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RAILROAD RETIREMENT BOARD

Actions Needed to Reduce Continued Risk of Fraud and Improper Payments

Statement of Daniel Bertoni,
Director, Education, Workforce, and
Income Security Issues

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Why GAO Did This Study

Over time, GAO, the RRB Inspector General, and the U.S. Department of Justice have reviewed or investigated RRB's disability benefit programs and found them to be vulnerable to fraud and abuse which places the agency at risk of making improper payments. In 2008, the Department of Justice investigated and prosecuted railroad workers who were suspected of falsely claiming RRB benefits. As of September 30, 2014, these investigations and prosecutions have resulted in approximately \$614 million in restitution, forfeiture, and fines, raising concerns about RRB's administration of its disability claims process.

Implementing strong preventive controls can serve as a frontline defense against improper payments. Examples of preventive controls include 1) ensuring that key duties and responsibilities are divided or segregated among different people to reduce the risk of error, waste or fraud and 2) using timely earnings information to ensure claimants are eligible to receive program benefits. GAO did not make recommendations regarding the occupational disability program, and in 2014, made five recommendations regarding the total and permanent disability program.

This testimony provides information on (1) the critical program vulnerabilities of RRB's occupational disability program, and (2) the potential for fraud and threat of improper payments in RRB's total and permanent disability program.

GAO is not making any new recommendations in this testimony.

View [GAO-15-535T](#). For more information, contact Daniel Bertoni at (202) 512-7215 or bertonid@gao.gov.

What GAO Found

The Railroad Retirement Board (RRB) administers two disability programs—the occupational disability program and the total and permanent disability program. The occupational disability program provides benefits to railroad workers in situations where workers are unable to perform their railroad work, but may be able to return to the workforce in another occupation. The total and permanent disability program provides benefits to workers who have a medically determinable physical or mental impairment severe enough that they are generally unable to engage in any regular employment. As a steward of taxpayer dollars, the RRB is responsible for how it disperses billions of taxpayer dollars each year.

In recent years, the RRB has been the subject of Government Accountability Office (GAO) audits that have highlighted shortcomings in RRB's administration of its disability programs. RRB Inspector General audits and a U.S. Department of Justice investigation have found similar challenges. GAO found that RRB's continued reliance on a paper-based process and the agency's lack of a robust analytical framework to target potential fraud and abuse in the occupational disability program left the agency susceptible to making improper payments to individuals who did not qualify for benefits. For example, individual occupational disability claims were kept in paper-based files making it difficult for claims examiners to identify unusual patterns or instances where medical information may originate from a small number of doctors or hospitals. Similarly, RRB did not maintain information on doctors in a format that would allow the agency to detect and analyze potential instances of fraud. RRB had begun separately collecting data to detect unusual patterns in relation to a high-profile fraud incident involving employees of the Long Island Railroad, but had not expanded these analyses to other railroads or to other programs outside the occupational disability program.

GAO also found last year that RRB's total and permanent disability program was vulnerable to fraud and improper payments. A shortage of timely data, gaps in internal controls, a lack of a comprehensive system of quality assurance and performance monitoring, and insufficient focus on potential fraud all contributed to a need for fundamental program reform. For example, GAO found that RRB was using information to verify a claimant's self-reported work and earnings history that was up to 1 year old when newer data were available. Further, RRB's claims review process did not follow accepted internal controls by sufficiently separating claim reviews from approvals and, as a result, from one-quarter to one-third of total and permanent disability cases were approved without independent review by a second party. In addition, RRB's performance monitoring standards were focused primarily on payment timeliness and accuracy and less on whether claimants were properly qualified to receive benefits. Lastly, RRB's process lacked a fundamental awareness and sensitivity to instances of potential fraud. In a recent report examining the total and permanent disability program, GAO made several recommendations to improve the oversight of this program including ways to improve information, increase internal controls and foster fraud awareness. RRB officials agreed with all of GAO's recommendations and the agency has begun taking steps to implement them.

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee:

Thank you for the opportunity to be here today to discuss the challenges facing the Railroad Retirement Board's (RRB) disability programs, and the potential for these programs to be at risk of fraud and improper payments.¹ As a steward of taxpayer dollars, the RRB is accountable for how it spends billions of taxpayer dollars annually. Over time, our audits of the RRB have identified internal control weaknesses and oversight gaps in its benefit programs. Related audits by RRB's inspector general and an investigation by the Department of Justice have identified similar challenges. As you and the members of the subcommittee know, Justice has investigated and prosecuted railroad workers suspected of falsely claiming RRB benefits which, if paid in full, could total more than \$1 billion in disability benefits. Between the late 1990s and 2008, as many as 1,500 former Long Island Rail Road workers were suspected of falsely claiming RRB benefits, with the help of several physicians, a former union official, and a former RRB field office manager. As of September 30, 2014, these investigations and prosecutions have resulted in approximately \$614 million in restitution, forfeiture, and fines. An additional 44 individuals also voluntarily disclosed their involvement in the fraud scheme and agreed to the termination of their RRB disability benefits. These cases have raised concerns about RRB's program oversight, and highlighted higher-level deficiencies in RRB's disability claims process.

My testimony today will focus on the continued existence of critical program vulnerabilities that threaten RRB's disability programs. As we have previously reported², implementing strong preventive controls can serve as the frontline defense against fraud and improper payments in general and we have made several recommendations to that end. The RRB Inspector General has also made numerous recommendations specifically directed at improving RRB's disability programs. Implementing these recommendations requires a proactive approach to preventing improper payments, increasing public confidence in the administration of RRB's benefit programs, and avoiding the challenges associated with recovering overpayments.

¹ An improper payment is defined by statute 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. It includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts Pub. L. No. 107-300, § 2(g)(2), as amended, codified at 31 U.S.C. § 3321 note. Office of Management and Budget guidance also instructs agencies to report as improper payments any payments for which insufficient or no documentation was found.

² See Related GAO Products at the end of this statement.

This statement is primarily based on our body of work issued from September 2009 through June 2014. More detailed information on our objectives, scope, and methodology for this work can be found in the issued reports. We conducted the work on which this statement is based 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.

Background

Under the Railroad Retirement Act of 1974,³ the Railroad Retirement Board operates two distinct disability programs—the occupational disability program and the total and permanent disability program. The occupational disability program provides benefits for railroad workers when they are unable to perform the duties required of them by their railroad employment. The program—which uses labor- and management-negotiated disability criteria that apply only to a worker’s ability to perform his or her specific railroad occupation—provides benefits for workers who have physical or mental impairments that prevent them from performing their specific job, regardless of whether they can perform other work. For example, a railroad engineer who cannot frequently climb, bend, and reach, as required by the job, may be found occupationally disabled. Workers determined to be eligible for benefits under the occupational disability program may ultimately be able return to the workforce, but generally may not return to their original occupation. According to RRB, at the end of fiscal year 2013, the agency was paying about 60,500 occupational disability annuities, down from about 61,700 in fiscal year 2012. In fiscal year 2014, the agency approved about 97 percent of the 1,250 applications for occupational disability benefits it received.

The eligibility criteria for the total and permanent disability program differ from the occupational disability program. Under the total and permanent disability program, RRB makes independent determinations of railroad workers’ claimed disability using the same general criteria that the Social Security Administration (SSA) uses to administer its Disability Insurance (DI) program.

³ Pub. L. No. 93-445, 88 Stat. 1305, codified at 45 U.S.C. § 231 et seq.

For example, a worker must have a medically determinable physical or mental impairment that: (1) has lasted (or is expected to last) at least 1 year or is expected to result in death, and (2) prevents them from engaging in substantial gainful activity, defined as work activity that involves significant physical or mental activities performed for pay or profit.⁴ In other words, these workers are essentially deemed unable to perform any gainful work and are generally unable to engage in any regular employment. SSA staff review about one-third of the cases that RRB has determined to be eligible for total and permanent disability benefits for which Social Security benefits may potentially be paid. According to RRB, at the end of fiscal year 2013, the agency was paying about 20,700 total disability annuities. In fiscal year 2014, RRB approved about 78 percent of the nearly 800 applications for total and permanent disability benefits it received.⁵

While the railroad retirement system has remained separate from the Social Security system, the two systems are closely linked with regard to earnings, benefit payments, and taxes. A financial interchange links the financing of the two systems, providing a transfer of funds between RRB and SSA accounts based on the amount of Social Security benefits that workers would have received if they were covered by Social Security, as well as the payroll taxes that would have been collected if the railroad workers were covered by Social Security instead of their own system. When such benefits would exceed payroll taxes, the difference—including interest and administrative expenses—is transferred from Social Security to RRB. When such payroll taxes would exceed benefits, the transfer goes in the other direction. Since 1959, such transfers have favored RRB, and for all RRB benefits paid in fiscal year 2012, RRB received about 38 percent of the financing for benefits paid through the financial interchange.

Past Fraud Highlights Gaps in RRB Oversight of the Occupational Disability Program

In 2009 and 2010, we reviewed the claims process for RRB's occupational disability program and found no overall evidence of unusual claims at similar commuter railroads like those

⁴ For total and permanent disability criteria, see 45 U.S.C. § 231a(a)(1)(v) and 20 C.F.R. §§ 220.26, 220.28, and 220.141. For DI criteria, see 42 U.S.C. § 423(d)(1) and 20 C.F.R. § 404.1572. Both occupational disability and total and permanent disability benefits are payable to employees with at least 10 years (120 months) of creditable railroad service or to employees with 5 years (60 months) of creditable railroad service after 1995. The programs also pay benefits to certain disabled widow(ers) and certain surviving children.

⁵ In contrast, the approval rate for claims under SSA's DI program for 2012 was about 30 percent for workers and about 31 percent for all claimants (2012 was the most recent data available.)

exhibited at the Long Island Railroad; however, we did identify several potential program vulnerabilities including a reliance on a manual, paper-based claims process and the lack of a systematic way to evaluate potentially fraudulent claims.⁶

Our work found that RRB had not analyzed occupational disability data or performed other analyses that could have enabled the agency to identify unusual patterns in disability applications. Claims for disability through RRB are generally filed on paper and processed in paper form, which prevents the agency from detecting potential patterns of fraud or abuse that would be possible with a computer-based system. When a railroad worker files a claim and submits information—such as details about his or her disability and work history—RRB staff create a paper claims file. These files are reviewed by claims examiners who apply eligibility criteria to determine if a benefit should be awarded. Claims are assigned to examiners randomly, and due to the manual nature of the claims process, it is difficult for individual examiners and the agency to detect potential patterns of fraud or abuse such as a high concentration of claims from one source, or boilerplate medical exam information from a small number of doctors or hospitals.⁷ Such analyses are central to ensuring the integrity of the program and—more importantly—ensuring that only eligible railroad workers receive benefits. Indeed, as was the case in the Long Island Railroad incident, the use of paper files likely played a key role in allowing these patterns to go undetected.

In 2009, we analyzed data from multiple RRB data systems to determine the number of occupational disability benefit awards made, relative to employment, for the Long Island Railroad compared with other commuter railroads and application and approval rates for occupational disability benefits for workers at these railroads to determine if other railroads exhibited high numbers of claims like those found at the Long Island Railroad. It is important to note that the data we used for our analyses were readily available to RRB, and the agency could have used these data to identify such patterns as part of its routine monitoring and oversight of the occupational disability program. While we found no overall evidence of unusual claims like those exhibited at the Long Island Railroad, neither we nor RRB could perform analyses to detect unusual patterns in commuter rail worker's applications, approval rates, and impairments by railroad occupation because the information is paper-based. Further, RRB does

⁶ See Related GAO Products at the end of this statement.

⁷ Case files are assigned based on the terminal digit of the claimant's case file number.

not maintain electronic data for all railroads on claimants' doctors in a format that would facilitate analysis and allow the agency to detect potentially fraudulent claims. Currently, RRB only has information on claimants' doctors in their paper claim files. RRB has taken some steps to increase the use of data to detect and analyze claim patterns, but much more work needs to be done. Since the Long Island Railroad incident, RRB created a new staff position responsible for collecting, developing, and analyzing relevant data to help manage and oversee the occupational disability program. However, this office's limited reviews have thus far focused on RRB's occupational disability program and RRB officials told us during our 2014 review that there were no current plans to include and evaluate data from the total and permanent disability program in its analyses.

Total and Permanent Disability Program Is Also Vulnerable To Fraud and Improper Payments

Our recent work examining the processes and controls associated with the total and permanent disability program indicated that it too was vulnerable to fraud and improper payments.⁸ For example, we found fundamental shortcomings in this program's policies and procedures with respect to the disability determination process, internal controls, performance and accountability, and fraud awareness.

- **Outdated earnings information:** Our 2014 review found that RRB awarded total and permanent disability claims based on out-dated work and earnings information. In order to qualify for total and permanent disability benefits, a worker must meet certain work and earnings eligibility criteria. For example, a worker generally cannot earn income in excess of \$850 per month from employment or net self-employment.⁹ RRB requires that claimants report any income and employment information at the time a disability claim is submitted, and RRB attempts to confirm this information by comparing it to data within

⁸ GAO, *Railroad Retirement Board: Total and Permanent Disability Program at Risk of Improper Payments*, GAO-14-418 (Washington, D.C.: June 26, 2014.)

⁹ If an annuity is based on disability, there are certain work restrictions that can affect payment, depending on the amount of earnings. The annuity is not payable for any month in which the disabled employee works for an employer covered under the Railroad Retirement Act of 1974. The annuity is not payable for any month in 2015 in which the disabled employee earns more than \$850 in any employment or net self-employment, exclusive of disability-related work expenses. Withheld payments will be restored if earnings for the year are less than \$10,625 after deduction of disability-related work expenses.

the SSA Master Earnings File.¹⁰ However, this earnings database may not provide up-to-date information on work and earnings because the most recent data contained within the database are for the last complete calendar year before the claim was filed. As a result, the data that RRB uses to determine eligibility may lag behind actual earnings by up to 12 months. Without reviewing the most up-to-date information available, RRB is unable to ensure that only eligible workers receive benefits. There are other sources of data that could potentially provide RRB more current information on work and earnings, and as a result of our 2014 review, we recommended that RRB explore options to obtain more timely earnings data to ensure that claimants are working within allowable program limits prior to being awarded benefits. Information sources such as the National Directory of New Hires (NDNH) and *The Work Number* could potentially provide RRB with more timely earnings information on claimants' work histories.¹¹ The NDNH was established in part to help states enforce child support orders against noncustodial parents. However, access to the NDNH is limited by statute, and RRB does not have specific legal authority to access it.¹² *The Work Number* is a privately-maintained data source designed to help users identify unreported income. *The Work Number* allows organizations such as social service organizations to locate an individual's current place of employment or uncover unreported income, based on the most recent payroll data from over 2,500 employers nationwide. Inquiries can be made about specific individuals or through automated data matches. *The Work Number* is used by several other federal agencies on a fee basis and is already available to RRB. RRB officials agreed with our recommendation and have told us that they will work with the Office of Management and Budget to further define and determine RRB's needs in this area.

¹⁰ The Master Earnings File is a database of earnings maintained by SSA that includes earnings for individuals as reported to SSA by employers on Form W-2 (Wage and Tax Statement), and income from self-employment as reported to the IRS on Schedule SE. Although RRB maintains its own data system for monitoring railroad employment income and related taxes, the system does not include work and earnings from non-railroad employment or self-employment.

¹¹ The Secretary of Health and Human Services is required to establish and maintain the NDNH within the Federal Parent Locator Service. 42 U.S.C. § 653(i). *The Work Number* is a commercial service provided by Equifax that allows social service organizations and others to locate an individual's current place of employment or uncover unreported income, based on the most recent payroll data from over 2,500 employers nationwide. Inquiries may be made individually, or through automated data matches. The information is limited to employers who participate in the system.

¹² SSA, which has legal authority to access the NDNH, currently uses the data to periodically monitor the earnings of those receiving Supplemental Security Income benefits, and to investigate current, or recent alleged work activity that is not yet posted to the MEF for DI applicants and beneficiaries.

- **Insufficient supervisory review process:** Our examination of RRB’s total and permanent disability claims review process uncovered gaps in internal controls such as allowing a single claims examiner to review claims and award disability benefits—in many cases without an independent review by a second party. GAO’s *Standards for Internal Control in the Federal Government* states that agencies should ensure that key duties and responsibilities are divided or segregated among different people to reduce the risk of error, waste, or fraud.¹³ However, we found an inconsistent review process at RRB. Specifically, at the time of our review, RRB’s policies and procedures allowed for discretion at the field office level regarding how complete a case file must be before forwarding it to headquarters for a determination, and these files were subject to different levels of review. For example, at the headquarters examination and determination level, RRB policy allowed for some claims to be approved without any subsequent independent review and generally allowed examiners to use their judgment to decide which cases did not require additional scrutiny. In other words, at their discretion, a single RRB claims examiner could “self-authorize” the claim. In recent years, about one-quarter to one-third of all total and permanent initial claims were approved by the same claims examiner who reviewed the application. Without a second review, such claims can be problematic, such as when there is an error in judgment on the part of the claims examiner, or a failure to obtain key medical and vocational evidence. As a result of our review, we recommended that RRB revise its policy to require supervisory review and approval of all total and permanent disability cases. In response, RRB has subsequently changed its policy and officials stated that nearly all claim files are now reviewed by a second party.
- **Program quality and integrity:** Our 2014 review also found an insufficient commitment to quality and program integrity. We found that RRB’s primary focus on quality was to ensure that claims were paid quickly and that the approved benefit amount was paid. However, RRB did not have sufficient controls to ensure that the claimant was actually eligible for benefits or that the benefit was awarded correctly—prior to the benefit being

¹³ GAO, *Standards for Internal Control in the Federal Government*. GAO/AIMD-00-21.3.1. (Washington, D.C.: Nov. 1, 1999).

paid. In certain circumstances, RRB was able to identify improper payments after the benefit had already been paid, but this put RRB into a “pay and chase” mode where it must try and recover benefits paid to ineligible claimants. We agree with RRB that claims should be paid as quickly as possible; however it is equally important to ensure that the benefits are properly awarded.

To ensure the integrity of the program, it is also critical that RRB report the results of its quality assurance efforts to Congress and other interested parties. RRB’s performance monitoring standards have been focused primarily on payment timeliness and accuracy and less on whether claimants were properly qualified to receive benefits. Information on approval rates and the accuracy of disability determinations is critical towards ensuring the accountability of the agency’s work. As a result, we recommended that RRB strengthen oversight of its disability determination process by establishing a regular quality assurance review of initial disability determinations to assess the quality of medical evidence, determination accuracy, and process areas in need of improvement and develop performance goals to track the accuracy of disability determinations. RRB agreed with these recommendations and plans to develop new measures of quality and program integrity and will include the development of performance goals as a part of its new quality assurance plan; however, we have yet to receive or review this plan.

- **Fraud detection and awareness:** Lastly, our review found inadequate internal controls to identify and eliminate fraud at every stage of the process and an insufficient commitment to fraud awareness throughout the agency. RRB had not engaged in a comprehensive effort to continuously identify and prevent potential fraud program-wide even after the high-profile Long Island Railroad incident exposed fraud as a key program risk. Since that incident, RRB increased its scrutiny of claims from Long Island Railroad workers—for example, by ordering more consultative medical exams. However, as noted earlier, its other actions to detect and prevent fraud have been limited and narrowly focused. For example, in 2011, RRB conducted an analysis of 89 cases of proven fraud¹⁴ in its occupational disability and total and permanent disability programs to

¹⁴ In this context, cases of “proven fraud” are from a list of cases that, according to the RRB OIG, had been successfully prosecuted for fraud as a result of undisclosed employment while receiving disability benefits from RRB.

identify common characteristics that could aid in identifying at-risk cases earlier in the process. However, RRB did not draw any conclusions about new ways to identify potential fraud and, as a result, did not make any system-wide changes to the determination process.

Our interviews with RRB staff also showed an inconsistent level of awareness about fraud, and claims representatives in all four of the district offices that we contacted said they had not received any training directly related to fraud awareness. While RRB has initiated fraud awareness training, agency participation was incomplete and updates and refreshers were sporadic. Due to this limited focus on fraud detection and awareness, we recommended that RRB 1) develop procedures to identify and address cases of potential fraud before claims are approved, 2) require annual training on these procedures for all agency personnel, and 3) regularly communicate management's commitment to these procedures and to the principle that fraud awareness, identification, and prevention is the responsibility of all RRB staff. RRB agreed with this recommendation and has begun taking steps to increase fraud awareness, amend its policies and procedures with new fraud detection and reporting mechanisms, and provide fraud awareness training to its staff. RRB officials also stated that the agency has hired a contractor to review the agency's fraud awareness and detection systems to identify specific areas in need of improvement.

In summary, our recent work has found that RRB's disability programs lack sufficient policies and procedures to address the vulnerabilities it faces and, as a result, remains vulnerable to fraud and runs the risk of making improper payments. The weaknesses we have identified in RRB's determination process require sustained management attention and a more proactive stance by the agency. Without a commitment to fundamental aspects of internal control and program integrity, RRB remains vulnerable to fraud and runs the risk of making payments to ineligible individuals, thereby undermining the public's confidence in these important disability programs. While the Board agreed with all of our recommendations and the agency has taken steps to address them, more work remains to be done. We look forward to working with members of the subcommittee, RRB officials, and Inspector General staff as RRB continues to implement our recommendations.

Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contacts and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Daniel Bertoni, Director, Education, Workforce, and Income Security issues at (202) 512-7215 or bertonid@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff members who make key contributions to this testimony are David Lehrer (Assistant Director), Jessica Botsford, Alex Galuten, Jamila Kennedy, Jean McSween, Arthur Merriam, and Kate van Gelder.

Related GAO Products

Standards for Internal Control in the Federal Government. GAO/AIMD-00-21.3.1. Washington, D.C.: November 1, 1999.

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