



U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

Audit of Railroad Retirement Board's Compliance with Improper Payments Reporting in the Fiscal Year 2019 Performance and Accountability Report

Report No. 20-06

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What We Found

The Railroad Retirement Board (RRB) was not compliant with the Improper Payments Elimination and Recovery Act of 2010 (IPERA) because it did not satisfy four of six payment integrity reporting requirements. This occurred because the RRB did not publish payment integrity information or improper payment data for Railroad Medicare.

We further determined that (1) the agency's payment integrity reporting was incomplete and therefore inaccurate; (2) RRB's performance in reducing Railroad Medicare improper payments was inadequate and some of the RRB's recapture program information needed improvement; (3) some of RRB's additional reporting requirements pertaining to improper payment barriers and accountability, information systems and other infrastructure, and relief from annual reporting request were missing; and (4) the timeliness of improper payment data and sampling and estimation plans could be improved.

What We Recommend

To address the exceptions in this audit, we made five recommendations related to IPERA compliance, action plans to reduce improper payments, reconciliation of data, and resuming Railroad Medicare reporting.

RRB management concurred with one of the five recommendations. RRB's position was that the Centers for Medicare and Medicaid Services (CMS) was responsible for the Medicare program as a whole, the RRB's Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting. We disagreed with this position and continue to see the need for our recommendations as explained throughout this report.

What We Did

Section 3(b) of IPERA requires each agency's Inspector General to assess compliance for each fiscal year. Our audit procedures included identification of criteria; assessment of the accuracy and completeness of agency reporting; assessment of the RRB's sampling plan, accompanying material, and related postings; and coordination efforts with CMS to determine if Railroad Medicare payment integrity information and improper payment data was reported in the U.S. Department of Health and Human Services' fiscal year 2019 Agency Financial Report.

The mandated objectives of this audit were to

- determine whether the RRB is in compliance with IPERA;
- evaluate the accuracy and completeness of improper payment reporting; and
- evaluate agency performance in reducing and recapturing improper payments.

The scope of the audit was improper payment data reported in the RRB's fiscal year 2019 Performance and Accountability Report.

Contents

INTRODUCTION	1
OBJECTIVES, SCOPE, AND METHODOLOGY	1
BACKGROUND	2
RAILROAD MEDICARE, PAYMENT INTEGRITY REPORTING, AND IMPROPER PAYMENT DATA	5
RESULTS OF AUDIT	7
PAYMENT INTEGRITY REPORTING REQUIRED IN STATUTE	8
REQUIREMENT #1 – RRB PUBLISHED A PERFORMANCE AND ACCOUNTABILITY REPORT	8
REQUIREMENT #2 – RRB WAS NOT REQUIRED TO CONDUCT RISK ASSESSMENTS	9
REQUIREMENTS #3 THROUGH #6 – RRB DID NOT PUBLISH AN IP ESTIMATE, A CORRECTIVE ACTION PLAN, A REDUCTION TARGET, OR IP RATE OF LESS THAN 10 PERCENT FOR RAILROAD MEDICARE	9
RECOMMENDATION	11
MANAGEMENT’S COMMENTS AND OUR RESPONSE	11
RRB’S PAYMENT INTEGRITY REPORTING WAS INCOMPLETE AND INACCURATE	14
AGENCY PERFORMANCE IN REDUCING AND RECAPTURING IMPROPER PAYMENTS NEEDS IMPROVEMENT	14
RRB’S IMPROPER PAYMENT REDUCTION EFFORTS FOR RAILROAD MEDICARE WERE INEFFECTIVE	14
INSUFFICIENT INFORMATION WAS PROVIDED FOR RAILROAD MEDICARE’S RECAPTURE PROGRAM, UNCOLLECTIBLE AMOUNTS, AND THE DO NOT PAY INITIATIVE	15
RAILROAD RETIREMENT ACT AND RAILROAD UNEMPLOYMENT INSURANCE ACT RECAPTURE PROGRAMS COULD BE IMPROVED	15
RECOMMENDATIONS	17
MANAGEMENT’S COMMENTS AND OUR RESPONSE	17
ADDITIONAL REPORTING REQUIRED IN STATUTE	18
INFORMATION ON RAILROAD MEDICARE IMPROPER PAYMENT BARRIERS, ACCOUNTABILITY, INFORMATION SYSTEMS, AND OTHER INFRASTRUCTURE WAS MISSING	18
RRB IMPROPERLY CEASED PAYMENT INTEGRITY REPORTING FOR ITS RAILROAD MEDICARE PROGRAM	18
RRB DID NOT REPORT A HIGH PRIORITY PROGRAM	19
RECOMMENDATION	20
MANAGEMENT’S COMMENTS AND OUR RESPONSE	20

OTHER OBSERVATIONS	20
RAILROAD MEDICARE PAYMENT INTEGRITY REPORTING AND IMPROPER PAYMENT DATA IS NOT TRANSPARENT IN HHS’ FISCAL YEAR 2019 AGENCY FINANCIAL REPORT	20
THE SAMPLING AND ESTIMATION PLAN WAS NOT OPTIMAL	21
APPENDIX I: MANAGEMENT COMMENTS	23
APPENDIX II: MANAGEMENT COMMENTS	27
APPENDIX III: PREVIOUS OFFICE OF INSPECTOR GENERAL OPEN AUDIT RECOMMENDATIONS FOR IMPROPER PAYMENT REPORTING	28
APPENDIX IV: ABBREVIATIONS	32
LIST OF TABLES	
TABLE 1. RRB’S TIMELINE FOR COMPLIANCE WITH IMPROPER PAYMENT LAWS	4
TABLE 2. ASSESSMENT OF RRB’S COMPLIANCE WITH IPERA	7
TABLE 3. OVERPAYMENTS RECAPTURED OUTSIDE OF PAYMENT RECAPTURE AUDITS	16

INTRODUCTION

This report presents the results of the Office of Inspector General's (OIG) audit of the Railroad Retirement Board's (RRB) fiscal year 2019 compliance with the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA), which both amended the Improper Payments Information Act of 2002.¹

Objectives, Scope, and Methodology

The mandated objectives of this audit were to

- determine whether the RRB is in compliance with IPERA;
- evaluate the accuracy and completeness of improper payment reporting; and
- evaluate agency performance in reducing and recapturing improper payments.

The scope of this audit was the information published in the RRB's Payment Integrity section of its fiscal year 2019 Performance and Accountability Report (PAR). Payment integrity information and improper payment data reported in the PAR consisted of fiscal years 2017 and 2018 overpayments recaptured outside of payment recapture audits for the RRB's Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) programs. The RRB did not report improper payment data on its Railroad Medicare program, vendor payments, or employee payments. The RRB provided narrative discussing why they did not report on those respective programs.

To accomplish the audit objectives, we

- identified criteria from the law as well as Office of Management and Budget's (OMB) governmentwide guidance for IPERA;
- identified and reviewed RRB internal guidance, policies, and procedures for PAR reporting;
- reviewed the RRB's payment integrity section as provided in the fiscal year 2019 PAR, accompanying material, and related postings;
- requested and reviewed source data and documentation from the agency to support the information in the PAR;
- assessed the accuracy and completeness of agency reporting;
- evaluated the agency's performance in reducing and recapturing improper payments;

¹ Pub. L. No. 111-204, 124 Stat. 2224 (2010), Pub. L. No. 112-248, 126 Stat. 2390 (2013), Pub. L. No. 107-300, 116 Stat. 2350 (2002).

- interviewed appropriate RRB officials and agency staff;
- coordinated with key individuals from the U.S. Department of Health and Human Services' (HHS) Centers for Medicare and Medicaid Services (CMS) to obtain evidence that Railroad Medicare improper payment estimate was reported in HHS' Agency Financial Report (AFR);
- reviewed appropriate CMS documentation; and
- reviewed agency documentation.

We assessed the data reliability of payment recapture data and overpayment recoveries obtained from RRB's debt recovery section by (1) comparing data from the computer generated spreadsheets to the Financial Management Integrated System (FMIS) and Treasury Report on Receivables (TROR), (2) verifying underlying calculations, (3) verifying the accuracy of the filtered accounts receivable records, and (4) interviewing agency officials knowledgeable about FMIS and TROR. We determined the data from the debt recovery section was sufficiently reliable for the purposes of this audit.

Our review of internal controls were limited to those necessary to address the objectives and scope of the audit. For example, we used the Council of the Inspectors General on Integrity and Efficiency's *Guidance for Improper Payments Elimination and Recovery Act Compliance Reviews*, Part III, Section B of Appendix C to OMB Circular No. A-123, *Requirements for Payment Integrity Improvement*, OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control* to conduct our evaluation of the RRB's internal control over payment integrity and OMB Circular No. A-136, *Financial Reporting Requirements*.²

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our fieldwork at RRB headquarters in Chicago, Illinois from December 2019 through April 2020.

Background

The RRB, an independent agency in the executive branch of the Federal Government, administers retirement and survivor and unemployment and sickness insurance benefit programs for railroad workers and their families under the RRA and RUIA. The RRB paid \$13.1 billion in retirement and survivor benefits and \$93.2 million in unemployment and

² Council of the Inspectors General on Integrity and Efficiency, *Guidance for Improper Payments Elimination and Recovery Act Compliance Reviews* (Washington, D.C.: July 9, 2019); Office of Management and Budget (OMB) Appendix C to Circular No. A-123, *Requirements for Payment Integrity Improvement*, M-18-20 (Washington, D.C.: June 26, 2018); OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, M-16-17 (Washington, D.C.: July 15, 2016); and OMB Circular No. A-136, *Financial Reporting Requirements* (Washington, D.C.: June 28, 2019).

sickness insurance benefits during fiscal year 2019. The RRB also administers aspects of the Medicare program (Railroad Medicare) under the Social Security Act.³ The RRB, through its contractor, paid \$832.4 million in Railroad Medicare Part B claims on behalf of its beneficiaries from October 1, 2018 through September 30, 2019.

Improper payment legislation was enacted to reduce improper payments and directed OMB to issue governmentwide guidance regarding reporting requirements. IPERA defines an improper payment as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. An improper payment includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, and any payment for a good or service not received (except for such payments authorized by law).⁴

The primary criteria derived from federal improper payment laws were

- OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control* (OMB M-16-17);⁵
- Appendix C to OMB Circular No. A-123, *Requirements for Payment Integrity Improvement* (OMB M-18-20); and⁶
- OMB Circular No. A-136, *Financial Reporting Requirements*.⁷

OMB M-18-20 defined significant improper payments "...as gross annual improper payments (i.e., the total amount of overpayments and underpayments) in the program exceeding (1) both 1.5 percent of program outlays and \$10,000,000 of all program or activity payments made during the fiscal year reported or (2) \$100,000,000 (regardless of the improper payment percentage of total program outlays)."⁸ The guidance also required agencies to approach improper payments with an Enterprise Risk Management (ERM) framework in mind and link agency efforts in establishing internal controls and preventing improper payments. According to OMB M-18-20,

... [ERM] framework can be used to assist in the management of payment integrity risk. Management is required to manage their payment integrity risk to an agency achieving its strategic, operations, reporting, or compliance objectives. While the extent of this may differ among agencies, ensuring the integrity of federal payments is fundamental to the core mission for agencies.

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

⁴ Pub. L. No. 111-204, 124 Stat. 2224 (2010), Pub. L. No. 112-248, 126 Stat. 2390 (2013), and Pub. L. No. 107-300, 116 Stat. 2350 (2002).

⁵ OMB M-16-17.

⁶ OMB M-18-20.

⁷ OMB Circular A-136.

⁸ Also known as "programs and activities identified under section 2(c) of the Improper Payments Act of 2002" per 31 U.S.C. § 3321.

Part of an ERM model is the extended enterprise. According to OMB M-16-17 and OMB M-18-20, the extended enterprise consists of interdependent relationships, parent-child relationships, and relationships external to an agency. Thus, no agency is self-contained. In the context of ERM and the management of payment integrity risk, the extended enterprise includes state, local governments, other departments and agencies, or third party service providers. Although agency’s have less control, they still maintain responsibility for managing risk to payment integrity that comes from the extended enterprise. Despite having little or no control, agencies retain the responsibility for the management of payment integrity risk that comes from the greater risk environment.

OMB guidance requires each agency’s Inspector General (IG) to assess IPERA compliance and submit its final report by May 15th of the following year after the issuance of the agency’s PAR.⁹ Agencies that are noncompliant with IPERA are subject to additional reporting requirements. Noncompliance for one year requires that the agency submit a plan describing the actions to be taken to become compliant. Noncompliance for two consecutive fiscal years for the same program requires a review from OMB to determine if additional funding would help the agency become compliant.

Within the RRB, the Office of Programs compiles and reports improper payment data for the annual PAR. Table 1 shows fiscal year 2019 reporting and the expected timeline for publishing the next improper payment estimate or conducting a risk assessment for the RRB’s benefit and non-benefit programs, if applicable.

Table 1. RRB’s Timeline for Compliance with Improper Payment Laws

Program	Fiscal Year 2019 Reporting	Next Expected Reporting Cycle	What is Expected?
RRA	Did Not Report	FY 2020 PAR	Conduct a Risk Assessment
RUIA	Did Not Report	FY 2020 PAR	Conduct a Risk Assessment
Railroad Medicare	Did Not Report	FY 2020 PAR	Publish: <ul style="list-style-type: none"> - an Improper Payment Estimate - a Corrective Action Plan - and Meet a Reduction Target - an Improper Payment Rate of Less than 10 Percent
Vendor Payments	Did Not Report	FY 2020 PAR	Conduct a Risk Assessment
Employee Payments	Did Not Report	FY 2020 PAR	Conduct a Risk Assessment

Source: Railroad Retirement Board (RRB) Office of Inspector General (OIG) analysis of RRB agency reporting from fiscal year 2017 through fiscal year 2019.

Note: In July 2018, OMB granted the RRB reporting relief for the RRA and RUIA programs. The RRB ceased reporting Railroad Medicare improper payment data beginning in fiscal year 2019. Vendor and Employee payments were not considered susceptible to improper payments.

⁹ OMB M-18-20.

Railroad Medicare, Payment Integrity Reporting, and Improper Payment Data

At the end of fiscal year 2019, approximately 455,000 qualified railroad beneficiaries were enrolled in the RRB's administered portion of Medicare Part B. During fiscal year 2019, the RRB contracted with a Specialty Medicare Administrative Contractor (Palmetto, GBA) and administered certain provisions of the Medicare program.¹⁰ These provisions included eligibility determination, enrollment or removal from enrollment, premium collection, processing state buy-ins, processing arrearages and refunds, paying Canadian Part A claims, liaison work with Palmetto, quality assurance and oversight of Palmetto, records maintenance, and answering inquiries. According to the RRB, these costs were offset by approximately \$32 million in reimbursements from CMS.¹¹

As such, CMS has continued to pay the RRB for these administrative services through an existing and ongoing cost reimbursement agreement. CMS has paid the RRB approximately \$97 million to administer the Railroad Medicare program (fiscal years 2013 through 2019). This \$97 million covered both direct and indirect costs for the RRB and the RRB OIG. During this same timeframe, CMS paid the RRB an additional \$120 million for its Palmetto contract. This resulted in a separate Railroad Medicare program costing taxpayers \$217 million over seven years.

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

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

¹⁰ As part of its administrative responsibilities, the RRB selected a Specialty Medicare Administrative Contractor (SMAC) to process Railroad Medicare claims nationwide and administered the contract with the carrier, Palmetto GBA. The contracting officer, contracting officer representative, and the contracting team are all RRB government employees.

¹¹ The Centers for Medicare & Medicaid Services (CMS), a branch of the U.S. Department of Health and Human Services (HHS), is the federal agency that administers the national Medicare program.

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

As part of an extended enterprise, CMS provided the RRB with Railroad Medicare payment integrity information and data for the second year in a row, in time for fiscal year 2019 PAR reporting. The Railroad Medicare improper payment rate and estimates were determined through CMS' Comprehensive Error Rate Testing (CERT) program. As such, the RRB should have reported Railroad Medicare payment integrity information in its PAR which it did not. We discuss this in the section titled *Requirements #3 through #6 – RRB did not Publish an IP Estimate, a Corrective Action Plan, a Reduction Target, or IP Rate of Less than 10 Percent for Railroad Medicare.*

RESULTS OF AUDIT

We have determined the RRB was not compliant with IPERA because it did not satisfy four of six payment integrity reporting requirements as shown in Table 2.¹² If an agency does not meet one or more of the six requirements, then it is not compliant under IPERA. The RRB’s position was that CMS is responsible for the Medicare program as a whole, the RRB’s Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting.

Table 2. Assessment of RRB’s Compliance with IPERA

Program Name	#1 - Published a PAR	#2 - Conducted a Risk Assessment	#3 - Published an Improper Payment Estimate	#4 - Published Corrective Action Plans	#5 - Published and is Meeting Reduction Targets	#6 - Reported an Improper Payment Rate of Less than 10 Percent
RRA	Compliant	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
RUIA	Compliant	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Railroad Medicare	Compliant	Not applicable	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Vendor Payments	Compliant	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Employee Payments	Compliant	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

Source: RRB OIG analysis of fiscal year 2019 Performance and Accountability Report (PAR).

We determined the agency’s payment integrity reporting was incomplete and therefore inaccurate. The agency could correct these deficiencies by implementing recommendations made in our prior RRB OIG improper payment audit. At the time of this audit, the prior year audit recommendations remained open.¹³

We did not evaluate RRB’s performance in reducing improper payments for the RRA and RUIA programs because the RRB received RRA and RUIA reporting relief in July 2018. Using available information outside of the RRB’s PAR, we determined the RRB’s performance in reducing Railroad Medicare improper payments was inadequate and some of the RRB’s recapture program information needs improvement. As part of this audit, we determined some of RRB’s

¹² Pub. L. 111-204, 124 Stat. 2232-2233 (2010).

¹³ RRB Office of Inspector General (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), Recommendations 4, 5, 6, 7, 9 and 19.

additional reporting requirements pertaining to improper payment barriers, improper payment accountability, information systems and other infrastructure, and relief from annual reporting request were missing. We made a few other observations regarding timeliness of data and achieving an optimal sampling and estimation plan. In a prior RRB OIG audit, we made recommendations to correct these issues. At the time of this audit, the prior year audit recommendations remained open.¹⁴

Beginning with fiscal year 2011, IPERA requires that we annually assess and report on six areas of compliance with criteria listed in the law. We considered OMB and Council of Inspectors General on Integrity and Efficiency guidance for our evaluations of the additional reporting required in statute. We have provided the details of these compliance assessments, audit findings, observations, and recommendations for corrective action in this report.

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

Payment Integrity Reporting Required in Statute

The RRB was not compliant with IPERA because it did not satisfy four of six payment integrity reporting requirements as shown in Table 2.¹⁵ If an agency does not meet one or more of the six requirements, then it is not compliant under IPERA. The RRB's position was that CMS is responsible for the Medicare program as a whole, the RRB's Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting. We discuss our findings in the following sections.

Requirement #1 – RRB Published a Performance and Accountability Report

The RRB published a PAR for fiscal year 2019 and posted the report and accompanying materials required under OMB guidance on the agency website. Therefore, the RRB complied with the first of six payment integrity reporting requirements. The RRB included in its PAR a link to www.paymentaccuracy.gov.

Federal agencies are required to publish an AFR or PAR for the most recent fiscal year and post that report and any accompanying materials required by OMB on the agency website. The agencies must report information on payment integrity, disclosing payments that were processed correctly, and those payments that were improper.

¹⁴ RRB OIG, Report No. 19-09.

¹⁵ Pub. L. 111-204, 124 Stat. 2232-2233 (2010).

Requirement #2 – RRB was not Required to Conduct Risk Assessments

The RRB was not required to conduct risk assessments for RRB's five programs during the fiscal year 2019 PAR reporting cycle. This is the second of six payment integrity reporting requirements. Risk assessments were not applicable because

- OMB granted the RRB relief from reporting improper payments for the RRA and RUIA programs on July 19, 2018;
- RRB reported an improper payment estimate for Railroad Medicare in the fiscal year 2018 PAR. However, RRB ceased reporting Railroad Medicare improper payment data beginning with the fiscal year 2019 PAR; and
- RRB deemed the non-benefit paying programs, vendor and employee payment programs, not susceptible to significant improper payments in its fiscal year 2017 PAR reporting.

If required, federal agencies should conduct a program specific risk assessment for each program or activity that conforms with section 2(a) of the Improper Payments Information Act of 2002.¹⁶ For programs that are deemed to be not susceptible to significant improper payments, agencies are required to perform risk assessments at least once every three years. Programs already reporting an improper payment estimate do not need to perform an additional improper payment risk assessment.

Requirements #3 through #6 – RRB did not Publish an IP Estimate, a Corrective Action Plan, a Reduction Target, or IP Rate of Less than 10 Percent for Railroad Medicare

The RRB was not required to publish payment integrity information on RRA, RUIA, vendor payments, or employee payments. However, the RRB did not publish payment integrity information or improper payment data for Railroad Medicare. Therefore, the RRB was noncompliant with requirements three through six. To comply with

- Requirement #3 – Publish an Improper Payment Estimate, federal agencies must publish improper payments estimates for all programs and activities identified under section 2(c) of the Improper Payments Information Act of 2002 in the accompanying materials to the annual financial statement;
- Requirement #4 – Publish a Corrective Action Plan, federal agencies must publish programmatic corrective action plans prepared under section 2(d) of the Improper Payments Information Act of 2002 in the accompanying materials to the annual financial statement;
- Requirement #5 – Publish and Meet Annual Reduction Targets, federal agencies must publish improper payments reduction targets established under section 2(d) of the Improper Payments Information Act of 2002 for each program assessed to be at risk, and meet such targets; and

¹⁶ 31 U.S.C. § 3321.

- Requirement #6 – Report a Gross Improper Payment Rate of Less than 10 Percent, federal agencies are required to report a gross improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 2(b) of the Improper Payments Information Act of 2002.¹⁷

The RRB did not publish the required information because the RRB’s position was that CMS is responsible for the Medicare program as a whole, the RRB’s Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting. According to a RRB statement found in its fiscal year 2019 PAR,

It was subsequently learned that these same testing results were captured by the Department of Health and Human Services in their 2018 Agency Financial Report, resulting in duplicative reporting. After consultation with the RRB Office of General Counsel (OGC) and Centers for Medicare and Medicaid Services (CMS), it was decided that the RRB would no longer report the results of this testing in the P&AR. This decision was shared with OMB with no objections. As such, the RRB will cease reporting Railroad Medicare improper payment data beginning with the fiscal year 2019 Payment Integrity Report.

We reached out to OMB regarding this matter, and OMB’s response was that they did not officially approve RRB to make this change. Instead, OMB advised that RRB and CMS should work together on the issue. Office of Programs management stated that RRB and CMS were working on an updated MOU between RRB and CMS, which would clarify each agency’s responsibilities regarding Railroad Medicare reporting of improper payments.¹⁸ They expect the agreement to be finalized by the end of 2020. Until the MOU is finalized, RRB’s position was that they have a tentative agreement with CMS that Railroad Medicare reporting responsibilities belonged to CMS.

Furthermore, the RRB’s assertion that its responsibilities were limited is particularly misleading. For example, the RRB reviews Palmetto’s invoices and authorizes payment to Palmetto based on their adherence to the contract between RRB and Palmetto. In 2019, the RRB reviewed and approved approximately \$18.3 million worth of invoices. CMS does not perform this function or have the power of the purse with regards to Palmetto.

During our audit we asked members from the Office of Programs and the Bureau of Fiscal Operations what the RRB reviewed to support their claim of duplicate reporting. They explained that they reviewed HHS’ AFR. At a later date, the Director of the Office of Programs clarified and stated, “I reviewed the HHS AF[R] and a specific mention of the Palmetto SMAC is not there.” Additionally, we determined the RRB did not have any of the appropriate documentation to support the inclusion of RRB’s Railroad Medicare in HHS’ overall Medicare Fee-for-Service (FFS) improper payment reporting.

¹⁷ 31 U.S.C. § 3321.

¹⁸ We made this recommendation in RRB OIG Report No. 19-09 and at the time of that audit the RRB nonconcurred with the recommendation.

Our IG wrote directly to the CMS administrator and to Congress about Railroad Medicare improper payment reporting and overall program responsibility. The IG concluded that

While benefits received under Railroad Medicare are solely for qualified railroad beneficiaries, the quality of healthcare, monthly premium cost, and customer service are not distinct from traditional Medicare. If RRB management denies ownership of its Railroad Medicare program and does not accept responsibility for minimizing improper payments, there is no practical reason for its existence.

As a result of RRB's noncompliance with four of six payment integrity reporting requirements, the RRB has not adequately prevented improper payments, reduced improper payments, or provided complete transparency of improper payment rates for a program it is responsible for overseeing and administering. As such, the RRB did not disclose to the public and Congress the following information about the Railroad Medicare program and the performance of the RRB's SMAC, Palmetto GBA:

- The RRB had \$107.1 million in projected improper payments.
- The RRB did not have a corrective action plan to reduce the prior year's improper payment rate. The prior year's rate was 10.53 percent as published by the RRB in its fiscal year 2018 PAR, this triggered the need for a corrective action plan.
- The RRB did not publish an annual reduction target for this year or meet last year's published rate of 9.93 percent.
- The RRB had a gross improper payment rate of 12.5 percent, which exceeded the 10 percent threshold.¹⁹

At the time of this report, the RRB had been noncompliant for two consecutive fiscal years.

Recommendation

We recommend that the Office of Programs

1. create and submit proposals to Office of Management and Budget during their next budget submission that will bring the agency into compliance. If the Director of Office of Management and Budget determines that additional funding would help the agency become compliant, the agency should obligate an amount of additional funding determined by the Director of Office of Management and Budget to intensify compliance efforts.

Management's Comments and Our Response

In response to our draft report, the Office Programs stated,

[t]he question of RRB's responsibilities with respect to Medicare and the RRB [SMAC] contract has been researched and addressed in the past. Through consultation with

¹⁹ The information provided is according to a CMS' Comprehensive Error Rate Testing report titled *November 2018 Final Report For Contractor RRB*. The report included reviewed claims data from the sampling period July 2016 through June 2017.

the CMS and our Office of General Counsel, we agree that CMS is responsible for reporting the Medicare [FFS] program improper payment rate as determined through the [CERT] program.

... CMS and RRB agree that Medicare FFS should be treated as one program and the Medicare FFS program improper payment rate will continue to be reported in HHS's [AFR]. The RRB is bound by CMS' regulations and procedures addressing the Medicare program.

CMS and RRB agreed that RRB would no longer separately report SMAC improper payment rate information inasmuch as the RRB SMAC is included in the Medicare FFS program improper payment rate reported in the HHS AFR. 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' Medicare FFS improper payment rate measurement 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 GBA, including ensuring that the SMAC diligently performs required activities to reduce its improper payment rate. In addition, the RRB is working in partnership with CMS to finalize the MOU to delineate the duties and responsibilities of each Agency.

As a part of our contract administration, the RRB is responsible for utilizing the improper payment rate information provided by CMS in conjunction with CMS' regulations and procedures addressing Medicare to work with the SMAC to reduce Medicare FFS improper payments. ... Reducing improper payments is a goal that is shared throughout the Federal government and the RRB will continue to do our part to reduce improper payments whenever and wherever possible.

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

[t]hrough dialog with CMS, RRB learned that its separate reporting of the SMAC FY 2018 improper payment rate information was duplicative of the Medicare FFS improper payment rate reported in the HHS's AFR and resulted in an overstatement of the Medicare FFS improper payment... CMS reports a Medicare FFS program improper payment rate, which includes all CMS-contracted MACs and the RRB SMAC. ... Although Section 1842(g) of the Social Security Act provides the RRB with the authority to contract with and to oversee a contractor to perform Medicare Part B functions, including the functions of determining Medicare Part B payment amounts and of making these Medicare Part B payments, CMS and RRB agree that Medicare FFS is one program for improper payment reporting purposes.

The comments provided by management did not warrant a modification to our report. We disagree with management's comments for the reasons explained in our prior audit report and explained in the section of this report titled *Requirements #3 through #6 – RRB did not Publish an IP Estimate, a Corrective Action Plan, a Reduction Target, or IP Rate of Less than 10 Percent for Railroad Medicare*.²⁰ We have determined that the RRB should continue to separately report Railroad Medicare payment integrity information in its PAR due to the unique characteristics of RRB SMAC, its extended enterprise relationship with CMS, the lack of

²⁰ RRB OIG, Report No. 19-09.

transparency for a separate Railroad Medicare program, and the less than optimal sampling of the RRB SMAC, Palmetto GBA.²¹

As discussed in our prior report and reiterated here, OMB guidance requires that, “[a]gencies should not put programs or activities into groupings that may mask significant improper payment rates by the large size or scope of a grouping.”²² The intent of the statement is to provide complete transparency of improper payment rates for a program that RRB is responsible for overseeing and administering. At the time of this report, Railroad Medicare improper payments had deteriorated further with an improper payment rate of 12.5 percent and a monetary loss estimates of \$104 million. We discussed duplication and transparency issues in the section of this report titled *Railroad Medicare Payment Integrity Reporting and Improper Payment Data is Not Transparent in HHS’ Fiscal Year 2019 Agency Financial Report* and the consequences of a monetary loss of over \$100 million in the section titled *RRB did not Report a High Priority Program*. Furthermore, as explained in the section of this report titled *Other Observation – Sampling and Estimation Plan Was not Optimal*, CMS’ CERT sampling and estimation plan to calculate the National Medicare FFS improper payment rate had not changed. This left the RRB with a less precise and unreliable improper payment estimate and rate for the Railroad Medicare program.

It is important to reiterate the sampling issue. If RRB fulfills the actions as described in its management’s comments and nothing changes with the sampling size for its SMAC (Palmetto GBA) there will be a problem with the improper payment rate and estimation. It should not be relied upon. It is well within the RRB’s responsibilities to advocate for improved sampling for the RRB SMAC in the overall CERT sampling program. It is of concern that even when afforded with the opportunity to align with CMS’ accuracy requirements during its initial inclusion, the RRB chose the option that produced less precise results than that of the larger CMS Medicare Administrative Contractors (MAC).

In response to RRB’s assertion of being bound by CMS’ Medicare regulations and procedures, we provided some context. As addressed in the RRB’s contract with Palmetto GBA (RRB’s SMAC), the RRB is not completely bound by CMS. According to the contract’s statement of work, “[t]he Contractor shall perform all [MAC] Part B functions on behalf of [RRB] Medicare beneficiaries as specified in this SOW and outlined in both the Internet-Only-Manuals [IOM] ... and Paper-Based Manuals. For purposes of this contract, when differences or conflicts occur, **this SOW shall take precedence over the IOMs** unless otherwise specified.”

We urge the RRB to leverage the information presented in this report by being proactive with their stewardship while working in partnership with CMS. The RRB must advocate for a MOU

²¹ CMS contracted Medicare Administrative Contractors (MAC) processed Medicare claims for their respective geographical regions, whereas the RRB contracted SMAC processed Railroad Medicare claims nationwide. CMS does not treat the RRB SMAC in the same way as its own MACs. This has been discussed in past RRB OIG audit reports.

²² OMB M-18-20.

that would clearly delineate the duties and responsibilities of each agency and provide the transparency as intended by law.²³

RRB's Payment Integrity Reporting was Incomplete and Inaccurate

The RRB's payment integrity reporting in its PAR was incomplete and therefore inaccurate. OMB guidance requires the RRB OIG to evaluate the accuracy and completeness of agency reporting of improper payment data. The RRB was not required to publish payment integrity information or improper payment data on RRA, RUIA, vendor payments, or employee payments. However, the RRB did not publish any Railroad Medicare information for payment integrity reporting requirements three through six. See the section in this report titled *Requirements #3 through #6 – RRB did not Publish an IP Estimate, a Corrective Action Plan, a Reduction Target, or IP Rate of Less than 10 Percent for Railroad Medicare* for details concerning this issue, the cause of the issue, and the corresponding recommendation to correct the deficiencies. We are not making recommendations for this finding due to the recommendation already made in this report which addressed the incomplete RRB agency reporting.

Agency Performance in Reducing and Recapturing Improper Payments Needs Improvement

OMB guidance requires that the agency's IG evaluate agency performance in reducing and recapturing improper payments. We did not evaluate RRB's performance in reducing improper payments for the RRA and RUIA programs because the RRB received RRA and RUIA reporting relief in July 2018. Using available information outside of the RRB's PAR, we determined that the RRB's performance in reducing Railroad Medicare improper payments was inadequate and some of the RRB's recapture program information needs improvement. We discuss our findings in reference to uncollectible amounts, the Do Not Pay (DNP) Initiative, and cost benefit analysis in the sections below.

RRB's Improper Payment Reduction Efforts for Railroad Medicare were Ineffective

Even though the RRB did not report on its Railroad Medicare program in its PAR, we determined the RRB was unsuccessful in reducing improper payments. According to a CMS CERT report titled *November 2018 Final Report For Contractor RRB*, the Railroad Medicare improper payment estimate increased from \$89.8 million to \$107.1 million and the improper payment rate increased from 10.53 percent to 12.5 percent.²⁴ The RRB should have used CERT's November 2018 report to report on its Railroad Medicare program.

²³ Pub. L. No. 111-204, 124 Stat. 2224 (2010), Pub. L. No. 112-248, 126 Stat. 2390 (2013), Pub. L. No. 107-300, 116 Stat. 2350 (2002).

²⁴ The \$89.8 million and the 10.53 percent was reported in the RRB's fiscal year 2018 PAR using the CERT's report titled *November 2017 Final Report For Contractor RRB*.

The increase occurred due to an ineffective corrective action plan and a less than optimal sampling and estimation plan. We discuss this in the section titled *The Sampling and Estimation Plan was Not Optimal*.

Insufficient Information was Provided for Railroad Medicare's Recapture Program, Uncollectible Amounts, and the Do Not Pay Initiative

For the second year in a row, the RRB did not include sufficient information about Railroad Medicare overpayment recapture data, Railroad Medicare uncollectible amounts, and did not provide a sufficient explanation of the DNP Initiative related to the Railroad Medicare program in its fiscal year 2019 PAR. This occurred because the RRB's position was that CMS is responsible for the Medicare program as a whole, the RRB's Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting.

In our prior year audit report, we determined that RRB did not include Railroad Medicare uncollectible amounts in its fiscal year 2018 PAR. RRB provided Palmetto's accounts receivable report for Railroad beneficiaries and providers to support the overpayments. It contained items such as amounts written off, bad debts, and allowance for uncollectible accounts. Additionally, we determined that the RRB did not provide a sufficient explanation in its fiscal year 2018 PAR on the DNP Initiative related to Railroad Medicare. We found that Palmetto used the List of Excluded Individuals and Entities to prevent improper payments. Using databases like those, meets the intent of public law that covers the DNP Initiative. In a prior RRB OIG audit, we made recommendations to correct these issues. At the time of this audit, the prior year audit recommendations remained open.²⁵

Railroad Retirement Act and Railroad Unemployment Insurance Act Recapture Programs Could be Improved

The RRB's RRA and RUIA recapture program information needs improvement. We evaluated the reported RRA and RUIA payment recaptured data for fiscal years 2017 and 2018 as shown in Table 3. The data showed an increase in recoveries for RRA and the RRB continued to recover identified improper payments as described in its PAR.

²⁵ RRB OIG, Report No. 19-09, Recommendations 10 and 11.

Table 3. Overpayments Recaptured Outside of Payment Recapture Audits

Fiscal Year	RRA Amount Recaptured	RUIA Amount Recaptured	Cumulative Amount Recaptured Fiscal Years 2009 - 2018
2018	\$72 million	\$25 million	\$501 million
2017	\$70 million	\$25 million	\$265 million

Source: RRB PAR for fiscal year 2019.

We determined that no inconsistencies were found when examining the RUIA program payment recapture information, however not all payment recapture information published in the PAR for the RRA program agreed with the underlying supporting data. For fiscal year 2018, RRA returned payments in the preparation worksheet did not agree with what was recorded in the RRB's financial system, FMIS.

This occurred because the preparer of the preparation worksheet used the collections detail from the TROR application to determine the total amount of RRA returned payments, which differed from the RRA return payments detail recorded in FMIS by total number of records and dollar values. Annually, the RRB certifies TROR to be accurate and consistent with the agency's financial system. As a result, the \$72 million shown in Table 3 was understated by approximately \$100,113 which directly impacted the cumulative amount of \$501 million.

Railroad Retirement Act and Railroad Unemployment Insurance Act Uncollectible Amounts

During our review of the recapture program for RRA and RUIA, we found the RRB provided justification for uncollectible RRA and RUIA amounts in its PAR as required. The RRB identified the estimated amount determined to be uncollectible at \$305,786.94 for RRA and \$35,729.73 for RUIA. Additionally, the RRB waived \$813,502.66 in RRA and RUIA benefit overpayments based on criteria established in the Code of Federal Regulations.

Non-Benefit Programs: Vendor and Employee Payments Recapture Program

We could not determine if the RRB conducted a sufficient cost benefit analysis to forgo having a payment recapture audit program for vendor and employee payments. Instead, the RRB improperly relied on a risk assessment in its determination of cost effectiveness as reported in our prior audit. However, in the fiscal year 2019 PAR, the RRB made improvements to its payment integrity reporting. The RRB described actions taken to detect and quantify potential improper payments for vendor and employee payment programs, which included a summary of their ongoing quality assurance (QA) reviews of these programs.

According to the fiscal year 2019 PAR, "[t]he most recent vendor payment QA reviews conducted during quarter two of fiscal year 2019 concluded that there were no improper vendor payments ... [and] [t]he most recent employee payment QA review conducted in June/July 2019 concluded that there were no improper employee payments." The RRB's position was that these QA results confirm that vendor and employee payment programs were not susceptible to significant improper payments, and that an improper payment recapture program was not necessary, or cost effective, at this time.

The information provided in the PAR was not sufficient for our office to evaluate the accuracy of the RRB's decision. As required by OMB M-18-20, the RRB should have provided the RRB OIG and OMB with the analysis used by the agency to reach its decision. Based on the information presented in the PAR, we could not determine the approach or process used during the QA reviews, including the sample size. We were not provided with any underlying support to determine if statistical sampling was used or another appropriate cost benefit analysis was used in support of its decision. According to OMB M-18-20,

[i]f an agency determines that it would be unable to conduct a cost-effective payment recapture audit program for certain programs[,] ... it should notify OMB and the agency's Inspector General of this decision and include any analysis used by the agency to reach this decision. The notification may take place in a memo that is submitted to OMB and the agency Inspector General via email.²⁶

This matter was reported in our prior audit report, and our prior year audit recommendations remained open.²⁷

Recommendations

We recommend that the Office of Programs

2. update the corrective action plan that was published in the Railroad Retirement Board's fiscal year 2018 Performance and Accountability Report to reduce Railroad Medicare improper payments and publish it in the Railroad Retirement Board's fiscal year 2020 Performance and Accountability Report; and
3. publish Railroad Medicare overpayment recapture data in the Railroad Retirement Board's fiscal year 2020 Performance and Accountability Report.

We recommend that the Bureau of Fiscal Operations

4. perform a reconciliation of Railroad Retirement Act overpayments recapture source data to the Financial Management Integrated System when preparing the payment recapture data worksheet to ensure accurate information is published in the Railroad Retirement Board's Performance and Accountability Report's payment integrity section.

Management's Comments and Our Response

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

For recommendation four, the Bureau of Fiscal Operations concurred with our recommendation.

²⁶ OMB M-18-20.

²⁷ RRB OIG, Report No. 19-09, Recommendation 13.

Additional Reporting Required in Statute

As part of this audit, we evaluated the agency's additional reporting as required in OMB Circular A-136 and OMB M-18-20. We determined some of the RRB's additional reporting requirements were missing. We discussed our findings in reference to improper payment barriers, improper payment accountability, information systems and other infrastructure, and relief from annual reporting request in the sections below.

Information on Railroad Medicare Improper Payment Barriers, Accountability, Information Systems, and Other Infrastructure was Missing

In the fiscal year 2019 PAR, RRB did not describe

- statutory or regulatory barriers that could limit corrective actions for Railroad Medicare; and
- specific performance appraisal criteria for its employees to reduce improper payments for the Railroad Medicare program.

In our prior audit report we reported our concerns about Railroad Medicare barriers and accountability, and our prior year audit recommendations remained open.²⁸

In the fiscal year 2019 PAR, RRB did not provide a description of information systems and other infrastructure it needs to reduce improper payments to the levels the agency had targeted; or a description of the resources the RRB requested in its most recent budget submission to Congress to establish and maintain the necessary controls, systems, and other infrastructure for the Railroad Medicare program.

The RRB did not report this information because it is the agency's position that CMS is responsible for the Medicare program as a whole, the RRB's Medicare responsibilities were limited overall, and if RRB published Railroad Medicare payment integrity information it would have resulted in duplicative reporting.

RRB Improperly Ceased Payment Integrity Reporting for its Railroad Medicare Program

In fiscal year 2019, the RRB improperly stopped reporting Railroad Medicare payment integrity information and improper payment data. The agency did not use the process outlined in OMB M-18-20. According to OMB M-18-20,

[i]f an agency's program has documented a minimum of two consecutive years of improper payments that are below the statutory thresholds - or otherwise can demonstrate that the program is no longer susceptible to significant improper payments ... the agency may request relief from the annual reporting requirements for this program or activity.

²⁸ RRB OIG, Report No. 19-09, Recommendation 15 and 16.

This request must be submitted in writing to OMB. In addition, the request should include an assertion from the agency's Office of Inspector General that it concurs with the agency's request for relief and agrees that the program is no longer susceptible to significant improper payments. Requests may be submitted without an assertion from the agency's Office of Inspector General, if the agency notes the reason(s) the Office of Inspector General would not provide an assertion.

The RRB's Railroad Medicare program did not have two consecutive years of improper payments below statutory thresholds or demonstrate that the program was no longer susceptible to significant improper payments.

RRB disagrees with our finding and contends that it did not seek relief from OMB because reporting Railroad Medicare improper payments in its PAR would have resulted in duplicate reporting, CMS is responsible for the Medicare program as a whole, and the RRB's Medicare responsibilities were limited overall.

The RRB and HHS' CMS provided no transparency of duplicative reporting. A reader of the HHS' AFR would not be able to understand if the RRB's Railroad Medicare program was included in the report or ascertain any payment integrity performance information about the RRB's contractor, Palmetto GBA.

RRB did not Report a High Priority Program

The RRB did not identify Railroad Medicare as a high priority program even though its improper payment monetary loss estimate was \$104 million, exceeding the OMB established threshold of \$100 million. The RRB should have included this information in its fiscal year 2019 PAR, which would ensure it was included on paymentaccuracy.gov and reported to the RRB OIG.

RRB contends that reporting Railroad Medicare improper payments in its PAR would have resulted in duplicate reporting due to HHS reporting it in their AFR, CMS is responsible for the Medicare program as a whole, and the RRB's Medicare responsibilities were limited overall.

Of notable concern, HHS Medicare FFS is a high priority program and will continue to be for the foreseeable future as it has eclipsed the \$2 billion threshold at \$31.62 billion based on fiscal year 2018 Medicare FFS improper payment rate data. If the RRB and CMS jointly believe that the RRB is not responsible for Railroad Medicare and it is a subcomponent of the HHS Medicare FFS program, then the additional reporting requirements of the larger high priority program would be inclusive of the RRB. Thus, the RRB and CMS should have ensured Railroad Medicare was appropriately represented in relevant HHS Medicare FFS high-priority program reporting. Yet, there is no evidence that this occurred or was discussed between RRB and HHS' CMS. Whether the RRB reports Railroad Medicare in their PAR or contends that HHS has done so in their AFR, the RRB must be held accountable and reminded that improper payment reporting is more than producing a dollar estimate. The intent of the law was to eliminate and recover improper payments as described:

Per IPERIA, OMB will identify a list of high-priority programs for greater levels of oversight and review. OMB will utilize improper payment reporting in an agency's AFR or PAR to make this determination.

The threshold for high-priority program determinations for FY 2018 reporting, and for subsequent years, is \$2 billion in estimated improper payments as reported in the AFR or PAR, regardless of the improper payment rate estimate.

To reduce the monetary loss to the tax payers by issuing payments correctly the first time, in FY 2018[,] High Priority Programs will be combined with programs that have over a \$100 Million or more in monetary loss. This is an opportunity to improve the efficiency of government programs by focusing on reducing incorrect payment[s] that result in monetary loss.

Under IPERIA, high-priority programs have the following additional requirements:

- a. Tailor corrective actions (see Part II.B.3)*
- b. Publically report actions to prevent and recover improper payments (see Part II.B.4)*
- c. Develop semi-annual or quarterly actions to reduce improper payments (see Part II.B.5)*

As such, the RRB did not provide complete transparency for a program it is responsible for overseeing and administering, which now is considered a high priority program by OMB.

Recommendation

We recommend that the Office of Programs

5. resume payment integrity reporting in the Railroad Retirement Board's performance and accountability report, as required by applicable improper payment laws, until official approval from Office of Management and Budget is obtained and updated governing documents between the Railroad Retirement Board and the Department of Health and Human Services have been signed to reflect the extended enterprise relationship between the two agencies.

Management's Comments and Our Response

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

Other Observations

While conducting this audit, we made other observations regarding transparency of data and achieving an optimal sampling and estimation plan. We describe the details of our observations in the next sections.

Railroad Medicare Payment Integrity Reporting and Improper Payment Data is Not Transparent in HHS' Fiscal Year 2019 Agency Financial Report

As discussed in previous sections of this report, the RRB believed its Railroad Medicare improper payment information was being reported in HHS' AFR. However, we could not locate any of this information in HHS' AFR. We did not locate any reference to the RRB, Railroad

Medicare, or Palmetto GBA in HHS' Payment Integrity Report section of its AFR. For fiscal year 2019, there was no transparency for this separate Railroad Medicare program. RRB's implementation of recommendation number five of this report could address this issue.

As determined in our prior audit report, the RRB's Railroad Medicare data was approximately two years old in the fiscal year 2018 PAR because Railroad Medicare data was based on claims sampled between July 2015 and June 2016 for its payment reporting. This occurred even though approximately one year old data was available earlier than it was provided to the RRB. In coordination with HHS OIG, HHS, and CMS and our review of HHS's AFR, we determined that HHS issued its fiscal year 2018 AFR based on claims sampled between July 2016 and June 2017 and not consistent with the RRB's two year old sampling results. According to CMS, they focused on the overall Medicare payment integrity reporting results for their agency first. CMS explained they provided RRB with the sampling results at the same time as the other MACs. This practice has continued into the fiscal year 2019 reporting cycle. Our prior recommendation to correct this issue remained open.²⁹

We confirmed this by evaluating if the RRB's fiscal year 2019 improper payment error rate of 12.5 percent was included in HHS' fiscal year 2019 AFR. For this evaluation, we held discussions with CMS and obtained the applicable sample from them. We concluded that the rate of 12.5 percent was not included in HHS' FY 2019 AFR. Instead, we determined the rate was included in HHS' FY 2018 AFR.

If RRB SMAC sampling continues in this way, the improper payment rate and estimate will continue to fluctuate and will be less reliable. This should be of great concern especially if the SMAC, Palmetto GBA, used this information for collecting award fees and other contractor bonuses.

The Sampling and Estimation Plan was Not Optimal

As of November 2019, CMS' CERT sampling and estimation plan to calculate the National Medicare FFS improper payment rate was not changed to address sampling assumptions applicable to the larger jurisdictional MACs. These assumptions were not applicable to the RRB SMAC due to its small size, which left the RRB with an unreliable improper payment estimate and rate.

In order for the RRB SMAC's CERT results to meet OMB's statistically valid and rigorous sampling definition in OMB M-18-20, the RRB must advocate for change and revisit suggested options made by CMS' statistical contractor. If appropriately addressed by the RRB, CMS, and CMS' CERT statistical contractor; the RRB SMAC's CERT results will become more reliable and lead to improved improper payment reduction strategies. Until that occurs, the accuracy of the Railroad Medicare improper payments rate could be improved if the RRB requested an increased sample precision of +/- 3 percent. As discussed in our prior audit report, the RRB should be advocating for its sampling and estimation plan methodology and ensure it aligns with CMS' CERT sampling and estimation plan precision goals for the other MACs.

²⁹ RRB OIG, Report No. 19-09, Recommendation 18.

In our prior audit report, we determined that the RRB did not ensure the Railroad Medicare's sampling and estimation plan was at the optimal level, which is statistically valid and rigorous. OMB directs such agencies to work towards improving their plans to meet the requirements for statistically valid and rigorous plans. Further, the RRB's sampling and estimation plan was incomplete for Railroad Medicare. Our prior year audit recommendations address these weaknesses and remained open.³⁰

³⁰ RRB OIG, Report No. 19-09, Recommendations 4, 5, 6, 7, 9, 18, and 19.
RRB's Compliance with Improper Payments Reporting - Report No. 20-06

APPENDIX I: MANAGEMENT COMMENTS



UNITED STATES GOVERNMENT

MEMORANDUM

FORM G-1151 (1-92)

RAILROAD RETIREMENT BOARD

May 4, 2020

TO: Debra Wheat
Deputy Assistant Inspector General for Audits

FROM: Crystal Coleman CRYSTAL
Director of Programs COLEMAN

SUBJECT: Management Response – Draft Report on the “Audit of Railroad Retirement Board’s Compliance with Improper Payments Elimination and Recovery Act in Fiscal Year 2019 Performance and Accountability Report”

Digitally signed by CRYSTAL
COLEMAN
Date: 2020.05.04 14:07:54
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Background

We are responding to the recommendations addressed to the Office of Programs (OP).

The Railroad Retirement Board’s (RRB’s) responsibility under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA), requires the RRB to make payments directly to beneficiaries. The RRB is responsible for all actions taken in accordance with the provisions of both the RRA and RUIA. Accordingly, the RRB reports on both of these acts in its Performance and Accountability Report (PAR). However, the RRB does not have sole responsibility for the Medicare program; in fact, the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) are responsible for establishing Medicare program regulations and policies, and for managing most aspects of Medicare program operations, while the RRB plays a more limited role in Medicare program administration.

The question of RRB’s responsibilities with respect to Medicare and the RRB Specialty Medicare Administrative Contractor (SMAC) contract has been researched and addressed in the past. Through consultation with the CMS and our Office of General Counsel, we agree that CMS is responsible for reporting the Medicare Fee-for-Service (FFS) program improper payment rate as determined through the Comprehensive Error Rate Testing (CERT) program.

Section 1842(g) of the Social Security Act (SSA) and other authorities provide that RRB’s administrative responsibilities include the certification of individuals as eligible for Medicare coverage and contracting with a Medicare administrative contractor to perform Part B claims processing functions. These functions include but are not limited to: providing provider education and technical assistance including improper payment outreach and education programs, determining and authorizing the amount of Medicare Part B payments and making such payments, and taking appropriate steps to reduce improper Medicare Part B payments. The costs of these services are to be paid by the Secretary of Health and Human Services as provided in section 1841(i) of the SSA.

For improper payment reporting purposes, CMS and RRB agree that Medicare FFS should be treated as one program and the Medicare FFS program improper payment rate will continue to be reported in HHS's Agency Financial Report (AFR). The RRB is bound by CMS' regulations and procedures addressing the Medicare program.

CMS and RRB agreed that RRB would no longer separately report SMAC improper payment rate information inasmuch as the RRB SMAC is included in the Medicare FFS program improper payment rate reported in the HHS AFR. 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' Medicare FFS improper payment rate measurement 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 GBA, including ensuring that the SMAC diligently performs required activities to reduce its improper payment rate. In addition, the RRB is working in partnership with CMS to finalize the MOU to delineate the duties and responsibilities of each Agency.

As a part of our contract administration, the RRB is responsible for utilizing the improper payment rate information provided by CMS in conjunction with CMS' regulations and procedures addressing Medicare to work with the SMAC to reduce Medicare FFS improper payments. The actions taken by the RRB will continue to include but are not limited to:

- Work with CMS on a regular basis to ensure that the MOU is current and accurately reflects each agencies responsibilities,
- Preparing annual risk assessment to determine SMAC vulnerability,
- Utilizing the CERT improper payment rate information to prepare annual medical review strategies,
- Require the SMAC to submit an Improper Payment Activities Report (IPAR) after the final improper payment rate data is received, and
- Ensure that the SMAC submits regular updates to the RRB if the improper payment rate is not equal to accepted tolerance levels.

Reducing improper payments is a goal that is shared throughout the Federal government and the RRB will continue to do our part to reduce improper payments whenever and wherever possible.

Following are the OP responses to recommendations #1, #2, #3 and #5:

Recommendation 1

Create and submit proposals to OMB during their next budget submission that will bring the agency into compliance. If the Director of OMB determines that additional funding would help the agency become compliant, the agency would obligate an amount of additional funding determined by the Director of OMB to intensify compliance efforts.

Response

RRB non-concurs. Through dialog with CMS, RRB learned that its separate reporting of the SMAC FY 2018 improper payment rate information was duplicative of the Medicare FFS improper payment rate reported in the HHS's AFR and resulted in an overstatement of the Medicare FFS improper payment reporting across the Federal Government as a whole. CMS reports a Medicare FFS program improper payment rate, which includes all CMS-contracted MACs and the RRB SMAC. As discussed above, HHS and CMS are responsible for the Medicare FFS program policy and most aspects of Medicare FFS program operations. Although Section 1842(g) of the Social Security Act provides the RRB with the authority to contract with and to oversee a contractor to perform Medicare Part B functions, including the functions of determining Medicare Part B payment amounts and of making these Medicare Part B payments, CMS and RRB agree that Medicare FFS is one program for improper payment reporting purposes. As such, CMS and RRB agreed that RRB would no longer separately report SMAC improper payment rate information inasmuch as the RRB SMAC is included in the Medicare FFS improper payment rate calculated by CMS and reported in the HHS AFR. The RRB shared this decision with OMB. The RRB will continue to work in partnership with CMS and carry out our responsibility for proper contract administration of the SMAC contract with Palmetto GBA.

Recommendation 2

Update the corrective action plan that was published in the RRB's fiscal year 2018 PAR to reduce Railroad Medicare improper payments and publish it in the RRB's fiscal year 2020 PAR

Response

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

Recommendation 3

Publish Railroad Medicare's overpayment recapture data in the RRB's fiscal year 2020 PAR.

Response

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

Recommendation 5

Resume payment integrity reporting in the RRB's PAR, as required by applicable improper payment laws, until official approval from OMB is obtained and updated governing documents between the RRB and the Dept. of HHS have been signed to reflect the extended enterprise relationship between the two agencies.

Response

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

APPENDIX II: MANAGEMENT COMMENTS



UNITED STATES GOVERNMENT
MEMORANDUM

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

May 1, 2020

TO : Debra Stringfellow-Wheat
Deputy Assistant Inspector General for Audit

FROM : Shawna R. Weekley SHAWNA WEEKLEY
Chief Financial Officer Digitally signed by SHAWNA WEEKLEY
Date: 2020.05.01 14:12:41 -05'00'

SUBJECT: Management Response – Draft Report on the “Audit of Railroad Retirement Board’s Compliance with Improper Payments Reporting in the Fiscal Year 2019 Performance and Accountability Report.”

The response related to the one recommendation directed to the Bureau of Fiscal Operations is as follows:

Recommendation 4: “...perform a reconciliation of Railroad Retirement Act overpayments recapture source data to the Financial Management Integrated System when preparing the payment recapture data worksheet to ensure accurate information is published in the Railroad Retirement Board’s Performance and Accountability Report’s payment integrity section.”

Management Response: Concur. Estimated completion date November 30, 2020.

cc: Ana M. Kocur, General Counsel
Crystal Coleman, Director, Office of Programs
Jeffrey Baer, Chief, Treasury, Debt Recovery, and Financial Systems
Tim Hogueisson, Director, Audit Affairs and Compliance
Parris Washington, Debt Recovery Manager

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

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

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

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

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

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

APPENDIX IV: ABBREVIATIONS

AFR	Agency Financial Report
CERT	Comprehensive Error Rate Testing
CMS	Centers for Medicare and Medicaid Services
DNP	Do Not Pay Initiative
ERM	Enterprise Risk Management
FFS	Fee-For-Service
FMIS	Financial Management Integrated System
HHS	U.S. Department of Health and Human Services
IG	Inspector General
IPERA	Improper Payments Elimination and Recovery Act of 2010
IPERIA	Improper Payments Elimination and Recovery Improvement Act of 2012
MAC	Medicare Administrative Contractor
MOU	Memorandum of Understanding
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAR	Performance and Accountability Report
QA	Quality Assurance
RRA	Railroad Retirement Act
RRB	Railroad Retirement Board
RUIA	Railroad Unemployment Insurance Act
SMAC	Specialty Medicare Administrative Contractor
TROR	Treasury Report on Receivables