In August 2018, we were notified that onboarding was in process and FPS was expected to be functional by the end of September 2018.

OIG is concerned that RRB's Medicare program modernization plan has not been effective and recommends that RRB continue to improve controls and provide effective oversight over approximately \$850 million in Railroad Medicare payments made on behalf of its beneficiaries.

²¹ The Antideficiency Act is codified in several sections of title 31 of the United States Code (USC) including 31 USC 1341(a), 1342, 1349-1351, 1511(a), and 1512-1519.

²² Federal Management Circular 74-4 was reissued in 1981 as OMB Circular A-87 and codified as 2 Code of Federal Regulations (CFR) Part 225 in 2005. OMB has consolidated and streamlined its guidance located at 2 CFR Part 200.

²³ GAO, Medicare Fraud Prevention: *CMS Has Implemented a Predictive Analytics System, but Needs to Define Measures to Determine Its Effectiveness*, GAO-13-104 (Washington, D.C.: October 2012).

Challenge 4 – Assessing Payment Accuracy and Transparency

In 2015 through 2017, OIG reported that RRB was not in compliance with the Improper Payments Elimination and Recovery Act of 2010 (IPERA), which amended the Improper Payments Information Act of 2002 (IPIA).²⁴ In May 2015, OIG issued an audit report to assess RRB's fiscal year 2014 compliance with IPERA. The audit determined that RRB was not in full compliance with IPERA reporting requirements.²⁵ Specifically, RRB did not comply with the risk assessment requirements because it did not assess risks for all of the programs that it administers. As a result, OIG was unable to assess compliance for the publication requirement for improper payment estimates for all of the programs and activities identified as susceptible to significant improper payments under the risk assessment. The audit also reported that improvements were needed for the RRA program and the RUIA program, to ensure completeness of reported amounts for the RRA, as well as the accuracy of the reported improper payment amounts for the RRA and the RUIA programs. This includes the understatements and insufficient supporting documentation. RRB developed a risk assessment plan in response to the OIG's determination that RRB was not in compliance with IPERA.

In May 2016, OIG determined that RRB remained noncompliant with IPERA for the second consecutive year, for the risk assessment requirement.²⁶ Specifically, risk assessment documentation did not meet the minimum requirements specified in OMB guidance. OIG also determined that improvement was still needed to ensure the accuracy of reported improper payment amounts for RRA and RUIA programs because both programs reported understated amounts of approximately \$12 million and \$904,000. In addition, OIG identified other improper payment reporting deficiencies, which made RRB's improper payments report incomplete.

In May 2017, OIG issued a report on RRB's compliance with the IPERA that resulted in six recommendations.²⁷ Because it was the third year of noncompliance with IPERA, OIG recommended corrective actions needed for improvement and implementation to ensure proper compliance with IPERA guidance.

²⁴ Public Laws 111-204 and 107-300.

²⁵ RRB OIG, *Audit of the Railroad Retirement Board's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2014 Performance and Accountability Report*, Report No. 15-06 (Chicago, IL: May 15, 2015).

²⁶ RRB OIG, *Audit of the Railroad Retirement Board's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2015 Performance and Accountability Report*, Report No. 16-07 (Chicago, IL: May 13, 2016).

²⁷ RRB OIG, *Audit of the Railroad Retirement Board's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2016 Performance and Accountability Report*, Report No. 17-05 (Chicago, IL: May 12, 2017).

In May 2018, OIG reported that RRB remains challenged to complete improper payment initiatives intended to reduce improper payments and to intensify its efforts to successfully prevent and identify improper payments.²⁸ RRB was compliant with IPERA requirements, when applicable, for the RRA and RUIA programs for its fiscal year 2017 reporting.²⁹ OIG determined that RRB was compliant with IPERA because risk assessments that addressed all of the factors required by OMB guidance were completed for two programs that RRB administers: vendor payments and employee payments.

RRB did not report improper payment amounts for the Medicare Part B program in the payment integrity section of RRB's fiscal year 2017 Performance and Accountability Report (PAR). However, the PAR stated that CMS established the Comprehensive Error Rate Testing (CERT) program to estimate improper payment error rates. CMS uses the error rates from the CERT program to reduce or eliminate improper payments through various corrective actions. It was also stated that the Medicare error rate was not available when the payment integrity report was published. RRB plans to begin reporting Medicare Part B improper payment data in the fiscal year 2018 PAR.

Although noncompliance was no longer cited, RRB had not yet taken the corrective actions required by IPERA to address the OIG's determination of noncompliance for three consecutive years for its risk assessments. IPERA requires an agency to submit reauthorization proposals for each discretionary program or activity that has not been in compliance for three or more consecutive years; or submit proposed statutory changes to bring the program or activity into compliance, when its Inspector General determines it is noncompliant with IPERA for three consecutive years. Because RRB management did not concur with our recommendation for third year noncompliance, they did not make the corrective actions required by IPERA. By not taking the required corrective actions, RRB management neither afforded the Congress an opportunity to address RRB noncompliance for the third consecutive year, nor complied with IPERA.

We found that improvements were needed to ensure that improper payment amounts are accurate and complete for the RRA and RUIA programs. We determined that the reported improper payment amounts were understated by approximately \$20.8 million and \$1.6 million for the RRA and RUIA programs, respectively. We also found that the reported recaptured payments were understated by an estimated \$5.5 million for the RRA program. In addition, we determined that RRB improper payment methodologies used for the RRA and RUIA programs result in inaccurate improper payments reported for both programs. This impacts the completeness of the reported data for both programs.

²⁸ RRB OIG, *Audit of the Railroad Retirement Board's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2017 Performance and Accountability Report*, Report No. 18-05 (Chicago, IL: May 9, 2018).

²⁹ RRB OIG, Report No. 18-05.

A reliable and accurate program evaluation process is imperative for identifying improper payments and their root causes, so action may be taken to prevent improper payments in the future.

Transparency

The Digital Accountability and Transparency Act of 2014 (DATA Act) amended the Federal Funding Accountability and Transparency Act of 2006 (FFATA), which required OMB to ensure the existence and operation of a single searchable website of federal award information, accessible by the public at no cost.³⁰

The DATA Act expanded FFATA and:

- required disclosure of direct federal agency expenditures and linkage of federal contract, loan, and grant spending information to federal programs so taxpayers and policy makers can more effectively track federal spending;
- established governmentwide data standards for financial data to provide consistent, reliable, and searchable governmentwide spending data that are displayed accurately for taxpayers and policy makers;
- simplified reporting for entities receiving federal funds by streamlining reporting requirements and reducing compliance costs while improving transparency;
- improved the quality of data submitted by holding federal agencies accountable for the completeness and accuracy of the data submitted; and
- applied approaches developed by the Recovery Accountability and Transparency Board to spending across the Federal Government.

The DATA Act charged OMB and the U.S. Department of the Treasury (Treasury) with issuing guidance on the data standards needed to implement the DATA Act and required full disclosure of federal funds on the public website USASpending.gov (or a successor system) no later than May 2017.³¹ The DATA Act further required the Secretary of the Treasury, in consultation with the Director of OMB, to ensure that the information is posted to the public website at least quarterly, but monthly when practicable. The DATA Act did not provide any additional funding dedicated to its implementation.

³⁰ Public Law, 113-101 (May 9, 2014) and 109-282 (September 26, 2006).

³¹ Office of Management and Budget (OMB), *Increasing Transparency of Federal Spending by Making Federal Spending Data Accessible, Searchable, and Reliable*, OMB Memorandum 15-12 (Washington, D.C.: May 8, 2015).

OIGs were encouraged to undertake DATA Act readiness reviews at their respective agencies, well in advance of the first November 2017 report. In 2016, OIG conducted a review of RRB's readiness for the implementation of the DATA Act, and reported its findings in a memorandum to RRB's three member Board on October 4, 2016.³²

In the October 2016 memorandum outlining the results of its readiness review, the OIG raised concerns to RRB management related to RRB's heavy reliance on its contractor as its solution for implementing the DATA Act. In that memorandum, OIG made four recommendations to the Bureau of Fiscal Operations to take action to ensure that RRB would be ready to meet the requirements for their first DATA Act submission in May 2017. The recommendations included: developing milestones to facilitate better oversight of the contractor; holding regular status meetings; forming a formal DATA Act work group with appropriate levels of management; and expediting system changes to prepare for DATA Act implementation. In response to the readiness review, RRB management only partially concurred with OIG's recommendations, and did not submit any corrective actions for review.

In November 2017, OIG reported on the status of RRB's implementation of the DATA Act.³³ In this report, OIG determined that RRB made its initial certified DATA Act submission by the required due date and implemented the required data standards. However, the data files were not complete or accurate and did not agree to RRB's source systems.

Because RRB's initial DATA Act submission was not accurate or complete, OIG is concerned that it did not meet the intent of providing transparent, consistent, reliable, and searchable spending data for which taxpayers and policy makers can base their decisions.

Challenge 5 – Human Capital Management

Human capital management is the process to acquire, train, and manage the skills of the workforce to advance an organization's mission and goals. As part of its human capital management process, an agency must continually review its plans to retain employees and elevate the skills of the existing employees allowing them to effectively contribute to the organization. Succession planning is key to the continuing and uninterrupted operations of an agency.

In July 2017, Office of Personnel Management (OPM) issued a human capital (HC) management evaluation of RRB.³⁴ The evaluation was conducted because of two critical human capital challenges that RRB is facing; an increasing retirement eligibility rate due to an aging workforce and high field office turnover rates. In April 2018, OPM reported that RRB had taken corrective action to close the remaining open recommendations from the 2017 OPM evaluation.

³² RRB OIG, Memorandum: *Digital Accountability and Transparency Act of 2014 Readiness Assessment for the Railroad Retirement Board* (Chicago, IL: October 4, 2016).

³³ RRB OIG, *Audit of the Railroad Retirement Board's Initial DATA Act Submission, While Timely, Was Not Complete or Accurate*, Report No. 18-01 (Chicago, IL: November 8, 2017).

³⁴ U.S. Office of Personnel Management, *Human Capital Management Evaluation Railroad Retirement Board* (Washington D.C.: July 19, 2017).

However, human capital management remains a challenge for RRB.

RRB has an aging workforce, with about 50 percent of its employees having 20 or more years of service. Additionally, as of November 2017, RRB reported that about 30 percent of the agency's current workforce will be eligible for retirement by the end of fiscal year 2019.³⁵

In addition to retirement among personnel, RRB has experienced high turnover in its leadership. The agency is overseen by a three member Board (the Board), including a Chairman. The Office of Chairman has been vacant for three years, since the retirement of the Chairman in August 2015. In addition, in August 2018, the Management Member of the Board's term expired and the Labor Member of the Board expressed his intention to retire.

Lastly, RRB has experienced multiple retirements and separations of its senior executive staff. One major priority for the agency's leadership will be to ensure the transfer of knowledge to guarantee continuing and uninterrupted operations of the agency.

In June 2017, the RRB filled the position of General Counsel. In March 2018, the RRB named a Chief Financial Officer and a Director of Equal Opportunity.³⁶ On July 27, 2018, The President issued his intent to nominate an individual for the position of Chairman of RRB, for a five-year term expiring on August 28, 2022. However, this nominee has not yet been confirmed by the Senate.

With succession planning, an agency can identify potential leaders with the skills and abilities to fill vacant positions or develop them for advancement to vital roles in the organization. In developing a successful succession plan, the strategy must ensure that employees are consistently being developed to move into key roles.

In September 2011, OIG reported that RRB had identified staff attrition as an ongoing concern.³⁷ The report also stated that these changes would impact every aspect of the agency's operations, to include senior level management. While RRB has a Human Capital Management Plan and Succession Plan, historically it has not been funded. Also, while the plan identified RRB's need to maintain and replace employees, the impact of declining budgetary resources was not considered. OIG concluded that RRB management should enhance the plan by evaluating the possibility of staff and financial reductions and then by establishing a contingency plan to address staff and funding necessities for plan readiness.

RRB should take advantage of its attrition and turnover to recruit and train new employees to assist the agency in promoting new perspectives. With the incorporation of new employees, the addition of innovative and different viewpoints are presented along with new skills and approaches, which can alter the agency's culture.

³⁵ RRB, *2018 Annual Report*.

³⁶ RRB, *2018 Annual Report*.

³⁷ RRB OIG, *Office of Inspector General's Proposal to Improve Business Efficiency at the Railroad Retirement Board*, (Chicago, IL: September 21, 2011).

In addition to the human capital management issues already identified, OIG has become aware of an additional area of concern related to staffing.

Audit and Compliance Section

Within RRB, the Audit and Compliance Section (ACS) conducts external audits of employers to ensure compliance under the RRA and RUIA, and verifies the accuracy of reported compensation and contributions. Although the section does not have the authority to audit taxes under the Railroad Retirement Tax Act, its staff reviews the compensation amounts on which these payroll taxes are based. According to BFO's Fiscal Year 2018 Audit Plan, the ACS audit universe consists of 712 railroad employers and labor organizations. Also according to this audit plan, as of February 2017, railroad employers and labor organizations submitted approximately 272,000 employee reports valued at nearly \$18 billion in Tier I creditable compensation for 2016. According to RRB statistical data, the total Tier I and Tier II compensation for fiscal year 2016 was approximately \$35 billion.³⁸ The RRA program has a two-tiered benefit payment structure.

ACS also gathers, verifies, and analyzes activities of employers and employees in support of the Board's coverage determinations under the RRA and the RUIA. ACS submits coverage cases to the Office of General Counsel, which drafts a preliminary decision that is forwarded to the Board for a formal determination.

Prior to 1991, the OIG had developed and implemented a program to audit the payroll records of railroad employers. During the course of litigation to enforce an OIG subpoena to a railroad employer, the OIG had been advised that railroad audits could be justified as spot checks by the OIG to evaluate the efficiency of procedures used by RRB. However, the U.S. District Court for the Northern District of Texas ruled that the OIG railroad employer audits went beyond spot checks and oversight, and refused to enforce the subpoena. As a result of this ruling, OIG ceased doing audits of railroad employers. Therefore, ACS remains the only RRB organization conducting external audits of railroad employers at this time.

Recently, OIG has become concerned about the ACS's ability to meet their mission of conducting railroad employer audits due to sustained staffing shortages. For example, in fiscal year 2010, ACS completed 12 audits, in fiscal year 2013, they completed only 4 audits, and by fiscal year 2016, although 3 audits were in progress, none were completed.

According to RRB's most recent Federal Managers' Financial Integrity Act report for ACS:

- The annual staffing and administrative budget for personnel compensation was \$312,605 for fiscal year 2016. The unit was staffed with 2.36 full time equivalents.

³⁸ Tier I is based on a combined railroad retirement and social security earnings, using social security benefit formulas.

- Status of Workloads and Backlogs - ACS's fiscal year 2017 Audit Plan was submitted to the Board on September 2, 2016. It outlined that due to sustained reduction in audit staff, audit projects were reprioritized to focus on completing backlog audits. It also stated that a fiscal year 2016 audit assignment was re-characterized as a fiscal year 2017 audit.
- The most recent Management Control Certification for Employer Audits dated October 20, 2017 included the following statement that was made by the responsible certification official:

“Due to sustained staffing shortages and inadequate coverage of the entities which we are responsible for auditing, I cannot state that the unit's mission is being effectively accomplished. However, I do believe that the quality of the audits conducted is excellent.”

RRB is not prioritizing audits of employer compensation reporting. RRB has decreased the number of staff assigned to employer audits and has also decreased the budget for these audits. As a result, RRB is not giving sufficient audit coverage to employer compensation reporting.

Challenge 6 – Material Weaknesses Related to Financial Statement Reporting and the Control Environment

OIG is mandated to audit RRB's consolidated balance sheet, as well as the related statements of net cost, changes in net position, budgetary resources, the statement of social insurance, the statement of changes in social insurance, and the related notes to the financial statements. RRB management's responsibility is the preparation and fair presentation of said financial statements in accordance with accounting principles generally accepted in the United States of America. Upon RRB's completion of these financial statements, OIG is responsible for expressing an opinion on the financial statements, which are based on the audit being conducted in accordance with the auditing standards generally accepted in the United States of America.

OIG reported a material weakness for financial reporting for fiscal years 2014, 2015, 2016, and again in 2017. To address our audit recommendation for development and implementation of new controls for financial reporting, RRB management stated that they developed new controls, conducted training, and updated procedures. During our fiscal year 2017 financial statement audit, we found that although these actions were taken, additional internal control improvements were needed because we identified approximately \$503.2 million of recorded and approved financial transactions that lacked adequate supporting documentation in the agency's official records for these transactions.

The material weakness for financial reporting also includes the lack of communication with the National Railroad Retirement Investment Trust's (NRRIT) auditor. The lack of communication with NRRIT's auditor has resulted in the OIG's continuous rendering of a disclaimer opinion for RRB's financial statements since 2013. This lack of cooperation and communication has prevented OIG auditors from obtaining sufficient appropriate audit evidence regarding RRB's financial statements.

In fiscal year 2016, OIG reported a new material weakness which continued in fiscal year 2017. We reported that RRB management had not taken corrective actions to address high level, monetarily significant matters that were not in accordance with authoritative guidance, previous agreements, and laws and regulations regarding matters that could have a detrimental effect on the reliability of financial reporting at RRB and at governmentwide levels. OMB issued guidance defining management's responsibility for ensuring that an organization is committed to sustaining an effective control environment.³⁹ This finding provided examples of our audit concerns regarding the control environment.

One of the most significant concerns involves ownership of NRRIT net assets. NRRIT was established in 2001 by the Railroad Retirement and Survivors' Improvement Act 2001 (RRSIA). NRRIT's sole purpose is to manage and invest railroad retirement assets. The RRSIA authorizes NRRIT to invest railroad retirement assets in a diversified investment portfolio in the same manner as those of private sector retirement plans. NRRIT's net assets represented \$26.5 billion or approximately 80 percent of the total assets reported for fiscal year 2017. Approximately \$1.8 billion was transferred in fiscal year 2017 from NRRIT to the U.S. Treasury for the payment of railroad retirement benefits throughout the year.

RRB indicated that it has no ownership interest in NRRIT in its assertion that NRRIT should be classified as a disclosure entity for financial statement reporting purposes under Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards 47 (SFFAS 47), *Reporting Entity*. Based on RRB's classification of NRRIT as a disclosure entity, NRRIT net assets would not be included in RRB or governmentwide financial statements beginning in fiscal year 2018.

OIG disagreed with RRB's assertion and determined that NRRIT should be classified as a consolidating entity, which would result in NRRIT net assets remaining in RRB and governmentwide financial statements. When the U.S. Department of the Treasury (Treasury) finalized its SFFAS 47 determinations, Treasury guidance classified the NRRIT as a consolidating entity, which will result in NRRIT net assets remaining in RRB and governmentwide financial statements.

³⁹ OMB, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Circular A-123, M-16-17 (Washington, D.C.: July 15, 2016).

Other OIG concerns regarding the control environment included (1) lack of corrective action and acknowledgement for inaccurate Medicare cost reimbursements and nonadherence with applicable authoritative guidance, and (2) RRB management's inaccurate improper payment definitions, which continue to result in understated reported improper payments.

The material weakness in control environment does not only apply to financial statement reporting, but is found in other areas. In April 2017, OIG issued a report related to RRB's compliance with the Federal Travel Regulation (FTR).⁴⁰ This audit was conducted to determine if RRB was in compliance with the FTR and implemented and enforced adequate internal controls. The audit revealed that RRB did not always comply with the FTR because internal controls were not always enforced or adequate. OIG made 19 recommendations that related to improving, strengthening, enforcing, and conducting training on RRB's travel policies and the travel management system.

In this report, there were several significant findings related to the Board whose travel policies and procedures for their staff tend to be less stringent and much less likely to be enforced. These policies and procedures, called "Board Orders," allowed Board Members and subordinate staff to approve travel for themselves, their respective staff, and to authorize their own travel vouchers. Agencies are permitted to establish their own travel policies and procedures as long as they are compliant with the FTR. However, because so many of these findings related to the Board's travel, it further brings into question the agency's leadership and their contribution to RRB's weakened control environment.

GAO's internal control standards state that the oversight body and management should demonstrate a commitment to integrity and ethical values. One attribute of this principle is "Tone at the Top," which contributes to the design, implementation, and operating effectiveness. This principle conveys that management should demonstrate the importance of integrity and ethical values through their directives, attitudes, and behavior. Agency management, who is ultimately responsible for setting the tone at the top, should demonstrate and communicate these values that will create a culture by which all employees will adhere.

Challenge 7 – RRB Oversight of the National Railroad Retirement Investment Trust

NRRIT was established by the RRSIA to manage and invest railroad retirement assets. As a tax-exempt entity, NRRIT is independent of the federal government and authorized to invest the federal assets entrusted to it in a diversified investment portfolio in the same manner as private sector retirement plans. NRRIT is also responsible for transferring funds to RRB to pay benefits that are not funded through current tax receipts from railroad employees or employers. Approximately \$26.5 billion in assets were invested by NRRIT on behalf of railroad retirees and their families at the end of fiscal year 2017.⁴¹

⁴⁰ RRB OIG, *Audit of the Railroad Retirement Board Did Not Always Comply with the Federal Travel Regulation*, Report No. 17-04 (Chicago, IL: April 11, 2017).

⁴¹ RRB, *Performance and Accountability Report, Fiscal Year 2017* (Chicago, IL: November 2017).

OIG continues to express concerns that the oversight of NRRIT is inadequate. OIG contends that oversight and transparency of NRRIT could be improved if independent performance audits were conducted in full compliance with Generally Accepted Government Accounting Standards, (GAGAS) along with IT audits, independent investigations, financial evaluations, and risk assessments, as appropriate and equivalent with Employee Retirement Income Security Act covered plans.

The following outlines the specific challenges related to NRRIT.

RRB Component Auditor Deficiencies Have Resulted in a Disclaimer of Opinion on RRB Financial Statements

As a result of OIG's lack of access to NRRIT's auditor, OIG issued a disclaimer of opinion for fiscal years 2013 through 2017. OIG is required by law to audit the financial statements of RRB, and NRRIT is a significant component of RRB. In order to comply with the AICPA group financial statement auditing standard, OIG contacted NRRIT requesting direct communication with, and cooperation from, their auditor. To date, there has been no communication or cooperation from NRRIT's auditor, directly or indirectly.

Because OIG cannot obtain sufficient appropriate audit evidence with respect to NRRIT, we cannot issue an opinion on RRB's financial statements. To prevent future disclaimers of opinion, it is imperative that RRB management counsel NRRIT regarding its auditor's responsibilities to comply with the AICPA's group financial statement requirements.

Performance Audits

NRRIT had commissioned four external reviews since its creation, with the first in 2004 and the most recent in 2012, but had not established an objective and independent policy for conducting performance audits. There is no indication that the reviews commissioned by NRRIT were performed in accordance with GAGAS, which provides a framework for conducting high quality audits. NRRIT also self-selects the areas to be audited, which is a major concern. Other comparable federal programs, such as the Pension Benefit Guaranty Corporation's single-employer insurance program and the Thrift Savings Plan, are subjected to externally initiated and conducted performance audits by one or more independent oversight organizations. In contrast, to these entities, NRRIT selects the objective and scope of its reviews.

OIG believes NRRIT's self-selection of review decreases the independence of the reviews and prevents thorough oversight to fully protect RRB assets held by NRRIT. OIG opposes any arrangement that allows NRRIT to control the performance audits. It is also the OIG's opinion that a statutory amendment requiring performance audits would have greater effectiveness, since NRRIT could not opt to alter the policy without legal justification.

In October 2014, in response to a May 2014 GAO report, NRRIT signed a Memorandum of Understanding (MOU) with RRB to delineate responsibilities and procedures for (i) Financial Audits and (ii) Performance Assessment Evaluations with respect to assets held by NRRIT. This MOU states that “performance reviews should be regularly scheduled every three years beginning in calendar year 2015, with the understanding that additional reviews could be scheduled, if warranted.”⁴²

Although the MOU clearly states that NRRIT has agreed to these performance reviews, the MOU does not require them to be performed and continues to permit self-selection. As of November 2017, RRB management disclosed that in December 2015, the NRRIT engaged the independent firm of KPMG to conduct the first audit addressing the October 2014 performance review agreement, on the topic of Corporate Governance Framework. In September 2016, NRRIT provided RRB with a copy of the report and advised that the audit had identified no significant gaps in the corporate governance framework of the NRRIT. The NRRIT noted that it agreed with several auditor recommendations to strengthen the existing governance policies and procedures.

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

Original Signed By:

Martin J. Dickman
Inspector General

⁴² Memorandum of Understanding between National Railroad Retirement Investment Trust and the Railroad Retirement Board signed in October 2014.

APPENDIX I: MANAGEMENT COMMENTS

Management's Comments

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

Challenge 1 - Program Integrity to Strengthen Disability Programs

RRB has demonstrated and documented its commitment to continuously improving the quality of systems, policies, procedures and processes that support disability decisions. In response to Office of the Inspector General (OIG) recommendations and ad hoc communications, as well as Government Accountability Office (GAO) audit findings, and internal quality assurance reviews, the RRB has taken meaningful actions to strengthen critical aspects of the program. Yet, the RRB continues to rehash the same grievances over the program despite being well aware that it is administered according to existing law and regulations. The RRB repeatedly criticizes the RRB for not adopting some of its suggestions regarding the Occupational Disability Program, ignoring the fact that many of its suggestions would require legislative changes to the Railroad Retirement Act (RRA), which neither rail labor, rail management nor their respective constituencies seek.

The RRB's animus towards the Occupational Disability Program is evidenced in its reliance on outdated findings. For instance, the RRB relies on a dated GAO Report, *Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities (GAO-09-821R)*, September 9, 2009, that cites the approval rate of the occupational disability program as potential indicators of continued weaknesses in program decision making. Further, the Seven-Day Letter to Congress, dated February 10, 2014, recommended that the RRB employ a licensed medical doctor to oversee the entire disability program and that the RRB replace their current disability claims examiners with licensed medical staff to adjudicate disability applications. This recommendation completely ignores the fact that the application of complex vocational rules and earnings information is critical to the adjudication of occupational disability claims. The RRB further recommended that without those changes, the occupational disability program should be eliminated and disabled railroad workers apply for sickness benefits and ultimately a total and permanent disability. Finally, it recommended that if the occupational program continued, it should be a one year temporary program. The flawed basis of this logic is consistent with its citation of work related to disability programs established under different laws for vastly different workers who are typically much younger, better educated, and in sedentary-to-light exertional level jobs when they become disabled; and in industries that are far more able to create and accommodate light duty work.

The RRB remains steadfast in its approach to administering the disability programs so as to maintain or improve program integrity and protect the National Railroad Retirement Investment Trust. Many of the recommendations and suggestions made by the RRB for program improvement have been incorporated into the way cases are processed and adjudicated. Yet, the RRB continues to point to the eleven year old Long Island Rail Road (LIRR) physician assisted fraud scheme, that was first disclosed in a 2008 news article, as proof that the program is ineffective, in spite of the fact that out of more than 700 cases identified, only 28 of the 33 actions resulted in criminal charges against LIRR annuitants. The RRB likewise fails to mention the unique characteristics of LIRR's private pension plan, which have since been modified, that may have incentivized fraudulent disability applications. While the RRB agrees that no amount of fraud committed against the program is acceptable, the RRB fails to address the impact of the improvements in case processing and monitoring. Further, the RRB, in performing its due

diligence, has in recent years, referred a variety of cases and potential issues to the OIG. Included among those was an instance where another medical practitioner was evidencing a pattern of possible fraudulent behavior. To date, the RRB has not been informed of any legal actions that have occurred as a result of this referral more than six years ago.

Current Disability Program Issues

The OIG alleges that foundational flaws and a culture “seemingly entrenched in defending its disability program at the expense of strengthened program integrity have resulted in little significant improvement or change.” It further states that the RRB is unable to effectively manage the disability program leaving over \$1 billion in annuity payments at increased risk. We strongly disagree with these groundless statements. The OIG has failed to demonstrate through its own investigations that \$1 billion dollars in annuity payments are at risk. Since 2007, no additional instances of widespread, systemic fraud has been brought to the attention of RRB management.

To address concerns regarding program integrity, the RRB established a Fraud Task Force comprised of subject matter experts, senior agency officials, and representatives from the Board Offices, charged with identifying and evaluating changes to the disability program which would enhance program integrity. To assist in this mission, a Disability Program Improvement Plan (DPIP) was developed, tracking activities related to 18 separate initiatives, with multiple tasks, which have been implemented, such as form revisions, enhanced examiner training, use of a second level authorizer, and tracking of physicians. The OIG raises concerns that the due dates on the plan sometimes change and that some initiatives are closed, without being implemented. The due dates for the various tasks were subject to change depending upon availability of agency resources and budget. The decision not to implement an initiative was made only after a careful analysis and a determination that implementation would not bring significant benefit or was not cost effective. The DPIP is a living document and the Board continues to meet as needed to address issues that arise concerning the disability program.

Pursuant to the OIG’s recommendation that the RRB employ a Chief Medical Officer (CMO) to oversee the disability program, a physician was hired in 2017. Unfortunately, this CMO left after ten months to accept a job with greater pay at a private insurance company. The CMO position has been reposted and applications are currently under review. In the meantime, the RRB continues to use independent medical contractors to assist in the review and interpretation of medical evidence submitted as proof of a disability.

Another OIG recommendation that was implemented involved the revision of the forms used to obtain job information from railroad employers. While the OIG acknowledges RRB management’s extensive revisions to, and intent to replace the current job verification forms (G-251a and G-251b) with a singular version, the OIG contends that voluntary completion of the forms is “incongruent with RRB regulations....” In support of this contention, the OIG has noted that the regulations of the RRB state that the RRB “shall also consider the employer’s description of the physical requirements and environmental factors relating to the employee’s regular railroad occupation, as provided on the appropriate form.” Omitted from the regulatory citation is the fact that the regulations provide that examiners must also consider the employee’s own description, as well as other sources, such as the Dictionary of Occupational Titles. The intent of this regulation is to identify what information disability examiners should consider if available, not to mandate that employers must provide vocational information. This is not only apparent from the logical reading of the regulation, but was also emphasized when the policy was established in 1997. As noted at the time the procedure was introduced, it was to allow for

employers to “offer the applicant’s railroad employer the opportunity to voluntarily provide [emphasis added] information on the applicant’s job duties which may be utilized in determining the applicant’s eligibility to an occupational disability.” Determining Disability, 62 Fed. Reg. 50056 (proposed Sept. 24, 1997) (to be codified at 20 CFR 220).

The OIG notes that in 2017, approximately 34 percent of disability determinations included an employer provided form. It further notes that in 2018, the percent of employer provided job information rose to 54 percent of cases. This result highlights the RRB’s ongoing effort to encourage employers to provide job information. Although it was never envisioned that it would be mandatory for employers to provide vocational information, the RRB appreciates a need for the adjudicating staff to have an understanding of the various railroad occupations. Consequently, to further address this issue, staff now attends classroom and onsite training facilitated and led by industry representatives to aid in assuring that staff has an acceptable understanding of the functions of the various railroad occupations.

In response to a recommendation from the OIG, the Form RL-8A, *Occupational Disability Certification*, was developed and implemented. This form requires recipients to self-certify their continued entitlement to a disability annuity, by providing current information regarding their impairments and work activity. The OIG is critical of the manner in which the RRB has implemented the form, asserting that its use is too narrow and that completion of the form should be required of all occupational disability annuitants. In developing the criteria for selecting who would receive the RL-8A certification, the RRB used the profile identified in the LIRR cases to include annuitants who: 1) had an occupational entitlement; 2) did not have a disability freeze; 3) had an orthopedic or mental impairment; 4) was under age 55 as of the form release date. Including all 18,300 occupational annuitants in an RL-8A certification process as the OIG suggests would have been unduly burdensome and unnecessary, as well as impractical to monitor. The initial result of the High Risk Continuing Disability Review (CDR) program resulted in one discontinuance after a full CDR and one discontinuance based on the completion of the RL-8A. Accordingly, this ineffective effort was rolled back.

The OIG calls this result lackluster and blames the design and implementation as the reason that the results were not higher. While OIG acknowledges that the GAO issued a report in February 2018 recommending that the RRB focus on reallocating resources used for high-risk CDR’s to other CDR efforts that produce more effective outcomes, he ignores the many steps that the RRB has routinely used in adjudicating and monitoring disability cases. Each year, the RRB releases the Forms RL-4, *Employee Disability Reminder Notice*, and RL-5, *Survivor Disability Reminder Notice* to remind disabled annuitants of their responsibility to report any event that may impact their disability annuity. The RRB also releases the RL-7, *Disability Reminder Notice – Annuitant Under Earnings Notice* to disabled annuitants reminding those who are under the full retirement age to notify the RRB of earnings for any month in which they exceed the monthly earnings limit, or if their total earnings exceed the annual earnings limit. Additionally each year, the RRB receives earnings information for RRB disability annuitants from SSA which is used to identify any case where the earnings exceed the annual earnings limit. Effective August 1, 2017, disability post examiners are also required to obtain and verify employment and income using The Work Number (TWN) for all Railroad Retirement Act disability claims and all Social Security Act disability claims when developing for CDR. Information obtained from the TWN employment and income report must be taken into consideration when determining continuing eligibility for disability benefits. TWN is also being used in conjunction with other sources reporting income (earnings or wages) information (example, DEQY, EDM, and SEQY) to obtain both past and recent income information. TWN is checked by the initial claims examiner at the onset of the case and prior to adjudication. Finally,

DBD uses State Wage Match, a program in which wage and unemployment benefit information is obtained from a State under a contract agreement in accordance with the Computer Matching Act. As a result of our continuing efforts in program integrity we have found that the vast majority of disability annuitants are not working and are receiving a benefit to which they are legally entitled.

The OIG asserts that “another program improvement that has not been fully implemented is action to prevent occupational disability adjudications based on the simple task standard for railroad employees.” This is factually incorrect. Requests for examples of situations where a disability annuity has been awarded to someone on the basis of an inability to perform a simple task have gone unanswered. In accordance with section 2(a)(2) of the Railroad Retirement Act (45 U.S.C. § 231(a)(2)), “the Board shall determine whether the employee’s condition is disabling for work in his *regular occupation* by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation.” The RRB has been and shall continue to follow the statute and regulations as part of the adjudication process. Claims examiner training includes a review of how impairments are assessed to determine whether there is sufficient objective medical evidence to determine restrictions caused by impairments. The sequential evaluation process used in the training is found in 20 CFR 220.13(b)(2)(iv). These regulations are included in RRB’s Disability Claims Manual Part 13, along with the Independent Case Evaluation process where medical information is reviewed to establish the functional limitations of the condition. As functional limitations are established and job demands determined, the two are compared and reviewed to determine if the claimant is capable of performing the essential job duties of their regular railroad occupation. In summary, contrary to the OIG’s claim, disability staff is trained extensively on the proper adjudication of occupational disability annuities in accordance with the statutes and regulations on the topic.

The OIG continues to take exception to the grant rate within the disability program and is critical of what he describes as a culture concerned with “paying benefits quickly” with little regard to paying them accurately. As noted previously, the OIG has repeatedly demonstrated animus towards the program, and has provided no evidence to support his claims that the grant rate demonstrates that occupational annuities are being awarded in error. And while it is common for benefit paying agencies to focus on timeliness, RRB’s data reflects that benefits are certainly not being awarded quickly. For fiscal year 2018, it took on average 331 days to process a disability case due in part to various steps that were added to the adjudication process to strengthen our program integrity. And some recommendations that were piloted such as the increased use of specialty exams to strengthen the decision, have been proven to add excessive cost without any discernible concomitant improvements to the technical quality of the adjudicative process.

As mentioned previously, the OIG fails to consider differences in the population of railroad employees applying for disability benefits. The average age and years of service of an RRB disability applicant, is 58.3 years with approximately 27 years of service. This is relevant because railroad workers with 30 years of service are eligible for full age annuities as young as age 60 – as are their spouses, whereas the spouse of a disabled annuitant with less than 360 months of service is not eligible for an annuity until both parties are age 62, and that spouse annuity will be reduced for age unless the spouse defers retirement until attaining full retirement age (age 66 or 67, depending upon date of birth). In addition, the exertional level of typical railroad work for most applicants is in the medium to heavy level, exacerbating the normal wear and tear on the body that occurs with aging. The point is, outside from the added incentive that

previously existed with employees of Long Island Railroad, collecting a disability pension is not financially advantageous.

LIRR Restitution

The OIG points out that "as of September 2018, only \$1,593,668 of the approximately \$5.9 million in court ordered restitution related to the LIRR convictions had been returned to the RRB." It states that the RRB has not established accounts receivables on some of the criminally convicted LIRR defendants, which represent more than \$150 million in additional court ordered restitution. The OIG goes on to say that the RRB should use every avenue to recover payments lost due to fraud or similar fault to prevent the "continued" abuse of the occupational disability program. Yet, the OIG is well aware, once restitution is ordered by the court, the Department of Justice is responsible for collecting restitution payments and delegates these activities to the Financial Litigation Units (FLU) within each U.S. Attorney's Office.

According to the United States General Accountability Office (GAO), in a report dated February 2018, titled "*Federal Criminal Restitution, Most Debt is Outstanding and Oversight of Collections Could Be Improved*," the GAO pointed out the challenges faced by the FLU in collecting federal criminal restitution. The GAO concluded that many victims are unlikely to receive any meaningful portion of court-ordered restitution owed to them because of the offenders' inability to pay these debts. The RRB is appreciative of the efforts of the U.S. Attorney's Office, Financial Litigation Unit (FLU) in facilitating the collection of the \$1,593,668 in court ordered restitution and will continue to work closely with the FLU to receive funds as they are collected.

With respect to the defendants who were not RRB annuitants, the Bureau of Fiscal Operations has established debts representing the \$150 million in restitution which was assessed against two individuals. These two defendants were doctors who fraudulently charged railroad workers a "fee" outside of regular payments for the exams they performed. The assessment includes amounts attributable to "potential" losses had the scheme not been stopped, and not an actual amount paid from the trust to the two individuals from whom this restitution was ordered to be paid. However, while the statute and language of the Sentencing Agreements require non-government entities to receive payments first, should the FLU collect on these debts, the RRB is prepared to receive the payments.

The RRB has never "allowed" individuals to commit fraud against the program without repercussions. Referrals are made to the OIG regularly when fraud is suspected. When allowed by statute, annuities are stopped or offset to recover funds. The RRB has not and does not simply take an application at face value. As has been repeatedly shared with the OIG, the claims examiners review signs, symptoms and laboratory findings in assessing a case. Examiners consult with the onsite contracted doctor and order additional examinations as needed. Examiners review the description of the job and confirm findings when possible. The programmatic changes that have been implemented over the past ten years have greatly increased the strength of the occupational decisions which can be further demonstrated by the OIG's inability to find continued, systemic, massive fraud in the occupational disability program.

Challenge 2 - Information Technology Security and System Modernization

With ever increasing Information Technology (IT) security and privacy risks, we understand your concerns to make our IT systems and processes more robust. Our legacy systems are built using an architecture that was deemed vigorous 40 years ago, but stand no chance exposed to the modern security threats and real time interactions of today. The OIG's assessment of our

Cybersecurity framework suggests the current controls as not effective. Although OIG recommendations are directed towards better vulnerability management and fixing current infrastructure, policies and procedures, the agency's Chief Information Officer (CIO) strongly believes that the right way to solve this problem is to modernize, transform and simplify these complex legacy systems to enable a robust and secure environment. Our goal is to build the right partnerships with external cloud service providers who can provide more secure, better, cheaper solutions, and therefore, we effectively mitigate the risk in the current legacy systems.

During this transformation period, we have enhanced our Continuity of Operations with the USDA/NITC partnership. The RRB is more confident than ever that our systems will function normally in the event of a disaster, and the restoration of applications and critical services from this alternate site is a matter of hours, not days.

Given that our mission essential functions are performed today in a legacy mainframe environment that is costly and extremely resource heavy to protect customer data from increasing cyber threats, we signed up with the Department of Homeland Security for Continuous Diagnostics and Mitigation (CDM). The CIO believes in the CDM program as a way to address these cybersecurity risks. The CIO considers cybersecurity as not a onetime activity, but rather a continuous effort requiring vigilance at all times. We continue to manage the risk of the critical infrastructure considering asset management, remote access, identity management, and network protection. We have started the incremental and iterative process to transform our legacy mainframe software systems, and with the anticipated funding in the coming fiscal years we will accelerate this transformation. We anticipate that in the next 5 years we will gradually reduce our dependence on the mainframe operations.

Being proactive on the IT modernization program, we have discussed with the Federal CIO office (EOP/OMB/FCIO) for a recurring monthly meeting, primarily for a review and oversight of the projects in this program. We have also brought onboard an IT Program Manager consultant to work with both the RRB Project Managers and the contractors to ensure the projects are completed on time and on budget.

Without strong project management, it is true that complex projects with large federal IT investments frequently fail or incur cost overruns. To mitigate such risks our Legacy Systems Modernization Services contracts are performed as Firm Fixed Price (FFP). The RRB will continuously monitor, measure, and perform value driven services to ensure the predictable outcome of a successful migration. To achieve this successful migration, we are deploying agile principles such as breaking up multi-yearlong projects into a series of short releases focused on the most critical or key performance indicators to increase the opportunity for success, as well as ensuring frequent standup meetings, or daily scrums, as an effective means to convey information and to facilitate quick resolution of identified risks and issues. Early this year, the legacy tax system and dependent applications were successfully transformed to a modern technology. This project was on a FFP and there was no cost overrun. After go-live, the net result was a system that RRB has gained confidence in its operation, and is able to maintain and operate daily without the support from the systems integrator.

We are making good progress on the Enterprise Infrastructure Solutions projects. Proposals are being evaluated for a task award on content delivery and website migration services. We are conducting market research to understand marketplace capabilities for data and unified communications services for the planned acquisitions.

We are deploying all citizen-centric digital solutions using strong authentication via GSA/ Login.gov. These external self service solutions are being transformed to use secure communications with multi-factor authentication and identity management. We also understand the necessity to block unauthorized hardware from accessing the RRB network for effective network protection. Our enrollment in the CDM program will assist in this purpose.

We recognize that our cybersecurity program is still in need of improvement. Our goal is to remediate the cybersecurity risks at the earliest, with a comprehensive cybersecurity strategy to address our deficiencies. This will supplement the risk mitigation capabilities of EINSTEIN III (E3A) that the RRB currently has in place.

The objective of our roadmap is to modernize IT legacy systems to meet railroad community expectations, and to protect the sensitive information they trust us to maintain. By modernizing the legacy systems, we ensure that the enterprise architecture is stable for years to come, is flexible to accommodate new innovations, and enables the encryption and security aspects to keep customer data safe. Adherence to NIST standards for encryption and FIPS 140-2 for Data in Transit and Data at Rest, ensures enterprise network security outside of the RRB network. As part of our defense in depth strategy, we have deployed Web Application and Database Firewalls in addition to the standard Network Firewalls. With the anticipated funding in future years, we will complete the implementation of the roadmap to ensure data security and sustainability of our operations in the years to follow. We, therefore, continue to deliver better citizen-centric services, provide excellent customer service, effectively steward taxpayer dollars, and safeguard trust fund assets

Challenge 3 - Management of Railroad Medicare

Bureau of Fiscal Operations Response: As previously stated in fiscal year 2017, the OIG's Cost Allocation Plan (CAP) audit (audit report 16-10) was fundamentally flawed and, therefore, should be rescinded. The OIG was concerned by the significant non-concurrences related to the CAP audit report, 16-10. Significant non-concurrence, from an audit perspective, is driven by inaccurate and unreliable audit results.

Again, the RRB believes that the OIG's CAP audit was fundamentally flawed because the guidance used as the basis for review, OMB Circular A-87 (revised May 10, 2004), *Cost Principles for State, Local, and Indian Tribal Governments*, provides guidance for grant recipients at the state, local and Indian tribal government level. The RRB is not a grant recipient, nor is it a state, local, or Indian tribal government. The RRB has administrative responsibility under the Social Security Act for railroad workers' Medicare coverage and certain benefit payments. The RRB performs Medicare program-related work on behalf of the Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services (HHS) and, by virtue of an agreement between the RRB and the HHS, the RRB is reimbursed for that work.

The IG asserted that "labor costs were reimbursed based on RRB management's professional judgment." The statement is disingenuous and misleading because the OIG also acknowledged in the report that employee profiles were initially developed by an agency workload committee. Additionally, the OIG auditors acknowledged that the employee profiles are reviewed annually and updated as needed. The auditors should have discovered during the audit that all employee profiles are validated quarterly and a statistically valid sample of employee profiles are tested as part of an annual review. Relative to the IG's assertion that indirect costs had not been formally approved by CMS, again, the statement is disingenuous and misleading. CMS

reviewed and certified every cost allocation plan submitted since 1983. The notion that RRB's costs (both direct and indirect) are unsupported, and were not approved, is disingenuous and misleading.

The OIG alleges that the "RRB had received \$7.9 million in Medicare contract overpayments during the period of fiscal year 2013 through 2017." The OIG further alleges that "an additional \$20 million, for a total of \$27.9 million, in overpayments may be owed to CMS since the contract's inception." Prior to publication of the OIG's FY 2018 Management and Performance Challenges document, RRB was unaware that the OIG had made a determination and communicated the results to CMS. Upon inquiry into this matter, the OIG stated that they were drafting a document to describe the audit results; the OIG ultimately transmitted such results in Priority Audit Memorandum (PAM) 19-01 – Excess Medicare Reimbursements on October 17, 2018. The audit results discussed in PAM 19-01, are incorrect and demonstrate a fundamental lack of understanding of the governing documents and processes related to the Medicare contract. The RRB has provided a robust and comprehensive response, to both educate the OIG and refute the OIG's unreliable, misleading, and invalid allegations. However, the details of which cannot be discussed herein as, for an unspecified reason, the OIG has restricted the distribution of PAM 19-01.

The OIG expressed concerns that Railroad Medicare is not using the CMS Fraud Prevention System (FPS). The OIG notes that Railroad Medicare was approved for onboarding to FPS with implementation in December 2016 or January 2017. As December 2016 approached, CMS contacted Palmetto GBA and informed Palmetto GBA that implementation was being delayed. This delay was until August 2018 which was the earliest implementation date for FPS. In late August 2018, Palmetto GBA was granted access to FPS, however, the system did not provide a drop down option for the SMAC jurisdiction to have full functionality of FPS. Palmetto is currently waiting for the FPS contractor to provide training on a work around while they resolve the drop down issue.

Challenge 4 - Assessing Payment Accuracy and Transparency

Since 2015, in response to OIG recommendations, we have made improvements and undertaken corrective actions in our improper payments analysis and reporting. We have reevaluated and improved our methodologies to ensure all appropriate areas are included in our improper payment computations for the RRA program and improved our estimation of RUIA underpayments by changing from a judgmental sample review of 20 cases to a statistically valid sample review of 100 cases. The Medicare program is now reflected in all appropriate tables and charts in the P&AR. We have also strengthened controls to ensure the accuracy of supporting data by improving our documentation and validation processes for the RRA and RUIA analysis and updated our procedures to reflect these enhancements.

The following is a timeline of the OIG findings and RRB corrective actions taken to address risk assessment non-compliance with IPERA:

- In May 2015, the OIG *Audit of the Railroad Retirement Board's Compliance with IPERA of 2010 in the Fiscal Year 2014 Performance and Accountability Report* indicated the RRB had not prepared risk assessments for all programs the agency administers.
- In May 2016, the OIG *Audit of the Railroad Retirement Board's Compliance with IPERA of 2010 in the Fiscal Year 2015 Performance and Accountability Report* indicated the RRB's risk assessment documentation did not meet the minimum requirements specified in OMB guidance.

- We took corrective action as part of our fiscal year 2016 IPERA analysis and reporting. We updated our risk assessment documents for the RRA, RUIA and Medicare programs to include the nine specific risk factors developed by OMB which are likely to contribute to improper payments.
- In May 2017, the OIG determined the RRA, RUIA and Medicare risk assessments were compliant with IPERA per *OIG Audit of the Railroad Retirement Board's Compliance with IPERA of 2010 in the Fiscal Year 2016 Performance and Accountability Report*. Risk assessment compliance for these programs occurred within two years of the initial OIG finding in May 2015.
- In addition, in fiscal year 2017 we updated our risk assessments for vendor payments and employee payments prior to the issuance of the OIG's May 2017 IPERA audit report.
- In May 2018, the OIG determined the vendor and employee payment risk assessments were compliant with IPERA per *OIG Audit of the Railroad Retirement Board's Compliance with IPERA of 2010 in the Fiscal Year 2017 Performance and Accountability Report*.

As stated previously in the Fiscal Year 2016 Performance and Accountability Report and the fiscal year 2017 and fiscal year 2018 OIG IPERA audit response, we would like to reiterate that RRB's categorization of underpayment accruals for both the RRA and RUIA programs are in full compliance with OMB's guidance and the definition of improper payments. Based on the Office of General Counsel's legal opinion L-2015-54 dated November 20, 2015 (RRA), we made some modification to the categorization of various underpayment accruals found in our Quality Assurance review cases and therefore, are now in compliance. Based on the Office of General Counsel's (OGC) legal opinion L-2016-23 dated June 17, 2016 (RUIA), we obtained verification that our methodologies for categorization of underpayment accruals were already in compliance with IPERA. The RRB obtained OMB approval of our RUIA methodology in February 2014 and our RRA methodology in August 2016, further confirming that we are compliant with OMB IPERA guidance.

In July 2018, OMB granted the RRB reporting relief for the RRA and RUIA programs since these programs have had consistent estimated improper payments, which fall under the statutory threshold.

IPERA: Despite having confirmed that the RRB is compliant with IPERA, the IG continues to bemoan lack of corrective action taken in response to a finding and recommendation with which the RRB did not concur. The RRB did not concur with the IG's assertion that the RRB was non-compliant with IPERA for a third consecutive year and therefore, did not agree with recommended actions because the RRB completed the revisions to the referenced risk assessments in accordance with OMB guidance prior to issuance of OIG audit report 17-05. However, the OIG refused to evaluate them because the risk assessments were not published in the RRB's Fiscal Year 2016 Performance and Accountability Report. The risk assessments in question were published in the Fiscal Year 2017 Performance and Accountability Report and determined to be compliant.

Transparency: While the RRB disagreed with the OIG's characterization of our oversight role and efforts during their readiness review, the RRB concurred with the recommendations addressed to the Bureau of Fiscal Operations in the draft report relating to the RRB's initial DATA Act submission. The RRB has taken significant corrective action and believes that our actions fully address our recommendations in the November report of audit. Specifically, in response to OIG recommendations from the November report, we developed comprehensive

procedures titled Data Act Process Flow in cooperation with CGI support staff, the Contracting Officer's Representative and principle stakeholders from the Bureau of Fiscal Operations, Bureau of the Actuary and Research and Acquisition Management. To improve the accuracy and timeliness of railroad retirement and unemployment and sickness payment data that update the USA Spending site and Federal Assistance Award Data System, files submitted rely on payment data contained in the Master Benefit File and UI/SI MACRO system. Additionally, designated contacts in the Bureau of the Actuary and Research participate in the "pre" and "post" broker reviews as outlined in the "Data Act Process Flow" and certify data for upload into the Broker. Designated contacts in Acquisition Management also participate in the "pre" and "post" broker reviews as outlined in the "Data Act Process Flow" and certify data for upload into the Broker.

All actions required to ensure that data in the DATA Act files are complete and accurate prior to submission and certification are described in the "Data Act Process Flow." Comprehensive controls and procedures covering the submission and certification of RRB's DATA Act files are incorporated in the "Data Act Process Flow." We also assessed staff training needs and arranged for CGI staff to conduct on-site training for Data Act reporting. Finally, the Chief Financial Officer (CFO) designated staff who act as file submitter, certifier and their alternates. No files are submitted without the written assurance of bureau POC's attesting to the completeness and accuracy of the files.

Challenge 5 - Human Capital Management

Federal agency Human Capital/Human Resources policies and practices are evaluated on a periodic basis by another regulatory Federal agency, the Office of Personnel Management (OPM). For some agencies, OPM conducts a limited audit focusing more on an agency's hiring decisions and adherence to merit system principles (to include job postings and veterans preference). OPM also has the authority to guide, enable and assess agency strategic human capital management processes and audit an agency's human capital system to include reviewing RRB's Strategic Alignment, Leadership and Knowledge Management, Results-Oriented Performance Culture, Talent Management and Accountability. This type of audit is called a Human Capital Management Evaluation (HCME).

In October 2016, OPM was on-site at the RRB conducting this more detailed HCME. OPM was last on-site at the RRB in 2011. Contrary to the OIG's statement, OPM was not conducting the audit because of RRB turnover rates or our aging workforce; rather, OPM was conducting a HCME in accordance with prescribed OPM timeframes. The HCME assesses the use of personnel management authorities at the RRB, adherence to merit system principles, and compliance with human capital management laws and regulations. As a result of this audit, all of the required actions have been resolved and the recommended actions have been implemented. The RRB has never been found in violation of merit systems principles since OPM has been conducting audits of the RRB.

In response to our aging workforce and high attrition rates, coupled with static budget levels, the Executive Committee has focused their efforts on succession management, specifically, developing the agency's current human capital and fulfilling mission critical hiring goals to meet the agency's needs. Focusing on these two strategies, the agency has succeeded at dealing with periods of high retirement eligibility of its workforce. While it is important to bring in new personnel with fresh perspectives, we still believe that an important contributor to our success in meeting our mission is the quality and experience of our current workforce. Since 2015, RRB has instituted several human resources flexibilities and authorities within the Federal

environment to include reinstating a training and development section within our HR office in order to develop processes, training and systems that can maximize the growth potential for current employees and new hires. RRB also implemented a Learning Management System (LMS) referred to as RRB University. Through our LMS, we have developed and published several online training sessions as well as purchased an online catalog of more than 1,500 soft skill online training courses to help maximize growth opportunities for our current employees in expanding their knowledge, skills and abilities. In fiscal year 2018, the RRB provided more than 25 course offerings via classroom style training sessions on such topics as Effective Management training, Microsoft Office and Written Communication skills. RRB is in the process of revising our awards program as well as our performance management system in an effort to maximize employee performance.

Although our Human Capital and Succession plans were not fully funded, we have been able to implement key aspects of these plans ensuring continuing and uninterrupted RRB operations, including an Individual Development Plan (IDP) program, the Executive Candidate Development Program (ECDP), and a new supervisor training curriculum. In addition, we continue to utilize the re-employment of retirees to assist in retaining the knowledge of our specialized workforce and to assist in succession planning.

While we appreciate the IG's support for increased staffing in the Audit and Compliance Section (ACS), his narrative is again misleading. The Inspector General states that the "RRB has decreased the number of staff assigned to employer audits and has also decreased the budget for these audits." His choice of words implies that the RRB intentionally reduced staffing and diminished the audit role. The statement is, again, patently false. The fact of the matter is that retirement, a subsequent promotion, and an unexpected long-term absence due to illness has reduced the staffing in the section. Pending Executive Committee approval, the CFO plans to hire two new auditors in fiscal year 2019. Again, we appreciate the IG's support for the matter.

Relative to the coverage function, if the OIG validated the concerns prior to publishing such results, the auditors would have known that following the retirement of the ACS coverage specialist, full responsibility for the function, and the position, were transferred to the Office of General Counsel (OGC). The OGC hired a staff member and assumed full responsibility for the function at the start of fiscal year 2019.

Challenge 6 - Material Weaknesses Related to Financial Statement Reporting and the Control Environment

The OIG continues to assert that two material weaknesses exist; the first, which was cited in prior years, relates to financial reporting and has two components (1) ineffective internal controls and (2) lack of access to the National Railroad Retirement Investment Trust's (NRRIT) auditor.

1. Regarding assertion on ineffective controls: As it relates to FY 2017, and not FY 2018, we reject the characterization that "...approximately \$503.2 million of recorded and approved financial transactions lacked adequate supporting documentation in the agency's official records for these transactions." That statement is patently false. Supporting documentation for the referenced transactions was NOT, as the OIG stated, missing. The documentation was, in fact, available for review in hardcopy and promptly provided upon request. Further, the OIG did not take exception with the accuracy or completeness of the documentation the RRB provided to support the validity of the transactions. It is important to note that while the OIG is citing this instance as support

for this material weakness, to date the OIG has not issued a specific finding or recommendation for fiscal year 2018. While the OIG continually criticizes RRB's internal controls, the auditors have not identified any material misstatements in the financials or taken exception to documentation provided in hardcopy.

2. Related to lack of access to the NRRIT: The OIG continues to demand that the American Institute of Certified Public Accountants (AICPA), Clarified Statements on Auditing Standards has legal precedence over the National Railroad Retirement Investment Trust's establishing statute. RRB's position on this matter has been, and will continue to be, that contact between the OIG and the NRRIT auditor is inconsistent with section 15(j) of the RRA, which provides for the independent status of the NRRIT. The Memorandum of Understanding (MOU) dated October 31, 2018,⁸ demonstrates GAO's agreement with the RRB's interpretation of NRRIT's establishing legislation. Therefore, the RRB rejects the OIG's inclusion of this matter as both a component of the financial reporting material weakness and as a basis for a disclaimer of opinion.

The OIG asserted that a second material weakness exists, which the OIG has cited since 2016, related to the control environment. Regarding this material weakness, the OIG's four major concerns relate to (1) NRRIT's classification category, (2) Medicare cost reimbursements, (3) improper payment definitions, and (4) compliance with Federal Travel Regulations (FTR).

1. NRRIT classification related to Statement of Federal Financial Accounting Standards (SFFAS) No. 47: the MOU dated October 31, 2018, confirms the RRB's position and approach to SFFAS 47, in that "[n]otwithstanding this MOU, NRRIT has not independently determined that this [consolidation entity classification] is the appropriate classification for the Trust [NRRIT] for purposes of SFFAS 47."⁹ The GAO recognizes, NRRIT as an independent entity and, acknowledges that "this MOU is not indicative of NRRIT agreement with this [consolidation entity] classification,"¹⁰ as that classification determination "is solely the determination of the Secretary of the Department of the Treasury and Director of the Office of Management and Budget."¹¹ GAO accepts that, "[r]ather, NRRIT enters into this MOU merely to facilitate GAO to obtain audit evidence to support NRRIT balances and disclosures included in the U.S. government's financial statements for the purpose of GAO's audits of the U.S. government's financial statements."¹² The MOU further states that "[n]either the classification of the Trust [NRRIT] as a consolidation entity in the U.S. government's financial statements nor anything in this MOU, should be construed to require any changes to the existing reporting practices between NRRIT and the RRB in support of NRRIT net assets."¹³ As such, the OIG's "concern" related to this matter is irrelevant, and therefore, rejected.
2. Relative to Medicare Cost Reimbursements: As stated in 2017, the OIG's Cost Allocation Plan (CAP) audit (audit report 16-10) was fundamentally flawed and, therefore, should be rescinded.

⁸ MOU for the *NRRIT Inclusion in Government-Wide financial Statements and GAO Access to Information*, entered into by the National Railroad Retirement Investment Trust (NRRIT) and the U.S. Government Accountability Office (GAO), dated October 31, 2018.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See *id.*

3. Relative to improper payments definitions: RRB management rejects OIG's allegation that inaccurate improper payment definitions continue to result in understated reported improper payments. The RRB secured a legal opinion from its Office of General Counsel in fiscal year 2016 and they agree with our classification of RUIA and RRA payments as proper. The RRB also received approval from OMB for our established methodologies to identify improper payments in the RRA and RUIA benefit payment programs. In August 2016, OMB granted the RRB approval to continue conducting the RRA Improper Payment analysis according to our established methodology. Finally, in July 2018, OMB granted the RRB reporting relief for the RRA and RUIA programs since these programs have had consistent estimated improper payments, which fall under the statutory threshold.

4. Relative to the OIG's Travel Audit: The OIG, using a statistically valid sample, evaluated all RRB Temporary Duty (TDY) travel for a six-year period (2010-2015). Total TDY travel costs during that six-year period was approximately \$3.2 million (average annual costs of approximately \$540,000). Neither the average annual amount, nor the six-year total dollar value, assuming a 100 percent error rate, are material to financial reporting. Therefore, by definition, citing this example in support of a material weakness related to financial reporting is erroneous. The AICPA defines a material weakness as a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. To suggest that the materiality of this audit could have a material effect on the RRB's financial statements is nonsensical.

In closing, the OIG has disclaimed the RRB's financial statements and asserted a financial reporting material weakness since 2014. Additionally, in 2016 the OIG began reporting a control environment material weakness due to concerns related to disagreement over audit matters. However, the OIG has not identified any financial reporting impact resulting from the purported material weaknesses.

Challenge 7 - RRB Oversight of the National Railroad Retirement Investment Trust

For fiscal year 2018, the Office of Inspector General (OIG) will again render a disclaimer of opinion on the RRB's financial statements, as has been done since fiscal year 2013. As a basis for the disclaimer of opinion, the OIG contends that they require access to the National Railroad Retirement Investment Trust's auditor in order to comply with American Institute of Certified Public Accountants (AICPA) group financial statement auditing standards.

We continue to reiterate to the OIG that the Railroad Retirement and Survivors' Improvement Act of 2001 (RRSIA)¹⁴ amended the Railroad Retirement Act (RRA) by adding section 15(j) that provided for the establishment of the National Railroad Retirement Investment Trust (NRRIT).¹⁵ NRRIT was created to "manage and invest"¹⁶ the funds of the railroad retirement system for the purpose of providing railroad retirement benefits administered by the Railroad Retirement Board.¹⁷ We further emphasize that the statute provides that NRRIT is not a "department,

¹⁴ Pub. L. 107-90, 115 Stat. 878 (2001).

¹⁵ See section 15(j) of the RRA, 45 U.S.C. § 231n(j).

¹⁶ *Id.* § 15(j)(1).

¹⁷ *Id.* § 15(j)(4)(G).

agency, or instrumentality of the Government of the United States and shall not be subject to title 31, United States Code.”¹⁸ (Emphasis added.) Title 31 governs monetary and financial matters within the federal government.¹⁹ By inclusion of the provision that NRRIT “shall not be subject to title 31,” Congress made clear that control normally exercised over government agencies through the budgeting, appropriation, and auditing functions of the federal government would not apply to NRRIT. Further, the MOU between the NRRIT and the U.S. Government Accountability Office (GAO) dated October 31, 2018, states that “[t]here is no other legal basis or requirement for the Trust [NRRIT] to provide financial information to another party outside of that which is specified in the Act [RRSIA].”²⁰ RRB’s position on this matter has been, and will continue to be, that contact between the OIG and the NRRIT auditor is inconsistent with section 15(j) of the RRA, which provides for the independent status of the NRRIT. The MOU dated October 31, 2018, demonstrates GAO’s agreement with the RRB’s interpretation of NRRIT’s establishing legislation; therefore, the RRB rejects the OIG’s inclusion of this matter as both a basis for a disclaimer of opinion on RRB’s financial statements and as a component of the financial reporting material weakness.

Further, the MOU dated October 31, 2018, demonstrates GAO’s acceptance of “the long-standing year-end reporting practices between the Trust [NRRIT] and the RRB, including the existing treatment of the NRRIT net assets on the RRB’s balance sheet.”²¹ The “GAO will independently obtain audit evidence to support NRRIT balances and disclosures included in the U.S. government’s financial statements,”²² which through the government-wide consolidation process are the same, or substantially similar, as included within the RRB’s financial statements. Therefore, the OIG should be able to rely on the audit results of the GAO. Accordingly, this provides further support for RRB’s conclusion that this situation does not warrant a disclaimer of opinion on the RRB financial statements.

As stated now for various years, the Inspector General (IG) also believes that the Railroad Retirement Board’s oversight of NRRIT is inadequate and consequently recommends formal agreement between key parties or amendments to the Act to require independent performance audits, as well as other ERISA-type audits, evaluations, and assessments. RRB management continues to believe the oversight of NRRIT is sufficient under current law.

The language of section 15(j) of the Act and the legislative history leading to its enactment clearly establish the intent of Congress to protect the assets of the Trust and NRRIT itself from political influence. Moreover, in the May 2014 GAO report concerning oversight of NRRIT (GAO-14-312) referenced by the IG, GAO specifically noted that NRRIT was independent of the federal government and exempted from the title 31 of the U.S. Code to protect it from political influence. Further, the GAO report stated that NRRIT is not without oversight beyond mandatory financial audits. In particular, GAO noted the Trust is monitored by the RRB and other federal agencies through regular reports and other communications. GAO also noted that NRRIT on its own initiative commissioned four performance audits since 2002 which were comparable to and in some cases more comprehensive than those of comparable state pension plans.

¹⁸ *Id.* § 15(j)(2).

¹⁹ 31 U.S.C. *et. seq.*

²⁰ See MOU, October 31, 2018

²¹ See *id.*

²² See *id.*

Moreover, as also noted by the IG, in fiscal year 2015 the RRB and NRRIT entered into a MOU requiring performance reviews over three-year cycles beginning with calendar year 2015. Contrary to what is stated in the IG's report, per the terms of the MOU, NRRIT does not self-select the objectives and scope of the performance reviews without consultation with the RRB. The key subject areas and timeline, as well as scope of each audit, is only determined after consultation between NRRIT and the RRB.

As we noted in our response to the IG's fiscal years 2016 and 2017 Management and Performance Challenges Reports, in December 2015, NRRIT engaged the independent firm of KPMG to conduct the first audit under the MOU on the topic of Corporate Governance Framework, the results of which audit were reported to the RRB in September 2016. Consistent with the three-year cycle established by the MOU, and after consultation with the RRB, an independent firm will commence a new performance review in November 2018. This performance review will cover NRRIT's investment guidelines, asset allocation, performance benchmarks, and investment plan, and is expected to be completed in 2019. Accordingly, in the RRB's view, the history of continuing cooperation between NRRIT and the RRB on this and other matters renders any amendment to the Act recommended by the Inspector General unnecessary.