U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

Management Information Report

Management and Performance Challenges Facing the Railroad Retirement Board

Report No. 20-03 November 21, 2019

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What We Found

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

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

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

Management's Comments and Our Response

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

What We Did

Our identification of management challenges facing the Railroad Retirement Board (RRB) is based on recent audits, evaluations, investigations, and current issues of concern to the Office of Inspector General (OIG). RRB OIG identified six major management challenges facing RRB during fiscal year 2019.

We previously provided these management challenges to the RRB for inclusion in its fiscal year 2019 Performance and Accountability Report.

Objective

Our objective was to identify and assess the most serious challenges facing RRB management.

Scope

The scope of the audit was fiscal year 2019.

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INTRODUCTION

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

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

In fiscal year 2018, the RRB paid retirement-survivor benefits of nearly $12.7 billion to about 540,000 beneficiaries. The RRB also paid net unemployment-sickness benefits of $93 million (including recoveries of about $100,000 in expired temporary extended unemployment benefits under the American Recovery and Reinvestment Act of 2009, the Worker, Homeownership, and Business Assistance Act of 2009, and subsequent reauthorizing legislation) to about 24,000 claimants.

We are no longer reporting on challenges of the RRB oversight of the National Railroad Retirement Investment Trust (NRRIT) and human capital management. The NRRIT has been removed as a separate challenge because they have been unresponsive to the audit concerns we expressed in numerous audit reports regarding the need to ensure effective management of the net assets the NRRIT holds for the RRB which was approximately $26.6 billion as of September 30, 2018. The challenge for human capital management has been removed because the agency has taken some steps regarding this challenge as a result of a review conducted by the Office of Personnel Management.

This year we are introducing new challenges for financial management and reporting concerns and compliance issues. This year's management challenges are:

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

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

Management's Comments and Our Response

These management challenges were provided to RRB for inclusion in its fiscal year 2019 Performance and Accountability Report. Subsequently, RRB management provided written comments, which are provided in Appendix B. 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. Actions as described by the RRB as they relate to these challenges do not always meet the intent of OIG recommendations nor do they always address the weaknesses that remain. While RRB management provided comments and rebuttals, our assessment of the major challenges facing RRB remains unchanged. As responsible public stewards, RRB management must implement an effective control system to ensure that all agency programs are managed efficiently.

Challenge 1 – Improve Agency Disability Program Integrity

Why is this a serious management challenge? The OIG has remained concerned since uncovering a fraud scheme at the Long Island Rail Road that remained undetected by RRB management.[1]

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

The OIG identified deficiencies in the occupational disability program and has made numerous recommendations for improvement in program integrity. While the RRB has taken some actions to address the challenge, additional improvements are needed. The approval rate for occupational disabilities remained close to 100 percent at 97.8 percent during fiscal year 2018 and has remained consistent through July 2019. During fiscal year 2018, the RRB paid approximately $697 million to 16,000 occupationally disabled annuitants. The average monthly occupational disability annuity was $3,164.

As a result of prior concerns expressed by the OIG, the RRB developed a disability program improvement plan (DPIP) to track improvements to its disability program. An OIG contracted audit of the DPIP found that the actions taken as a result of the DPIP were not fully effective in establishing a risk based approach to prevent future fraud and abuse in RRB's disability programs. Specifically, the actions taken did not (1) establish a dedicated entity within RRB to lead the fraud risk management process, (2) establish a fraud risk assessment process tailored to the disability programs that routinely determines and updates the fraud risk profile for the programs, and (3) establish an ongoing fraud risk monitoring process to evaluate the effectiveness of corrective actions and identify new risks. The Office of Programs concurred with the three recommendations to address these weaknesses, but indicated they do not have the authority to take the recommended actions and will forward them to the RRB Board.

The OIG contracted two other audits of the agency's disability program. These audits determined that the RRB did not effectively consider fraud risk indicators in the disability decision process and provided three recommendations. They also determined that RRB medical experts did not always reach a consistent medical assessment based on the medical evidence and provided two recommendations. RRB management did not concur with any of these recommendations.

See Appendix A for a list of relevant reports.

[1] 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 retirees, doctors, and disability facilitators. This case was prosecuted by the U.S. Attorney's Office for the Southern District of New York.

Challenge 2 – Improve Information Technology Security and Complete System Modernization

Why is this a serious management challenge? Improving cybersecurity and modernizing the RRB's systems is vital to support the ability to meet its core mission. Managing cybersecurity risks is critical to improvement of the security posture of the federal networks and critical infrastructure. Executive Order 13800 emphasizes the importance of strengthening the cybersecurity of federal networks. In the fiscal year 2020 RRB Budget Justification, RRB acknowledged that they received $20 million towards information technology modernization in fiscal years 2018 and 2019.

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

In the annual FISMA audit for fiscal year 2018, the OIG's contractor found that RRB did not comply with FISMA legislation and OMB guidance and that sampled security controls selected from National Institute of Science and Technology Special Publication 800-53, Rev. 4 demonstrated ineffectiveness, and thus the RRB's Information Security Program did not provide reasonable assurance of adequate security. The overall information security program has weaknesses that impact the cybersecurity framework that include deficiencies in the areas of risk management, configuration management, identity and access management, data protection and privacy, security training, information security continuous monitoring, incident response, and contingency planning. A total of 31 recommendations were made and although these findings are consistent with prior FISMA audit results, RRB management disagreed with the conclusion that the RRB's Information Security Program is not providing adequate assurance of adequate security. RRB has taken action to implement two of these recommendations.

OIG recently completed an audit of selected Federal Information System Controls Audit Manual controls and determined that the selected information system controls were not always adequate. The audit determined that the agency did not update all management control review and assessable unit documentation, the budget allocation prevented necessary reinvestigations, and they did not maintain comprehensive personal identity verification replacement policy and procedures. Of the four recommendations, the agency concurred with two and did not concur with the other two.

In fiscal year 2019, the Chief Information Officer introduced an initiative called "On Track to Tomorrow." The initiative is composed of several information technology projects that will improve efficiency of operations, adhere to governance, and provide increased value to the railroad community. The OIG contracted for two IT audits related to RRB's modernization program in fiscal year 2019. A contracted audit of the mainframe applications re-platform determined that the plan is progressing in accordance with established project goals and the RRB's goals are reasonable and attainable. The audit did not result in any recommendations.

The contracted audit of the legacy systems modernization initiatives determined that the project is progressing effectively for phase one of the four phase project. The contractor determined that the legacy systems migration services project was managed effectively and completed. The re-engineering assessment project is underway. They assessed that the status of project outcomes and anticipated improvements were realized for the applications that were converted. The audit did not result in any recommendations. The assessment of the re-engineering mission essential programs could not be fully assessed for effectiveness because the project was awarded after the audit scope ended.

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

Challenge 3 – Improve Management of Railroad Medicare

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

The Social Security Administration gave RRB legislative authority to administer certain provisions of the Medicare program for railroad employees. These provisions included enrollment, premium collection, and payment of benefits, selection of a carrier to process Medicare Part B claims nationwide, and management and oversight of the contract carrier. RRB is also responsible for administering a contract with its Part B carrier, Palmetto, GBA. At the end of fiscal year 2018, approximately 475,000 qualified Railroad Retirement beneficiaries were enrolled in Railroad Medicare (RM), and approximately 455,000 were also enrolled in Medicare Part B. During calendar year 2018, Palmetto processed more than 8.5 million RM claims, and made approximately $867 million in payments for Part B medical services. The Centers for Medicare and Medicaid Services (CMS) reimbursed RRB for $31.4 million in RM program costs during fiscal year 2018: Of that amount, $16.7 million was for the RRB's railroad specialty Medicare administrative contractor (SMAC) and $14.7 million was for RRB expenses incurred for administering the program.[2]

In response to our recent audits, agency management indicated that it will no longer provide the required reporting and oversight responsibilities for the RM program. This response is of concern given the authority and reporting responsibility the RRB has for the Medicare Part B program. We disagree that the RRB is not responsible for oversight and reporting responsibilities for this program, and therefore stand by the recommendations made in our recent audit reports.

Our audits have identified improper payments that could have been prevented, improvements needed for improper payment reporting, and the need for improved controls and support to validate the accuracy of reimbursements the RRB receives to administer the RM program.

While benefits received under RM are solely for retired railroad workers, the quality of healthcare, monthly premium cost, and customer service are not distinct from traditional

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

Medicare. If RRB management denies ownership of its RM program responsibilities and does not accept responsibility for minimizing improper payments, there is no practical reason for its existence.

Oversight to Prevent Improper Payments

OIG has determined that Palmetto's controls were not fully adequate to detect and prevent the payment of improper evaluation and management (E/M) services and to ensure that the services were in accordance with Medicare's coverage and medical necessity requirements. E/M services represent different types of physician/patient encounters, such as office visits or hospital visits. Within each type of encounter, there are different levels of care. Medicare only allows payment where the E/M service is medically necessary. Palmetto's medical review coverage of E/M services was minimal and only represented approximately one percent of E/M services. We identified additional edits that were agreed to by Palmetto and which would help to detect and prevent improper payments. We identified estimated improper payments ranging from $0.9 million to $3.5 million for E/M services. In our most recent audit report of RRB Medicare, RRB management did not concur with 32 of our 34 recommendations for improvement. Management stated that it is not responsible for the RM program and only reviews Palmetto's contract performance and it believes the E/M improper payments can only be recovered under special limited circumstances. Because our findings addressed Palmetto's Statement of Work functional requirements under the RRB's contract authority, we continue to see the need for these corrective actions.

Reporting Improper Payments

OIG has determined that improvements were needed regarding RRB's reporting for RM improper payments. We disagreed with management's response that they will no longer report RM improper payments because such reporting is redundant to Medicare improper payment reporting completed by the United States Department of Health and Human Services (HHS). Although the RRB received RRB Board approval to cease the reporting of improper RM payment data, such approval is not sufficient because IPERA does not provide authority to the RRB's Board to grant relief from reporting. Under IPERA, OMB approval is needed to provide RRB with any reporting relief. The RRB identified RM as being susceptible for improper payments, thus subjecting the program to improper payment reporting requirements. Once an agency starts reporting, they must report for a minimum of two consecutive years before requesting that OMB grant them relief from annual reporting.

RRB Cost Allocation Plan

CMS reimburses the RRB for Medicare related work performed. We previously determined that reimbursements the RRB received for Medicare related work was unsupported and therefore the reimbursements could be inaccurate. We audited the RRB's cost allocation plan which is the basis for reimbursement and found that RRB controls were not adequate to ensure that the RRB's cost allocation plan and reimbursement calculations were accurate and supported. We made 26 recommendations for corrective action and RRB management concurred with 10. The RRB has only implemented four of these audit recommendations.

See Appendix A for a list of relevant reports.

Challenge 4 – Improve Payment Accuracy and Transparency

Why is this a serious management challenge? The topics of data, accountability and transparency are included on the President's Management Agenda. Recent audits identified the need for improved payment accuracy and transparency.

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

Payment Accuracy to Recover Improper Payments

As previously discussed in Challenge 3, we identified that RRB SMAC controls were considered ineffective. We also identified improper payments for 50 percent of the high risk E/M tests that we performed. Because RRB management stated that the improper payments cited in our audit report can only be recovered under special limited circumstances, it is apparent that they do not plan to recover the improper payments ranging from $0.9 million to $3.5 million cited in our audit report. We found that recovery of the cited improper payments is not restricted to special limited circumstances. Therefore, we cite the need to improve payment accuracy for the RM program through recovery of improper payments.

Transparency

RRB must improve transparency by publishing accurate data. We cite instances in a Digital Accountability and Transparency Act (DATA Act) audit, improper payments audit, and an Acquisition Management audit.

Our previous audit under the DATA Act found that the files submitted for the first quarter of fiscal year 2017 were incomplete, inaccurate, and did not agree to RRB's source systems. The purpose of the submissions for the DATA Act reporting is to provide full disclosure of federal funds on a public website. RRB management has submitted closure requests for all seven recommendations that are being verified in the current Data Act audit.

Our most recent improper payments audit addressed transparency concerns for future reporting for the RM program. As discussed in Challenge 3, RRB management stated that it does not plan to report RM anymore because it is redundant to reporting completed by HHS. We responded that because the RRB's improper payment rate for RM exceeded the allowable threshold as provided by law, improper payment reporting for this program should not be combined with the larger HHS reporting. To combine RM with HHS reporting would decrease transparency and conceal the true state of improper payment errors within the RM program. According to OMB guidance, agencies should not put programs or activities into groupings that may mask significant improper payment rates by the large size or scope of a grouping. The intent of the guidance is to provide transparency of improper payment rates for the programs an agency is responsible for overseeing and administering. While maintaining the same principle of the guidance, a significant improper payment error rate of a small program should not be combined with a large program to allow the noncompliant smaller program to become compliant. We determined that because RM is administered by the RRB, and has a separate contractor, its improper payment reporting should also remain separate. RRB must improve transparency and accountability by reporting the RM program amounts.

In a recent audit of the acquisition management function at RRB, the OIG contractor found several instances of inaccurate reporting to the Federal Procurement Data System (FPDS). In a statistical sample, the OIG contractor identified several instances where the contract number reported on FPDS was incorrect and instances where amounts were reported under incorrect contract numbers. Inaccurate information reported to FPDS decreases transparency. RRB management agreed to take corrective action to ensure future information reported to FPDS will be accurate.

See Appendix A for a list of relevant reports.

Challenge 5 – Financial Management and Reporting Issues

Why is this a serious management challenge? Financial management and reporting is being presented as a new challenge this year as a result of recognizing the need for improvements in the areas as identified in the annual mandated financial statement audit and performance audits of 1) unapplied cash, 2) waivers and the write-off process, and 3) cash statements.

OIG has rendered a disclaimer audit opinion on the RRB's financial statements since fiscal year 2013 because OIG auditors have not been permitted to communicate with the RRB's component auditor as required by financial statement audit guidance. The audit firm employed by the National Railroad Retirement Investment Trust (NRRIT) is the RRB's component auditor. The NRRIT held approximately $26.6 billion of the RRB's $33.5 billion assets as reported in the RRB's fiscal year 2018 financial statements. The auditor's opinion also included two material weaknesses: financial reporting and deficient internal controls at the agency-wide level.

The material weakness for financial reporting has been reported since fiscal year 2014. During our fiscal year 2018 audit, we continued to find the need for internal control improvements and found that monetarily significant approvals were being made without adequate review of supporting documentation. The material weakness for deficient internal controls at the agency-wide level was reported for the first time. OMB guidance states that an evaluation of internal controls must be performed for the agency as a whole. If control principles or components have not been fully designed and implemented, they cannot be tested and must be considered ineffective. This material weakness was reported because the five required components of internal control were not designed, implemented, and operating effectively. The five required components of internal control consist of: control environment, risk assessment, control activities, information and communication, and monitoring. Corrective actions related to the material weaknesses remain unimplemented.

The unapplied cash and waiver/write-off audits identified improvements needed to ensure 1) the accuracy and integrity of agency records, 2) protection of RRB trust funds, 3) internal controls, and 4) internal control supporting documentation. In these audits, we found that documented controls were outdated and incomplete and that other controls were not performing or were inadequate.

Unapplied cash consists of cash remittances that cannot be applied with the typical reasons being: the related debt has not been established or the remittance does not match an existing debt balance. The RRB has to examine its records to determine what debt to record the remittance against or to issue a refund for the remittance. In 2016, the records of unapplied cash were migrated from an older system to a new system. We determined that after the migration, improvements were still needed. Agency management concurred with only 5 of our 14 recommendations. All of the recommendations remain unimplemented.

A waiver may be requested by a beneficiary who has been determined to have received an erroneous overpayment. A waiver may be granted if the RRB determines that (1) the overpaid person is without fault and (2) recovery would be contrary to the purpose of the Railroad Retirement Act or the Railroad Unemployment Insurance Act, or would be against equity or good conscience. A write-off is the suspension or termination of collection action and a waiver of recovery is the RRB waiving its right to collect. Agency management concurred with three of our recommendations and partially concurred with one. These four recommendations remain unimplemented.

Our contracted audit determined that several control weaknesses in the preparation of the Statement of Changes in Cash and Investment Balances (SCCIB) could affect the reliability of the statements. These statements are used by the various bureaus within the RRB including Bureaus of Actuary and Legislative Affairs. The audit also determined that the universe of general ledger transactions supporting SCCIB funds do not reconcile with the respective subsidiary ledgers and related trial balance. The audit concluded that these internal control matters coupled with the exceptions noted in the transactions significantly affects the reliability of amounts reported in the SCCIB. RRB management did not concur with any of the 17 recommendations made to address the issues noted and indicated they will stop preparing these statements because it is not cost effective.

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

Challenge 6 – Compliance Concerns Identified

Why is this a serious management challenge? Our audits have shown that the RRB has been noncompliant with various guidance. This can have a far reaching impact on the protection of federal trust funds, assets, government wide improper payments, and the effectiveness of agency operations.

Recent audits, found that the RRB was not in compliance in the following areas:

Improper Payment Reporting

The RRB was noncompliant with IPERA because the improper payment rate of 10.53 percent for the RM exceeded the 10 percent threshold defined in the law. Although RRB management asserted they will no longer report RM improper payments, OIG disagreed and stated that the RRB should continue to report RM improper payments. The RRB is required to fulfill its responsibility for having appropriate procedures to ensure beneficiaries cannot erroneously or fraudulently receive RM Part B benefits or pay premiums for such benefits. Additionally, the RRB's SMAC determines if RM payments to providers should be made on behalf of the RRB's beneficiaries. RM payment errors were caused by incorrect coding, insufficient documentation, and medical necessity as reported by the RRB in its Fiscal Year 2018 Performance and Accountability Report. The RRB is responsible for oversight of its SMAC, including determining if the SMAC had fulfilled its contractual obligations and if they should be paid for work performed.

If the RRB follows through with its intentions of not reporting next year, it will be masking the fact that its SMAC performance in reducing improper payments has deteriorated further because we have documentation to show that next year's RM improper payment rate will be 12.5 percent.

Enterprise Risk Management

The RRB's enterprise risk management (ERM) process was not fully effective because RRB had not complied with all of the internal control requirements specified in OMB guidance and did not implement the ERM process agency-wide. ERM is a discipline that deals with identifying, assessing, and managing risks. It provides an enterprise wide, strategically aligned portfolio view that provides better insight about how to most effectively prioritize resource allocations to ensure successful mission delivery. Revised OMB guidance emphasizes the importance of coordinating ERM activities with the strategic planning and review process, and internal controls required by the Federal Managers' Financial Integrity Act and Government Accountability Office's *Standards for Internal Control in the Federal Government*. We made ten recommendations, of which seven remain unimplemented.

Federal Travel Regulations

A 2017 OIG audit found that the RRB did not always comply with the federal travel regulations (FTR) because internal controls were not always enforced or adequate. This audit report included 19 recommendations citing noncompliance with FTR and RRB policies and procedures. Although RRB management concurred with 13 of the recommendations and corrective actions are pending they have not been completed.

Acquisition Management

RRB did not always adhere to Federal Acquisition Regulations (FAR) guidance. Per FAR guidance, closeout procedures include ensuring that excess funds are de-obligated. Our contracted audit identified six RRB acquisitions where obligated funds remained in the agency's financial reporting system beyond the closeout date. FAR guidance also provides for ensuring that timely and accurate reporting of contractual actions in the FPDS. The contracted audit also identified 12 instances where the contract number was incorrectly reported.

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

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

Original Signed By:

Martin J. Dickman
Inspector General

APPENDIX A: AUDIT REPORTS

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

Improve Agency Disability Program Integrity

- Railroad Retirement Board (RRB) Office of the Inspector General (OIG), *The Implementation of the Disability Program Improvement Plan at the Railroad Retirement Board Did Not Result in a Fully Established Fraud Risk Assessment Process*, Report No. 19-15 (Chicago, IL: September 27, 2019).
- RRB OIG, *The Railroad Retirement Board Disability Programs Do Not Effectively Consider Fraud Risk Indicators in the Disability Process*, Report No. 19-16 (Chicago, IL: September 27, 2019).
- RRB OIG, *The Use of Medical Experts During Disability Determinations at the Railroad Retirement Board Can Be Improved*, Report No. 19-17 (Chicago, IL: September 27, 2019).

Improve Information Technology Security and Complete System Modernization

- RRB OIG, *Performance Audit of RRB's Compliance with the Federal Information Security Modernization Act of 2014 Fiscal Year 2018*, Report No. 19-03 (Chicago, IL: December 19, 2018).
- RRB OIG, *Selected General Information System Controls at the Railroad Retirement Board Were Not Always Adequate*, Report No. 19-07 (Chicago, IL: May 14, 2019).
- RRB OIG, *Mainframe Applications Re-Platform Initiative at the Railroad Retirement Board is Progressing in Accordance with Established Project Goals*, Report No. 19-11 (Chicago, IL: September 26, 2019).
- RRB OIG, *The Legacy Systems Modernization Initiatives at the Railroad Retirement Board are Progressing Effectively*, Report No. 19-12 (Chicago, IL: September 26, 2019).

Improve Management of Railroad Medicare

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

Improve Payment Accuracy and Transparency

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

- RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Elimination and Recovery Act in Fiscal Year 2018 Performance and Accountability Report*, Report No. 19-09 (Chicago, IL: May 30, 2019).
- RRB OIG, *Railroad Medicare Controls Over Evaluation and Management Services Were Not Fully Adequate*, Report No. 19-10 (Chicago, IL: August 5, 2019).
- RRB OIG, *The Acquisition Management Function at the Railroad Retirement Board Was Not Fully Adequate or Effective*, Report No. 19-14 (Chicago, IL: September 27, 2019).

Financial Management and Reporting Issues

- RRB OIG, *Report on the Railroad Retirement Board's Financial Statements Fiscal Year 2018*, Report No. 19-01 (Chicago, IL: November 15, 2018).
- RRB OIG, *Railroad Retirement Board Write-off and Waiver Processes were not Fully Efficient, Effective, or Adequate*, Report No. 19-05 (Chicago, IL: Revised April 23, 2019).
- RRB OIG, *Improvements Needed for the Unapplied Cash Process at the Railroad Retirement Board*, Report No. 19-08 (Chicago, IL: May 16, 2019).
- RRB OIG, *Internal Control Weaknesses Noted in the Preparation of the Railroad Retirement Board's Statement of Changes in Cash and Investment Balances Could Affect Reliability of the Statements*, Report No. 19-13 (Chicago, IL: September 27, 2019).

Compliance Concerns Identified

- RRB OIG, *Railroad Retirement Board Did Not Always Comply with the Federal Travel Regulation*, Report No. 17-04 (Chicago, IL: April 11, 2017).
- RRB OIG, *Enterprise Risk Management Process at The Railroad Retirement Board Was Not Fully Effective*, Report No. 18-07 (Chicago, IL: July 9, 2018).
- RRB OIG, *Audit of Railroad Retirement Board's Compliance with Improper Payments Elimination and Recovery Act in Fiscal Year 2018 Performance and Accountability Report*, Report No. 19-09 (Chicago, IL: May 30, 2019).
- RRB OIG, *The Acquisition Management Function at the Railroad Retirement Board Was Not Fully Adequate or Effective*, Report No. 19-14 (Chicago, IL: September 27, 2019).

APPENDIX B: MANAGEMENT COMMENTS

Management's Comments

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

Challenge 1 – Improve Agency Disability Program Integrity

The RRB recognizes the importance of identifying and mitigating fraud risk throughout the programs it administers. In this regard, the Board has established the Fraud Risk Assessment Committee (Committee). The members of the Committee include: (1) the Director of Programs; (2) the Chief Risk Officer; (3) the General Counsel; (4) the Chief Actuary; (5) the Director of Field Services; and (6) the Chief Information Officer. The purpose of the Committee is to assess, and offer solutions to mitigate fraud risk in the administration of all of the Agency's programs, including the disability program.

The Committee, will undertake a number of initiatives, including, but not limited to, (1) conducting a review and assessment of any change or proposed change in the policies or procedures through which the RRB administers its programs that either the Committee or the Board deems necessary; (2) reviewing the data and other tools currently available to the RRB and determining the best ways in which to use those tools to assess and mitigate any fraud risk; (3) suggesting any new tools which the RRB may develop or acquire to improve its understanding or awareness of fraud risk to the RRB's programs or better address the mitigation of such risk; (4) reviewing the RRB's current internal processes and controls and their effectiveness as well as determining any modifications or updates which could be made to improve program integrity and/or mitigate risk; and (5) considering any other initiatives that the Committee determines appropriate or which it is directed to undertake by the Board.

Challenge 2 – Improve Information Technology Security and System Modernization

The RRB acknowledges the OIG's concern with its ability to establish and maintain a secure and reliable information technology environment for its data, applications, and systems. We understand and take very seriously the mandate of the *Federal Information Security Management Act of 2002* (FISMA), as amended by the *Federal Information Security Modernization Act of 2014,* to ensure adequate security protections for Federal information systems and information. As the RRB continues the development and implementation of its IT modernization initiatives, we anticipate the cybersecurity posture of the Agency will improve and sustain at acceptable levels.

Preliminary audit results for the FY 2019 FISMA audit indicate that Kearney & Company will assess our overall maturity at Level 2 – *Defined* and will recognize significant improvements in the Configuration Management, Identity and Access Management, Security Training, and Incident Response domains that matured from Level 1 – *Ad-Hoc* to Level 2 – *Defined.* The preliminary FY 2019 audit results demonstrate progress in improving our information security program and practices across the Agency as required by FISMA, OMB policy and guidelines, and National Institute of Science and Technology standards and guidelines. The RRB will continue to make incremental steps to reach the overall maturity goal of Level 4 – *Managed and Measurable*.

Challenge 3 – Improve Management of Railroad Medicare

The RRB has never denied responsibility for those portions of the Railroad Medicare program over which it has authority. The RRB acknowledges its responsibilities under the Social Security Act to administer certain provisions of the Medicare program for the railroad, which includes the administration of the Specialty Medicare Administrative Contractor (SMAC) contract, with Palmetto GBA, LLC. In contrast to the OIG's statement, the RRB does not have authority to pay Medicare beneficiaries or providers directly. Notwithstanding the Agency's specified Medicare responsibilities for railroad annuitants, the Centers for Medicare & Medicaid Services (CMS), a component of the Department of Health and Human Services (HHS), administers the Medicare program as a whole.

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

1. Evaluation and Management (E/M) Services Audit: The RRB takes seriously its Medicare responsibilities and SMAC contract administration duties in accordance with CMS Medicare program guidance. It should be noted that prior to the end of audit fieldwork, the SMAC implemented certain detective or preventive edits that the OIG identified during the course of the audit. Further, the SMAC received the OIG's estimated improper payment information for E/M services in August 2019. CMS prescribes Medicare program guidance for re-evaluating claim determinations as they relate to all Medicare Administrative Contractors to include the RRB SMAC. In accordance with CMS guidance and the terms and conditions of the contract, the SMAC is currently reviewing the OIG's improper payment audit results. The RRB is committed to continued dialogue, partnership, and cooperation with CMS to ensure that the SMAC meets the terms and conditions under the contract.

2. Improper Payments Audit: The RRB disagrees with the OIG's representation that the RRB is not correctly reporting improper payments. The OIG's assertion relates in part to CMS' Comprehensive Error Rate Testing (CERT) program. Pursuant to an OIG recommendation, the RRB reported its SMAC CERT results in its fiscal year (FY) 2018 Performance and Accountability Report (P&AR). However, since CMS also reported these results in HHS' FY 2018 Agency Financial Report ("AFR"), CMS reached out to RRB for further information. Through dialogue with CMS, RRB learned that its reporting of its SMAC FY 2018 CERT results was duplicative and resulted in an overstatement of the Medicare improper payment reporting by the Federal Government as a whole. CMS reports a combined overall error rate, which includes all MACs and the RRB SMAC. As such, CMS and RRB agreed that RRB would no longer separately report CERT information. RRB shared this decision with OMB. This is in no way an attempt to mask

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

any significant improper payment rates, but rather to ensure correct improper payment reporting consistent with CMS' administration of its Medicare program.

3. Cost Allocation Plan: Five of the six recommendations discussed herein related to an audit from 2016. Since then, through ongoing dialogue with the CMS, the Agency has clarified its calculation methodology and streamlined the CAP report format to the acceptance of CMS. Additionally, during fiscal year 2019 the Agency submitted closure requests for all six recommendations as all corrective actions have been completed. Management does not believe that further corrective action is necessary for these recommendations; as such, we disagree that this matter contributes to a serious management concern or challenge.

Challenge 4 – Improve Payment Accuracy and Transparency

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

1. Payment Accuracy for Railroad Medicare: CMS prescribes Medicare guidance to the MACs and the RRB SMAC, which includes improper payments. Though the OIG asserts that the SMAC made improper payments and failed to take action to collect payments that the OIG deemed improper, the OIG did not provide the data file to the SMAC to verify these payments for the period covering 2013 to 2016 until August 2019. The SMAC is currently reviewing the file it received from the OIG. The SMAC will take appropriate action in accordance with CMS guidance.

2. Transparency: The OIG states that OMB guidance instructs that agencies should not put programs or activities into groupings that may mask significant improper payment rates by the large size or scope of a grouping. Medicare is the responsibility of CMS as a whole. Although Section 1842(g) of the Social Security Act provides the RRB with the authority to contract with a carrier to perform Medicare Part B functions, CMS and RRB agree that Medicare FFS is one program for improper payment purposes.

   For purposes of calculating and reporting improper payments, OMB Circular A-123, Appendix C, Part I(A)(4) authorizes each Federal agency to determine the definition of a "program" that most clearly identifies and reports improper payments. Circular A-123, Appendix C further instructs that agencies should not report subcomponents of a large program in an effort to reduce the size and fall below the statutory thresholds, and advises that agencies may consider using the groupings of programs listed in the Catalog of Federal Domestic Assistance (CFDA) when defining a program. The October 2018 CFDA lists all Medicare Part B programs as one program under CMS, and does not list any Medicare programs under the Railroad Retirement Board. CMS reported the combined improper payment results in the HHS' AFR.

3. DATA Act: We continue to make great strides in ensuring that the Agency's DATA Act submissions are complete, accurate and agree to applicable source systems. The OIG's fiscal year 2019 audit results demonstrate that the RRB has achieved the "higher" quality level validated by an extremely low error rate of 0.43%; as such, we disagree that this matter contributes to a serious management concern or challenge.

4. Acquisition Management: We continue to report high quality information into the Federal Procurement Data System (FPDS). The OIG's fiscal year 2019 audit report cited 12 erroneous FPDS entries out of the total population entries spanning from fiscal year 2013 through 2018 or 3,264 entries. The OIG's audit results indicate that the RRB has an extremely low error rate of 0.37%. As such, we disagree that this matter contributes to a serious management concern or challenge.

Challenge 5 – Financial Management and Reporting Issues

The OIG has identified a new management challenge, which asserts the need for improvements related to two material weaknesses identified in the financial statement audit as well as results of performance audits covering the topics of 1) unapplied cash, 2) waivers and write-off processes, and 3) cash statements. We continue to design and implement cost effective internal controls striving toward optimal operational efficiency. Though more improvements will come, we disagree with the OIG's characterization and consolidation of these matters into a serious management challenge. Specific comments are included below:

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

2. Material weaknesses:

   a. *Financial reporting*: The OIG bases this discussion of the financial reporting material weakness upon fiscal year 2018 audit results. In fiscal year 2019, we expanded our quality assurance sampling plan for journal and standard vouchers. The quality assurance review covered 100% of journal vouchers and one-third of standard vouchers processed during the 3rd quarter, April 2019 through June 2019, where voucher amounts ranged from $5 million to $5 billion. Of the 32 vouchers reviewed, the review did not disclose any procedural or substantive errors. The error rate for the 3rd quarter of fiscal year 2019 was 0%, whereas the error rate for the same time period in fiscal year 2018 was 10.7%. We will continue to review and strengthen our voucher processing internal controls as necessary; however, we disagree that this matter rises to the level of material weakness or serious management concern.

   b. *Deficient internal controls at the agency-wide level:* We acknowledge the OIG's concern and continue to make strides implementing Enterprise Risk Management (ERM) at the RRB by leveraging the Management Control Review (MCR) infrastructure already in place. In fiscal year 2019, we incorporated critical changes to the MCR guide to reflect core ERM principles, conducted training for responsible officials and Agency leadership, as well as updated the

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

Agency's risk profile. We are committed to strong internal controls and will move forward with the next phase of ERM implementation.

3. Unapplied cash: We concurred with the audit recommendations to update internal control documentation and perform the necessary test of controls. During fiscal year 2019, we submitted to the OIG corrective actions and closure requests for three of the five recommendations for which the Agency concurred. We will continue to implement corrective actions to close the remaining recommendations. It should be noted that the OIG stated in the audit report that unapplied cash is not material to the Agency's financial statements; as such, we disagree that this matter rises to the level of a serious management concern.

4. Waivers and write-off processes: We concurred with three of the four recommendations and partially concurred with one. We will continue to implement corrective actions to meet the intent of the recommendations, which focused on updating the policies, procedures, and internal control documentation as well as conducting training, as appropriate. The audit results did not take exception to the actual waivers or write-offs sampled during their audit fieldwork. As such, we disagree that this matter rises to the level of a serious management concern.

5. Cash statements: The Statement of Changes in Cash and Investment Balances (SCCIB) were produced and distributed internally to RRB for awareness purposes and were not required by any authoritative source. Therefore, in the interest of effective and efficient operations as well as economical utilization of government resources, we have discontinued the publication and distribution of the SCCIB. As such, we disagree that this matter rises to the level of a serious management concern.

Challenge 6 – Compliance Concerns Identified

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

1. Improper Payment Reporting: As discussed above, CMS is responsible for the Medicare program as a whole. Although Section 1842(g) of the Social Security Act provides the RRB with the authority to contract with a carrier to perform Medicare Part B functions, CMS and RRB agree that Medicare FFS is one program for improper payment purposes. As such, CMS and RRB agreed that RRB would no longer separately report CERT information inasmuch as the RRB SMAC is included in the full CERT report issued by HHS. RRB shared this decision with OMB. This is in no way an attempt to mask any significant improper payment rates, but rather to ensure correct improper payment reporting consistent with CMS' administration of its Medicare program. The RRB will continue to work in partnership with CMS and carry out our responsibility for proper administration of the SMAC contract with Palmetto.

2. Enterprise Risk Management: See Challenge 5, Material Weaknesses discussion at 2.b, *Deficient internal controls at the agency-wide level.*

3. Federal Travel Regulations: We concurred with 12 of the 19 recommendations and partially concurred with one. The Agency has adopted a new circular, which it believes covers the items raised by the OIG. As such, we disagree that this matter rises to the level of a serious management concern.

4. Acquisition Management: The referenced audit results have indicated that, while revisions to policies and procedures concerning de-obligation of funds may be necessary, large stale obligations do not exist after contract/order closeout. The auditors reviewed all contracts closed out spanning fiscal year 2013 through 2018 and identified $66,857.18 that needed to be de-obligated. Upon notification, the RRB immediately de-obligated these funds prior to the conclusion of audit fieldwork and is in the process of updating its policies and procedures related to this process. It should be noted that while stale obligations should be de-obligated timely the OIG's finding of $66,857.18 does not materially impact the solvency of the Railroad Retirement Trust Fund System which as of September 30, 2019 totaled $27.5 billion. As such, we disagree that this matter rises to the level of a serious management concern. See also Challenge 4, Acquisition Management for details concerning FPDS reporting accuracy.